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MEETING OF THE SUPREME COURT ADVISORY COMMITTEE

MARCH 7, 2025

(FRIDAY SESSION)

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Taken before *D'Lois L. Jones*, Certified
Shorthand Reporter in and for the State of Texas, reported
by machine shorthand method, on the 7th day of March,
2023, between the hours of 9:00 a.m. and 4:30 p.m., at
Vinson & Elkins, 200 West 6th Street, Suite 2500, Austin,
Texas 78701.

1 **INDEX OF VOTES**

2 Votes taken by the Supreme Court Advisory Committee during
3 this session are reflected on the following pages:

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2 CHAIR TRACY CHRISTOPHER: Good morning, it's
3 9:00. We'll go ahead and get started. I'm usually pretty
4 loud, but I'll turn the microphone on in case you need me.

5 This is my inaugural job as Chair here. I
6 have wondered whether I could do it, because I am a big
7 talker, usually, in this committee, and Chairs usually
8 don't talk, so it's going to be a little tricky for me not
9 to be raising my hand to ask questions in every occasion,
10 but I've been on the committee for a long time.

11 Justice Bland and I used to sit at that end of the table,
12 and the two of us would whisper and, you know, like, oh,
13 my gosh, what are they doing now; and then when she got on
14 the Supreme Court, she moved up here to this end of the
15 table, and I was very sad, but I always stayed back there
16 at that end of the table. So now we're up here, and I'm
17 whispering, but I'm going to turn the microphone off so
18 you don't have to worry about it.

19 You know, I have big shoes to fill. I wish
20 Chip could have been here today, but he said that he
21 couldn't. You know, the Supreme Court has thanked him,
22 thanked him, thanked him. He decided -- this was not a
23 coup. He decided that he wanted to step down as Chair of
24 the committee, and so I got a very persuasive phone call
25 from Justices Bland and Young to talk me into doing it, so

1 we thank him for his many, many years of service. There
2 is absolutely no way I will be Chair for anywhere near
3 that number of years. In fact, I'm going to be retiring
4 as a judge at the end of '26, and so Justice Young and
5 Justice Bland are like, "Well, you can stay a little bit
6 longer. This will be a good retirement job for you." So
7 we'll see. We'll see how that goes, if it really is a
8 good retirement job for me.

9 HONORABLE KENT SULLIVAN: The pay is great.

10 CHAIR TRACY CHRISTOPHER: So I will call on
11 Justice Bland for a status report.

12 HONORABLE JANE BLAND: Good morning.
13 Great to be with all of you, and thank you to Quentin for
14 hosting this committee meeting today. I know it's a
15 little tight here. Fortunately, our new Chair has gotten
16 on the ball, and we've got dates for this year, and we're
17 working on the dates for next year. We're hoping to have
18 those meetings at the State Bar, and thanks to the Travis
19 County judges, they have offered a nice conference room
20 space close by that can fit all of us, and so thank you to
21 them as well.

22 So Chief Justice Hecht, it feels a little
23 strange not having him at this end, along with Chip. Chip
24 sent -- we had some correspondence over the last couple of
25 months, and I'll share a little bit of what he said to me

1 when he said he wasn't going to be able to make the
2 meeting. "It's hard to believe I've participated in the
3 committee's work for so many years, but I can say without
4 reservation that I got more out of the experience than I
5 ever gave, and one of the joys of this service was getting
6 to know and work with so many outstanding people." He's
7 confident that led by our two -- our new Chair, Tracy
8 Christopher, and our new Vice-Chair, Marcy Greer, that,
9 you know, we will take the committee to new heights and
10 solve the problems of our justice system, both large and
11 small.

12 So we'll see. That's a big charge, but
13 that's -- so he sends his greetings. He and Chief Justice
14 Hecht are both emeritus members of this committee, and
15 we're hoping to be able to call on them from time to time,
16 if not frequently, to get their institutional knowledge
17 and insight. As we all know, some discussions come back.
18 It may take about 10 years, but they come back again. And
19 so one of the discussions this morning, there was a -- on
20 the central docket, there was a meeting 10 or 15 years
21 ago, a similar kind of discussion. So, anyway, we'll look
22 forward to counting on them as a resource.

23 We are very delighted to have Chief Justice
24 Christopher as the Chair of this committee. She has been
25 on this committee 22 years. We started at the same time,

1 and as all of you know, she is one of the most highly
2 regarded judges in our state system. She served, you
3 know, on the state bench for 30 years. I don't want to
4 say that out loud.

5 CHAIR TRACY CHRISTOPHER: Uh-huh.

6 HONORABLE JANE BLAND: And a long time as a
7 trial judge and a local administrative judge and then on
8 the court of appeals and now Chief Justice of the Court of
9 Appeals. The -- everyone knows and, you know, most of the
10 lawyers in here know how great she is, and that's even
11 when she's probably ruled against all of you at one point
12 or another. But one of the things about Chief Justice
13 Christopher is that she is a judicial problem-solver, and
14 that's true of the cases that she manages; but she, really
15 very early on, turned her attention to solving problems
16 for the system as a whole; and so she and Kent Sullivan
17 looked at plain language in our admonitory instructions,
18 because the instructions we were giving to jurors were
19 pretty obscure for the modern era; and they both worked
20 on, and Chief Justice Christopher was Chair of, the
21 oversight committee of the pattern jury charges.

22 And then on this committee, as you all know,
23 she has been an integral player when it comes to, you
24 know, how our modern discovery rules, she's had a hand in
25 that, with Justice Brown and others around the table.

1 She -- when we decided that there was some good to be had
2 after the pandemic with remote proceedings, but it was a
3 difficult thing to know when they were right to use and
4 when they were not right to use, she and Justice Miskel
5 worked on those rules; and, you know, we adopted rules,
6 and we've had very little feedback on them, so that makes
7 me think that they're working well for judges and lawyers
8 across the state. And I can always be disabused of that,
9 but they seem to be -- we seem to have struck the right
10 balance for when those kinds of hearings are appropriate
11 and when they are not.

12 And then, you know, most recently, I'll just
13 turn to our vice-chair. Marcy Greer was asked to chair
14 the task force for the business court rules, and on a
15 pretty tight deadline; and with a lot of help from members
16 of this committee, they hit that deadline, and we have the
17 business courts up and running, which I'll say a little
18 bit about in a minute.

19 Sort of the other things that are going on
20 outside of this committee, of course, we now have, with
21 Chief Justice Hecht's retirement, we have a new Chief
22 Justice, Chief Justice Jimmy Blacklock, and he is very
23 interested in the work of this committee and is going to
24 follow our work closely. He values your input and counsel
25 and I think is looking forward to giving this committee a

1 fair share of work in terms of getting insights into how
2 we can make our state judiciary operate efficiently and
3 how we can keep it strong. He was sworn in on
4 January 7th, and we have a new justice to replace his seat
5 on the Court, Justice James Sullivan, and I know he'll be
6 anxious to meet all of you and get to know you.

7 Chief Justice Blacklock -- every other year,
8 the Chief Justice has to give a State of the Judiciary
9 address to the Texas Legislature, and he did that last
10 week, and you can watch it on the Court's YouTube channel,
11 if you didn't get to see it.

12 Okay. Turning to some of the other things
13 that are going on, the Texas Board of Legal Specialization
14 has finalized its rules for a specialization in judicial
15 administration. That was a legislative mandate that we
16 had from the 2023 session. Fortunately, the Board of
17 Legal Specialization has some wonderful people on it, some
18 of whom are on this committee, took the laboring oar, and
19 our committee did not have to do it, but the first exam
20 will be in October of 2025. There is, in that bill
21 creating the specialization, the prospect -- it's
22 unfunded, the unfunded prospect of a little bit of a pay
23 merit bonus if you are -- if you achieve that
24 certification. So I would not expect there will be
25 legions of judges seeking that, but if there ever is

1 something funded with it, you might see a lot of judges
2 trying to become board certified.

3 Okay. We also approved kind of some tweaks
4 to Texas Rule of Civil Procedures 10 and 6 that had to do
5 with the, you know, motions to withdraw and e-mail
6 addresses, and that was from some work of this committee,
7 and they'll take effect in April.

8 On to the business courts and the Fifteenth
9 Court of Appeals, you-all may have seen Governor Abbott
10 had an editorial in *The Wall Street Journal* this week that
11 y'all's street is open for business, and it spoke about
12 the business courts and their importance to the state, and
13 so there seems to be support for our courts, and he was
14 very happy with, so far, it sounds like, with his
15 appointments, in that article. I say so far, because it's
16 only a matter of time before somebody has to make a ruling
17 and make somebody unhappy, but we'll see.

18 So as of Sunday, there are 46 cases in the
19 business court originally filed, and 36 removed, so a
20 total of 82. The Houston division has the most, which is
21 to be expected, as it's kind of 20 percent of the state's
22 population. The Court has disposed of 28 cases, and there
23 are six on appeal already, so that's why, you know, we'll
24 see. And so on the Fifteenth Court of Appeals, at the
25 initial outset last September, we transferred about a

1 hundred cases that the other courts of appeals had
2 identified that were filed between September 1st, 2023,
3 and September 1st, 2024, that would fall under the
4 Fifteenth's exclusive jurisdiction. There have been some
5 additional transfers of cases identified since then, and
6 some have been transferred back to their original courts.

7 There are some transfer decisions pending in
8 our Court that, hopefully, will help define the contours
9 of the jurisdiction of the Fifteenth Court of Appeals.
10 That was one of the things our committee had long
11 discussions about in coming up with the Fifteenth Court
12 rules, and so stay tuned for that. There's also -- the
13 Fifteenth Court is moving around the state, so I think if
14 you're interested in having them come to your neck of the
15 woods, reach out to them. They've -- they've heard
16 argument at UT Law School. They're hearing argument in
17 Houston. They've already issued 45 opinions, so it's a
18 very hard-working court. Not to -- that is not to say
19 that the other appellate courts are not hard-working.
20 They are very hard-working, too. You know, there's just
21 nothing like having to be an intermediate appellate judge
22 and handle the caseload they handle.

23 So the legislative session is upon us, as
24 you all know, and you all may be involved in in various
25 capacity. There's a number of bills that we're tracking

1 that might affect the judiciary, and we'll know more later
2 on, obviously, whether this committee is going to be
3 handed a lot of work. Last time, we were handed about 15
4 projects. Some of them were very easy, some of them were
5 more difficult and challenging, like the business court
6 rules, but there are several bills that affect the
7 judiciary, the Judicial Conduct Commission, obligations of
8 judges. There are some that would require updates to the
9 Court's eviction rules, so that may fall under this
10 committee's work.

11 There's some pending about alternative
12 licensure for paralegals, so we may be talking and
13 thinking about that, in addition to the work that's
14 already been done on those, and maybe some changes to the
15 Rules of Civil Procedure for jury panels and jury demands
16 and some things like that, but not to worry about those
17 yet, because, as we know, the legislative session is a
18 short amount of time, but seems endless, and so we will
19 know better what our obligations will be at the end of the
20 session.

21 And that's about it in update from me, which
22 is a lengthier one than usual. It's certainly lengthier
23 than I've ever given for this committee. I'll add one
24 more thing. So it's true, where Elaine and Justice Kelly
25 are, that used to be where we sat, so I do feel very

1 comfortable having Justice Christopher next to me again,
2 but we will try to keep the whispering to a minimum.

3 PROFESSOR CARLSON: We will, too.

4 HONORABLE JANE BLAND: Mostly because it's,
5 now, everyone else is raising their eyebrows about what's
6 going on at this end of the table, and I used to be in
7 that position. So we'll try our best.

8 CHAIR TRACY CHRISTOPHER: Justice Young, any
9 comments?

10 HONORABLE EVAN YOUNG: Yes. Now the part
11 that everyone really came for, the deputy's comments. I
12 am glad to be back with you-all. It was about 10 years
13 ago that I first joined this committee, and it's a time
14 warp of sorts. Here I am, and so many people that were
15 long here before I ever first came are still here, toiling
16 away, just amazing to see, and some new faces. I'm very
17 glad to be back. I'm very glad to be Justice Bland's
18 deputy.

19 There are a couple of things that I remember
20 wondering about when I was a member of the committee. One
21 of them was, all right, we're doing all of this work, our
22 subcommittees. We spend all day, we debate this, we
23 debate that. Is anyone at the Supreme Court really
24 listening, does anybody care? Now I know the answer to
25 that question, but moving on. No, no, just kidding. It

1 is of even greater importance than I thought and that I
2 hoped. It is something that the Court is constantly
3 talking about, can we get SCAC's views of this, we really
4 ought to get SCAC's views of that. There is no arm of the
5 Supreme Court that's more important, I think, to the
6 functioning of Texas courts at large. Our opinions are
7 very important, but the rules, the rules are more
8 important than any given opinion that we have, and none of
9 the rules can be properly modified or drafted without the
10 work of this body, and so I've now seen from both sides
11 how important the work that you do is, and I thank you
12 for, even more now, having been on the side where I'm
13 relying on it than on the side in which I was -- well,
14 contributing. I don't know if I contributed much to it
15 before. I tried, but I'm very appreciative of that.

16 And I'm appreciative of being Justice
17 Bland's deputy, because the other thing that I always
18 suspected but didn't really know, is Justice Bland, how is
19 it that she does everything that she does? Are there
20 really two of them, are they twins, are they triplets, and
21 I can tell you I think it's just one, but she works even
22 harder than I thought, and that is something respect and
23 admiration can't be obtained by having a title. It can
24 only be earned, and Justice Bland has certainly earned
25 mine on the inside, and I think that you-all know the

1 truth about her as well, that there are few people who
2 manage to make each day count the way that she does on
3 behalf of the people.

4 It is a great pleasure to be with our two
5 new Chairs, our Chair and our Vice-Chair, both of whom
6 I've worked with, and I am in the not-so-elite club of
7 having been ruled against by Chief Justice Christopher,
8 and who knows, depending on what the people of Texas say
9 in my next election, maybe I'll again get to be in that
10 position, if Chief Justice Christopher decides to sit, as
11 some people do, on courts of appeals, but hopefully I will
12 not be in that position ever again. And with that, I --

13 CHAIR TRACY CHRISTOPHER: Now he just
14 overrules me.

15 HONORABLE EVAN YOUNG: It is a great
16 pleasure to be back with you, and with that, I'm going to
17 allow the agenda to move forward, but, again, thank you
18 for what you all do.

19 CHAIR TRACY CHRISTOPHER: All right. Our
20 first item on the agenda is listed as prohibiting the
21 central docket. That was assigned to the judicial
22 administration subcommittee. Bill Boyce is the Chair, but
23 is unable to join us today, so Kennon has taken the
24 laboring oar on getting this done. I was talking to a lot
25 of people here this morning. It's probably our most

1 controversial issue in a while. We've all gotten phone
2 calls. We've all gotten e-mails, and we kind of had to
3 give sort of some ground rules to begin with, and I know
4 this is arbitrary, but because we had a lot of people that
5 wanted to come and talk to us, but I have asked Kennon to
6 have one representative from Travis and one representative
7 from Bexar. I think there are other representatives here
8 also, but they're here for support, and if there's a
9 question that our designated representative can't answer,
10 we might allow another person to talk, but we're trying to
11 sort of corral our information process here this morning.
12 So with that, I'll turn it over to Kennon.

13 MS. WOOTEN: Thank you, Chief Justice
14 Christopher and Madam Chair. I am going to be addressing
15 the central docket topic. Before I go further, let me
16 acknowledge that sometimes it's called the central docket
17 system, sometimes it's called the central docketing
18 system. I might use those terms interchangeably today,
19 and before I get into the substance, I do want to start
20 with gratitude, because a lot of people have provided
21 information about this topic. It sparked more interest
22 than a lot of the other topics we've considered over the
23 years as a committee, and I have received comments,
24 information, feedback, and I want to say thank you, on the
25 record, to every single person who took the time to send

1 information to me.

2 You have in your materials, as Exhibit 3 to
3 the subcommittee memo, a lot of comments. We also
4 received additional information that I'll go over in a
5 minute, but before I get there, I want to extend special
6 gratitude to the people who made the time today to attend
7 this meeting as guests, both from Bexar County and Travis
8 County. From Bexar County, Judge Rosie Alvarado, who will
9 be the person who will speak on behalf of the county. We
10 also have from Bexar County, District Judge Christine
11 Vasquez Hortick. We have District Judge Toni Arteaga.

12 HONORABLE TONI ARTEAGA: Good morning,
13 everyone.

14 CHAIR TRACY CHRISTOPHER: And we have Ryan
15 Anderson, who serves in the position as general counsel of
16 the Bexar County Civil District Courts.

17 From Travis County, the spokesperson will be
18 the Local Administrative District Judge Amy Clark Meachum,
19 and then to her left we have Judge Jessica Mangrum from
20 Travis County.

21 So in terms of materials, we have the
22 subcommittee memo that everybody received. It's in the
23 notebook that we obtained electronically on pages 5
24 through 87 of the PDF. The supplemental materials that
25 were circulated via e-mail yesterday include a letter from

1 the Austin Chapter of the American College of Trial
2 Lawyers; a letter from the presidents, or a subset of the
3 presidents, of the Austin Chapter of the American Board of
4 Trial Advocates, or ABOTA; a summary memo from Pete
5 Schenkkan's associate, Daniela Peinado Welsh; and an
6 e-mail from Ryan Anderson, who I introduced a moment ago,
7 the general counsel for the Bexar County Civil District
8 Courts, which included the Office of Court
9 Administration's performance reports for the Bexar County
10 Civil District Courts between January 1, 2016, and
11 January 31, 2025. So thank you for that additional
12 information.

13 So the reason we're here to talk about the
14 central docket is because of the referral letter that's
15 Exhibit 1 to the subcommittee's memo, on page 19 of the
16 PDF, and it's topic two there, entitled "Prohibiting the
17 Central Docket." In that topic, there's a request from
18 the Court that the committee study the replacement of the
19 central docketing system used by some counties, with a
20 statewide requirement that each case be assigned to a
21 particular judge. There's a further request that the
22 committee propose draft rule amendments accomplishing this
23 objective. Today, the focus is on the first part of that
24 request, which is the study of the central docket system,
25 and in studying the replacement of that system, as

1 contemplated, the subcommittee endeavored, first, to
2 understand the concerns that gave rise to this request so
3 that, in part, we would ensure that any rule proposal is
4 crafted to address those concerns, as opposed to something
5 else.

6 And next, we endeavored, as a subcommittee,
7 to understand the system itself, including its
8 underpinnings and its functionality. We hear it referred
9 to a lot, but I think, like many things, once you get
10 beneath the surface of the term, you understand there's
11 complexities and differences that I think we have to, as a
12 Committee, appreciate as we endeavor to study it and its
13 potential replacement.

14 So in terms of the concerns that gave rise
15 to this referral letter that we received, bankrolled to
16 Chief Justice Jimmy Blacklock for shedding some light on
17 that, both in remarks he made to the media and also in his
18 State of the Judiciary remarks, and what has become clear
19 from those statements, the subcommittee understands the
20 Court's considering whether the central docket system
21 promotes the efficient and uniform administration of
22 justice in various courts, and that particular phrase
23 comes from a provision in the Texas Constitution,
24 specifically, section 31(a) of Article V of the Texas
25 Constitution, included in the first paragraph, on page one

1 of the subcommittee's memo. It states "The Supreme Court
2 is responsible for the efficient administration of the
3 judicial branch and shall promote rules of administration
4 not inconsistent with the laws of the state as may be
5 necessary for the efficient and uniform administration of
6 justice in the various courts."

7 So what he's stated as the roots of this
8 request, again, are coming from the constitutional
9 provision that you have quoted in the memo. The
10 subcommittee understands that this request may also have
11 been prompted, in part, by concerns that the central
12 docket system could make it difficult to get data on
13 individual judges' productivity because the cases are
14 moving among various judges within a particular system.
15 So those are the concerns that we're aware of. Maybe
16 there are more, but those are the ones we addressed in the
17 initial memo that's before you today.

18 Now, turning to understanding the system
19 itself and its functionality. I'll go ahead and say
20 explicitly something that's probably implicit in the memo,
21 and that is there is no set definition of central docket
22 system or central docketing system. You're not going to
23 go to a dictionary and find the explanation. So as a
24 subcommittee, what we did instead is try to understand the
25 key features of these central docket systems, and if you

1 look in the memo on page six of the PDF, you see an
2 explanation of those key features.

3 For those of you who have not been in a
4 central docket system, I'll say as a starting point,
5 generally, these systems allow any judge who's within the
6 system to exchange benches with other judges who are also
7 within that system, and it allows the judges to hear and
8 decide portions of cases without the cases being assigned
9 to a particular judge. Importantly, however, every single
10 case that gets filed is assigned to a particular court.
11 So you can trace what's happening with the case by court
12 number, but sometimes it's going to have multiple judges
13 making decisions on it over the life of the case.

14 So one key feature of the central docket
15 system is the ability of the judges to exchange benches
16 with each other and sit and decide portions of the cases
17 for one another. Another key feature of the central
18 docket is something called a master calendar system. So
19 I've come to appreciate something I didn't know before
20 this, which is, nationwide, there are typically two
21 approaches to calendaring. You have the individual
22 calendar system, and you have the master calendar system.
23 So the individual calendar system, it's essentially the
24 judge managing the cases, with assistance, often, from
25 personnel, and the calendaring is done on an individual

1 judge-by-judge basis.

2 With the master calendar system, however,
3 you have a master calendar for all of the cases that are
4 within the particular ecosystem of courts covered by that
5 docket system, and they are assigning cases out, using
6 that master calendar, to the judges within that system.

7 The National Center for State Courts has
8 reported that many courts, especially those in urban areas
9 with comparatively large civil caseloads, employ a master
10 calendar system. So this isn't something unique to Texas
11 and, more specifically, to the two counties that are often
12 thought of when we think of central docket system, which
13 is Travis and Bexar.

14 Another thing that we've come to appreciate
15 is that there are other counties aside from Travis and
16 Bexar that are using this master calendaring system, and
17 probably a lot more than we know about right now, but we
18 do know that it's happening in Angelina County, Lufkin,
19 because of information that's available online about that
20 particular county.

21 And on a more basic level, I think it's
22 important for us, as a committee, to appreciate that any
23 time a court system is providing a docket for cases
24 without regard to the judges assigned to those cases, it's
25 effectively using a master calendar system, right, and

1 when we think about examples of that, they're provided in
2 the memo. We've got the plea docket. We've got the
3 uncontested docket, the agreed order docket. We've got
4 emergency dockets. We've had times in our state with
5 natural disasters where we have emergency response
6 dockets. We have the ancillary docket in Houston. So I
7 think the point for us to understand as a committee is
8 that, in many instances, we have hybrid systems in our
9 courts throughout Texas, even though they aren't formally
10 called central docket system outside of Travis and Bexar.

11 So, again, one of the central features of
12 the central docket system is the ability of the judges to
13 exchange benches with one another and herein decide
14 portions of the cases for each other. So turning to the
15 underpinnings of that, as a preliminary matter, there is
16 another constitutional provision that comes into play from
17 the Texas Constitution, and it's quoted on page six of the
18 meeting notebook. This is from section 11 of Article V,
19 and it provides that the district judges may exchange
20 districts and hold courts for each other when they may
21 deem it expedient and shall do so when required by law.

22 As set forth in the memo, this particular
23 language, in substance, has been in the Constitution since
24 1876, and there are many cases that have recognized that
25 this constitutional provision grants district courts broad

1 discretion to hear each other's cases. There are some
2 examples of that cited on page seven of the meeting
3 notebook, including some examples from the Supreme Court
4 of Texas in cases issued over time.

5 Now, with that constitutional underpinning,
6 we have statutory provisions that have come about in the
7 Government Code. In Chapter 24 of the Texas Government
8 Code, by way of example, we have section 24.003, also
9 quoted on page seven of the meeting notebook, and this
10 expressly applies to counties with two or more district
11 courts. So, again, that's going to apply, by way of
12 example, to Travis and Bexar. And this particular statute
13 says, "Unless provided otherwise by local rules of
14 administration, a district judge in a county may, among
15 other things, hear and determine any case or proceeding
16 pending in another district court in the county without
17 having the case transferred and may sit for another
18 district court in the county and herein determine any case
19 or proceeding pending in that court. It may temporarily
20 exchange benches with a judge of another district court in
21 the county."

22 There's another provision, turning to the
23 next page of the meeting notebook, page eight.
24 Subpart (d) there that addresses the ability of the
25 district judge in the county to hear or determine any part

1 or question in a case or proceeding pending in any of the
2 district courts, and there's more that I'll let you read,
3 but it's important for us, as the Supreme Court Advisory
4 Committee advising on rule-related matters, to know that
5 section 24.003 of the Government Code gave rise to a rule,
6 which is Rule 330(e) of the Texas Rules of Civil
7 Procedure, quoted on page eight of the meeting notebook.
8 So that's where we have the meat of the matter in terms of
9 existing rules for the central docket system.

10 We also have, in Chapter 74 of the Texas
11 Government Code, provisions pertaining to the duties of
12 local administrative judge. Example of local
13 administrative judge is our esteemed Judge Meachum we're
14 going to hear from later; but this particular part that's
15 quoted on page nine of the meeting notebook is 74.092, and
16 it lays out obligations of the local administrative judge
17 for the courts in which the judge serves, as well as local
18 administrative judge; and those include, among other
19 things, implement and execute the local rules of
20 administration, including the assignment, docketing,
21 transferring the hearing of cases, and supervising the
22 expeditious movement of court caseloads subject to local,
23 regional, and state rules of administration. There's
24 more, but I did want to highlight those provisions because
25 when we think about the constitutional underpinnings about

1 the expedient movement of cases, we see that same language
2 kind of carried over into the statute there in section
3 74.092 of the Government Code.

4 Turning next to section 74.121 of Government
5 Code, we see additional language about the exchange of
6 benches, applicable to courts other than district courts
7 and, to a degree, to the district courts as well. Also,
8 moving on to section 74.094 of the Government Code, quoted
9 starting on page 10 and moving over to 11, we see
10 provisions for the district or statutory county court
11 judges to hear and determine matters pending in any
12 district or statutory county court in the county,
13 regardless of whether the matter is preliminary or final
14 or whether there is a judgment in the matter. Again, more
15 to see there, all quoted in the memo.

16 I think it's also noteworthy that in the
17 last legislative session, speaking of the business court,
18 the Texas Legislature expressly put in a provision
19 allowing those judges to promote the orderly and efficient
20 administration of justice, to exchange benches and sit and
21 act for each other in any matter pending before the court.

22 So now we have five divisions up and running
23 with 10 business court judges. We could have a total of
24 11 divisions up and running, for a total of 16 business
25 court judges. So there's a possibility, in other words,

1 in this legislation for 16 judges, in a district comprised
2 of 254 counties, to exchange benches with each other and
3 sit and decide cases for one another. It's important for
4 the record, I think, to note that we're not aware, as a
5 subcommittee, of any of the business court judges planning
6 to implement a central docket system, but it certainly
7 seems that the statutory language would allow for that to
8 happen.

9 On page 11 of the meeting notebook, there
10 are some additional cases that have expressly recognized
11 the central docket or central docketing system and its
12 authorization, including in Travis and Bexar Counties. So
13 I think it's without question that these systems are
14 legally authorized both in the Texas Constitution and in
15 statutory provisions, so we have that background in mind.

16 And, now, turning to the next part of our
17 study, which is how are these systems functioning in
18 Texas, and again, I can't overstate the importance of the
19 reality that there are components of this system operating
20 throughout our state, right, but we are going to focus on
21 Travis and Bexar, because those are the two counties that
22 have formalized central docket systems by name and the
23 ones we often think of, right, when we think about the
24 central docketing system.

25 So in the memo, I have laid out some key

1 features of those particular counties. I'm going to go at
2 this at a fairly high level, because we have judges from
3 those counties who can speak to it better than me, I'm
4 sure, but I do want to make a few points for the record
5 from the memo, and we'll start with Travis County. I
6 think, as a starting point, it's really important to
7 understand that Travis County isn't a pure central docket
8 system, right. It is a hybrid system. What does that
9 mean?

10 Well, if you look to the local rules, for
11 example, of the district court judges, you'll see that
12 they specifically provide for assignment of cases to
13 particular judges in particular instances. By way of
14 example, Local Rule 2.6 addresses the assignment of cases
15 to a judge, if it's a complex case, sometimes a high
16 conflict case will be assigned to a particular judge, and
17 there's a procedure set forth for that type of assignment.
18 I can tell you, from having litigated in the Travis County
19 district courts for well over a decade, and before that I
20 was at the Supreme Court of Texas as a rules attorney, so
21 I wasn't litigating then, but I was observing, and there
22 are a lot of assignments that happen. So, for example, in
23 my docket, I have a lot of complex cases, and I have had
24 several of them assigned to judges in Travis County. So
25 even though it's central docket, I've had a lot of

1 assigned cases in it; and I think Pete Schenkkan has said
2 that he has an administrative docket, so a lot of his
3 cases are also getting assigned through another local
4 rule, which is Local Rule 10, laid out in the memo; and
5 from what we know, it appears that about 30 percent of the
6 matters handled by Travis County civil district court
7 judges are determined either by the court number where the
8 case is filed, through submission, or through specialized
9 assignment through one of those procedures I mentioned a
10 moment ago.

11 With submission docket, it's laid out in the
12 memo when that can happen, but it can be uncontested
13 matters that you submit to the court that's assigned upon
14 filing, and it can also be friendly suits and agreed
15 divorces accompanied by sworn written testimony that has
16 been filed with the district clerk. So the bottom line
17 point here is, yes, it's a central docket system, but it's
18 also something else. It's also got assignments happening
19 within it for various reasons.

20 Another thing to understand about Travis
21 County, in terms of its operation, is that assignments of
22 the matters and the various cases, including the central
23 docket, are made by the end of the week before the
24 hearings or trials are scheduled, at the latest. So by
25 way of example, if I've got a hearing coming up next week,

1 I've got to announce ready by Wednesday the week prior,
2 and by that Friday the week prior, I'm going to see a
3 docket laying out which judges are hearing which matters,
4 including mine. So I go into the hearing knowing who's
5 going to hear the case, as opposed to having no idea which
6 judge I'm going to be before, and of course, another
7 benefit of that is the judges also know which cases
8 they're going to hear, and so they have the time to read
9 the materials and get up to speed.

10 Another thing that I do want to point out
11 about the central docket system in Travis County
12 specifically is they have an electronic docket note system
13 that they use internally. I know that some of the voices
14 against the central docket system have said, well, these
15 judges don't know what's happening, you may have one judge
16 this week and another judge next week and all of this
17 inconsistency can come about, but they do have a system
18 internally of taking notes about the cases so that the
19 judges are not coming into the cases cold. There is
20 information that's built upon other prior proceedings in
21 the system, and the idea there is to reduce the risk of
22 having uninformed judges and inconsistent rulings.

23 As laid out in the memo, the central docket
24 system is not just in the district courts but also in the
25 county courts. In terms of the data that we have, I've

1 included in the memo both the data that's available at the
2 administrative judicial region level, and this is in
3 Exhibit 4 of the memo, starting on page 83 of the PDF, and
4 you can see all of the administrative judicial regions
5 listed with their clearance rates. Travis County is in
6 three. It's the largest part of Region 3, and you can see
7 there that Administrative Judicial Region 3 is a leader in
8 this particular reporting period for clearance rate of
9 cases, and the reporting period, I believe, is March 2024
10 to December of 2024.

11 Also available online, you can get
12 county-specific data for clearance rates, and if you drill
13 down into Travis County, you'll see that there is a 94
14 percent clearance rate for civil cases and a 93 percent
15 clearance rate for family law cases, again in the
16 reporting period March 2024 to December of 2024.

17 There have been comments that the
18 subcommittee has received both for and against the central
19 docket system in Travis County. Same is true for Bexar
20 County. All of the comments that have been obtained by
21 the deadline for submission of the memo, which is
22 February 28, are in Exhibit 3; and I believe, Pete, your
23 associate did a good job of sort of summarizing how those
24 comments lay out in terms of for or against the central
25 docket.

1 Turning now to Bexar County, there -- in
2 Bexar County, there are two generalized central dockets.
3 There's the nonjury docket administered by the presiding
4 civil district judge, known as the presiding judge.
5 There's also the jury monitoring docket, administered by
6 the monitoring civil district judge, also known as the
7 monitoring judge. And the way it works there is the 14
8 district court judges are assigned to one-month periods of
9 service as presiding judge and to three-month periods as
10 monitoring judge, no one judge being assigned to both of
11 those roles at any given time, and then all of the other
12 judges who aren't assigned to one of those roles are
13 essentially designated in numerical order to assist one
14 docket or the other.

15 On page 15 of the PDF notebook, you see a
16 deeper explanation of the presiding court system. This is
17 what I think a lot of people think of when they think of
18 central docket in Bexar County, sometimes called cattle
19 call, where the presiding judge sits up and assigns all of
20 the cases out as the parties are there in the court
21 announcing for the judge whether they're ready or not.

22 I've come to appreciate, from talking with
23 people who practice law in Bexar County and also from
24 being there a few times myself, that sometimes the
25 individuals who are at the presiding docket will say,

1 "Please mark us as conferring," and will go out into the
2 hall and actually confer, if they haven't done that
3 already. They'll come back and be revisited by the
4 presiding judge, and they can tell the judge an agreed
5 order to come or we have an agreed reset.

6 So why do I tell you these things? I tell
7 you, in part, because from my understanding -- and I hope
8 that, Judge Alvarado, you'll clear up anything that I get
9 wrong here, but it's my understanding that you can set a
10 hearing in Bexar County with just three days' notice; and
11 unlike in Travis County, where you have to set your
12 hearing through the court administrator's office and that
13 process, in Bexar County, you don't have to do that. You
14 just submit your notice of hearing. You identify the
15 docket that you need to be in, and that can happen with
16 just three days' notice, so it's very fast, relatively
17 speaking, but there is, it seems, a very common practice
18 of the lawyers having an opportunity to confer, say we'll
19 reset, et cetera. So it's not set in stone just because
20 it's set on three days' notice, is the bottom line there.

21 In Bexar County, just as in Travis County,
22 we have county courts also with a centralized docket. The
23 criminal, juvenile, probate judges, however, all run their
24 own dockets. And the evidence indicates that hearings do
25 get set quickly in Bexar County, as a general rule, and

1 that the trials are also heard and handled in an
2 expeditious manner, generally speaking. And I spoke with
3 somebody who is on a committee that was formed recently in
4 Bexar County to study the central docket there, and she
5 reported that it's not uncommon for your case to be set
6 for trial within 14 months of filing, which is pretty
7 quick, relatively speaking.

8 So in terms of data for Bexar County, I'll
9 turn your attention, again, to Exhibit 4 for the
10 region-wide data. Bexar County is in Administrative
11 Judicial Region 4, so you can see there a 51 percent
12 clearance rate, but it's important to make sure everybody
13 knows that we do now have Bexar County specific data,
14 thanks to Mr. Anderson. You received that via e-mail
15 yesterday, so you can see, if you look at that data, that
16 the clearance rates for the reporting period are much
17 higher, and it's broken down, I believe, by civil, family,
18 and criminal.

19 Again, as I mentioned, I want to be clear
20 that the comments that the subcommittee got were both for
21 and against the central docket in Bexar County.
22 Everything we got is -- has been provided to you, and with
23 that, I think I'm going to pause before I get to the
24 discussion points in the memo so that we can get
25 additional information from the guest judges who are here

1 on their particular counties.

2 Judge Meachum, starting with you.

3 HONORABLE AMY MEACHUM: Thank you all for
4 allowing me to be here this morning. I appreciate it, to
5 the Chief Justice and Justices, as well as Ms. Greer and
6 the whole committee. This is my first appearance at the
7 SCAC, so I'm happy to open up the civil and family courts
8 facility for you. We were talking to Ms. Greer about
9 that, I think, two weeks ago, and we're hoping that the
10 rest of your meetings this year can be at our facility,
11 and I think we can even provide parking a little more
12 easily than the parking here in the Indeed Tower, so
13 hopefully you'll take us up on that and come to our
14 facility at 1700 Guadalupe.

15 So I really didn't come with prepared
16 remarks. I came to be a resource. I know this committee
17 has read all of the materials. I just wanted to point out
18 a couple of things that you can argue it either way, from
19 the trial judge perspective, as to what is a better docket
20 for the trial judge. I think when you run for office in
21 Travis County, you're running, and you know you're going
22 to be part of the collective, and so you buy into that,
23 and so this is a system that has been happening for
24 decades in Travis County. We are the standard bearers for
25 that system, but it's really not for the judges at all.

1 It's really for the litigants and the lawyers, and they,
2 for the most part -- I looked at the comments. We had a
3 few people who were upset. You're always going to have a
4 few people who are upset, but for the most part, when you
5 see the comments, and it's the entire family bar section.
6 It's the entire family bar advocates. It's all of the
7 local chapter of ABOTA. It's the entire group of the
8 American College of Trial Lawyers in Travis County. For
9 the most part, it's overwhelmingly positive about the
10 central docket locally, because it's for them, and they
11 know that. They know they can get their hearings reached
12 when they want to get their hearings reached. They know
13 their clients can have access to the justice.

14 For the family law bar alone, when they have
15 to wait months to get temporary orders hearings, but on
16 Travis County docket they can get a temporary orders
17 hearing in two weeks, and they can get these people who
18 are fighting about their families, and they can get them
19 that resolution, at least a temporary resolution in two
20 weeks, it is revelatory in comparison to, I think, some of
21 the other counties across the state and some judges. Some
22 judges do it very well on an individualized docket, and
23 some judges don't, because it's very hard to manage all of
24 that. Through court administration on both the civil and
25 the family side, we are reaching cases quickly, and that

1 is why I think our dockets are one of the single best
2 access to justice agents in the State of Texas. And that
3 has always been true, and I believe that's why you see
4 such support from the local bar.

5 You know, it is -- I want to make an open
6 invitation to everyone in this room to come and see us do
7 our job, to come and watch court administration do their
8 job. If you have not appeared in Travis County in five or
9 10 years, you may not be aware of all of the updates we
10 have made to the system. I believe our dockets are some
11 of the most efficient, proficient, and technically
12 advanced in the State. We routinely assign things out by
13 2.6 that are complicated and complex. Our single biggest
14 litigant in Travis County is the State of Texas and the
15 Office of the Attorney General, who routinely chooses to
16 file in Travis County rather than the other counties
17 around the state that they could file in with their
18 optional venue provisions, and I believe they file with us
19 because they also know that they will get their cases
20 heard quickly and efficiently and proficiently, and we are
21 proud of what we do. We would love for you to come see it
22 in action, talk to our court administrator, talk to any of
23 us. I'm here with one of my colleagues, Judge Mangrum.

24 I will say one thing, when Kennon reached --
25 she originally reached out to me and said if I could be

1 here at 11:00, and I said yes, but then she said we're
2 moving it up to 9:00. Well, one benefit about our docket
3 in Travis County is, is all of those lawyers and litigants
4 who were planning on coming to me today at 9:00, they were
5 not inconvenienced. We were able to move them to another
6 judge, and they were able to get reached. They are short
7 dockets today, but they were not inconvenienced for me to
8 be here with you-all. They were able to keep their
9 hearings set and to keep their justice moving along on
10 behalf of their clients.

11 My phone number is 512-825-4920, and I would
12 love to meet with any of you when you have the time.
13 Coffee, lunch, whenever you're in town. I am passionate
14 about court administration, and I am passionate about
15 listening to criticisms and trying to make those
16 criticisms better and refining a system. We've been doing
17 that the entire 14 years I've been on the bench in Travis
18 County, and we will continue to do it. So thank you for
19 giving me the opportunity to be here. We appreciate it.
20 Thank you.

21 HONORABLE ROSIE ALVARADO: And, thank you,
22 and I mirror much of what Ms. Meachum said as well as far
23 as the way that the system operates. My name is Judge
24 Rosie Alvarado. I serve on the 438th District Court, also
25 have served in the capacity of local administrative judge

1 as well, and we're really proud of our system. And the
2 Bar, I would say for the most part, is very proud of our
3 system, too, and it operates very well, and it functions
4 very efficiently. We have many, many positives about the
5 system, and certainly, with any system, no system is
6 perfect, but we have come to learn to operate within those
7 imperfections and try to make adjustments and tweaks and
8 evaluate the system periodically over a period of the 63
9 years that it has been in operation. And so during that
10 course of time, on occasion, there have been times where
11 we've gone through an evaluative process of it to make it
12 better and more efficient, and I think over the course of
13 the years we have done that.

14 From an efficiency standpoint, our system,
15 it allows for a greater number of cases to be heard each
16 day by utilizing all of our available judges, as opposed
17 to, perhaps, one judge with a full docket, and people --
18 multiple people waiting in the hallway and other
19 courtrooms completely vacant, and so that's one of those
20 wonderful beauties of our system. It does ensure timely
21 adjudication of cases. It also allows us to stack cases
22 for both pretrial motions and then trial settings and
23 then, of course, if they resolve, and sometimes that
24 happens, because there's cases that may be -- or motions
25 that are dispositive of specific types of trials, it

1 doesn't leave a time gap for judges. We can quickly fill
2 that in with other matters that are waiting to be heard.

3 On the points of access to justice, we can
4 have hearings on three days' notice. That is a true fact
5 in Bexar County, and that way all litigants can appear
6 before the courts on time-sensitive matters. In family
7 law cases, in particular, there is exigent circumstances
8 as it relates to children, with respect to property, and
9 so in lieu of having to wait weeks or months sometimes to
10 get a court date, we have the availability to have our
11 litigants heard on very short notice.

12 Additionally, we have a presiding judge that
13 is a duty judge, and I saw in your memo, you referred to
14 it as the duty judge. We call it our presiding judge, and
15 that judge is there during business days, Monday through
16 Friday, 8:30 a.m. to 5:00 p.m., to hear all sorts of
17 matters. I will tell you, having just come off that stint
18 and serving the entire month of February, you are in the
19 belly of the beast, as each one of our judges here can
20 agree with me on that point, that it is a very difficult
21 task to get through that month, but it's also very
22 rewarding because we are moving cases. Those are our
23 agreed orders. Those are our uncontested matters. Those
24 are our emergency requests for protective orders and TROs.

25 In addition to that, that duty judge also

1 runs the dockets in the morning, the 8:30 docket, which is
2 a nonevidentiary docket, and the 9:00 o'clock docket,
3 which is the presiding evidentiary docket, and that's what
4 I'm talking about stacking. So if, for instance, you have
5 cases that may be dispositive of a matter, but depending
6 on which way the court rules, the trial that is next set
7 on the 9:00 o'clock docket for the evidentiary matter,
8 they can get stacked together and sent out to a judge.
9 And so if it's resolved and the case goes away, they call
10 right back in, and we send them another case. So there's
11 that aspect of it as well.

12 With respect to complex cases, particularly
13 -- excuse me, my notes just went down on me. Trying to
14 keep that coming. With respect to complex cases, a couple
15 of things on that is that -- pardon me. Go ahead. If you
16 want to jump in, I'm trying to pull my notes up.

17 HONORABLE ANTONIA ARTEAGA: You heard about
18 the stints, and so we have one month for presiding and for
19 monitoring court we have three months, and you're so
20 lucky, as am I, because I'm in monitoring court right now.
21 I'm the monitoring court judge for January, February, and
22 March, and we also have a hybrid type system in that if we
23 have complex cases, I will assign them, or the monitoring
24 court will assign them, to a specific judge to be sure
25 that they get the care and the attention that we need. I

1 currently have one with a double fatality, happened over
2 here on Canyon Lake, and that's a specialized case, and
3 it's a complex case with gobs of experts, and so that is
4 something that we can determine in monitoring court, and
5 we have a system for that as well. So we do have a hybrid
6 system as well.

7 The other wonderful thing, as Judge Alvarado
8 was saying about monitoring court, is our jury trials. We
9 can get you to a jury trial in six months, if that's what
10 you like, but like Travis County, our system is not for
11 us. It is for the litigants. It's for the attorneys. So
12 if the litigants and the attorneys are pushing it and they
13 want a trial, come. Or if one is pushing it and the other
14 -- it's a beautiful system as well, because let's say my
15 friend here is ready to go to trial and my friend here
16 says, "Not yet, but I want to go to trial soon." Okay,
17 great. How about next week? And because I know which of
18 our seven judges are available for trial, and I know that
19 two of them just settled, I have a slot right there. They
20 don't know, but you want a jury trial, I'll get you it.
21 It happened just this last week as well.

22 So that's the beauty of having seven judges
23 assist with jury trials at any given time, or in the
24 presiding court system, having the at least six judges
25 that we have over there. Now, sometimes one of our jury

1 trials might have their complex case. That's okay. I've
2 got six other judges to work with, and the system does
3 work. It's worked for over 60 years, and it works for our
4 community, and Judge Alvarado does a great job as our
5 local administrative judge helping us arrange everything.
6 It's a lot of moving parts, but it works. Judge.

7 HONORABLE ROSIE ALVARADO: Thank you for
8 that, by the way. So, also, one thing I wanted to point
9 out is that we don't have to impose time limitations on
10 announcements for settings. A litigant can come into
11 court and fully have their case developed, for instance,
12 on a temporary orders hearing in a family law matter,
13 where in some jurisdictions, they're only given maybe 20
14 minutes, and sometimes maybe they're only given an hour.
15 In Bexar County, they can come in, and they can ask for a
16 three-day -- or, I'm sorry, a three-hour matter, or even
17 up to two days in our presiding court before having to be
18 sent out to our monitoring judge for a special assignment.
19 And that's the beauty of that as well, is because we can
20 accommodate those type of time requests and not limit
21 families as well.

22 Additionally, and I was trying to get into
23 this on the complex case issues, is sometimes you will
24 have a case that, perhaps, has not been designated as a
25 complex case through our monitoring court and has -- but

1 still has some, perhaps, high conflict issues or some very
2 specialized issues, and they've just spent a lot of time
3 with you as the judge, maybe two days or an eight-hour
4 hearing or a three-hour hearing, whatever that time would
5 be, and it's just a very specialized issue. For instance,
6 like a discovery dispute on certain key issues. The court
7 can sua sponte on its own retain that case on that very
8 limited issue and admonish the attorneys on that matter,
9 basically saying, "You are welcome to hear this here.
10 I'll give you a few minutes of time as long as you don't,
11 you know, create a long -- a long time announcement."

12 And then -- and then also we can bring cases
13 back, for instance, on family law matters that are high
14 conflict, but perhaps maybe not complex in nature, but
15 there's high conflict. For instance, a situation where
16 one judge may order family reunification therapy services
17 and perhaps somebody wants to stare down that order and
18 say, "No, we're not going to do that," and then it comes
19 back to the court again, and using our judges' note
20 system, I can see what Judge Arteaga did in the other
21 hearing, and I can say, "Well, she ordered family
22 reunification. Now you're here on the merits setting and
23 you're trying to tell me that you're not going to want me
24 to award this child over to the other parent or have
25 access to the other parent because you chose not to go to

1 family reunification therapy." Well, I can sit there and
2 say, "Well, we're going to status hearing this, so maybe
3 we will bring this out every 60 days, just to come back on
4 a status hearing, and reset your merits setting to allow
5 for that reunification therapy to take place."

6 So there are ways that we can do those type
7 of -- implement those type of things that perhaps you
8 would see from the -- the consistency of one judge and one
9 court. We have that same consistency. We have judges'
10 notes. We have a system that we can look into, and I can
11 see what she did in another hearing.

12 HONORABLE ANTONIA ARTEAGA: And it works on
13 the civil side, too. For example, there's this beautiful
14 case, and it has lots of information going on, but let me
15 just tell you the information that most judges won't like.
16 Five summary judgments, five summary judgments in one
17 matter, and I know that because I'm the monitoring court
18 judge. They came to me. So let me just be clear that you
19 understand. We have a great communication system in the
20 back. What happened, as the monitoring court judge, I
21 alerted them they need to condense that into one day, two
22 day max. I've already talked to the presiding judge, and
23 I've already CC'd the trial judge that myself and the next
24 monitoring court judge have already agreed she's going to
25 get the case. So the presiding judge is going to send all

1 of those five summary judgments to the trial judge that
2 only us know is really going to be their trial judge,
3 except the attorney may be in the room, or but that same
4 judge will be hearing the five summary judgments, and at
5 time of jury trial, which is coming up soon in April or
6 May, then that judge is also going to get the trial as
7 well. And we were able to coordinate that because of our
8 presiding court system and because of our monitoring court
9 system.

10 HONORABLE ROSIE ALVARADO: And these systems
11 also promote settlement, and by way of what Ms. Wooten had
12 indicated is, you know, we call -- it is the cattle call.
13 They come on in, but oftentimes, and I would say, gosh,
14 maybe 65 percent of the time, these cases, they're
15 announcing conferring, and they want to go into the
16 conference center that we provide for them to sit and
17 resolve their matters. And if they find out that they
18 can't resolve a matter, in the meantime, we're sending out
19 cases to judges to be heard, so the docket is still
20 moving. Then they come back maybe an hour later, after
21 they have maybe narrowed -- or limited their issues, and
22 then we're sending them out also, or they come back with
23 resolved settings. So it gives people an opportunity to
24 have meaningful face-to-face discussions at the time of
25 trial.

1 As we all know, like, for instance, when the
2 pandemic took place, COVID stopped all of the jury trials,
3 and settlements stopped at that time. People weren't
4 getting cases settled. They wanted us to get the jury
5 trials going back again, because they wanted to have
6 movement in their cases. So when you have the imminence
7 of a setting, it does promote that settlement, and we have
8 very great success with that by utilizing our centralized
9 docket system.

10 HONORABLE ANTONIA ARTEAGA: And that's one
11 of the flaws, in my humble opinion, of an independent
12 docket, and I have talked with many of my judicial
13 colleagues at the advanced civil trial seminar earlier
14 this year, or last year, and one of the big things that
15 they ask the litigants, how can we -- how can the
16 attorneys help us. Let us know if you settle, because we
17 might have, again, a summary judgment. We might have a
18 four-hour summary judgment scheduled for you in the
19 afternoon, and if you don't need that anymore, then I've
20 lost four hours. There's a judge sitting there with
21 nothing to do for four hours, and it's -- I can imagine
22 it's very frustrating for them.

23 We don't have that in Bexar County, because
24 we have cases stacked, and we're ready to go because we
25 can handle it, and while in a different independent docket

1 that might not be able to happen, it happens in Bexar
2 County all the time.

3 HONORABLE ROSIE ALVARADO: Right. We also
4 do take into account the one judge, one family model. All
5 of our child welfare cases are sent to designated
6 associate judges to hear those cases through the life of
7 the case, so that is definitely something that we take
8 into consideration as well.

9 We have convened an advisory committee well
10 before Justice Blacklock's letter that came out. My gosh,
11 how long ago was it? About a year ago that we convened
12 the committee. For the purpose of evaluating our current
13 methods and how we operate our central docket and to
14 receive recommendations and feedback from the Bar. That
15 committee serves with three of our sitting district court
16 judges, and I think it's about 15 attorney members, if I'm
17 not mistaken on that, and then they will work together to
18 convene recommendations, and then for those
19 recommendations to the court for consideration. We just
20 received our first round of recommendations, and so we
21 have a committee of judges now that are meeting to
22 evaluate them and see where we can possibly make
23 additional modifications to our local rules as well.

24 So I honestly could go on and on and on and
25 on and on, because I really believe that there are many,

1 many positives to this process. It has been a system that
2 has been supported 63 years in our county. I would say,
3 by and large, the great majority of the attorneys that
4 practice on the Bar and the elected officials that have
5 been here serving in this system support this system.
6 Certainly, there's always outliers, and that's
7 understandable, but that's also what helps keep the system
8 operating and being evaluated consistently to see where it
9 can be improved.

10 So I'm grateful to all of you to allow us to
11 be here to talk about it. Thank you very much, and I will
12 be here to answer any questions.

13 HONORABLE ANTONIA ARTEAGA: And you're
14 welcome to come to San Antonio. We have this thing called
15 a Riverwalk, any time y'all want.

16 CHAIR TRACY CHRISTOPHER: Kennon, what do
17 you suggest in terms of throwing it out to comments from
18 the committee at this point, or do you want to go into
19 your second part, which is, you know, how could we change
20 it?

21 MS. WOOTEN: Thank you. And thank you very
22 much for all of the additional feedback, for the record.
23 We really appreciate it.

24 I think it makes sense to turn it to the
25 committee members for feedback, but I do hope, for all the

1 committee members, that when you make remarks, you
2 consider the discussion points that are laid out on pages
3 16 and 17 of the PDF, because these are crafted to help
4 the subcommittee with the next part of this analysis,
5 which is drafting proposed rule amendments. So just by
6 way of example, when you give comments, like what part of
7 a central docketing system do you think should be
8 addressed in rules? When you give comments, can we think
9 about potential unintended consequences if we sweep too
10 broadly in addressing what we know as the central
11 docketing system? Can we also think about the fact that,
12 as of today, we have pending legislation, Senate Bill 293
13 and House Bill 1761, that would require the district
14 judges to report their hours in Texas?

15 So to the extent that these systems might
16 impede the ability to get judge-specific productivity data
17 if those bills, one or both, I guess, become law, we would
18 have that type of data provided that might address that
19 particular concern. So, again, when you give comments, if
20 you could think about the discussion points, that would be
21 very, very helpful to the subcommittee for the next phase
22 of the assignment. And would you like for me to pass this
23 mic around as people talk?

24 CHAIR TRACY CHRISTOPHER: I think we can
25 probably do all right. If people are having a hard time

1 hearing, let us know. Judge Estevez.

2 HONORABLE ANA ESTEVEZ: I have a question,
3 and I think it goes more to San Antonio, just because
4 you -- okay. I have a question. I think it goes more to
5 San Antonio than Austin just because of the differences,
6 but -- and I could be wrong, but I think a lot of the
7 drive about getting rid of the central docket system would
8 be because of the accountability bills that are going to
9 keep coming back from the Legislature, and I know that
10 where they eventually want to go -- I'm not saying that's
11 where they are going, but how long a motion sits before
12 it's granted, how many continuances a judge gives. Those
13 kind of issues. How do you give that accountability back
14 to those original judges if you keep your system the way
15 it is?

16 HONORABLE ROSIE ALVARADO: Oh, I think I can
17 address that, and I think part of that is, one, we are
18 open to transparency and to tracking, absolutely. And we
19 certainly invite suggestion from the State, from this
20 committee, from OCA. We have even internally worked on
21 specific -- specifically, the -- some procedures that we
22 could implement. We've talked a lot about different ways
23 that we can do that. I think transparency is something
24 that is very, very important to us, and we want to -- and
25 certainly, it's problematic when you have a central docket

1 because data tracking can be a little bit more difficult.

2 So in addition to that, I mean, I think that
3 we're all aware that the Canons of Judicial Conduct
4 require I think within -- or say within a reasonable
5 two-month period would be what is appropriate at the
6 outset of ruling on motions, but I'm hoping that I
7 answered your question in that regard.

8 HONORABLE ANTONIA ARTEAGA: And may I add to
9 that?

10 HONORABLE ANA ESTEVEZ: Well, maybe if I --
11 you know, I'm one of those regions where I was -- I'm one
12 of the presiding judges, and I'm just going to say that --
13 can I just put in a free little thing? I know that it
14 looks like our judges aren't working well, but that's not
15 true. They put the county judges in there, too, that are
16 constitutional, and I have 45 of them, and I don't think
17 they've ever closed a case in ever, and so just so, you
18 know, I don't have anybody that's lower than in their
19 seventies. One. Okay.

20 And with that, I really -- I truly feel like
21 the drive of getting rid of all of this has to do with
22 that accountability, because of what we've been told is
23 coming down from the Legislature and what they've already
24 passed, and OCA has to give these numbers, and it took us
25 a long time to get those San Antonio numbers, and you said

1 that we finally got them. So it's not can you do it. I
2 guess the question is how can you do it? Would you just
3 be saying that only a district judge with the cause number
4 that's been assigned to that court can give that
5 continuance? Or are you going to say, you know,
6 ultimately the judge with that number is responsible, even
7 if someone else heard that hearing of when that motion
8 will be ruled on? And we also were talking about those
9 issues for certifications. So there's a lot of things
10 that I think drove this to this point of accountability
11 for judges.

12 HONORABLE ANTONIA ARTEAGA: If I may. I
13 agree. I was one of the first to apply for -- to be one
14 of the courts of excellence that Senator Zaffirini and
15 some of your other colleagues have asked for, and one of
16 the things that was told to me or that I learned is that
17 "You don't qualify. We can't get the right numbers for
18 you, and you have to have these numbers, and since Bexar
19 County can't produce them like we want to see them, then
20 you don't qualify for a -- your court cannot be a court to
21 be certified as excellent," and I said, okay, because
22 there's nothing else I can do about it. This is something
23 that we have grown up with for the last 60 plus years.

24 Is there an answer? Absolutely. Do I know
25 what it is today? No. But let me tell you this. If

1 there is any accountability, we all want accountability.
2 We are open to that, because I can tell you, you've got
3 one of the hardest working judges in the room here with
4 Judge Alvarado, and we don't want any extra work. She has
5 two kids going to college, so do I, and we don't need any
6 extra load on us, but we take whatever we need to, because
7 we serve. Can we account for it? Absolutely. How do we
8 do that? We've got some ideas, because we want to be
9 sure. I want you to know how great I'm doing. I want you
10 to know how great our system is, because it is. I don't
11 want it to be thrown out the 25th floor of this beautiful
12 building, because it works.

13 Now, are there, in any system, folks who may
14 not be as up to the task as maybe another judge? Yes.
15 And the question, and I'm hoping this wise committee can
16 help us with it, and when I say wise, I am looking at all
17 of you, but especially Mr. Orsinger, who I know in
18 San Antonio is one of the wisest ones we have, help us
19 find out how to do that. Work with us, and we are open to
20 all suggestions, and we have some of our own as well, and
21 we're working already on that, as we speak.

22 CHAIR TRACY CHRISTOPHER: Judge Meachum.

23 HONORABLE AMY MEACHUM: All right. Thank
24 you. Let me just say, I want to make two points on
25 accountability. I want to make the first point that when

1 I started this job 14 years ago, the local administrative
2 district judge had to do one report to OCA on a monthly
3 basis, and now we have to do seven on a monthly basis and
4 three more on a yearly basis, and so reporting is always
5 being worked on and always being refined. I promise you
6 that, in terms of accountability, Travis County has worked
7 with OCA. In fact, some would say we helped OCA actually
8 create its system that they are now using because they
9 didn't have anything last legislative session when they
10 passed both 1182, House Bill 1182, and Senate Bill 2384.

11 And so we have been on the forefront of
12 that, and I just want to put that out there, that we have
13 reported our numbers by court number, and then we report
14 other things by judge; and both of those numbers, all of
15 them, those numbers, along with every other court in the
16 state. And the six big counties -- I see Judge Miskel
17 here. She knows this from when she was on the bench in
18 Collin County finishing up. The Collin County judges, the
19 Travis County judges, the Bexar County judges, the Tarrant
20 County judges, and the Dallas and Harris County judges all
21 have to do monthly reporting by court, and we are doing
22 that. It's a lot of work. Whether or not it's a good use
23 of judicial time, I think we could have that debate on
24 another forum for another day, but we are doing what the
25 Legislature and OCA and Judicial Council is asking of us.

1 But if the end goal is access to justice, as
2 well it should be, then we have 12 civil and family
3 judges. We have one who is a full-time child welfare
4 judge. She helps us some on the dockets when her times
5 free up, but the other of us are doing her work. We have
6 one who is a dedicated juvenile judge, and the rest of us
7 are doing her work, and then we have a court right now
8 that's open, the 250th. The Governor finally appointed
9 for it the other day, but the 250th hasn't shut down.

10 I have a 84 million-dollar consent judgment
11 on my desk right now out of the 250th Court, and everybody
12 in the State of Texas, the AG's know this, as do the
13 parties, are waiting on me to rule on this, but should I
14 wait for the 250th Court judge, who just got appointed two
15 days ago, to appear? He's lovely, by the way, Judge Cory
16 Liu. You're all going to like him a lot, but he hasn't
17 shown up yet, and he won't, because they're waiting on a
18 Senate confirmation.

19 But even though that bench is open, the
20 other nine of us are doing that work, and so if the end
21 result of accountability is to find the courts that aren't
22 working and then the end result from that is to have a
23 more efficient, better judicial system, then I would say
24 to you, Travis County has unlocked that. Bexar County
25 might have unlocked that actual solution to the problem

1 we're trying to solve, and if we're just trying to solve
2 our individual judges needing to be unelected, frankly, we
3 solve that, too, in Travis County.

4 You know, the voters elected a vexatious
5 litigant in Travis County, somewhat notably. That judge
6 was accountable to the rest of us, accountable to our
7 court administrator, and accountable to the voters, and
8 she was unelected, and so I think that's the
9 accountability that's built in the system. We all may
10 like it or we don't like it, but those of us who are
11 judges in the room, that's what we serve under.

12 CHAIR TRACY CHRISTOPHER: Judge Miskel.

13 HONORABLE EMILY MISKEL: I was just going to
14 ask a follow-up question about the accountability issue.
15 I don't know how Bexar County -- I don't know what your
16 case management software is, but I know --

17 HONORABLE ANTONIA ARTEAGA: Odyssey.

18 HONORABLE EMILY MISKEL: Okay. So in
19 Odyssey, if I am exchanging benches with another judge and
20 I make a docket entry, I can do it by judicial officer,
21 and so I would imagine you could use the case management
22 system to do a report by court number or by judicial
23 officer. I just thought I would ask, like, couldn't you
24 track like trials by judicial officer using Odyssey's
25 features?

1 HONORABLE ANTONIA ARTEAGA: We already do.

2 HONORABLE EMILY MISKEL: Okay.

3 HONORABLE ANTONIA ARTEAGA: In our
4 monitoring court system, you can look to see how many
5 cases have been assigned to one particular judge,
6 regardless of the original court assignment, but the trial
7 judge, we have all of that information ready to go, happy
8 to provide it at any time to anybody, and you can see, not
9 only what cases were assigned, which were tried to verdict
10 and which were not. The length of the trial as well. We
11 do have all of that.

12 Odyssey is a -- is here to stay, but like
13 our -- many of our docket systems, it has pros and cons,
14 and one of the cons is helping us track what we need, and
15 then getting the upgrades that are needed is a fiscal
16 hurdle that we also have, but that's another great reason
17 that we have our presiding court system, because our
18 central docket, as we've learned, is so much more
19 efficient, and we work with less. If you look at the cost
20 of an independent docket to run that and a cost to run our
21 own central docket, I do not have my own staff attorney.
22 I do not have my own court coordinator. I do not have any
23 of that. I have one court clerk that belongs to me, and I
24 have court reporter and my deputy. That's it. I don't
25 have anybody else on salary. The rest we do ourselves,

1 and we get Ryan Anderson to carry some of the heavy
2 lifting as well, but that's all that we have. If you look
3 at the cost of our court, I guarantee it's going to be at
4 least half the cost of what an independent -- an
5 individual docket would cost.

6 CHAIR TRACY CHRISTOPHER: Judge Chu and then
7 Judge Kelly.

8 HONORABLE NICHOLAS CHU: To kind of help
9 frame the discussion for the committee, there are two
10 points I wanted to make. The first is kind of backing up
11 to some historical stuff. I serve as the local
12 administrative judge for Travis County's probate courts,
13 so kind of bureaucrat at times, a lot of times I feel
14 like, because I have to dive into these OCA reports.

15 So two legislative sessions, two bills were
16 passed in terms of tracking certain metrics for
17 disposition rates -- certain disposition rates, number of
18 continuances granted when the parties ask, time standards,
19 things like that, how many cases are filed, and that
20 created a seismic shift in terms of how counties tracked
21 their court cases. It used to be a certain way to do it,
22 but now we have it kind of rushed to figure out these
23 numbers, and especially for the urban counties, that
24 caused a lot of data collection that we normally don't do.

25 One of the issues with the central docket is

1 that because all of the cases kind of go in a pot, you
2 don't see individual court metrics, because all of this
3 data is reported by the court itself. You know, there's
4 ways that I think both counties have dealt with that
5 really well, but ultimately, I think the legislative
6 intent, the issues kind of going forward to this
7 legislative session time, the transparency bill with
8 judges reporting their hours, along with the pay raise,
9 those are kind of in the same idea of just seeing how
10 judges are doing, right, like, that's basically the theme
11 that's -- this kind of last couple of cycles.

12 The best way, I think, to do that without
13 bringing a sledgehammer to the whole judicial
14 administration process is to, you know, instead of OCA's
15 guidance of how you collect data by court, courts like the
16 53rd, the 147th, or anything like that, you go by judicial
17 officer. It's already happening right now, when you look
18 at the criminal courts with the public safety report, the
19 reporting system that OCA has to track in terms of which
20 judge is giving a bond to a criminal defendant and what
21 that bond is set at. When we do those, those aren't --
22 those aren't set by court, but instead by judicial
23 officer. You have to code it into the system that way,
24 and then it spits out, here's all of the bonds that Nick
25 Chu put out.

1 And so if OCA changes the guidance and it
2 isn't -- it's an OCA guidance change and not a Rule of
3 Civil Procedure change, then I think that would achieve, I
4 think, Chief Justice Blacklock's objective of trying to
5 have transparency that's being called by the Legislature,
6 but at the same time not blowing up the system.

7 And that brings me up to my second point,
8 which is if the referral letter -- if we go the way of the
9 referral letter in creating a rule, either through the
10 Rule of Judicial Administration or a rule for the Rule of
11 Civil Procedure in prohibiting the central docket,
12 whatever that means, right, then first step is, one,
13 amending the Texas Constitution; two, amending the
14 Government Code in all of those specific provisions that
15 generally allow, and under the Court Administration Act,
16 Chapter 74 of the Government Code, but also in every --
17 almost -- a lot of enabling statutes for when you created,
18 for example, Probate Court Number 2 in Travis County or
19 the, you know, random district court number, there is
20 sometimes a line in those enabling statutes that say that
21 that court's allowed to exchange benches with other
22 courts. So there's a lot of legislative changes that
23 would have to happen in order for bench exchanges, as the
24 foundational framework of allowing a central docket, to
25 change.

1 If we do that, that will not just be an
2 effect on the civil courts or just an effect on Travis
3 County and Bexar County. What would happen is, is that
4 that would have a huge effect on rural counties, because a
5 lot of the rural counties have one judge or two judges.
6 Sometimes they're riding circuits at opposite ends, but,
7 also, it would affect the urban counties a lot, too,
8 because a lot of counties have an emergency docket, a bond
9 reduction docket or jail call, where all of the cases are
10 filed in different courts, like County Court at Law Number
11 1, 2, 3, 4, 5, but then every day for the week there's a
12 duty judge that hears the cases in custody, decides on
13 whether they should be -- set bond, plea, or set for
14 expeditious trial on a criminal matter, and that complies
15 with speedy resolutions, according to the U.S.
16 Constitution.

17 There were a few lawsuits, I think, in the
18 Eighties that had to create kind of these frameworks, and
19 that would not happen, because it would go back to the
20 individual judges. Those individual judges would then
21 have to show up for that while they're also doing their
22 jury trial or doing their plea dockets or things like
23 that. Same situation with the emergency docket in civil
24 courts or family courts, where every Friday before a
25 spring break there's a ton of cases where parents are

1 fighting over custody of their kids; and that means that
2 if Court 1 is open, you could get those; but if Court 2
3 has already left or they're in a jury trial, Court 2's
4 emergency hearings aren't going to get heard until late,
5 or at all, on that Friday.

6 Also, there just is a system where -- and
7 this applies in the criminal courts, too, where a
8 colleague -- I remember this when I was a prosecutor. A
9 judge down the hall had to go to a meeting for some kind
10 of local administrative judge thing. So and judge down
11 the hallway covered that docket to do the routine pleas at
12 the end, so nobody had to end docket early.

13 So those kinds of -- those kinds of things
14 are required in order for courts to work in Texas. We
15 have -- we have a lot of courts in general, just because
16 of the size of our State, but I think an effect that we
17 will see if we get rid of bench exchanges is the only way
18 to compensate for that without having people sub in as
19 quickly or a -- or, you know, emergency centralized docket
20 for some of these things, is we just need more judges.
21 Like every urban county will then ask for a bunch of
22 district judges or a bunch of county court at law judges,
23 so that instead of having the same workload, everybody has
24 less workload so the system can accommodate for that, and
25 that is an unintended consequence if we get rid of this by

1 statute.

2 CHAIR TRACY CHRISTOPHER: Judge Kelly.

3 HONORABLE PETER KELLY: I just wanted to
4 turn the emphasis to the practicalities of it. I
5 practiced in Harris County, and then had a fair amount of
6 hearings in Bexar Counties, and it's strange. You know,
7 you go to central docket. You go to one courtroom. He
8 doesn't have time, so they send you to another courtroom
9 in another building; and, you know, you go down to three,
10 take the tunnel over. It's an odd -- odd coming there and
11 as an outsider, but the practitioners love it, and by
12 extension, their clients love it. The practitioners love
13 it. They get a hearing. It's just another way of doing
14 things. Those of us that have had all of the hearings
15 before the same judge and only one judge handles the case
16 are used to it being done one way. Travis County and
17 Bexar County, they do it a different way, but why really
18 change it if the results are the same? It's kind of like
19 driving on the left side of the road as opposed to the
20 right side of the road. Everybody still gets where
21 they're going.

22 From the user perspective, as opposed to the
23 metrical, whatever numbers OCA wants from user
24 perspective, I mean, just look at the testimony, the
25 commentary that's given by the sections of the San Antonio

1 Bar that they enjoy that. So why bother changing it, and
2 let OCA figure a way to track the numbers if they really
3 want to.

4 CHAIR TRACY CHRISTOPHER: Let me ask for
5 comments from the committee on people who don't like the
6 central docket, and if you would explain, because we have
7 a lot of people here, obviously, who are big fans of it,
8 love it, you know. They're going to talk about it and
9 urge us to keep it. So let me hear the people who don't
10 like it, to kind of get us moving down the road, and why
11 you don't like it. Yes, Quentin.

12 MR. SMITH: I actually don't dislike it.
13 I'm kind of agnostic, but I do have a question.

14 MR. LEVY: Oh, then you don't get to talk.

15 MR. SMITH: Wait, wait, wait, wait, because
16 it may change my view. So is it possible to have a
17 different judge for summary judgment, pretrial, and trial?
18 Is that possible in the --

19 MR. LEVY: It's almost assured.

20 MR. SMITH: Okay. Well, that's problematic
21 to me in my cases, because, like, if you're making
22 rulings, I want those to be consistent, and you have an
23 understanding of why those are happening. So I do think
24 that's a point, but also, everybody is talking about
25 efficiency. What about getting it right? What about

1 justice? Because it's one thing to be fast, it's another
2 thing to get it right. And so we're trying to get all of
3 these businesses to come to Texas to do business here, and
4 they're going to come to court, and I've got to tell them,
5 "Hey, we don't know who your judge is going to be next
6 week." And they're going to be like, "What? What are you
7 talking about?" I mean, that is a little strange. That's
8 unusual.

9 So I do think that there is something to be
10 said for the complex cases that people are trying, and
11 there doesn't seem to be, like, a set line in stone as to
12 what a complex case is, right? Is it a numerical amount,
13 or is it just -- we heard something about TOR cases
14 earlier, and so what is a complex case? So I think those
15 are issues that can be addressed, and I think we've been
16 talking about a lot of smaller cases, and I think that is
17 probably right. Maybe the central docketing system should
18 stay for family law cases, but there are other cases out
19 there where I think people would have problems.

20 CHAIR TRACY CHRISTOPHER: Lisa.

21 HONORABLE AMY MEACHUM: Should I answer that
22 question?

23 CHAIR TRACY CHRISTOPHER: No, not yet. I
24 just want people --

25 HONORABLE AMY MEACHUM: Sure.

1 CHAIR TRACY CHRISTOPHER: I want you judges
2 to hear --

3 HONORABLE AMY MEACHUM: Yes.

4 CHAIR TRACY CHRISTOPHER: -- the lawyers'
5 complaints --

6 HONORABLE AMY MEACHUM: Yes.

7 CHAIR TRACY CHRISTOPHER: -- before you --

8 MS. HOBBS: Well, I may not be -- I may be a
9 rebuttal to that.

10 CHAIR TRACY CHRISTOPHER: I think we want to
11 focus on the complaints, because we have a lot of people
12 here that are --

13 MS. HOBBS: I'm a rebuttal to that, as
14 somebody who has practiced in Travis County for 25 years,
15 and as often in Bexar County, but I just will say the
16 reality is that for 25 years I have watched judges --
17 like, they know what the prior rulings are, and I have had
18 one judge in 25 years overrule a prior ruling, and it was
19 our good friend, who we all love, is Judge Yelenosky, and
20 it was a reversal of summary judgment at a directed
21 verdict stage, and I think we -- on this committee, we all
22 love that Yelenosky was just, like, "I just can't, I just
23 can't," but most of them keep up the -- like, if something
24 has happened, then we're moving forward. We're getting --
25 and I'll have more to say, but I just wanted to address

1 that one point, and I appreciate you, Judge Christopher,
2 that you want opposition, because I'm an advocate for the
3 central system.

4 CHAIR TRACY CHRISTOPHER: Okay. Kent and --

5 MR. SMITH: I just want to say one thing,
6 though, but like a lot of cases are being filed in the
7 business courts in Houston and Dallas, and they're
8 avoiding Austin and San Antonio, and so I just -- I mean,
9 I hear there's love for this, but there are big commercial
10 cases where they're avoiding this area. I mean, like, if
11 you look at a lot of contracts, they're not putting Travis
12 County for venue provisions, even though they could.

13 HONORABLE ANTONIA ARTEAGA: I could give you
14 another reason.

15 MR. SMITH: What's that?

16 HONORABLE ANTONIA ARTEAGA: I could give you
17 another reason.

18 CHAIR TRACY CHRISTOPHER: Let's not have a
19 back and forth, if you don't mind.

20 HONORABLE ANTONIA ARTEAGA: I'm sorry,
21 Judge.

22 CHAIR TRACY CHRISTOPHER: That's okay. It
23 makes it very difficult for our court reporter, for
24 everyone to hear the comments. So I'd like it if we can,
25 you know, call on people and she knows who's talking. So

1 I think Kent and then Robert.

2 HONORABLE KENT SULLIVAN: I think Judge
3 Hortick is here.

4 HONORABLE CHRISTINE HORTICK: Yes.

5 HONORABLE KENT SULLIVAN: And I was just
6 going to suggest it would be great to hear from her,
7 because she is in the mix, and as I understand it, based
8 on what we were provided, she is against the central
9 docket system, and I just thought it would be great to
10 hear from her.

11 CHAIR TRACY CHRISTOPHER: All right.
12 Robert.

13 MR. LEVY: So it has been a long time since
14 I've had cases in Travis County or Bexar County, but one
15 of the challenges that I have always had with the central
16 docket is the cases that we have, we -- when I was
17 representing clients at a law firm, you have a case, you
18 know, a significant matter, involves a lot of risk, and
19 the company has to make determinations, and they are
20 either -- it could be the plaintiff, it could be the
21 defendant, and one of the most important issues in any
22 case that I would handle would be who is the judge and
23 what is the judge's experience, what do we know about the
24 judge and the judge's rulings. That is an issue that is
25 core to case analysis and making decisions about how it's

1 going to be adjudicated and whether this is a case that
2 should be settled or should be resolved in other means,
3 and it's just a fact of the way our system works.

4 Similar issue about juries. You want to
5 know who's on your jury. You want to know each person and
6 try to understand how they might understand the facts and
7 the issues that are presented to them. Similarly for the
8 judge. And every single time when I had a case in the
9 central docket, and I told my client, "Well, I can tell
10 you who -- what court it's assigned to, but that won't be
11 the judge that's going to be presiding over pretrial
12 issues, or it's not going to be the judge who tries the
13 case." And it's very challenging, because there's no way
14 for me to say what might happen, how are these issues
15 going to be addressed, because judges handle -- they have
16 their own -- their own approaches, their own unique
17 perspectives. Some have seen cases like this, and some
18 have never seen cases like this. Some have been
19 commercial lawyers, and some have been family lawyers, and
20 that -- that uncertainty is a handicap, and I realize it's
21 all part of what you know, and I understand that Travis
22 County -- or Austin lawyers and San Antonio lawyers are
23 very comfortable with the system, for the most part, but
24 they -- but coming in from Houston, which is where I live,
25 it was a real challenge, and it almost felt like, you

1 know, you were penalized for not being from those cities.

2 CHAIR TRACY CHRISTOPHER: All right. I'm
3 going to call on Judge Hortick, and then we're going to
4 take a break.

5 HONORABLE CHRISTINE HORTICK: Well, thank
6 you for the opportunity to address you all today.

7 CHAIR TRACY CHRISTOPHER: Could I ask you to
8 use the microphone?

9 HONORABLE CHRISTINE HORTICK: Yes. Thank
10 you.

11 Thank you. Can everybody hear me?

12 MR. ORSINGER: Yes.

13 HONORABLE CHRISTINE HORTICK: Okay, thank
14 you. Well, I guess, essentially, my issues with Bexar
15 County isn't necessarily revolving around a centralized
16 docket. It's the way a centralized docket is administered
17 in Bexar County. Essentially, it's divided into two
18 issues, so I appreciate the move to individual judicial
19 accountability as opposed to accountability by court. I
20 think that will solve the accountability issue. I know I
21 go to work a lot. I don't take very much time off, but in
22 our system, you are not -- there is no -- you're not
23 rewarded for going to work, other than the fact that you
24 go to work and are doing the right thing.

25 The way our system operates, yes, it's

1 fantastic if a judge has an emergency or they're out sick.
2 There's somebody else that can cover for them, but I
3 believe the system, as it exists, can be abused, because
4 we have no rules as far as when judges will be gone and
5 how many days they will be gone.

6 We get daily status sheets. Those change
7 from time to time. I might get a status sheet as
8 presiding judge on Tuesday that says I'm going to have
9 seven judges or six judges helping me. I might show up
10 for presiding court, and I have two, and, you know,
11 emergencies happen, I understand that, but the way our
12 system is run, it doesn't necessarily -- it assumes that
13 you have a good team, an entire good team, that is working
14 together, and I can say in the -- I'm in my third year on
15 the bench, and I can say that's not always the case. I
16 don't think that's the rule. I think that's the exception
17 in Bexar, but I think the individual accountability by
18 judicial officer will go a long way to address that issue.

19 Now, my -- my complaint in Bexar is I don't
20 believe our local rules -- I think our local rules, to
21 some extent, are in conflict with the Constitution. Our
22 local rules mandate that all hearings go to the presiding
23 judge or to the monitoring judge. I, as a judge, if I
24 hear a family law case that has turned into shambles
25 because they've not been able to get a hearing, and I will

1 say that, yes, in Bexar County you can get a hearing. You
2 can set a hearing for three days. That does not mean you
3 will actually get a hearing in three days, so that there
4 is the distinction.

5 My issue with our local rules -- and I
6 understand that as locally we can adjust that, but one of
7 my main concerns is the inability for me as an individual
8 judge to choose to keep a complicated or messy case that's
9 come before me. I'll give you an example. I had a case
10 two weeks ago that involved a preschooler. The
11 preschooler has been going to two different preschools for
12 the last several months because they could not get into --
13 and this is on the record. The attorneys said they could
14 not get a hearing to address the school issue. So this
15 poor kid has been going to two different preschools for
16 months because his parents could not reach an agreement
17 and they could not get before a judge to make a decision.

18 I think that I have -- I should have the
19 ability, if a case like that comes to me where there's
20 been gamesmanship on the part of the parties or the
21 attorneys, and sometimes that happens, that I should be
22 able to say this is problematic. I should be able to keep
23 this case and have these attorneys be able to come to me
24 with any sort of emergency situation and get that
25 resolved. Per our local rules, that is not permitted, and

1 I'll tell you, I have been given a memo that says that if
2 you do not follow the local rules, you are subject to a
3 judicial complaint. So I have to choose do I try and
4 address emergency issues or problematic issues if there's
5 a request by the attorneys to come back to me. I have to
6 weigh that. Well, do I do the best thing for this child
7 and get an answer to them, you know, regarding an issue
8 within a couple of days, or do I say, "No, I'm sorry,
9 you're just going to have to roll the dice," because I'm
10 afraid that a colleague is going to file a judicial
11 complaint because I'm trying to resolve an issue in a
12 timely manner.

13 So my issue is not necessarily with the
14 administration of a centralized docket. I think a
15 centralized docket is very appropriate and efficient in
16 certain ways, and so I -- I am not against centralized
17 dockets. I'm against the centralized docket as it's
18 administered in Bexar County, and so -- and I'm hearing
19 from my colleagues that we're working on solutions and
20 open to suggestions, and I'm very excited to hear that. I
21 mean, I've been fighting for about two years to get
22 issue -- or resolutions to some of my concerns addressed,
23 and I have always been met with "This is the best system,
24 we're not going to change anything." That's why I went
25 forward with litigation at personal expense, because what

1 am I supposed to do as a judge when I'm seeing these
2 examples -- these issues come up routinely?

3 I think I have an obligation to speak up,
4 and if I have to live in a situation where I have to rely
5 on colleagues -- not all, some colleagues, most
6 colleagues, that appreciate the system and want to keep
7 the system the way it is, I believe I have an obligation
8 to voice those concerns and do whatever I can to address
9 those concerns. And so, you know, what I'm hearing about
10 Bexar's open to suggestions, I'd love that. I've been
11 trying to get resolutions, because I would not like to
12 essentially blow up an entire way of doing cases, but
13 something in Bexar County, I think, needs to change.

14 Our system does not -- it hasn't -- there's
15 an issue with inconsistency in rulings, depending on the
16 judge, and it's problematic, especially in the family law
17 cases, and I'm just looking at a way to get those issues
18 addressed. So that does not necessarily mean that our
19 presiding system entirely has to go away or Travis' or any
20 other throughout the state. I just want these issues
21 addressed, and I -- I need help from outside of Bexar
22 County to get that done, and in whatever form or fashion
23 that takes place is fine with me, but those issues need to
24 be addressed, in my opinion.

25 CHAIR TRACY CHRISTOPHER: Thank you, Judge.

1 We'll take a 15-minute break at this time.

2 (Recess from 10:39 a.m. to 11:04 a.m.)

3 CHAIR TRACY CHRISTOPHER: This meeting might
4 be the first time I would ever need a gavel. So I talked
5 to Kennon over our break. We're going to take a series of
6 votes, even though everyone hasn't had to say everything,
7 so we all know this is sort of a preliminary vote, and
8 we're hoping to finish this discussion by lunchtime, with
9 the idea that, of course, the committee is going to come
10 back after we've had these discussions. I mean, we could
11 spend a lot of time getting a lot of rebuttal; and I know
12 some of the judges have said, well, I'd like a rebuttal;
13 and I'm not going to give you that chance at this point,
14 just because we have a fairly long agenda. This will come
15 back, and by the time it comes back, you'll be able to get
16 more information to the committee. You will understand
17 some of the fears that people have about the central
18 docket system, and I think that that will help us sort of
19 move along faster.

20 Okay. So, first of all, the first question
21 is we have a constitutional and a statutory provision that
22 says judges can exchange benches, right, so my first vote
23 is who thinks that -- that the Supreme Court should argue
24 for elimination of that statute and constitutional
25 amendment? Who would be in favor of that?

1 MR. DAWSON: I'm sorry, what's the question?

2 CHAIR TRACY CHRISTOPHER: Who would be in
3 favor of eliminating the constitutional and statutory
4 provision allowing for exchange of benches?

5 Do we know what that is? Exchange of
6 benches means one judge can preside in another judge's
7 court. All right. Any -- do we have votes in favor of
8 that?

9 MR. LEVY: Well, can I ask a question?

10 CHAIR TRACY CHRISTOPHER: Yes. This is very
11 preliminary.

12 MR. LEVY: I understand. Would that then
13 mean that if you have a case and you have an emergency in
14 the case that -- and the judge is skiing or sick or
15 whatever, nothing happens?

16 CHAIR TRACY CHRISTOPHER: Correct. That's
17 what that would mean, okay, if we got rid of the idea of
18 an exchange of benches.

19 All right. Anyone in favor of that idea? I
20 see no hands. Okay. So that's our first vote.

21 The second question is do we think that
22 there should be limitations on exchange of benches?

23 HONORABLE TOM GRAY: Beyond the ones that
24 are there.

25 CHAIR TRACY CHRISTOPHER: Beyond the ones

1 that are there.

2 HONORABLE TOM GRAY: Meaning that a judge
3 doesn't have to participate. The rule says "discretion."
4 The Constitution implies it with the use of the word
5 "may."

6 CHAIR TRACY CHRISTOPHER: What I am talking
7 about is should there be certain types of cases where
8 there would not be an exchange of benches, and then my
9 next question would be what kind, what kind of cases would
10 this group think would be appropriate? And as I said,
11 this is very preliminary. We've already had, you know, an
12 identification of, perhaps, the family law cases, it's
13 better if you have, you know, one judge overseeing it. I
14 think Travis County has one family law judge. I don't
15 know how they handle emergency matters, but, you know, as
16 a general rule, they have that ruling in family law
17 courts.

18 We've talked about complex cases. Pete can
19 tell us about the administrative cases that are exempted
20 from, you know, a wholesale exchange of benches sort of
21 thing.

22 My -- since we do not want to eliminate
23 exchange of benches, the next question is should there be
24 some sort of limits by statute, by rule, by best
25 practices, that we could move forward with that concept?

1 Yes.

2 HONORABLE MARIA SALAS MENDOZA: Judge, I
3 would say that my concern -- and I'm neither in favor or
4 against the central docketing systems. I will say, I've
5 never practiced in them, and I never was a judge in them,
6 and I thought Judge Hortick was going to say -- which is
7 my feeling, that I had a certain possessiveness about my
8 cases, and I didn't want other people hearing my motions,
9 but I think we should keep the ability to exchange benches
10 as needed, but my position is that this is something that
11 needs to be left to the councils in all of the counties.
12 Those judges and their council of judges and
13 administration are going to know what works best in their
14 county and that it could be a combination of these hybrid
15 systems that exist; and it doesn't answer the concerns
16 that Judge Hortick raises, which is that she's said this
17 is a problem and I want this addressed, and it's not
18 getting that addressed.

19 So I'm not addressing that, and I do think
20 that's important, but my feeling about this is that what
21 works in one county isn't going to work in all the
22 counties and that we should allow for the local
23 administration of assignment of cases, specialized
24 dockets, the limitations as needed, that all of that
25 should be left to the local administrative judges.

1 CHAIR TRACY CHRISTOPHER: I understand your
2 concerns. What I am trying to address is the letter that
3 we got from Chief Justice Blacklock, all right, and he
4 wants us to study the system and suggest changes for
5 eliminating the central docket, right, so what I am hoping
6 to move our committee towards is we might ultimately say
7 we think this is a bad idea, but if there are changes,
8 what changes would we think could be accomplished.

9 HONORABLE MARIA SALAS MENDOZA: So to answer
10 the question, I do think there should be some limitations,
11 but that should be whatever works. We have the conflicts
12 cases, the family law cases, cases with emergencies, but I
13 think Judge Chu said it early on. If the issue is
14 accountability, that one way to address it without blowing
15 up any system is to have -- is to track by the officer who
16 is handling whatever it is. If it's a motion, if it's a
17 trial, that that will address the accountability question
18 and still allow all of the jurisdictions to take care of
19 their issues. But to answer your question, I think, yes,
20 I think we can make recommendations that there should be
21 limitations for conflicts cases, for family, for others,
22 which I think they're already doing.

23 CHAIR TRACY CHRISTOPHER: Okay. So any
24 other discussion on that vote, should there be limits on
25 the exchange of benches? Yes.

1 MR. HUGHES: I guess my question, may be
2 bringing it to too fine a point, are you talking about
3 limitations by changing the statute or simply limitations
4 by enacting a rule? Because, obviously, I mean, my
5 thinking is it's one -- it's going to be -- once you have
6 a statute, it's going to be difficult to make adjustments
7 as you go along. If you have a rule, that's possible.

8 So I guess my question is, is the question
9 changing it by -- urging it be changed by statute or
10 urging it be changed by some sort of rule, either
11 procedural or judicial administration?

12 CHAIR TRACY CHRISTOPHER: I think the
13 exchange of benches is discretionary under the
14 Constitution and the statutes. It's discretionary. So,
15 to me, I could be wrong, but if I'm just answering your
16 question, it seems like we could propose limitations on an
17 exchange of benches and not be running afoul of the
18 Constitution or the statute. I could be wrong, but --
19 yes.

20 HONORABLE ANA ESTEVEZ: Can I just give
21 three examples of why I have concerns about putting
22 limitations on exchange of benches? Criminal matters, I
23 work in Potter and Randall Counties. We have five
24 district judges for Potter, three for Randall County. I
25 do do civil, family, and criminal law. At different times

1 throughout the 18 years, I have been called to sit in
2 someone else's criminal trial because there was either a
3 health emergency for that judge, and so I said, okay, I'll
4 come sit, and I sat, and I finished the trial, and it may
5 have been just the last day, but that would have been
6 three days wasted if we would have had a limitation on a
7 criminal matter.

8 Civil, this happens a lot. Somebody files
9 -- Tom Riney over there could have filed something. He
10 got the 251st. I am gone. It is my vacation week, and I
11 get a call or a text from Judge Frausto, and she says,
12 "Can I hear this TRO for you," and I say, "Absolutely,
13 thank you." And so he doesn't have to wait until I come
14 back. There is not a visiting judge. There's no
15 objections. Everything goes well.

16 Family law, we have really high -- and I
17 think the preference would be, absolutely, that I would
18 hear every issue on a really complicated case that I know
19 and I've known for -- I've got some of them that come back
20 so frequently, years, and it's been eight or nine years,
21 and I'm just waiting for that child to turn 18, but
22 they're just 12. But if something comes up in that case,
23 I want somebody else to be able to address it immediately,
24 and they do call, because we do it just based on, you
25 know, they will call and they'll say, "Hey, somebody is

1 looking for you. You're not available. Can I hear it for
2 you?" And I absolutely say "thank you," and I don't think
3 I want a limitation, because I don't want my case, in any
4 circumstance, to not be heard on something that I can't
5 think about right now. Like I don't even know how to
6 conceive of what that exception would have been, and
7 somebody would have to say, "No, we can't do that, because
8 we have this limitation."

9 So I just will -- I would say no. And I
10 just want people to think about the three different areas
11 and how it could affect you in your litigation or in other
12 cases where it's such an important thing. It's not
13 just -- I mean, we don't have a central docket, but I hear
14 cases every single day that belong to somebody else,
15 whether I'm listening to a felony and I assign myself
16 those misdemeanors. I'll listen to those misdemeanor. I
17 will listen to other cases. It is efficient when there's
18 one judge or maybe there's one defendant doing five or six
19 cases, for him just to keep doing them just in my case,
20 and the other judges can continue with whatever work they
21 have.

22 CHAIR TRACY CHRISTOPHER: Any other comments
23 on limitations on the exchange of benches? Robert.

24 MR. LEVY: I think that there is merit in
25 our considering a structure and approach in terms of

1 what -- how these processes should work and make -- and
2 provide guidance or suggestion to the Court for guidance
3 and what the factors are through more of our study and
4 dialogue, which is what we're really good at, and because
5 I think that there is kind of a lack of transparency in
6 terms of how the systems are set up, what are the factors,
7 what aren't the factors, and I think that litigators will
8 benefit by understanding that through a rule or set of
9 rules that provide that guidance. So -- and I think they
10 can address the issues that Judge Estevez is pointing out
11 in terms of what happens when, we know what happens when,
12 because this is what the rule says, so I speak in favor of
13 guidance.

14 CHAIR TRACY CHRISTOPHER: Judge Miskel and
15 then Judge Chu.

16 HONORABLE EMILY MISKEL: So I came into this
17 meeting prepared to hate the central docket and to argue
18 for its demise. As a litigant, I disliked it the few
19 times I was there. As a judge, I was extremely skeptical
20 that it would be a better way to manage cases, but after
21 being a district judge, we constantly exchange benches all
22 the time for a variety of things. The idea that we would
23 be able to do a statewide micromanaging of all the
24 different ways that judges exchange benches, I -- after
25 reviewing the materials, I think the medicine here would

1 be worse than the disease.

2 You know, just to give an example, one thing
3 we did in Collin County, we had just a plethora of these
4 low-dollar car wreck cases filed in district court, like
5 10,000-dollar car wreck cases that would never want to go
6 to jury trial, and so we came up with an idea to
7 efficiently resolve those cases where we would set 70 car
8 wrecks for trial in a week. We would have jury panels
9 coming every day. We would have all judges on deck to
10 handle them, and it incentivized settlement because we're
11 like, "Great, you're up tomorrow. We have a jury. We
12 have a judge." That was an excellent way for us to use
13 our creativity to efficiently solve a problem at our local
14 level.

15 I'm sure every county we talk to has some
16 way that they've identified a problem and solved it, and I
17 don't think that, with all of the rural, urban, suburban,
18 criminal, civil, probate, county court, district court,
19 that we are going to effectively, in this committee of
20 lawyers that handle the highest, most expensive cases and
21 not necessarily the thousands of cases that are constantly
22 before the courts, that our statewide micromanaging of it
23 is a good idea.

24 CHAIR TRACY CHRISTOPHER: Judge Chu.

25 HONORABLE NICHOLAS CHU: Two things. First

1 is I don't think we can put limitations on bench exchanges
2 or -- because of that Texas constitutional provision. It
3 says that the district judge may exchange districts or
4 hold courts for each other when they deem expedient.
5 That's clause one. "And shall do so when required by
6 law." Clause two, when required by law, are situations
7 like the removal of an elected official that's filed in
8 District Court 1. By law, District Court 1, because
9 they're in that county, can't hear that case, so the
10 regional presiding judge appoints a judge from another
11 county, that's a district judge, to hear that.
12 That's that form of required by law. So other than those
13 situations, the Texas Constitution does not allow for any
14 kind of limitation, I think, in terms of a statutory
15 rule-based limitation on bench exchanges.

16 Second is just that I think something that
17 we also forget, too, is that if we do affect bench changes
18 statutorily, that will also affect JP's, where I came
19 from. I do want to let y'all know that, like, that would
20 be a huge change in the way we do things for JP systems.
21 In West Texas, if anybody remembers what happened with
22 Justice Scalia, that was a situation where a JP was out
23 300 miles away and couldn't get to the death inquest,
24 because they have to do that, and so they had to get
25 another JP to do that, which was also 300 miles away or

1 like 200 miles or 100 miles away. So these rural
2 communities would really be affected by the efficiency of
3 the JP system if we provided certain limitations on -- on
4 the bench exchanges.

5 CHAIR TRACY CHRISTOPHER: Kent.

6 HONORABLE KENT SULLIVAN: If I understand
7 what you proposed, how you posed it, we're starting out at
8 the extremes. The first was a vote on amending the
9 Constitution and necessary statutes that would effectively
10 mandate no exchange of benches, and so we voted on that.
11 And the second alternative that we're looking at is
12 whether we would favor wholesale, unlimited, unfettered,
13 exchange of benches; and, you know, I think consistent
14 with the referral, it makes sense to seriously discuss
15 what sort of boundaries you could create that would allow
16 for a minimum baseline of reliability and consistency. I
17 don't know what those are, and I presume that the
18 subcommittee would look at what would be alternatives that
19 would produce that and perhaps not adversely affect some
20 of the attributes that people were talking about today,
21 but I think that would make sense. So I would be
22 against -- I was against the first extreme. I'm also
23 against the second extreme.

24 CHAIR TRACY CHRISTOPHER: Well, the second
25 question is should there be limits on the exchange of

1 benches, and you're also against that?

2 HONORABLE KENT SULLIVAN: No, I'm saying
3 yes.

4 CHAIR TRACY CHRISTOPHER: Oh, okay.

5 HONORABLE KENT SULLIVAN: That I think that
6 we ought to absolutely explore boundaries on the
7 completely unfettered exchange of benches, regardless of
8 case, regardless of circumstance, et cetera.

9 CHAIR TRACY CHRISTOPHER: Pete.

10 MR. SCHENKKAN: I want to give a good
11 example of why I think that's exactly the right answer to
12 this question. Of course there should be limits, and we
13 should decide which ones make sense, and making sense is
14 partly a question of how important the category is to take
15 out of the free exchange and then partly a question of
16 what are the collateral consequences of doing it one way
17 or another.

18 So to give you the example that is in my
19 practice area, and under the Travis County rules, you have
20 -- I'm just going to call it an administrative agency
21 case, but, think, you had a PUC bench trial at the State
22 Office of Administrative Hearings about whether Oncor, the
23 largest transmission distribution utility left in the
24 state of Texas and the sixth largest in the country, a
25 rate case with a 5,000-page record, and it's called a

1 Petition for Judicial Review. It's a court case, but it's
2 an appeal, and the judge is probably not going to actually
3 read the 5,000 pages of the record before hearing oral
4 argument on 35 different points of error by -- by the main
5 petitioner and 15 different ones by six others, but that
6 judge is darn sure going to read very long briefs that
7 have exceptions to the rules on the page limits, so you
8 can have some kind of chance of having two pages long of
9 an issue that's only worth \$50 million and then might
10 actually feel like it's not entirely clear from the briefs
11 on one or more of those issues what the record is on that
12 and go back and look at it.

13 So, of course, we want those cases siloed to
14 a particular judge. Should it be the judge whose number,
15 court number, was drawn randomly when the Travis County
16 case was filed? Hell no. There may well be a judge whose
17 schedule permits more brief reading at a particular time,
18 and there might actually be one who had handled a utility
19 rate case before and was not so frustrated by it that they
20 refused to ever handle another one. Give it to that
21 judge. That's an okay local rule. I don't think it
22 violates the constitutional provision, because I assume
23 technically, theoretically, the judge in whose court the
24 case was filed doesn't have to consent to it being
25 transferred to somebody else, but what do you think the

1 judge is going to do? How often is that going to happen?
2 Are they going to say, "You can't take it away from me"?

3 CHAIR TRACY CHRISTOPHER: I think it kind of
4 depends on your local rules --

5 MR. SCHENKKAN: Exactly. It may well.

6 CHAIR TRACY CHRISTOPHER: -- as to whether
7 there can be an objection to that.

8 MR. SCHENKKAN: And that's what I'm saying,
9 is how you do limitations is pretty complicated, and the
10 answers can be different for different kind of cases. The
11 solution I just talked about for administrative law cases
12 is a whole lot easier than for several different
13 adjectives here, complex, high conflict, and big, all
14 pretty vague and amorphous, and we don't have to spend a
15 lot of time talking about that because that's really where
16 the question is, what rules placing limits and for which
17 of those is the juice worth the squeeze.

18 CHAIR TRACY CHRISTOPHER: Roger, and then
19 I'm going to reframe my question.

20 MR. HUGHES: Well, I also point out that one
21 feature of the local rules is they deprive the assigned
22 judge of some discretion. I mean, this whole issue that
23 has become -- been brought to the public's attention
24 resulted from a judge who said, "I know what the local
25 rule says, but I want to opt out. I want to exercise my

1 discretion to keep certain cases," and so while one of the
2 features is we're relying on a rule and a statute that
3 gives judges the discretion to exchange benches, one
4 feature that makes the central docketing system in its
5 hybrid form work, is you're depriving trial judges of some
6 of that discretion. They can't keep cases they might
7 choose to keep. Is that a good rule or not? Does that
8 infringe upon the discretion conferred by statute? It's
9 not up to me to say, but if we're considering the issue,
10 that's a thought.

11 CHAIR TRACY CHRISTOPHER: Yes, Richard.

12 MR. ORSINGER: I think we should be very
13 careful if someone has in mind the idea that family law
14 cases are going to be set aside where central assignment
15 doesn't occur. There is an argument for continuity of the
16 judge in a case that's high friction and there is
17 sequential hearings, and perhaps you lose some continuity.
18 I haven't found that. I have found that every judge that
19 I appear in front of is ready for it, but I think there's
20 something much more important than the continuity between
21 hearings, and that is the availability of the court to
22 resolve issues in a very volatile, emotional environment.

23 In Bexar County, you can get a temporary
24 hearing of a family that's breaking up from one home to
25 two, splitting their finances and splitting their kids,

1 you can get a hearing in three days, and you are not going
2 to be told by the court the amount of time you have to put
3 on your case is limited.

4 I've practiced all around the state for 48
5 years. There are many judges, increasingly a number of
6 courts, that allow you 20 minutes per side for a contested
7 temporary hearing. Now, how on earth are you going to put
8 on the case about who's going to live in the home, who's
9 going to have the kids, how the bills are going to be
10 paid, in 20 minutes? I've never had a Bexar County judge
11 limit the time. The presiding judge takes an estimate
12 from the two lawyers. If they agree, it's assigned out
13 with that time limit. If they disagree, the higher time
14 limit is what's assigned out, and the judge will tell you
15 you're approaching your assignment deadline, but they
16 never put a limitation on your ability to put on evidence,
17 and that's hugely important on the first time that this
18 breaking up family is going to the courthouse that they're
19 actually heard and the witnesses they want to call can be
20 heard.

21 As far as the trial settings are concerned,
22 in the cases that handle their individual dockets, whether
23 it's Harris County or whether it's Dallas County or
24 whether it's a small rural court, it can take many months
25 to get your first trial setting; and it's always subject,

1 in the rural areas or the less populous counties, to the
2 criminal docket. So you can get busted out of your trial
3 setting because the judges have to give priority to the
4 criminal docket, and God forsake if they have a capital
5 trial, they're gone for months. And so what happens is
6 you approach your trial setting, you don't reach your
7 trial setting, so then what happens? Well, you get put
8 off four, five, six months.

9 In Bexar County -- and I can stand corrected
10 if the process is different from what my perception is,
11 but we set jury trials on the first three weeks of the
12 month, and we hold over the fourth week for no prearranged
13 settings, and it's a carryover week for the people that
14 don't get reached in the first three weeks. So in Bexar
15 County, you have an excellent chance of getting reached on
16 your first trial setting, but if they don't reach you on
17 that first or second or third week, you go to trial in the
18 fourth week. We clear those cases. It's really important
19 in family law cases to be able to get dispositions and let
20 people get on with their lives.

21 To me, the timing, the availability of the
22 court, the quickness of the rulings, so far outweighs the
23 continuity issue, for continuity of continuous hearings,
24 which doesn't happen that often, that I don't want anyone
25 here to go into the idea of preconception that we're going

1 to create a category of family law cases that can't have
2 the central assignment, because we will be sacrificing
3 what is most important, which is getting judicial
4 intervention early enough that we can stop worse things
5 from happening. Thank you.

6 CHAIR TRACY CHRISTOPHER: All right. So I'm
7 going to reframe the question a little bit, and again,
8 remember, these are just preliminary votes on, you know,
9 where we can kind of send our subcommittee. Instead of
10 saying should there be a limit on exchange of benches, my
11 question is, are there categories of cases that people
12 believe need the consistency of one judge? Yes, Elaine.

13 PROFESSOR CARLSON: Yeah, complex litigation
14 for sure, but I think there should be some exceptions. If
15 there's an emergency, if the judge is ill or out.

16 CHAIR TRACY CHRISTOPHER: Exceptions are up
17 next.

18 PROFESSOR CARLSON: Yeah, okay.

19 CHAIR TRACY CHRISTOPHER: Lisa.

20 MS. HOBBS: I do think that, but I also
21 think that both -- you know, let's put aside if this is an
22 attack on Bexar and Travis or if it's about an attack on
23 central, but I do think that I have never had a -- I only
24 do complex cases. I mean, no one's hiring an appellate
25 lawyer to do something that's not a complex case, and it's

1 always in front of one judge, and including Judge Alvarez,
2 who tried --

3 HONORABLE ANTONIA ARTEAGA: Arteaga.

4 MS. HOBBS: Sorry. In Bexar. And then, so
5 I think -- and then the family -- the Travis County has
6 like the family law one judge concept, and so, like, I
7 don't know -- and I'm listening to Pete, who I know
8 definitely practices in Travis County with his
9 administrative law cases, but it seems to me like these
10 counties have always just respected that there are some
11 cases -- but to Orsinger's point, it's like, sure, give me
12 a judge, but if, like, suddenly it's Friday and some
13 parent is not turning over a kid, I just need a judge. I
14 don't need a specified judge or whatever.

15 So I don't -- I don't understand -- and same
16 with complex cases. Like, we have a deposition.
17 Everything, you know, it's like building up, or there's
18 some times that you just need a judge. You don't need the
19 judge. You just need a judge to say this is going forward
20 or not, and that is true, and I've worked in all of these
21 kinds of cases, and I would rather have a judge than no
22 judge. And so I don't know how you would -- sure, we can
23 all think about these cases that, like, we need one judge
24 who is mostly in charge, mostly in charge of complex
25 cases, mostly in charge of family law cases, mostly in

1 charge of administrative case, but I don't know how you
2 say "and then you cannot exchange benches." Like, if some
3 emergency comes up.

4 Sure, maybe you do an emergency provision,
5 but emergency is ill-defined, and sometimes you need
6 something in two weeks, sometimes you need something that
7 day, but I just think these local rules are accounting for
8 cases where, if you can't get to your judge, you are
9 getting to a judge. And I just -- I'm scared about how we
10 would craft a rule that would create -- and I get it -- I
11 get it, Robert, that maybe we need to define things more
12 clearly or whatever, but I don't know how you craft a rule
13 that is more than just general discretion, which is what
14 the current rules are. Like, I don't know how to draft
15 it. If you can give me some ideas, I'd be happy to
16 consider.

17 CHAIR TRACY CHRISTOPHER: Robert.

18 MR. LEVY: So you're kind of on two sides of
19 this. You know, so if the local judges in Travis County
20 and Bexar County have figured it out, they've got their
21 system, so they've accounted for all of the things you're
22 talking about. That means you can create a standard, one
23 that would apply consistently and that there would be
24 accountability associated with it and predictability
25 versus I don't know how it works or whatever, and the fact

1 that they can do it means we can do it. We can provide
2 that. We can talk and understand what the exigencies
3 might be and what they shouldn't be, and those are factors
4 that I think were really well-suited to two of them.

5 MS. HOBBS: If I can, respectfully, it's not
6 like -- they are not looking at a rule and saying, like,
7 oh, okay, can, can't, can, can't. That's not how -- it's
8 in their discretion, and, yes, they have some guidelines.

9 MR. LEVY: Yeah, but how do I complain about
10 that if I don't like the result, if I say it's arbitrary,
11 if I say what standard are you applying? Don't I have the
12 right to understand how an assignment system is going to
13 work as a party?

14 MS. HOBBS: With discovery, how do you -- I
15 mean, you complain because it's an abuse of discretion.
16 You don't complain because there's not, like, clear
17 discovery rules. It's proportionality. It's all this
18 thing -- you can fight about it.

19 MR. LEVY: No, but if I don't -- if a judge
20 gets assigned to my case and issues a ruling that I don't
21 think is consistent with what the case is about, it
22 doesn't recognize the fights that we've had on the same
23 issue previously, and all of the things, and that it's not
24 the judge assigned to the case, I'm left without a remedy,
25 because there's no way a court of appeals is going to take

1 up an issue like that, and so I just feel like something
2 happened to my case, and I don't -- I can't even explain
3 to my client what and why this judge ruled on it versus
4 that judge.

5 MS. HOBBS: Well, and that goes back to
6 something -- and, I'm sorry, I'm not trying to take you
7 for task, but that comes back to something that you said
8 earlier, is that when you get assigned a judge, you want
9 to talk about, like, what you think -- how you think this
10 judge is going to rule and what you think about this judge
11 and that kind of thing, and, to me, that is the antithesis
12 of justice, because you --

13 MR. LEVY: Lisa, you tell me that you never
14 talk to your clients about your panel on appeal?

15 MS. HOBBS: Every time I do, I say, "I think
16 these are my strengths on my case, these are my strengths
17 of the law, these are strengths of my" -- but I'm telling
18 you, that is a very nefarious view of our justice system;
19 and, Robert, you can believe it, and I also have had
20 horrible times, but I'm not going to make judicial policy
21 based on that view of the judiciary, because I believe
22 that no matter what judge you're going through, you're
23 going through the facts, you're going through the law; and
24 if they go off the rails, you have a mandamus, and you can
25 correct that.

1 MR. LEVY: And I don't want you to
2 misunderstand what I'm saying in that it's a nefarious or
3 looking at bad judges versus good judges. I'm talking
4 about the fact that, as you know, when you argue a case
5 before a panel with a judge, you know what that judge is
6 going to be receptive to and not receptive to, and if
7 you're not arguing to that, that predilection, then I
8 think you're not representing your client well.

9 MS. HOBBS: Well, in Travis --

10 CHAIR TRACY CHRISTOPHER: Okay. Could I get
11 y'all to --

12 MS. HOBBS: Yeah.

13 CHAIR TRACY CHRISTOPHER: We're kind of
14 getting into a little personal fight here, and I think we
15 need to stop that and move on to some more comments.

16 MR. LEVY: Yeah, about AI.

17 CHAIR TRACY CHRISTOPHER: First I'm going to
18 call on Marcy, and then Judge Miskel and Judge Chu.

19 MS. GREER: I've practiced all over the
20 state, in every kind of court system -- in every kind of
21 court system imaginable, and if the issue is inefficiency
22 and lack of predictability, that goes in noncentralized
23 dockets as well, and in some cases, the inefficiencies are
24 way, way, way worse. I've got a case that's been set in
25 one county before a single judge that has been passed over

1 now four times for trial, but we had to be available for
2 two weeks without -- and to have our schedules available
3 to come there on minimum notice in two weeks, and we've
4 been passed over every time. That is not efficiency.
5 That's not a good way to handle things, but the point is,
6 is that each jurisdiction needs to have some flexibility.

7 The only limitation that I think would be
8 appropriate to consider would be to have some sort of
9 guidance on special assignments. I think when you try to
10 look at cases categorically, and say all family law cases
11 are this way, I mean, to Richard's point -- or
12 Mr. Orsinger.

13 MR. ORSINGER: Richard.

14 MS. GREER: To his point, you know, not all
15 family law cases are the same, and at different stages
16 they're not all the same. You may have different needs,
17 and I recall a case that I handled years ago where a judge
18 ordered my client hospital to stay open and operating,
19 which was, I thought, fairly extraordinary; but anyway, we
20 had a hearing to figure out how he was going to legislate
21 how the hospital had to run; and this is a women's
22 hospital where babies are being born and things are going
23 on; and we got the chief nurse officer on the stand.

24 And he quickly realized, oh, my God, you
25 know, deferring babies here, I mean, this job requires

1 somebody on the ground floor who knows what they're doing;
2 and I think it's really important to let those
3 individuals, the judges, the presiding judge, the court
4 administrator, or general counsel in the case of Bexar,
5 the people that are dealing with it on a daily basis and
6 know the litigants and know the parties, to have
7 flexibility; and if you categorically put limits on that,
8 that's going to make it so much more inefficient and so
9 much more ineffective and because each case is different.
10 There are cases that have bars that are much more
11 complicated. So defining a complex case is a difficult
12 matter, you know, to Mr. Schenkkan's point, or Pete's
13 point. I don't know what we're doing here.

14 MR. ORSINGER: We're friends.

15 MS. GREER: We're friends.

16 CHAIR TRACY CHRISTOPHER: First name unless
17 you're a judge. That's my rule.

18 MR. ORSINGER: Thank you, Tracy.

19 MS. GREER: Thank you. But I do think it's
20 important to not think of cases categorically and try to
21 put limits on this very important constitutional power to
22 allow judges to get their work done. I think it's got to
23 really be done at the local level and not at our level,
24 not at the statute -- I mean, the Legislature's level,
25 et cetera, if we want our courts to be run efficiently.

1 And I also want to make a point, because I
2 know part of this is to ferret out the bad judges, and one
3 of the ways to do that is to focus on the judge rather
4 than the court, and that point has been raised, and I
5 would call on Ryan Anderson. We've talked about the fact
6 that there are ways to track that information that can be
7 done very easily. It's just not being asked for right
8 now.

9 CHAIR TRACY CHRISTOPHER: Okay, I'm not
10 going to let him talk right this minute, because I've
11 still got Judge Miskel, Judge Chu, and Judge Kelly. Then
12 Ryan.

13 HONORABLE EMILY MISKEL: I just wanted to
14 respond to one comment that Robert made, which I think I
15 heard him say, well, the fact that Bexar County can define
16 these categories and manage it by local rule means that
17 we, SCAC, can do it by local -- by rule, and I think that
18 my problem with it is defining it statewide for everybody.
19 So the fact that specialized civil courts in the fourth
20 largest urban county in Texas have come upon a solution
21 doesn't mean anything about our committee's ability to
22 make a statewide rule that every court must follow.

23 CHAIR TRACY CHRISTOPHER: Judge Chu.

24 HONORABLE NICHOLAS CHU: Going back to
25 Robert's point, I just want to frame this in terms of, you

1 know, we have a, little "r," republican system of
2 government in Texas where we elect our judges to do a job,
3 and then when our -- when our judges get together, they
4 elect amongst themselves a local administrative judge, and
5 from that decision, that local administrative judge makes
6 the decision on best ways to kind of divide up cases and
7 do these things. If he or she is doing a bad job on that,
8 then their colleagues will vote that person out of office
9 as the local administrative judge and put in the new
10 person. That's how that system works.

11 And the remedy, Robert, is if you don't like
12 how the judge was prepared in the hearing, you know, yeah,
13 ideally when we're advocates we tell our clients or our
14 victims or witnesses that "I think this judge is going to
15 rule this way," but, truth be told, they could totally do
16 it differently. And that's the thing about trial court
17 judges, is that there's a level of discretion that they
18 have; and each one, as long as they're within that level,
19 you know, and make their decision based on the merits,
20 then that's totally fine. And the difference between one
21 judge and another judge with an outcome may be a different
22 result, but may be within their discretion as a trial
23 court judge; and that's the system that we've created
24 here. We should accept that that's okay.

25 Our system does not require us to have the

1 same result for every judge. Otherwise, we would just
2 have robots doing this. Or AI. And the remedy, if you
3 don't like a judge's preparation, is to vote them out of
4 office, and so that's the ultimate remedy for that, and so
5 I don't think we can create a rule to then restrict all of
6 these different counties to do this when, you know, these
7 counties are totally fine with the way that they're doing
8 it.

9 CHAIR TRACY CHRISTOPHER: Judge Kelly.

10 HONORABLE PETER KELLY: So there seems to be
11 a little bit of tension between two different paradigms,
12 the corporate interest wanting to have predictability.
13 They want to assess and monetize risk, figure out what's
14 going to happen to their case. Whereas, the need in --
15 for lack of better terms, smaller cases, whether it's
16 family law or whatever, to have a judge, any judge, to
17 make a ruling if something is about to happen.

18 It seems to me that, with regard to
19 predictability and economic risk, we already have the
20 business courts. There's already been a constitutional
21 amendment, a statute, and these courts are set up for the
22 development of a body of law so corporations will come to
23 Texas. I don't see a need to remake the entire court
24 system, or even the Travis County and Bexar County court
25 systems, to satisfy a need that hopefully is already being

1 met by the development of the business courts.

2 So in the sense of balancing policy interest
3 with regard to the centralized docket, it seems to be
4 weighing in favor of that, because the major policy
5 interest against it is assessment of risk. That's already
6 been taken care of.

7 And now I'd like to invite Justice
8 Christopher to make a comment. I seem to recall a case
9 about 15 years ago where one judge stepped in for another
10 judge to actually try the case that had been worked up.
11 Was that done in accordance to a particular rule or
12 because it was a category of case, or was it sort of by
13 the practice and custom that had developed in Harris
14 County in the civil district courts?

15 CHAIR TRACY CHRISTOPHER: Well, it's been a
16 while since I've been in Harris County, but we also had
17 free exchange of benches, and if a judge was not available
18 to try a case -- I think maybe the case you're talking
19 about, the judge's father got ill and was expecting to
20 have to leave right in the middle of a three-week trial,
21 and I took over it. And we didn't expect that there would
22 be -- well, there couldn't be any objection to it under
23 our current rules. So, I mean, that is something that the
24 committee needs to understand. Even if -- even if you had
25 one judge to do something, if we had the emergency or the,

1 you know, illness, another judge can step in, under our
2 rules, and there's no ability to object on the exchange of
3 benches. If I'm remembering our case correctly.

4 Ryan, with Bexar County, you have the
5 Odyssey system?

6 MR. ANDERSON: We do. We have the bare
7 bones Odyssey system, so our ability to generate reports
8 currently is not great, but we have come up with -- when
9 OCA first came out with the individual court reporting, we
10 had several calls with them as to whether we could do it,
11 because our system just isn't built the same as most of
12 the counties, and it's easier for other counties to do it.
13 But playing around with Odyssey, we came up with ways we
14 could get the data necessary to track what individual
15 judges were doing.

16 There are some things that were, under the
17 current set of rules, more difficult to do. Like out of
18 our presiding system, which is the pretrial motions, you
19 send it to whatever judge is available. Well, that's an
20 exchange of bench. It's not a transfer, but some of what
21 goes out of there are dispositive motions, and so,
22 technically, a dispositive motion going out of presiding
23 should be counted as a transfer and recorded as disposed
24 of by that judge, and we went back and forth with OCA, and
25 this is not disparaging OCA. They were most helpful, but

1 at the end, they said, really, all we're getting for, give
2 us the court it is filed in and the -- when it's disposed.
3 That's all we care, and that really isn't accurate.

4 I mean, obviously, I get the sense from
5 reading Chief Justice Blacklock's address that you want us
6 to drill down much more, and we can do it, and some of
7 it's going to be tracking out of our presiding system, and
8 Judge Alvarado and I have discussed this. We don't
9 currently put into our Odyssey system the slip that says
10 "Go to Judge Hortick on a 30-minute matter." We can start
11 doing that, and then in Odyssey, we have the assignment,
12 and we know that she took care of it, so we can give you
13 all of that data. It really isn't that hard. It's just
14 tweaking our system. It would have been nice had our
15 commissioners bought us a better version of Odyssey, but
16 c'est la vie. We've got a person in there, and we can sit
17 there and do it.

18 Since y'all are also discussing
19 improvements, if I could just put out for your
20 consideration the filing, and y'all saw we didn't get our
21 data to you until last night, and even that was a
22 work-around, because our 1182 reports, even though they
23 were done and we, the administrative side, had handed them
24 to our district clerk well in advance, they made the
25 unilateral decision not to send them to OCA because they

1 couldn't send the criminal and juvenile district courts,
2 because those courts had just switched to Odyssey, and
3 it's a mess. And so they just unilaterally decided we're
4 not going to do it, and they sent them late. OCA has
5 them, but they can't post them yet because they're late.

6 Why we have to go through our district clerk
7 to post information that has to do with court
8 administration is beyond me, and it holds us all captive.
9 I would much rather, when the 14 judges are irate about
10 something, come to me with something I can actually
11 handle.

12 Second point on that is Rule 165 requires
13 the district clerk to send out DWOP notices. It took us a
14 year, after trying to get DWOP back, to get them to send
15 out a notice, and to put this in -- and for the appellate
16 attorneys here, you'll really -- this will make you
17 swivel. Our district clerk, when they came in, did not
18 send out 306a notices for nine months. They didn't send
19 them out, and the only reason I clued in that they weren't
20 being sent out was I did 30 years of appeals. I did a few
21 bills of review, but I didn't do 15 bills of review in two
22 weeks involving failure to get notice, and when judges
23 were calling me with, hey, what is this, and started to
24 see it, and I called the district clerk, and they said,
25 "What are you talking about?"

1 So I think something that would be really
2 helpful is if the courts are going to be held responsible
3 for stuff, then put the responsibility in the courts.
4 District clerks, there are no requirements, minimum
5 requirements, for electing them, and that's scary when
6 you're a large county. This isn't recorded is it?

7 CHAIR TRACY CHRISTOPHER: So just for the
8 nonjudges in our group, to kind of explain a little bit
9 more on the exchange of benches, at least in Harris
10 County, if I chose to try someone else's case, I would
11 actually transfer it to my court so it would show up as a
12 trial for me and a disposition for me. If I was just
13 having a -- you know, covering someone's docket, I would
14 not. I would just leave it there, and it would just show
15 as, you know, ruled on the motion. Now, maybe my initials
16 would be on the docket sheet that you could, you know,
17 figure out that it was me doing it as opposed to somebody
18 else; and I don't think -- for example, Harris County has
19 the Odyssey system, so I'm not really sure it could do the
20 by judicial officer, but that's kind of the difference.

21 And the only reason I would transfer it is
22 because internally we had bragging rights over how many
23 trials we had, right, so you know, you wanted to get your
24 statistics correct. If, you know, you tried a case for
25 somebody else, you would actually put it onto your docket.

1 But so back to my question, and I understand
2 that -- oh.

3 HONORABLE EMILY MISKEL: I just had one
4 quick point, which is we're talking about rule, but
5 something that may be behind the scenes, if you haven't
6 dealt with case management system vendors, is it's my
7 understanding -- and, Ryan, you can correct me if I'm
8 wrong, but, like, if you ask Odyssey to make the tiniest
9 little change about how they store or report anything,
10 they want to charge you these, like, extortionate, "Sure,
11 we would be happy to make that change, that will be
12 \$80,000." But my understanding is if it's a legislatively
13 required change, then Odyssey will do that change on its
14 own dime. Is that your experience as well?

15 MR. ANDERSON: It's not been our experience,
16 but I do understand it's supposed to be. Our experience
17 so far has been trying to add a few bells and whistles at
18 exorbitant rates.

19 HONORABLE EMILY MISKEL: So I guess one
20 thing I was going to say, is if it's really important to
21 track things by judicial officer, it may be helpful to the
22 counties to have that be a legislative requirement,
23 because then the case management system might build that
24 in at their cost rather than charging each county some
25 extortionate amount of money.

1 CHAIR TRACY CHRISTOPHER: Okay. Back to my
2 original question, as modified, are there a category of
3 cases that people believe need the consistency of one
4 judge? Subject, of course, to exceptions. We've
5 identified perhaps family, maybe, or high conflict family
6 cases, complex cases, administrative cases. Are there
7 other categories that people believe need the consistency
8 of one judge? Yes, Judge Miskel.

9 HONORABLE EMILY MISKEL: I was going to say,
10 to my mind, I don't think it's so much a case type
11 category, like civil cases above X dollars. I think it
12 really is, in my mind, the ones I need to keep an eye on
13 are sort of the bad faith, naughty litigant cases, and so
14 if there's a way to define that.

15 MS. WOOTEN: We'll put that in the rule.

16 HONORABLE EMILY MISKEL: So I don't know
17 that it's necessarily --

18 CHAIR TRACY CHRISTOPHER: When you have the
19 troublemaker, don't you want the next judge to handle it?

20 HONORABLE EMILY MISKEL: I want them to hear
21 the same answer from me four times, right, and so, I
22 guess, so I think the way we might define categories might
23 be slightly different in this case.

24 CHAIR TRACY CHRISTOPHER: All right. Any
25 other discussion on the idea of categories of cases that

1 people believe need the consistency of one judge?

2 MS. GREER: And to clarify...

3 CHAIR TRACY CHRISTOPHER: Yes.

4 MS. GREER: You mean by rule or statute,
5 rather than best practices? I know you mentioned that at
6 one point.

7 CHAIR TRACY CHRISTOPHER: I'm not exactly
8 sure how this would happen, whether it would be by rule,
9 by statute, by best practices, just I'm trying to get sort
10 of kind of broad categories for the subcommittee to
11 consider how it was possible. Yes, Harvey.

12 HONORABLE HARVEY BROWN: As you know, in
13 Harris County, there were categories of cases that were
14 sent to one to three judges that were not quite big enough
15 for MDL, but were substantial enough to keep -- to create
16 kind of a mini-MDL for the county, so just something to
17 think about.

18 CHAIR TRACY CHRISTOPHER: Alistair.

19 MR. DAWSON: So I think putting these
20 categories where you cannot exchange benches unnecessarily
21 restricts our judges throughout the state, and it's sort
22 of a fix in search of a problem, in my opinion. I mean,
23 for -- and judges in all of the rural counties, you know,
24 I defer to them and I trust their judgment about when they
25 need to exchange benches, for whatever reason; and if you

1 say, okay, you can't do it in this case and that case and
2 this case and that case, that may effectively preclude
3 them from exchanging benches in 80 percent of their
4 docket, depending on how this vote goes, and I'm like,
5 why? Why would we do that? If a judge has a family
6 emergency and can't be on the bench, why would we say,
7 "Oh, you can't have another judge fill in for you, because
8 this is a complex case" --

9 MR. LEVY: That's not what she's saying,
10 though.

11 MR. DAWSON: -- or it's a family law case,
12 civil, big civil case, or it's over this much in value.

13 And then let me say, I'm not a big fan of
14 the central docket, so I'm not -- you know, but I defer
15 and I give great deference to the lawyers and judges that
16 practice in Austin and San Antonio, and they like it, so
17 I'll defer to them. In both of those communities, in both
18 of those counties, if you have a complex case, you can opt
19 out of the central docket. You can seek to have your case
20 declared as complex and a judge can make that
21 determination and assign it to a particular court.

22 So in Pete's example, he's got his big
23 humongous rate case, he could seek to have that, I
24 believe, declared as a complex case and assigned to a
25 particular judge; and he could even suggest, you know,

1 judge so-and-so has experience in these cases, you might
2 consider assigning it to that judge. So I just think that
3 you're unnecessarily restricting judges across the state
4 for what benefit? How often does it come up that you need
5 a case assigned to one particular judge and you can't get
6 a judge?

7 I mean, in all the counties that don't have
8 a central docket, you get assigned to a judge, and they
9 may have a fill-in for emergencies, and that's perfectly
10 acceptable. And in Travis and Bexar Counties, how many
11 cases are there that require one judge that you can't get
12 designated as a complex case or otherwise opt out of the
13 centralized system? So you're creating more harm than
14 you're solving, in my opinion.

15 CHAIR TRACY CHRISTOPHER: All right. I'm
16 going to try some new voices. Judge Keltner.

17 HONORABLE DAVID KELTNER: Two, two items
18 appear to me. I've not grown up with a centralized docket
19 system, not used to it. It doesn't necessarily mean it's
20 bad, but I do realize, as I thought about it, and I made
21 some calls yesterday, we do have a centralized docket
22 system across the state in juvenile cases. For example,
23 they generally have one juvenile judge elected and three
24 to four -- in our county, four masters. Everything
25 circulates among the masters, who sit for the judge on a

1 preliminary decision that goes up. It works very well,
2 and it meets a need, which is immediacy; and immediacy is,
3 in some of those issues, extremely important.

4 On the other hand, we do have assigned
5 judges in every metropolitan county, and I was trying to
6 check. I didn't get the calls -- all of the calls
7 answered I wanted, but in Dallas, Tarrant County, Harris,
8 I believe, certainly in Bexar County -- well, I'm not so
9 sure about Bexar County, all of the ad valorem tax cases
10 go to one or two judges that keep those. They have an
11 expertise in them and run them all. No one has any real
12 problem with that. It is an efficient way to run an
13 administrative system, and that's what we're really
14 talking about.

15 I think categories that we come up and foist
16 on somebody else will create problems that we have not yet
17 thought of, so I'm against the idea of categories. I
18 would be for the idea of, perhaps, guidelines where you
19 can comply with the Constitution and with the Government
20 Code and do that, but I -- every time I think about it, I
21 do think there would be some modifications, but when I try
22 to think of what the modification is, I fail, and I just
23 flail around, and I sort of think it's a good thing to
24 think about, but I think, at the end, we're not going to
25 recommend anything.

1 CHAIR TRACY CHRISTOPHER: Judge Estevez.

2 HONORABLE ANA ESTEVEZ: Just in answering
3 your question, if there was an area, if we did have an
4 area, I would want it to be best practices, not required,
5 and I'd like the word to be "should", not "shall," and I
6 think the only category that I think is really important
7 would be family, high conflict, with children, because
8 they last until the children age out. It's not -- the
9 complex litigation, it has an end. It will end. It will
10 end in 18 months, it will end in three years, but it will
11 be over.

12 Those other cases will continue and continue
13 and continue, if they're truly the high conflict, and it
14 is a benefit for me when I come in and I see everyone I've
15 seen the year before and the enforcement two months ago
16 and whatever it might be, but there is an advantage,
17 because we start off right where we left off, and it is
18 more efficient, and it just helps to know what's been
19 going on for years. Sometimes it's good to not -- as a
20 parent, to know all of the wrongs that have occurred,
21 because there's -- there are those abuses. That bad
22 child, as Justice Miskel was referring --

23 HONORABLE EMILY MISKEL: The bad faith
24 naughty litigants.

25 HONORABLE ANA ESTEVEZ: But it's the naughty

1 children for those litigants. It's not always the
2 attorney's fault. But that would be -- my only
3 recommendation would be a "should," and I think that
4 happens already. It sounds like it happens in Travis
5 County. So when you know you've got that case, you can
6 just say, "I'm going to stick with the judge," and it
7 sounds like that's the main complaint of Bexar County, and
8 maybe that would solve the problem for Bexar County, is
9 having a way to get that done.

10 CHAIR TRACY CHRISTOPHER: Judge Chu.

11 HONORABLE NICHOLAS CHU: Just for food for
12 thought for the committee, there are two ways a case gets
13 to a different judge than the judge that's assigned to
14 that court. The first is bench exchanges, so that
15 scenario would be if Roger heard a case of mine without a
16 formal order, that's a bench exchange.

17 The second way is by formal assignment, so
18 the regional presiding judge, Judge Estevez in this
19 example, would -- I would request to her to assign Roger,
20 and Roger, by order, would hear that case, and that's the
21 assignment, and that's how -- you know, we do formalized
22 assignments, but also visiting judge assignments.

23 HONORABLE ANA ESTEVEZ: And you get credit
24 for his work, by the way.

25 HONORABLE NICHOLAS CHU: I do. I do.

1 CHAIR TRACY CHRISTOPHER: Unless the whole
2 case is transferred.

3 HONORABLE NICHOLAS CHU: So if we -- yeah.
4 The only reason why I point this out is because if we do
5 some kind of limitation on bench exchanges, that doesn't
6 resolve limitations on assignments, and so, basically, we
7 would be creating a solution that would still -- like a
8 problem that still exists. If there is a problem. I
9 don't think there is a problem.

10 CHAIR TRACY CHRISTOPHER: Lisa.

11 MS. HOBBS: I'll actually defer to Harvey.

12 CHAIR TRACY CHRISTOPHER: All right.

13 Harvey.

14 HONORABLE HARVEY BROWN: I was just going to
15 say that even if we do create these categories, I still
16 think those judges need to have discretion to do a bench
17 exchange. Your doctor appointment lasts two hours, and
18 the jury is waiting, they've got a question. I don't want
19 to make my jury have to wait three hours when I can just
20 go next door to Tracy Christopher, and ask her in a phone
21 call, "Will you go handle this 10-minute matter?"

22 CHAIR TRACY CHRISTOPHER: David.

23 HONORABLE DAVID KELTNER: I'm sorry, I came
24 up with one thing I hadn't thought about, and it was out
25 of an experience in Bexar County. It was all good, by the

1 way. I assume we would exclude an MDL judge from rotating
2 docket or central docket system. So if the MDL panel
3 appointed, that judge would not be subject to the central
4 docket system, right? I think that's what I -- that's how
5 I read the -- I just looked at the MDL rules and read that
6 and then contacted the Chair, and he said that's their
7 expectation. And I think that's right. So I assume we
8 don't need to correct that, but that would be the one
9 category that I could see that would have a statewide
10 impact.

11 CHAIR TRACY CHRISTOPHER: Yes.

12 HONORABLE ANTONIA ARTEAGA: I have the
13 answer. Yes, we have our MDL judge, previously was Judge
14 Cathy Stryker, and when she had MDL hearings, she could go
15 ahead and set her MDL hearing all day if she needed to,
16 and because of our central docket, we would cover all of
17 the cases that would have otherwise been assigned to her.

18 CHAIR TRACY CHRISTOPHER: I think the
19 question was did anybody ever sit for her in the MDL
20 cases.

21 HONORABLE DAVID KELTNER: Right. And I
22 think the answer was "no," from what I can see.

23 HONORABLE ANTONIA ARTEAGA: No, we couldn't,
24 because it has to be assigned by --

25 HONORABLE DAVID KELTNER: And I can't find

1 it.

2 CHAIR TRACY CHRISTOPHER: Quentin.

3 MR. SMITH: I just want to refocus the
4 question for voting, which is no one wants to get rid of
5 rotating benches. We already voted on that. So we're
6 only talking about other separate, single categories we
7 can consider and then exceptions to those will still be
8 permitted, so it's not wholesale changes, because there's
9 a lot of discussion about we should not do this. We've
10 already decided that issue, so I just want to refocus the
11 discussion.

12 CHAIR TRACY CHRISTOPHER: Pete.

13 MR. SCHENKKAN: And this is kind of a follow
14 up to what Quentin is saying. I'm trying to make sure
15 we're clear on what the question and the next vote is
16 going to be on. The next vote, as I understand it, is not
17 going to be on is anybody in this room fixed in their
18 minds today that a category that should be limited is X.

19 The question is, are we going to agree that
20 there are categories where we should look into and see if
21 there should be limitations, and when we get there, then
22 we will also be looking at the exceptions or the standards
23 and procedures that are applied for any limitation.

24 CHAIR TRACY CHRISTOPHER: That's my
25 understanding of it.

1 MR. SCHENKKAN: In other words, are we going
2 to consider limitations at all?

3 CHAIR TRACY CHRISTOPHER: Correct, which is
4 why I, instead of saying limitation on exchange of
5 benches, I reframed it in terms of categories of cases
6 that people believe need the consistency of one judge, and
7 we've identified quite a few of those already.

8 MS. HOBBS: I have one.

9 CHAIR TRACY CHRISTOPHER: Yes, Lisa.

10 MS. HOBBS: I know you're avoiding me
11 because you think I'm just against, but I actually just
12 tried a case in Kerr County, and it had to do with TUFTA.
13 It was the hardest jury charge I've ever done. I think
14 the judge didn't understand TUFTA. It was not a big
15 commercial case. It was actually an assault case, but
16 understanding TUFTA was really hard. I don't think any of
17 us in this room would describe this case as a commercial
18 case, but the TUFTA --

19 HONORABLE TOM GRAY: Could you tell us what
20 that acronym is?

21 MS. HOBBS: No.

22 HONORABLE TOM GRAY: Okay.

23 MS. HOBBS: I cannot, Justice Gray. Will
24 you tell us what that is? I don't know.

25 HONORABLE TOM GRAY: I'm not even sure I

1 could pronounce it.

2 CHAIR TRACY CHRISTOPHER: Uniform Fraudulent
3 Transfer Act.

4 MS. HOBBS: There you go.

5 HONORABLE TOM GRAY: What is it?

6 CHAIR TRACY CHRISTOPHER: Uniform Fraudulent
7 Transfer Act.

8 MS. HOBBS: But I'm just saying, like,
9 there's complexities about it, and, I mean, this was a
10 high-dollar case, even though the underlying thing was
11 not, but we can all talk about what gets complex, and I'm
12 telling you, that TUFTA jury charge was like the hardest
13 I've ever done. And so, you know, I mean, like, pile in
14 on, like, what the hardest jury charge you've ever done or
15 why you think you need a judge who understands fraudulent
16 transfers and -- but they're not -- they're not everything
17 with what everybody in this room might think they are, and
18 so I would add that. I'm opposed to us trying to do it,
19 but if we're going to do it, I will tell you what my
20 hardest jury charges are.

21 CHAIR TRACY CHRISTOPHER: But may I ask you
22 a question? Was that a problem of not having one judge
23 through the consistency of the case or just a judge that
24 didn't understand --

25 MS. HOBBS: No. That's what --

1 CHAIR TRACY CHRISTOPHER: -- the law?

2 MS. HOBBS: Well, neither, actually. I
3 don't want to throw this judge -- the judge was awesome.
4 It was hard, and we were not exchanging benches, but I'm
5 just telling you, like, when you're talking about hard
6 things, they happen in a lot of different cases. And so,
7 you know, we -- we can say that commercial cases are big
8 and complex, but I can write that charge in a heartbeat,
9 but when you're talking about smaller cases that are --
10 may not be commercial cases, that's a harder charge to me;
11 and, you know, whether I deal with one judge or any other
12 judge -- I guess my question is, like what are we talking
13 about here? Like, I thought we were talking about we need
14 one judge to understand it. Great.

15 I need one judge to -- but what I need is,
16 when the trial starts, I need one judge to understand it,
17 and I just don't think whether I need a continuance or
18 whether I need this motion to compel to be granted and,
19 like, do we understand the scope of discovery or whatever,
20 those are not the hard things. I don't even get involved.
21 I don't even get involved. I mean, I might say, hey,
22 narrow the discovery, or, that discovery, you know,
23 whatever, but, like, the vast majority of what our judges
24 deal with every day are moving the case along; and when we
25 get to the the nitty-gritty, if we want to say, okay,

1 well, we need one judge, and you may say, "Oh, well,
2 you're in trial." Nope. We talked about this in summary
3 judgment. We talked about this in pretrial. We talked
4 about this at the jury charge stage, so this complex issue
5 that was not a complex case, it -- I literally was invited
6 to go down to Kerrville to educate this judge for four
7 times in a case that is not a complex litigation case.

8 CHAIR TRACY CHRISTOPHER: Judge Miskel.

9 HONORABLE EMILY MISKEL: I was also going to
10 bring up a red herring, though. So we're talking about,
11 oh, if we do away with --

12 CHAIR TRACY CHRISTOPHER: Wait, you're
13 bringing up a red herring?

14 HONORABLE EMILY MISKEL: I am. Yes.

15 CHAIR TRACY CHRISTOPHER: Did I hear that
16 correctly?

17 HONORABLE EMILY MISKEL: Yes. But here's
18 the thing. So we're talking about, oh, if Bexar and
19 Travis didn't have these centralized dockets, then we may
20 not have the consistency of one judge hearing the pretrial
21 matters and the trial. We already don't have that in the
22 big counties, because Dallas County has associate judges.
23 I think Harris County has associate judges. I can't --
24 but your pretrial matters are already heard by a different
25 judge. So if we're in favor of one judge managing the

1 case from beginning to end, which I loved doing as a
2 judge, then I think we also should get rid of associate
3 judges and acknowledge that it's not only in central
4 docket cases where different judges handle things, but
5 it's associate judges doing it, too, which I have always
6 disagreed with and hate, so I would like to bring them
7 into this discussion as well.

8 CHAIR TRACY CHRISTOPHER: I'm kind of with
9 you on that point, but Kennon.

10 MS. WOOTEN: I just want to raise the
11 associate judges as a starting point in the system, but I
12 also am thinking about some of the comments that we
13 received from people, again, appended as Exhibit 3 to the
14 memo; and some of them that are coming to mind included
15 that in certain counties without a central docket system,
16 you have to wait many months to get a hearing sometimes,
17 and sometimes the hearing setting might be after the trial
18 setting. So when we think about what categories of cases
19 need to be out of the system, I think it's important to
20 consider that, for example, in Travis County, we have a
21 hybrid system; and the reason why it makes sense and
22 works, I think, to have the complex cases assigned to a
23 particular judge is that all of these other cases are
24 still moving along.

25 And so it's that hybrid system that really

1 enables efficiency, from my perspective as somebody who
2 has litigated in this system for many years, and I'm going
3 back to the reason we're here, what's the problem we're
4 trying to solve, to the comment that Judge Miskel made
5 about maybe the medicine is worse than the disease; and
6 what I don't want us to do is to stymie efficiency when
7 our goal is to increase efficiency.

8 CHAIR TRACY CHRISTOPHER: I'm not sure
9 efficiency was the goal.

10 MS. WOOTEN: I think it was one of the --
11 like efficiency and uniform -- at least as stated by Chief
12 Justice Blacklock in the article that's appended as
13 Exhibit 2 to the subcommittee memo. It was about whether
14 the central docketing system promotes efficient and
15 uniform administration of justice, and I think at least
16 the data we've seen for --

17 CHAIR TRACY CHRISTOPHER: I think it was
18 more of the uniform, and I think that's what -- I think
19 that's what most people in the complex cases feel like, if
20 I've got three different judges, I'm not getting the
21 uniformity.

22 MS. WOOTEN: And I'll speak to that point.
23 I mean, I think, one, we have to acknowledge that the
24 constitutional provision is conjunctive, uniform, and
25 efficient administration of justice, so we can't consider,

1 I don't think, one without the other; and second, when we
2 think about uniformity, I will say, for what it's worth,
3 there's no case that I found that analyzes what that means
4 in this particular constitutional provision; and so I
5 guess that would take us to plain language; and when I
6 think about uniformity, I think about some aspects of the
7 central docket system in Travis County that increase it.

8 For example, I know I'm going to get a
9 setting within a set period of time. I know that there
10 are a set of local rules governing all of those courts
11 operating in that system, and that's to me more uniform
12 than if I go to a different county and have different
13 local rules among the different judges, and so you can
14 argue uniformity is there more so in some of these
15 systems. You could also argue that it's lacking because
16 you have different judges making decisions on the same
17 case. So I think it just depends on what aspect of the
18 system you're looking at, whether it increases or reduces
19 uniformity.

20 CHAIR TRACY CHRISTOPHER: Robert.

21 MR. LEVY: I wanted to just amplify a little
22 bit in terms of I think that what Quentin pointed out,
23 what I understand we're voting on, is -- is a question of
24 whether there is utility in having certain categories of
25 cases that might be assigned to specific judges. It does

1 not mean that there wouldn't be a circumstance where a
2 judge is not available but another judge could sit on an
3 emergency issue or some other factor that might permit a
4 judge -- a bench swap, under defined circumstances, and
5 I'll point out, again, that issue of kind of understanding
6 the regularity.

7 I looked at -- I just breezed very quickly
8 at the Bexar County rules, and it talks about the
9 calendaring system, but I don't know if there's a process
10 there to get a specific judge assigned, if you had a case
11 for it. And I understand in Travis County there is, but
12 it doesn't seem to be there in the rules, but maybe it is,
13 but part of -- and if it is, that's great. I'm just
14 talking about understanding and having a line of sight on
15 what that process is and what the factors are. That
16 provides a sense of consistency in knowing, and to Justice
17 Kelly, will you join me -- this is something I'd like to
18 see in the congressional -- you know, will you join with
19 me in a motion that all of the cases against my company
20 would go to the business court, no matter whether they're
21 tort or otherwise, and I'll vote with you on that?

22 And the reality is, is that there are a
23 large category of cases that are very complex, involve
24 significant science issues, might involve significant
25 issues regarding experts or other things that are dealt

1 with in pretrial, and they are cases that would not be
2 eligible for business court that it might make sense to
3 have a designated judge that will hear all of the pretrial
4 activity in that case because of the consistency issue.

5 And I'll finish with one comment. Anyone
6 here who ever had to go in front of Judge Scott Brister,
7 you knew what to expect in that court, and, boy, you
8 needed to be prepared for that. It helps to know if
9 you're in his court what's going to happen, and I think
10 that no matter what the -- it's not how the judge --
11 Alistair, it's not a matter of how -- it's not about the
12 outcome. It's just understanding what the judge is going
13 to want to see and making sure you're prepared for that.

14 CHAIR TRACY CHRISTOPHER: Okay. We're going
15 to take a vote and then we're going to have lunch, and
16 we're going to be done with this discussion and move on in
17 the agenda. We're obviously not done with this
18 discussion, but we want the subcommittee to have some food
19 for thought and to continue to move forward, with the
20 directive from Chief Justice Blacklock.

21 So the vote is -- and we're not talking
22 about how it will be accomplished and what the exceptions
23 are, but the vote is, are there categories of cases that
24 people believe need the consistency of one judge? That's
25 the vote.

1 Everyone in favor, raise your hand.
2 Okay. I've got 16 in favor. All those
3 opposed?

4 Nine opposed, Chair not voting.

5 (Recess from 12:20 p.m. to 1:18 p.m.)

6 CHAIR TRACY CHRISTOPHER: All right.

7 Robert.

8 MR. LEVY: I am happy to report to the
9 committee on the follow-up work on artificial intelligence
10 and the referral that the Supreme Court gave to us last
11 year, asking us specifically to look at potential changes
12 to Texas Rule of Civil Procedure 13 and Texas Rule of
13 Evidence 901, and we did that discussion, and it's
14 outlined in our memo, and I'll provide some follow-up and
15 also discussion of Judge Paul Grimm's presentation in our
16 Deep Thoughts meeting in December.

17 With the work of the two subcommittees,
18 actually, the Rules 1 through 14c subcommittee and the
19 Rule of Evidence subcommittee, we've explored this topic,
20 and in the summary, at this point in time, it's our
21 recommendation not to propose to the SCAC a specific rule
22 amendment that would address artificial intelligence, but
23 we do continue to encourage the committee and the Court to
24 pay attention to the issue, as it will continue to have an
25 impact on both trials, as well as on evidentiary issues.

1 The topic, obviously, has generated quite a
2 bit of focus, and we specifically noted on the Rule 13
3 issue that we did not think a rule amendment in Rule 13
4 would accomplish the goal of ensuring that lawyers would
5 not use AI inappropriately or rely on AI-generated content
6 in terms of case citations. That was an issue that gained
7 quite a bit of attention about two years ago, but, in
8 fact, it continues to happen. There was a recent case
9 where lawyers from the Morgan & Morgan firm were
10 sanctioned for citing cases that were hallucinations.

11 We certainly think that lawyers and
12 self-represented litigants need to understand not to rely
13 on AI without validating and checking the information that
14 it provides. But one follow-up is that AI is somewhat of
15 a pervasive technology, and it ends up occurring in many
16 different ways and different places that people are not
17 even aware of. So, typically, if you are using Lexis or
18 Westlaw or other tools to search for citations, that tool
19 is applying some level of AI to assist you in that
20 process. Obviously, it's not creating new cases, though,
21 as it's been trained not to do that.

22 We also point out that the ethical rules
23 continue to develop in this area, and the -- there has
24 been a -- or an ethics rule that's been issued on the
25 topic, and if you're interested in it, it's referenced in

1 the memo. The ethics committee perspective I think is
2 relatively on track with our recommendation to the
3 committee that this is a topic lawyers need to be aware
4 of. They need to be cognizant of the risk of using the
5 tool and not overly rely on that information.

6 I did want to point out Judge Grimm's
7 presentation, and in the memo, starting on page two, is a
8 summary, if you weren't here in December and were not able
9 to read the transcript, and I will point out that that
10 summary that I included was generated by AI. I asked an
11 AI tool to give us a summary. It certainly saved me quite
12 a bit of time, and I think it did a relatively -- or,
13 actually, a pretty good job. It's not as good as the full
14 transcript, Dee Dee, but it is helpful.

15 Some of the things that Judge Grimm pointed
16 out, as you recall, he was particularly focused on
17 concerns about AI in two areas. One was authentication
18 methodologies, as well as the deepfake issue, and the
19 deepfake issue was the topic that he was most concerned
20 about, and that's the situation where artificial
21 intelligence could be used to create, or significantly
22 modify, evidence, including audio and video evidence that
23 would be presented to a jury.

24 And while it is absolutely true that that
25 can be done, the subcommittee's perspective was that we're

1 not aware, currently, of situations where Texas courts
2 have struggled with the issue and have had challenges in
3 deciding on the admissibility of evidence that could have
4 been modified by AI, and we felt that currently it did not
5 make sense to try to create a new process in the Rules of
6 Evidence to address that issue.

7 We also noted -- and Harvey was particularly
8 helpful on this -- that the current rules, particularly
9 Rule 403, provides an opportunity for litigants to raise
10 evidentiary issues, including concerns about evidence that
11 might have been improperly modified by an AI tool, or even
12 otherwise, and Rule 403 could give courts the ability to
13 consider and even hear evidence outside the presence of
14 the jury to evaluate whether there seems to have been a
15 concern that the evidence might have been modified and
16 make a determination that admitting it would be more
17 prejudicial than helpful.

18 One of the other points that Judge Grimm
19 suggests is a couple of solutions that I wanted to point
20 out, mandatory disclosure when AI-generated content is
21 submitted as evidence. That might be an interesting
22 option, but I think, as I mentioned earlier, it would be
23 more problematic than helpful, because of the fact that AI
24 happens even when we don't know it happens, and, you know,
25 if you have a picture that you open up in a PDF viewer,

1 that viewer might be enhancing the sharpness of the
2 photograph. When you take a picture with an iPhone, for
3 example, that uses AI tools to improve the picture. It
4 knows where the face is, and it will brighten it; and
5 while you could argue that that evidence is not the
6 original original, it -- you know, if you have a
7 disclosure requirement, you might inadvertently not
8 disclose when AI has taken place.

9 The -- I also wanted to point out the very,
10 very interesting and useful winter publication of *The*
11 *Advocate* from the State Bar's litigation section, and they
12 had quite a few very, very interesting articles from --
13 Judge Grimm wrote an article, Judge Rodriguez has an
14 article, and a number of others that we think that the
15 committee might find of interest; and with the consent of
16 the -- of the editor of *The Advocate*, we included it in
17 the exhibits to our memo.

18 And, again, we were asked to talk about the
19 status of the Federal Rules of Evidence Advisory Committee
20 and its review of this issue, and as a short update, in
21 the January meeting of the Standing Committee on Rules,
22 they received a report from the Evidence Advisory
23 Committee's deliberations and plans, and the Evidence
24 Advisory Committee is considering a potential new rule.
25 It would be Rule 707 on machine-generated evidence, and

1 that would contemplate testimony that, if generated by AI,
2 and if that testimony would have required a Rule 702
3 analysis, effectively, as an expert report, if that
4 testimony was being offered by a person, then a similar
5 process should take place to evaluate the admissibility of
6 the AI-generated evidence.

7 That -- I think that that is an interesting
8 proposal, but I think it also will be potentially
9 challenging to actually apply, and I think, from the
10 perspective of the subcommittee, we felt that it might be
11 helpful to see what the Federal Civil Rules or Evidence
12 Rules Advisory Committee does with that before we
13 recommend proposing a similar rule in Texas. And
14 otherwise, we would like to continue to follow the topic.
15 We also note that there is a potential for legislative
16 action in this area that might impact the need for rules,
17 so we continue to monitor that as well, and our
18 recommendation is that we don't propose a rule amendment
19 to the Court at this time, but we stand ready to move on
20 one if that's the committee's or the Court's direction.

21 CHAIR TRACY CHRISTOPHER: All right. So the
22 subcommittee has recommended no rule amendment at this
23 time. Is there anyone on the committee that would like to
24 speak in favor of a rule amendment at this time? I know
25 we've had a lot of discussion about AI already.

1 All right. Seeing no hands, we will report
2 to the Supreme Court that you did not suggest a rule
3 amendment and the committee is in agreement.

4 We'll next move on to procedural rules for
5 the State Commission on Judicial Conduct.

6 MS. WOOTEN: That's me again, because
7 Justice Boyce is in Paris with his beloved.

8 MR. LEVY: Paris, Texas?

9 MS. WOOTEN: So this is the memo at Tab C of
10 the materials in the meeting notebook, starting on page
11 189, and this has been before the committee once before,
12 but we didn't actually reach it in discussion, so you
13 might not recall, but this is essentially a project to
14 look at the existing procedural rules for the State
15 Commission on Judicial Conduct and consider a wholesale
16 rewrite.

17 If you look in the materials, the referral
18 letter, which is appended as Exhibit 2, addresses the
19 wholesale revision of these procedural rules, and this
20 includes not simply making them align with statutory
21 language, but also looking at whether they could be
22 clearer, whether they need to be updated, et cetera. And
23 so we are in a somewhat odd place from a timing
24 perspective in that we have a bill that became law in the
25 last legislative session, which is House Bill 4344, and

1 that law did not get incorporated into the existing
2 procedural rules. So we have, as part one of the memo,
3 how you could revise the existing procedural rules to
4 reflect House Bill 4344 that became law in the last
5 legislative session and amend Chapter 33 of the Government
6 Code.

7 However, there is pending legislation in
8 this session that's addressed in part two of the memo, and
9 that pending legislation, from my read, would change the
10 language in the procedural provisions such that it
11 wouldn't make sense to incorporate simply what was done
12 during the last legislative session. So that's the
13 strange moment we find ourselves in as a committee in
14 terms of what do we do in this moment with legislation
15 that didn't get incorporated and propose legislation that
16 may or may not pass in its current form.

17 So at the -- with the ability of the Court
18 to chime in and tell me if this is the wrong approach, I
19 think what we could do today, to be productive as a
20 committee, is think about the existing rules, which are
21 provided in full at Exhibit 1, starting on page 205, and
22 discuss how they could be better. Could they be clearer?
23 Is there something about them that's not really workable?
24 And, of course, we know that ultimately whatever happens
25 in the Legislature could compel us to change them in

1 certain ways, but I think the Court wants us to have a
2 conversation today about what we might do, notwithstanding
3 how the law may develop in this legislative session.

4 Is that fair? Okay. Record reflects
5 nodding of the heads. So onward.

6 And, again, this is kind of open-ended right
7 now, but for anyone who has had exposure to this system,
8 if you have thoughts on how the procedures could be
9 clearer, this would be a good time to put them on the
10 record, and exposure does not have to mean being the
11 subject of discipline. Exposure might mean you
12 represented somebody, exposure might mean you advised
13 somebody. So let the record reflect I'm not asking judges
14 to comment on things they've lived through as the subject
15 of any kind of disciplinary proceeding. And with that,
16 I'll just open it up for suggestions that we might have in
17 terms of improvements to these rules that are set forth in
18 Exhibit 1 to the memo.

19 HONORABLE EMILY MISKEL: My question was --
20 oh, I'm sorry, I didn't raise my hand.

21 CHAIR TRACY CHRISTOPHER: Go ahead.

22 HONORABLE EMILY MISKEL: Like, for example,
23 the Jeff Leach bill has some, like, pretty specific terms
24 about deadline, internal deadlines and stuff. Was that
25 brought to him to carry by anyone, as far as you know?

1 Like, is somebody requesting those particular, like,
2 internally they need those extensions of those days?

3 MS. WOOTEN: I don't know the answer to that
4 question, but I will say, just pulling back, my
5 understanding is that during the last legislative session
6 that the changes were made, in part, because some people
7 desired more transparency and more efficiency in the
8 process. And I'm sorry that's not a direct answer, but I
9 don't have one to that question.

10 HONORABLE EMILY MISKEL: The only answer I
11 needed to know is, like, oh, those changes were brought by
12 the State Commission, they requested those, so we need to,
13 like, take those into account.

14 MS. WOOTEN: I am not aware of the
15 commission taking any proposed changes, and since you are
16 looking at that part, it might be helpful for me to just
17 kind of give people lay of the land of this fine memo that
18 I did not pen. So part one of this memo is focusing on
19 the proposed amendments that would essentially conform the
20 rules to the bill that became law, House Bill 4344 in the
21 last legislative session; and part two is the part that
22 Justice Miskel was commenting on that summarizes pending
23 legislative proposals and, among other things, addresses
24 procedures, which is something we would take into account
25 for the rules if, in fact, this becomes law. And we also

1 have incorporated into the memo, in bold and brackets,
2 comments from the District Judges Association about how
3 they would revise the rules, so we do have a source of
4 those particular comments in the memo.

5 MS. HOBBS: I'm sorry, Kennon. I missed
6 that. Did you say there was, like, a proposal of, like,
7 changes --

8 MS. WOOTEN: Yes, to be --

9 MS. HOBBS: -- in the annual report?

10 MS. WOOTEN: It's actually in the memo
11 itself.

12 MS. HOBBS: Oh, okay, sorry.

13 MS. WOOTEN: So part two of the memo
14 summarizes pending legislative proposals, and then you'll
15 see incorporated bold, bracketed comments, reflecting
16 amendments that have been requested by the District Judges
17 Association. So I don't know whether those will actually
18 effect change, but I think that Justice Boyce wanted them
19 documented so that we all have a sense for the
20 conversation that's ongoing about potential legislative
21 changes.

22 HONORABLE EMILY MISKEL: It's PDF page 195.

23 MS. HOBBS: I got it. Thank you.

24 CHAIR TRACY CHRISTOPHER: Oh, yes, Justice
25 Gray.

1 HONORABLE TOM GRAY: As a member of the
2 subcommittee who was not able to participate, I wanted to
3 make sure the record reflected that I didn't get a chance
4 to discuss this with the members of the committee as we --
5 as they moved it forward. I'd first like to say that the
6 proposals that were made by the subcommittee, to me, are a
7 perfect enactment of rules for the statute that we are
8 trying to deal with under the charge. I did not read the
9 charge or the statute before I read the memo, and as I was
10 working through the memo, I marked it up extensively about
11 the problems with the rules, because as you read this
12 cold, it is -- I don't think I'm overstating -- is
13 impossible to decipher.

14 My exposure to this area of the law stems
15 from three sources. When Bob Flowers was the Chair or
16 Director of the Judicial Conduct Commission, as a member
17 of the review tribunal of seven judges in about 2003, and
18 I wound up authoring the opinion, 114 pages, if you need
19 something to put you to sleep at night, and third, as a
20 target and ultimately sanctioned by the commission in 2007
21 with a public admonishment -- and I'll get into the
22 specifics, and I don't view it as being called out,
23 because it's very important to understand what that
24 background is for the comments that I want to make.

25 Bob Flowers, if you didn't know him, my

1 recollection is that he was a retired judge and became the
2 director. He was a guy that you could pick up the phone
3 and call and have a heart-to-heart conversation with about
4 either something that you were thinking about or something
5 that had already happened, or you may even field a call
6 from Bob Flowers out of the blue saying "Something has
7 come to our attention that you need to think about." And
8 I had a couple of those phone calls, started as early as
9 my initial campaign. Rex Davis, who was Chief at the
10 Court at the time said, "You ought to just call Bob and
11 visit with him and just get to know him," and I did, and
12 it was great advice, gave good direction to any judge that
13 was interested in the ethics of what they were doing,
14 which I would hope that they all would be.

15 The review tribunal was the first time I
16 delved into the process. I don't know how to describe it,
17 other than to say it was like the guys walking up to the
18 elephant, trying to describe it, because there's the
19 Constitution, which is heavily burdened with procedural
20 requirements within the context and text of the
21 Constitution. Texas Constitution, obviously. Then
22 there's all of these statutes, and they've been amended
23 since I had any real dealing with it. And then there's
24 the -- the rule that -- the rules that attempt to kind of
25 implement those two others and maybe make some

1 clarification. It's very difficult to follow.

2 A lot of the opinion is about conflicts and
3 understandings of what it is that we are trying to apply.
4 At this point, I divert one -- or digress, I guess, the
5 Texas Ethics Commission does their process substantially
6 different and, in my view, substantially better. One of
7 the things that you probably need to peek at is page 242
8 of the booklet, and you will think that suddenly in 2003
9 all of the judges in the state of Texas got a whole lot
10 more ethical. We only had 925 complaints filed in 2003.
11 In 2022, we had 1,764, which was only slightly up from the
12 1,724 filed in 2021, and fiscal year 2022 was 1,518.

13 I point those statistics out to make an
14 emphasis on the fact that what we are calling a filed
15 complaint had to have changed in that time period, and my
16 first observation and the big distinction between the
17 Texas Ethics Commission and the Texas Commission on
18 Judicial Conduct is when there is a complaint filed, the
19 target of the complaint gets a copy of it from the Texas
20 Ethics Commission, but not the Commission on Judicial
21 Conduct. To this day, almost two decades after the
22 complaint filed against me, I have still not seen the
23 complaints that were filed. I was sanctioned for a --
24 what I will characterize as a charge for a complaint that
25 was not -- or for an infraction that was not even in the

1 complaint.

2 So I would suggest that we can do a lot
3 better if we do a wholesale rewrite or -- and I've never
4 proposed this in the past, because I don't like repeating
5 in a rule what's in another source document, but I think
6 this is the exception, where setting out a complete
7 procedure, much like the commission does in its report of
8 how the procedures are designed to work, needs to be in
9 the rule that we propose. I'm not suggesting that we do
10 that now, with all of the pending legislation, but to
11 capture what was in the statute, I think the subcommittee
12 work has done that. But the -- once we got into it, I
13 would delve more deeply into the fixes, but at the very
14 least, whatever the complaint is needs to be made fully
15 known to the target of the complaint. The sanction would
16 seem to be limited to the -- or should be limited to the
17 complaint, and if the commission wants to add a complaint
18 that was not -- or a charge that was not in the complaint,
19 that needs to be expressed and done, because what I was
20 sanctioned for was -- I think they called it a hostile
21 work environment, not of a sexual nature, but that I
22 didn't get along with the people at the Court, the
23 employees of the Court, and I forget which canon they
24 cited.

25 But the point then of my angst, I believe is

1 the term I would use, about the sanction is that they did
2 not interview or talk to a single employee at the Court,
3 and so if you think I'm a bit bitter about that, you'd
4 probably be right. But because I didn't -- when I went
5 into the hearing, I had no idea that they were going to --
6 well, at the hearing, there was one question that I was
7 sort of like where did that come from, and then that was
8 what I was sanctioned for, ultimately, based on one
9 question at the hearing and whatever it was that they had.

10 The other part that is a problem for judges
11 is that when you start down that path of a complaint,
12 where do I get to take the handcuffs off? Where do I get
13 to talk about what normally I would never talk about in
14 public? Things that are going on behind closed doors.
15 That needs to be clear in the rules, if we are going to do
16 a wholesale rewrite or even suggest changes to the
17 procedure.

18 It is probably the most difficult three
19 provisions to try to read together and figure out what the
20 procedure is supposed to be and how you follow it through.
21 So much so that the commission has done -- now done a
22 flowchart, which was not available to me in 2005, 6, 7,
23 and it was -- it would have been nice, but I strongly
24 suggest that, if not now, at the end of this legislative
25 cycle when we find out what the Legislature does in this

1 area, is a wholesale rewrite and incorporate into the
2 rules everything from the Constitution through to the
3 statutes. It's too cumbersome, too problematic.

4 One of the very first things you'll have to
5 get to is what does it mean to file a case or file a
6 complaint, because as currently done, there is -- if you
7 look at the flowchart, it sort of takes a group of cases
8 or filings off to the side to a different procedure that,
9 under the current statute, the one that we are trying to
10 comply with, probably can't exist anymore, that diversion
11 of a complaint. I spent a lot of my time at the court of
12 appeals trying to figure out what documents were. Were
13 they a notice of appeal? Were they something else? Were
14 they a general complaint about a trial judge but not about
15 the judgment? And it all may trigger the filing of an
16 appeal, depending on what we determine it to be.

17 The way I read the statute, everything that
18 they receive that could in any way be a complaint has to
19 get filed. There's no diversion. One of the things that
20 I would want to try to clarify is the statute, for the
21 first time, requires that a complaint be sworn. If it's
22 an unsworn complaint, does it get filed? Does it get
23 filed as a complaint? I know at the Court, if it looked
24 like a complaint or looked like a notice of appeal, we
25 would file it as a notice of appeal and then sort it out

1 later as to whether or not it was, especially in the
2 criminal context, an adequate notice of appeal or a timely
3 or whatever.

4 So there are a lot of individual problems
5 that I won't get into with the trying to make it
6 comprehensive, but it literally starts from -- because, in
7 their report, which the subcommittee thoughtfully
8 attached, their annual report, it talks about the process,
9 and they talk about we don't normally take e-mails, and I
10 don't remember if it's phone calls or correspondence, and
11 we don't -- faxes, maybe it was -- and treat those as
12 complaints, but sometimes we do. And that procedure would
13 need to be at least reconsidered in light of the new
14 statute that requires them all sworn complaints -- or all
15 complaints to be sworn and what it is.

16 I'll be happy to answer any questions about
17 my experience or why I think it would benefit from a
18 complete description of the procedure from beginning to
19 end, but, again, I circle back to I think the
20 subcommittee's proposals address the issues raised by the
21 statute that we are charged with implementing at this
22 time. And with that, I'll be quiet so Robert can catch
23 his plane. Oh, he's already left anyway.

24 CHAIR TRACY CHRISTOPHER: I have a question.
25 The procedural rules for the State Commission on Judicial

1 Conduct that you attached as Exhibit 1, are those the
2 rules that the Supreme Court wants us to revise?

3 It does seem like the complaint process
4 information does not line up with these procedural rules.
5 When I read just their informal complaint process, it
6 doesn't seem to line up.

7 MS. WOOTEN: The answer to your question is,
8 yes, those are the rules that the Court wants us to
9 revise, to my knowledge; and in response to your comment,
10 I agree completely. When I was trying to match the
11 existing rules with the very helpful description, I
12 struggled to do that.

13 I'll also add, as Justice Boyce put out in
14 the memo, that the legislation that came about from the
15 last session didn't align with the existing rules either,
16 right? So to try to incorporate it in felt, for lack of a
17 better word, awkward, and so the proposal that's here now
18 is just to tack it on to the beginning, because we're not
19 sure what the Legislature intended to address with the
20 rules, and so that actually might be something worthwhile
21 for legislators who are suggesting procedural changes,
22 because, to Chief Justice Gray's point, it seems that
23 there is a lack of meshing of the different sources of
24 information guiding this very important process.

25 HONORABLE TOM GRAY: And one of the things

1 that we may need to address initially is what is our
2 authority to propose rules that would bind the commission?
3 Because some of what we have proposed would do that. And
4 it looks like Justice Bland has an answer to that.

5 HONORABLE JANE BLAND: I think we approve
6 those rules, the Court does. So the Court does, approves
7 those rules.

8 HONORABLE TOM GRAY: The commission's rules?

9 HONORABLE JANE BLAND: Historically, we
10 have, so --

11 HONORABLE TOM GRAY: You just grabbed that
12 bull by the horns and said, "We're going to do this, the
13 commission falls under our jurisdiction"?

14 HONORABLE JANE BLAND: Not we, Kemosabe.

15 HONORABLE TOM GRAY: Is that because, we,
16 Jane, wasn't included or that the Court would not take
17 that view?

18 HONORABLE JANE BLAND: Well, let's put it
19 this way. The Court has referred this project to this
20 committee for its advice and consent to draft the best
21 rules possible, and we will take it from there once we get
22 that work and we see what the Legislature comes up with.

23 CHAIR TRACY CHRISTOPHER: Lisa.

24 MS. HOBBS: To Justice Bland's comment,
25 we -- the Court, not "we." The Court has revised the

1 Judicial Conduct Commission, both the ethical rules and
2 the procedural rules many, many times in my lifetime as a
3 rules attorney or a general counsel. I've never looked at
4 our authority to do so, but we are a separate branch of
5 the government, so I assume we have one, as long as we're
6 consistent with the Constitution, which I think you might
7 be raising that maybe we aren't consistent with the
8 Constitution.

9 CHAIR TRACY CHRISTOPHER: Jackie has a
10 comment.

11 MS. DAUMERIE: Sure. So Chapter 33 of the
12 Government Code governs the commission, and in several
13 instances in that chapter, there are references to the
14 "procedural rules of the commission adopted by the Supreme
15 Court," so I think the Court clearly has authority.

16 HONORABLE TOM GRAY: So we can tell the
17 commission what they're going to do. Okay. Cool.

18 MS. WOOTEN: I don't want to rain on the
19 cool parade, but the only catch is, of course, that we've
20 got this legislation that addresses procedure that is on
21 the books now that the rules don't comport with, and then
22 we have proposed legislation.

23 CHAIR TRACY CHRISTOPHER: Yeah. Lisa, and
24 then Judge Miskel.

25 MS. HOBBS: Well, so, Chief Justice Gray, I

1 agree with -- like, I was making sure we had an
2 administrative process to screen cases and dismiss them
3 administratively, and it does seem to be a rule that says,
4 okay, well, we're going to dismiss anything that just says
5 "We hate your ruling," so you can't -- you can't -- like,
6 so there is an administrative dismissal process, as I read
7 the memo, which I think is a summary of the rules and not
8 actually the rules, and then there wasn't a case cite, so
9 -- a rule cite, so I can't tell you what that is. But I
10 would agree that anything less than that maybe should be
11 sworn, but I also -- so I'm talking out of both sides of
12 my mouth here, Chief Justice Gray. So I'm just telling
13 you, I'm talking out of both sides of my mouth.

14 Also, we could all hear of a news article,
15 and you're like, oh, my gosh, that happened? Why is that
16 person a judge? Like county court at law in X county, and
17 I would like the -- so I'm kind of talking out of -- like,
18 I like that idea of, like, everything that starts a
19 complaint should be sworn, but I also think that there may
20 not be anybody to stand up for a community when we hear of
21 something that makes our mouths drop, and so that makes me
22 think maybe not a sworn. I'm just saying --

23 CHAIR TRACY CHRISTOPHER: Well, having
24 recently filed one --

25 MS. HOBBS: Okay.

1 CHAIR TRACY CHRISTOPHER: -- there are two
2 ways to swear to it. You can swear to it on personal
3 knowledge or on information and belief.

4 MS. HOBBS: Okay.

5 CHAIR TRACY CHRISTOPHER: So someone could
6 file a complaint based on a newspaper article, based on
7 information and belief, and source of it would be the
8 newspaper article. So that's the current form that they
9 have on their website for filing.

10 MS. HOBBS: And that was something that was
11 not about a ruling and was more about --

12 CHAIR TRACY CHRISTOPHER: My complaint that
13 I filed?

14 MS. HOBBS: I don't mean to put you on the
15 spot.

16 CHAIR TRACY CHRISTOPHER: Oh, no, no. Mine
17 is -- it's public. It's public. So I filed a complaint
18 against a judge for a judge's failure to rule, and the
19 commission sanctioned the judge, and then the judge
20 appealed it, and the three-judge panel dismissed the
21 sanction. All public record at this point.

22 MS. HOBBS: Okay.

23 HONORABLE TOM GRAY: And if I was writing
24 from scratch, I think there needs to be a way for a
25 complaint to be filed without being sworn to, without even

1 a name being appended to it. I know that that cuts
2 against the judges and the legitimacy of complaints, but
3 the need for people with knowledge of problems that are
4 scared to come forward for a host of reasons, it's a
5 complaint, but the commission investigated it. It doesn't
6 have to be made public yet.

7 The thing that I liked about the way that
8 the Ethics Commission does their complaint process, as
9 soon as it's filed, they send it to the candidate or
10 elected official, or whoever it is, because they have all
11 candidates, not just judges, and they invite you to
12 respond, but you don't have to. And back during the '05,
13 6, 7, same time period as the -- there was somebody out in
14 California that was just routinely dredging through the
15 campaign expense reports and would fire off a -- an e-mail
16 complaint to the Ethics Commission about anything that
17 they perceived as a violation, and they -- the commission
18 would send this to you and say, "You've got 14 days," or
19 whatever it is. You can file anything you want to in
20 response to it. And it was helpful to, one, know that
21 stuff was being filed, and then giving you an opportunity
22 to respond, not in a formal manner, so -- and that may be
23 inappropriate for where we are in this conversation, but
24 it was something that worked well, I thought, but some of
25 those complaints were anonymous, and I still think those

1 complaints need to be in the process.

2 So, in other words, I guess if we were doing
3 recommendations to legislators, I would open it up more
4 than the current complaint process. But then you've got
5 to ask yourself, is a -- is an unsworn complaint something
6 that even gets into the system as being a filed complaint,
7 even if it's clearly a complaint about a judge?

8 CHAIR TRACY CHRISTOPHER: Well, I do know
9 that the complaints can be confidential.

10 HONORABLE TOM GRAY: Yes.

11 CHAIR TRACY CHRISTOPHER: So when you file a
12 complaint with the Judicial Conduct Commission, you have
13 to swear to it, but you can designate that it's going to
14 be kept confidential, because I was on a review of a case
15 where the judge wanted to know who had filed the complaint
16 against him, and we ruled "no" because that's what the,
17 you know, statute said, that it could be kept
18 confidential. So whoever filed the complaint obviously
19 didn't testify at the hearing about the judge's conduct,
20 because they were keeping it confidential.

21 MS. HOBBS: So I wonder, Chief Justice Gray,
22 are you saying that, like, you want anybody to file an
23 inquiry, but maybe it's not a case filed? Like, so
24 there's --

25 HONORABLE TOM GRAY: I would, actually,

1 anything that has a complaint, that looks like a
2 complaint, be filed as a complaint and docketed on the
3 commission's system and then dealt with as may be
4 appropriate. It may be nothing more than a gripe about a
5 ruling, and then it gets into the --

6 MS. HOBBS: Administrative dismissal or
7 whatever.

8 HONORABLE TOM GRAY: Yeah, under the system,
9 as I think this statute requires, I think it's got to
10 go -- if it gets filed, it has to go on the -- a copy is
11 provided to everybody at the commission and goes into the
12 log and gets investigated, you know, whatever that process
13 is, but that is broader than what is done currently,
14 apparently. Based on the numbers.

15 CHAIR TRACY CHRISTOPHER: Harvey.

16 HONORABLE HARVEY BROWN: So, Kennon, if
17 you're asking for kind of general suggestions, I
18 represented a judge 15 years ago at one of his hearings,
19 and it was kind of a mystery what was going to happen,
20 even after reading the rules when we walked in, so, you
21 know, I was prepared, I thought, pretty well; but when we
22 got there, they said, you know, "It's our time. No, you
23 sit in this room," and they went in and met with the
24 commission first, and, I mean, I was fit to be tied. You
25 know, I don't know what this person is saying to the

1 commission about my judge. They're getting to kind of,
2 you know, not only go first, but ex parte.

3 So I noticed on page 195 it says, "the
4 judge's right to attend each SCJC meeting at which the
5 complaint would be included in the report." I'm not sure
6 if that covers the informal hearing rule, which is on
7 page 207.

8 MS. WOOTEN: Uh-huh.

9 HONORABLE HARVEY BROWN: But I think there
10 should not be anything done in the informal hearing
11 without the judge being able to sit in and hear each and
12 every word.

13 Second, during the hearing, they asked a lot
14 of questions that were completely irrelevant legally, but
15 that would matter to laypersons. Like they started
16 grilling my judge about campaign contributions and about,
17 you know, places the judge would go out to on the campaign
18 trail and relations with lawyers, none of which had
19 anything to do with the complaint, and put the judge in a
20 very, very awkward position, and I tried to object and
21 that got shot down immediately, so I felt like I had no
22 ability to object and to limit the proceeding to the
23 complaint, which sounds like a little bit of what you had.
24 So I do think the rule should say somehow that the
25 evidence should be relevant or related to, or whatever it

1 is that they're there for officially that day.

2 And then the third thing that struck me was
3 they got to say all they wanted to, and I couldn't bring
4 in any witnesses, and I understand there's some good
5 reasons to keep it informal and short, but I thought that
6 the judge at the informal hearing should have a right to
7 call, you know, one or two witnesses. You know, you can
8 put time limits. You can do whatever you want, but I just
9 felt like the judge didn't get a chance to be heard
10 fairly, and when I read the complaint initially, I thought
11 this is just sour grapes by some litigants in his court.
12 It was a very complex case that the judge had handled, and
13 it was obvious somebody who knew something about that case
14 had made the complaint. He didn't know who, but I
15 thought, wow, I'm surprised it even got to this stage,
16 and -- and we won, but the judge was scared to death,
17 scared he was going to lose his livelihood; if he didn't
18 lose his livelihood, things were going to leak out, his
19 reputation was going to be damaged; and I just thought for
20 that level of proceeding, we need to kind of bend over
21 backwards and make sure we follow some due process; and I
22 didn't think that was clear under the rules. And that may
23 be dated. That was, like I said, 15 years ago, and I have
24 not reread the rules since then.

25 CHAIR TRACY CHRISTOPHER: Roger.

1 MR. HUGHES: Query under the existing rules,
2 can a complaint be lodged against a case while it's
3 ongoing? In other words, Mr. Smith gets a bad ruling and
4 he's still a year out for trial, so he files a complaint.
5 Is the complaint against the judge still heard while the
6 case that it arises from is still pending? I mean, is
7 there anything to deal with that issue?

8 MS. WOOTEN: I don't think the rules
9 expressly address that, if I recall correctly, so it seems
10 possible, unless a statute precludes it.

11 HONORABLE TOM GRAY: And under the time
12 lines that are imposed, it may very clearly have to be
13 dealt with before the ultimate judgment in the case.

14 HONORABLE EMILY MISKEL: One thing I'll say,
15 I have had litigants tell me in court that they made a
16 complaint about me, and I never heard about the complaint
17 ever, so I'm assuming that they've made the complaint that
18 they told me they did while their case was pending and it
19 got kicked out at the earliest stages or whatever, but as
20 the sitting trial judge, the only way I knew they had made
21 a complaint was that they told me about it in their case.

22 CHAIR TRACY CHRISTOPHER: Well, and I
23 disagree with Judge Gray on wanting to know about every
24 complaint, if they're just going to dismiss it. I would
25 just as soon not know about it if they're going to dismiss

1 it. When I was applying for an appointed, an opening, you
2 have to sign with the Governor's Office a release of your
3 judicial conduct file, and so they, you know, let me know,
4 "Oh, you had two complaints that were filed against you
5 that were both dismissed," and I was like, oh, thank God,
6 you know, but I was perfectly happy not to have known that
7 they filed something against me.

8 Harvey.

9 HONORABLE HARVEY BROWN: Relatedly, I do
10 think that an advantage to not knowing, too, is you don't
11 put yourself in the position that you even have to think
12 about the recusal motion. I mean, now that they're,
13 quote, adverse to you before the Ethics Commission, should
14 you recuse yourself, and so I would not want to know
15 either.

16 MS. WOOTEN: And I'll just add for context,
17 if I recall correctly, in the grievance system governing
18 lawyers, it's similar. Like the initial document that
19 gets filed, if it goes away without further proceeding,
20 the lawyer never knows. Like for our firm, we represent
21 lawyers moving through the grievance process, and it's
22 only when it's elevated to the next step that the lawyer
23 who is the subject of the complaint becomes aware of it,
24 and I agree that there's some comfort in not knowing about
25 every single thing that's said about you, particularly if

1 it never moves past step one.

2 CHAIR TRACY CHRISTOPHER: Yes, Tom.

3 MR. RINEY: I agree with that, because every
4 time you have to fill out your annual report for board
5 certification and you apply for a legal malpractice
6 policy, if you have knowledge that you've been under
7 investigation, you're required to disclose it, and you
8 know where that's going to lead, you're going to have to
9 do a lot more explaining. So if it's kicked out as not
10 being valid, I'm with you, I wouldn't want to know,
11 whether I'm a lawyer or a judge.

12 MS. WOOTEN: That's a really good point you
13 raised. It's making me think of some legal malpractice
14 cases that I've handled where the fight became about
15 whether the lawyer notified the insurance company in a
16 timely manner; and I'm not sure how it works for judges,
17 but for lawyers, if you don't comply with that policy
18 provision, that could be a reason for you not to get
19 coverage, even though you've been paying for coverage for
20 many years.

21 CHAIR TRACY CHRISTOPHER: Roger.

22 MR. HUGHES: Well, getting back to it, I can
23 see the practicality of not informing the judge if the
24 commission drops the complaint in file 13, because there's
25 nothing there, but let's suppose they decide to go to the

1 next step. What is the judge to do if the judge is
2 currently sitting on that person's case? I mean, is this
3 akin to a motion to recuse? Is there something that -- I
4 mean, technically, under the rules, if the litigant
5 doesn't file a motion to recuse, there's nothing for the
6 judge to do.

7 HONORABLE TOM GRAY: What would be the
8 grounds for recusal?

9 MR. HUGHES: I'm not sure. It would depend
10 on what the complaint was.

11 HONORABLE TOM GRAY: And, see, that's -- if
12 there's independent grounds for recusal, then it doesn't
13 depend on the complaint, and the -- what I have seen, not
14 from my own, because we don't get these, but complaints
15 about the trial judge, for example, that get brought up --
16 actually, excuse me, it's actually in connection with the
17 lawyers and recusing a lawyer in a case or disqualifying,
18 trying to. If there's not a financial interest and
19 there's not an actual adversity, and the case law has held
20 that a complaint process does not make the individual
21 necessarily adverse to the client, because most -- or many
22 criminal rulings or criminal cases where the person is
23 complaining about the quality of the representation just
24 does not rise to the level of being disqualification.

25 So I don't think that would impact many

1 cases, unless it was a complaint like the judge accepted
2 \$25,000 into his personal account, not a campaign
3 contribution, from the other party. In other words,
4 clearly a bribe.

5 MR. HUGHES: Yeah, yeah.

6 HONORABLE TOM GRAY: You know, that may get
7 to that point.

8 CHAIR TRACY CHRISTOPHER: Judge Miskel.

9 HONORABLE EMILY MISKEL: I couldn't cite you
10 an authority off the top of my head, but I feel like the
11 last time I looked into this, the answer was when someone
12 files a complaint against you, you're not recused from the
13 case, because then that would just be a way for people to
14 forum shop. Any time they didn't like a judge, just file
15 a complaint.

16 MR. HUGHES: Well, yeah, I can see serial
17 recusal people, and we've had them. Many of the judges
18 here have had them or seen them. I can see a person
19 going, well, gee, I can avoid Rule 13, et cetera,
20 et cetera, and just file complaints with the Judicial
21 Commission and get the same result. I think that's a
22 bad -- that would be something we don't want to encourage,
23 but like I'm saying, I'm just wondering how the rules
24 would want to deal with proceeding against a judge while
25 the judge is still sitting on that case. And perhaps that

1 would be grounds for an abatement or a continuance of the
2 commission proceedings.

3 HONORABLE EMILY MISKEL: My recollection is
4 the time frames involved with investigating these
5 complaints are so long that it's -- the trial is over
6 before you even find out that the complaint has been made.
7 I mean, I guess you could have the trial that keeps going
8 for four years, but then that might also be a basis for
9 the complaint.

10 MR. HUGHES: Okay. Well, maybe that's not a
11 practical issue.

12 CHAIR TRACY CHRISTOPHER: Judge Kelly, then
13 Lisa.

14 HONORABLE PETER KELLY: Not to get into war
15 story mode, but I had a complaint filed against me, and it
16 was for the wording of an order that had been signed off
17 by my two colleagues as well, and what I would suggest for
18 changes to the procedure is, one, please allow for
19 e-mailing of the complaint, because they mailed the
20 request for response to me, and I got it two days before
21 the response was due, one day before I was flying to
22 California. So it was very -- I had to, you know, request
23 for an extension of time for something I found out just a
24 day before.

25 Secondly, I don't know -- or, actually,

1 three different comments. They need to do these things
2 more quickly. The complaint had been pending for a whole
3 year or 10 months before they got to me. I think on Judge
4 Christopher's complaint, that had sat for a year, if not
5 longer, before they actually took action on it. Some
6 deadlines for the commission to take action, because
7 things happen, you know, the case is over or something. I
8 ended up setting the guy for oral argument, and it was not
9 going to affect my impartiality. I thought it was no
10 basis to recuse.

11 The third thing that would be helpful is if
12 there was some preliminary way, instead of -- you know, I
13 felt I had to fully and comprehensively respond to this
14 complaint, because we take these things seriously, but
15 there's no way I could defend myself, absent disclosing
16 confidential, you know, judicial conversations, because it
17 was a signed order by three of us. There was no way that
18 I could breach that confidentiality and respond. It might
19 be susceptible to something similar to a 91a motion. It
20 was the wording of an order, not any conduct, nothing like
21 that. If there was some way to, like, assist the
22 commission in its evaluation without having to do a full
23 response explaining the whole history of the case, you
24 know, 15, 20 pages explaining it, rather than just "I
25 can't respond this. These are confidential

1 deliberations." Those are my gripes.

2 CHAIR TRACY CHRISTOPHER: Tom.

3 HONORABLE TOM GRAY: The point of the
4 statute and the proposed rules of the subcommittee are to
5 get it moving and get it on the commission's docket. If
6 you look on page 193, page five of the memo, is the report
7 and recommendations on filed complaints. You've got 120
8 days to get it on the report to the commission of the
9 recommendation, and then they have a limited time in which
10 to file it, so it -- it does set deadlines for them to
11 take action, and that's -- the commission took some pretty
12 big hits on Sunset Review, and that's -- that's a lot of
13 what's got this stirred up right now, is they were way,
14 way, way behind in their investigation and disposition of
15 complaints, and so I think that's what's got this stirred
16 up right now.

17 CHAIR TRACY CHRISTOPHER: Lisa.

18 MS. HOBBS: So speaking of Sunset Review,
19 when I was general counsel, I do think that the Judicial
20 Conduct Commission was under review, and when I met with
21 the -- when I thought this is how due process should work,
22 this is how this all should work, and, you know, listening
23 to everybody saying it, their personal experiences with
24 it, I just really felt like I learned so much about, like,
25 why we have this and why other states do this, and because

1 you're trying to protect the judge, you're trying to
2 protect the complainant, right, because if you think a
3 judge -- so a judge shouldn't have to, like, be
4 accountable for, like, every person who is pissed off
5 about your ruling or whatever. You're trying to protect
6 the complainant, because it might be a lawyer who has a
7 legitimate complaint and doesn't want to make every judge
8 in the system mad.

9 So what I found, and what my advice to the
10 Court would be, is it's really not fair to give the
11 Supreme Court Advisory Committee the task to be, like, how
12 would we fix this? If you give us a specific complaint,
13 but if you want to get -- like, we cannot have this
14 conversation without the executive director of the -- of
15 the Judicial Commission in this room, because we will say,
16 like, well, we think this, and they'll be, like, well,
17 there's a constitutional reason, or here's who we're
18 trying to protect or whatever.

19 So that's -- that is my -- that might be my
20 overarching comment about it, because I'm looking at,
21 like, when it becomes public on this flowchart, and I
22 think that's great. I listen to people say, "I don't even
23 know this is a pending against me," and that screams due
24 process, like what do you mean you don't know? But then I
25 hear y'all say, "I don't want to know it's pending against

1 me," right? And so there's clearly some issues going on
2 that are beyond my -- and maybe everybody else in the room
3 is, like, completely satisfied with this, but I am not,
4 because if somebody files a complaint against me and I
5 don't know about the complaint the moment it's filed, due
6 process, due process. I need notice, right? And there's
7 obviously reasons and -- and the judges in this room are
8 telling you they don't want to know.

9 So it just -- I am just saying I'm not sure
10 any of us can take the bill that passed last session and
11 try to incorporate it into the new rules, and we see a
12 couple of other bills coming up, and we can over -- and
13 maybe in that process we do this, but, to me, it just
14 seems like we need -- and people can -- I mean, people can
15 think that the Judicial Commission is some kind of, like,
16 rogue committee or whatever. I don't know. I mean, I've
17 known a lot of executive directors of that. I don't think
18 they are, but I just think they give you a lot of insight
19 into -- because this process is weird. I mean, I'm just
20 looking at this flowchart. This is so weird, and it --
21 but it's got to be for a reason, and other states have to
22 do it this way, and if not, I want to know, but we can't
23 know this with just us deciding what is the right due
24 process for judges in this world. And I'm done.

25 CHAIR TRACY CHRISTOPHER: Judge Miskel, then

1 Pete.

2 HONORABLE EMILY MISKEL: I've actually been
3 holding on to a comment for a while that kind of dovetails
4 with that. When we were talking about who has the ability
5 to adopt the procedural rules, I was looking at Chapter 33
6 of the Government Code, and I came on 33.039, which says,
7 "The commission shall periodically, as the commission
8 determines appropriate, shall review the commission's
9 procedural rules, adopted by the Supreme Court, and
10 determine whether rule changes are necessary," et cetera.

11 So one thing I was thinking is that was kind
12 of getting to my question about where did this Jeff Leach
13 language come from, was that initiated by the commission
14 somehow? But it looks like the commission is directed to
15 make that report to the Supreme Court, so what I was
16 wondering is, it would obviously be premature to start
17 working on rules now if there are pending bills that are
18 out of committee that might affect them, but maybe it
19 might be good to ask the commission to do one of these
20 reviews of their procedural rules, with an eye to, once
21 the session is over and we have the laws before us, we
22 might have a review from the commission of things they
23 think are a problem, and then we could do our wholesale
24 kind of review of the procedural rules with that
25 additional information.

1 CHAIR TRACY CHRISTOPHER: At this point, I
2 guess the committee is not recommending that we go forward
3 with looking at these potential rule changes until we see
4 what happens in this legislative session.

5 MS. WOOTEN: That's correct. I don't think
6 it would be wise to try to incorporate the last past
7 language, when we can see and propose language changes to
8 that very language, right, and so I don't think it would
9 be a good move, but I know, Pete, you had something else.

10 MR. SCHENKKAN: I'm about to embarrass
11 myself badly, because I did not get to this section of our
12 package, and the answer to my question may be in it, so I
13 apologize if that's true, but it sounds like this is a
14 systemic issue that all 50 states have to face, and it's
15 unclear to me, has there been a review by somebody of best
16 practices and results of Judicial Conduct Commissions
17 around the various states? And if so, what does it say,
18 and if not, shouldn't it be part of the task, which we
19 could start moving while the Legislature is taking up the
20 current wave of possible changes in the frame of the
21 possible tasks that the Texas Supreme Court might possibly
22 ask us to advise on, so that when it comes back, we could
23 see how or where the Legislature has decided to try to
24 push us compares with what other people who have struggled
25 with this problem might be.

1 HONORABLE EMILY MISKEL: So responsive to
2 that, the National Center for State Courts just created a
3 Judicial Conduct Commission interactive tool that compares
4 Judicial Conduct Commissions in all 50 states, and it just
5 came out in February of 2025. But it's on the NCSC
6 website.

7 MR. SCHENKKAN: So if we had a task force
8 that, you know, maybe had our subcommittee and the
9 executive director of the commission and, you know, a
10 couple of people, maybe some useful work could be done
11 that might even feed back into the legislative process, so
12 if you -- you know, hopefully steer off some possibly
13 misguided efforts that would make the task even harder
14 next time.

15 CHAIR TRACY CHRISTOPHER: Well, I'm going to
16 leave that up to the Supreme Court as to whether they want
17 a task force.

18 MR. SCHENKKAN: Exactly. Exactly.

19 CHAIR TRACY CHRISTOPHER: That's above my
20 pay grade.

21 MR. SCHENKKAN: It is, but that might be the
22 ask.

23 MS. WOOTEN: This is definitely one idea
24 that came to me, is a possibility of having a guest member
25 of the subcommittee from the commission, and that way we

1 could work together as opposed to there being a process by
2 the commission, followed by a process of the subcommittee,
3 followed by a process of this committee.

4 CHAIR TRACY CHRISTOPHER: That might be the
5 best way to move forward at this point. I noted that the
6 memo said that -- and I know you didn't write this memo,
7 but you talked with commission staff. Someone talked to
8 commission staff.

9 MS. WOOTEN: That would be Justice Boyce.
10 He did speak with commission staff. I had a conversation
11 with former staff, because I thought it would be
12 interesting to get that input, and it's my impression,
13 granted not from direct conversation across the board, but
14 it's my impression that there's openness to discussion
15 about potential amendments to the rules, and I think it's
16 without question that some of the rules must be amended to
17 align with statutory language. It's just a matter of when
18 we make that call, based on the ongoing analysis.

19 CHAIR TRACY CHRISTOPHER: I think there have
20 been perhaps some other changes that have been -- some
21 other bills that have been implemented that may or may not
22 be in the actual rules, but are in the commission
23 procedures. You know, because if you look at the rules
24 and you look at their procedures, those don't exactly seem
25 to line up. Like the rules don't have anything about a

1 review to a three panel judges, but it's in the commission
2 procedures.

3 MS. WOOTEN: I wish I knew the answer to the
4 question that you have raised. I will just say that, to
5 me, there was a disconnect between the two, and it made me
6 wonder if there's more, in addition to the one bill that's
7 been cited in the referral letter, that we need to think
8 about, and I really liked Chief Justice Gray's suggestion
9 to bring the sources together in their current form, and
10 maybe that happens right after the legislative session
11 ends, and start fresh, because what we've done as a
12 subcommittee is work with the existing rule language and
13 the legislation passed in the last session, but, to me, it
14 ultimately isn't going to add the kind of clarity that I
15 think is needed for the rules. It was just a way to
16 propose one step forward and potential improvement with
17 alignment of statutory text.

18 HONORABLE TOM GRAY: Was that a motion to
19 table this discussion --

20 MS. WOOTEN: Yes.

21 HONORABLE TOM GRAY: -- until the
22 legislative session is over?

23 MS. WOOTEN: Can I make the motion? I'm not
24 sure if I can, but if I could make the motion, it is a
25 motion to table, with the suggestion that the subcommittee

1 look at what the National Center for State Courts has
2 done. That's new to us, and also, with the Court's
3 permission, reach out to the current executive director of
4 the commission to talk about ways to work together so that
5 we can be as efficient as possible.

6 HONORABLE JANE BLAND: Yes. These are all
7 very good suggestions, and we'll take a look at the task
8 force idea or something that will collect the right people
9 into the room.

10 CHAIR TRACY CHRISTOPHER: Tom.

11 MR. RINEY: I agree with Kennon, and I don't
12 have any answers. I've never been a judge, but I do have
13 a concern when you're taking a look at this in the future,
14 and that is make sure that we try to draft it so that it
15 cannot be used as a tool by litigants. You know, we get
16 bad lawyers, or maybe "naughty lawyers" was your term, I
17 mean, but they are out there, and if a judge makes a
18 ruling, a critical ruling in the case, which, you know,
19 really kind of dictates how the case is going to go, you
20 know, we get motions for rehearing, we get basically an
21 attempt to change the judge's mind by multiple other
22 motions, and then they don't want to go to trial because
23 they know what the outcome is probably going to be. So
24 they may have filed a recusal motion. You know, most
25 courts are pretty good about getting those resolved pretty

1 quickly, and we keep going.

2 You know, there are some judges that want to
3 throw their hands up and say, "I've had enough of this,"
4 and a judge should not be put in that position. Let's not
5 ever let the time deadlines or notification of the judge,
6 or whatever, be something that puts additional pressure on
7 that judge when the judge has made a hard ruling with a
8 naughty trial lawyer.

9 CHAIR TRACY CHRISTOPHER: Judge Miskel.

10 HONORABLE EMILY MISKEL: I will add that the
11 same litigant I referenced earlier that told me she had
12 reported me to the Conduct Commission also made a
13 complaint to the ADA, to the SPCA, to Texas Adult
14 Protective Services, so that is to say, these complaints
15 are wide-ranging and encompass a number of organizations.

16 CHAIR TRACY CHRISTOPHER: And while we were
17 talking about recusals during complaints, I know for a
18 fact that if I'm sued by a litigant, I don't have to
19 recuse. There's case law on that, so and that does happen
20 periodically. Just, you know, sued for whatever.
21 Unfortunately. Yes, Kent.

22 HONORABLE KENT SULLIVAN: You had raised the
23 question about where the process originates for the
24 three-judge panel, and it's actually -- I think we're
25 talking about the same thing. It's in the Constitution.

1 It calls for a three-judge panel or a seven-judge panel,
2 depending on the severity of the sanction that's under
3 consideration, and that's, I think, Article 5, section
4 1-a, and I mentioned it, in part, because I think it's
5 part of the problem, is that you have this vulcanized
6 approach to this, with some authority in the Constitution,
7 there's some statutory authority, there are rules, there
8 is a process. It gets this incredible hybrid system and
9 gets -- it's just a mess.

10 CHAIR TRACY CHRISTOPHER: I know that
11 Justice Schenck, when he was talking to the Legislature,
12 thought -- or Judge Schenck, when he was talking to the
13 Legislature, thought that there should be a review to the
14 Supreme Court from the special tribunals, and since
15 there's probably only three or four cases a year, it's not
16 going to be that hard.

17 Yes.

18 HONORABLE MARIA SALAS MENDOZA: So I think
19 maybe -- I haven't seen the report from the NCSC, and that
20 will be helpful, but I think that what I've heard a lot is
21 about concern the judges are not protected, that we're not
22 aware, that there's no due process, and I'm not suggesting
23 that that's not true, and I want the record to reflect
24 that I want judges protected. But to the extent that we
25 invite the commission, I think they've been subject of

1 some criticism, so they'll have that perspective, but I
2 think what we're getting from the Legislature is concern
3 for the public and that there's not -- that there's not
4 enough enforcement, that we're not holding judges
5 accountable, and so that voice also needs to be
6 considered, or that perspective, as we go forward and look
7 at these amendments, because I think that's why we had
8 legislative amendments last time. That's why they're
9 coming up this time, and so I don't know if that's true.
10 I'm just saying I think that's a perspective that we have
11 to consider, too.

12 CHAIR TRACY CHRISTOPHER: I think there's
13 the big dichotomy between complaints about a judge's
14 ruling or the judge's ruling wrong versus a judicial
15 conduct complaint, and often, the laypeople on the
16 Judicial Conduct Commission are more into, well, the judge
17 is making the wrong decision, so they should be
18 sanctioned, as opposed to something that is actually a
19 sanction. So the Judicial Conduct Commission has that
20 from their laypeople, and I know, because -- I know they
21 have been working with the Legislature to try and explain
22 the difference to the Legislature on that, that, you know,
23 you don't sanction a judge because a judge made a bad
24 call. It has to rise to something, you know, more than
25 that, in terms of a legal ruling.

1 Tom.

2 HONORABLE TOM GRAY: Except that if you look
3 at what they sanction judges for, there is a category that
4 is misapplication of the law. It is most often applied,
5 as I understand it, based on the summary information that
6 was in the report for the bail setting in criminal cases.

7 CHAIR TRACY CHRISTOPHER: Well, and that is
8 definitely what they have put in their proposed
9 amendments.

10 HONORABLE TOM GRAY: Yeah.

11 CHAIR TRACY CHRISTOPHER: Which is going to
12 be a very difficult question. There's also, right now, a
13 separate bill that's going to allow prosecutors to appeal
14 low bails, which -- which they currently are not allowed
15 to do. So, you know, we've been called on to figure out,
16 realistically, because the appeal can go from the
17 magistrate to the district judge, and it can go from the
18 district judge to the court of appeals, and we've been
19 called upon to, you know, opine how quickly we could get
20 that done and what would be the procedural issues involved
21 in it, but the bail issue is definitely big. That's why
22 you see that -- I think that's why you see that language
23 in some of these changes.

24 HONORABLE TOM GRAY: And that is right on
25 that line of legal rulings versus other conduct that is

1 regulated by the Code of Judicial Conduct.

2 CHAIR TRACY CHRISTOPHER: Right. Right.
3 It's a fine line. Like Judge Kelly's. I mean, they're
4 complaining about something he put in an order. What are
5 you supposed to do there?

6 HONORABLE TOM GRAY: How could that not be?

7 CHAIR TRACY CHRISTOPHER: Right. Right.
8 How could that not be a judicial decision, but they asked
9 him to respond, so I don't think that they are consistent
10 in asking for responses to things like that. But I don't
11 know if that's anything that we can cure.

12 All right. Any other comments on this? If
13 not, we'll take our afternoon break for 10 minutes.

14 (Recess from 2:38 p.m. to 2:56 p.m.)

15 CHAIR TRACY CHRISTOPHER: Okay. Our next
16 matter on the agenda is eliminating pre-grant merits
17 briefing, and I think Rich is going to present this for
18 us.

19 MR. PHILLIPS: Yes, thank you. Mindful that
20 it's almost 3:00, I'll try to keep my introductory stuff
21 short so we can get to a discussion. What's been sent to
22 the subcommittee, or to the committee and then to our
23 subcommittee, was to study whether the Court should
24 eliminate pre-grant merits briefing, and if so, what rules
25 changes would need to be done to do that. Similar to the

1 central docketing discussion from this morning, our
2 committee has kind of taken a two-step approach. We think
3 the first step is does this committee have a view about
4 whether the Court should eliminate the current practice,
5 and then, if so, we can go back and work on the rules.

6 The memo has some suggestions or thoughts
7 about what things may need to be done with the rules.
8 Also has attached to it, if you had a chance to look at
9 it, some other memos that have been prepared over the
10 years, one that was a joint memo from Justice Busby,
11 Justice Young, and Melissa Davis Andrews, and a memo from
12 Justice Young, and then also a summary from Martha Newton,
13 where she did a review of practices in other state courts
14 of last resort; and as I note in there, those memos from
15 Justice Busby and Justice Young, they were not members of
16 the Supreme Court I think when those memos were prepared,
17 so don't take them as speaking for the Court or even maybe
18 even speaking for their current views.

19 Very briefly, how did we get here and where
20 are we, I think would be useful just for those that don't
21 regularly practice in the Supreme Court. I promise I'll
22 keep it short. How did we get here? For many, many years
23 in the Supreme Court, you had to file a writ of error,
24 which was essentially a full merits brief to the Court,
25 explaining the problem and why you should win, then

1 response and reply, and largely what happened with those
2 is that the briefing attorneys, the law clerks would
3 prepare memos summarizing those writs of error that were
4 read by the Court, and then the Court decided whether to
5 grant and what to do with it.

6 In 1997, that practice was changed to what
7 we do now, which is petition for review process, where the
8 first thing that gets filed is a short -- it was
9 originally 15 pages, now it's 4,500 words -- petition for
10 review that's supposed to explain to the Court why the
11 case is important. If the Court's interested, they can
12 request a response, if one doesn't get filed. That just
13 takes one vote of one of the members of the Court.
14 After -- if a response is filed and the reply, they can
15 request merits briefing on the vote of three members of
16 the Court. After that happens, then a study memo is
17 prepared by one of the law clerks, a 10-page summary of
18 the parties' arguments and independent research by the
19 clerk, and based on that, then the Court decides whether
20 to grant a review. The merits briefing is the full-length
21 brief. You get a chance to explain everything, if the
22 Court requests that.

23 One thing I did want to explain, because
24 it's a wrinkle that will be important later, per curiam
25 opinions, the Court also can do those; and the internal

1 practice, I believe, still is to take six votes to issue a
2 per curiam opinion, which is unsigned and done not with
3 oral argument. But one wrinkle that's important, I think,
4 for our discussion is you don't know that a per curiam
5 opinion is coming until it comes. So there's no grant
6 that says, "We've granted your petition, and we're working
7 on a per curiam opinion." I think largely because, until
8 they see the draft per curiam, they don't know whether
9 it's going to get three votes.

10 So, right now, if you're getting a per
11 curiam opinion, the grant comes after merits briefing, and
12 I'm not sure how that process would work if the Court is
13 going to only grant petitions -- only get merits briefing
14 after granting petitions for review. So that's one thing
15 to think about as far as the current process.

16 Part of the rationale for the change from
17 writ to the petition for review is the idea that the
18 shorter petitions would allow the justices themselves to
19 read all of the petitions for review and be making that
20 initial cut about whether the case is important and
21 deserves further attention, rather than it being something
22 filtered through the briefing attorneys or law clerks, and
23 then the parties, again, would still have a chance to
24 present all of their full arguments in their merits brief.

25 The other thing I think that's worth looking

1 at is some recent statistics that I think are interesting
2 and may indicate kind of what's -- a little bit of what's
3 behind driving these requests. These statistics are from
4 Don Cruse. The last paper he had was from May of '24, so
5 that's as far as these go, but the interesting thing to
6 see there is that the merits briefing requests appear to
7 be going down a little bit over the last few years. Used
8 to be that they asked for merits briefs in about 50
9 percent of the cases. Over the last few years, that's
10 been more like 40 percent, but, also, the number of cases
11 where they are granting review after requesting merits
12 briefs has been trending up. So that suggests the Court
13 is maybe being a little more selective in the cases
14 they're asking for merits briefing in, and then those tend
15 to get granted at a higher rate.

16 The memo summarizes some of the benefits and
17 drawbacks that we discussed as a subcommittee, as to the
18 current practice. I don't want to belabor that too long,
19 because part of that was just to sort of foster discussion
20 in this committee. I think that some of the benefits
21 we've talked about, the idea that the justices themselves
22 are reading the petitions, and so you get their first
23 crack at what's important; but then by the time the Court
24 grants review, they've seen the entire merits brief, so
25 that they have an idea what all of the issues are.

1 Sometimes United States Supreme Court, where
2 they do grant before asking for merits briefs, we see a --
3 something happens where they get the merits brief and then
4 they decide the case really isn't what they thought it
5 was. Sometimes that doesn't happen until after argument,
6 and then the Supreme Court has to dismiss the petition as
7 improperly granted.

8 In theory, we have less of that. I don't
9 know that we even have a process for that in Texas. I
10 don't know if I've ever seen -- or if I ever have, it's
11 very rare for the Texas Supreme Court to do that. Partly,
12 I think it's because they've got all of the issues before
13 they decide whether to grant review.

14 We got some comments from some practitioners
15 that they appreciate the fact the Court asked for merits
16 briefs, even if they don't end up granting review, because
17 watching to see what cases the Court is asking for merits
18 briefs in can inform litigants and their counsel as to
19 what issues are interesting to the Court at the moment and
20 what are the kinds of things that the Court seems to be
21 worried about, and so being able to watch that is a useful
22 thing for the Bar and for our clients. And, also, at some
23 times, the process can facilitate settlement, because
24 sometimes just the fact that the Court asks for merits
25 briefs is enough to get the parties even talking about it;

1 whereas, if they're granting it already, then there may
2 not be quite as much of an incentive to do that.

3 The drawbacks, the biggest one and the one
4 that gets cited the most often, of course, is the fact
5 that you write a full merits brief, and the only thing
6 that you get at the end of it is a one-line "Petition
7 denied," and then sometimes that's hard to explain to
8 clients the cost of it and the fact that we did the whole
9 merits brief and this is all we get at the end, is one of
10 the concerns.

11 Also, concerned just about timing.
12 Sometimes takes a while to get through that entire process
13 to get the grant decision at the end. And there is an
14 interesting wrinkle in our practice that people -- when we
15 practice up there on a regular basis, we know we have to
16 do this, but when you're writing your merits brief, you
17 still are trying to convince them either to take the case
18 or not take the case, and those things can sometimes be in
19 tension. If I'm the petitioner, I want to write a merits
20 brief that says, "Boy, is it obvious that I win, and there
21 is no doubt, and it is super clear," but, also, "It's
22 really important that you take this case because it's not
23 clear or because you need to make it clearer," or what.
24 It's kind of a two thing -- and same thing for respondent,
25 where you say, "Well, you know, it's super obvious that

1 the court of appeals got it right, but you don't need to
2 say that," so it can cause a little bit of a tension.

3 We also discussed whether the Court could
4 consider some alternatives to changing the system
5 completely. They could sort of change their internal
6 procedures as to what it takes to request merits briefing
7 or perhaps even a system where, if it's obvious at the
8 petition stage that the case should be granted, to go
9 ahead and just on five votes they could say, "We'll just
10 grant it and request the merits briefing" rather than
11 doing the merits briefing first. I will say that in the
12 past few years, the Court has now, I think, at least four
13 or five times actually done that, where they have granted
14 the petition for review, set it for argument, and then --
15 and requested the merits briefing all at the same time,
16 rather than doing the merits brief first.

17 And I've seen a couple, and had one, where
18 the Court actually granted review and issued a substantive
19 per curiam opinion without even requesting merits briefs
20 at all, given -- and those tend to be issues that are
21 pretty discrete and where the merits brief maybe not would
22 have added anything else to the actual merits.

23 So the other thing we discussed briefly was
24 whether the Court could consider some sort of a pilot
25 program of having these kinds of sort of doing granting

1 before requesting merits briefs, only for cases maybe from
2 the Fifteenth Court or something, just to see how it
3 works. Again, that was just an idea that was discussed
4 earlier.

5 So with that, I think probably the best
6 thing to do is to open it up. I think maybe David
7 Keltner, from the subcommittee, wanted to say something
8 briefly, and I think he needs to leave, and then maybe
9 have a discussion on the committee as to what our
10 recommendations to the Court should be about changing or
11 keeping.

12 CHAIR TRACY CHRISTOPHER: All right.

13 HONORABLE DAVID KELTNER: Forgive me, I'm
14 going to have to leave early for a medical issue, and
15 thank you for letting me talk. I'm going to urge the
16 committee to go to the SCOTUS process. I think that that
17 is where a lot of the other informed, well-run Supreme
18 Courts, state courts, have gone. I looked at
19 Pennsylvania. I've recently had a case, very easy
20 process. It would not be a big changeover from our
21 process if we had adequate warning of when it went into
22 effect.

23 Two things, though, I think the Court ought
24 to consider, and I'm speaking only for myself, certainly
25 not the committee. One, we are going to have to figure

1 out the per curiam, but I think that's something the Court
2 can do, and potentially, I don't know if you need our
3 committee's help to do that.

4 Second issue is there is one hope that all
5 of us sort of discussed, and it's this: We know that the
6 Court grants on issues, not cases, and members of the
7 Court are fond of saying that, and so much the better. I
8 understand that. But, unlike the United States Supreme
9 Court, we're the Court of last resort in Texas where
10 some error correction is still called for and, candidly,
11 still needed with the number of courts of appeals that we
12 have and the conflicts that are coming up.

13 I think the Fifteenth Court of Appeals will
14 exacerbate that issue. I don't think that's a bad thing.
15 I think that's actually a good thing, but it gives your
16 Court an opportunity to have more defined and chiseled
17 matters to look at, but I would urge, and I would tell you
18 that the practicing appellate bar would urge you, that
19 error correction is still something that the Court ought
20 to consider.

21 I was talking to a number of other people
22 today. We thought about what if the Texas Supreme Court
23 had granted Pennzoil and Texaco? What if they had written
24 on the procedural issues before it got to the point it
25 got? Remember, it -- the petition was granted at the

1 Supreme Court, United States Supreme Court, on an issue
2 never raised in Texas. Maybe should have been, but I
3 think we would have had something somewhat different. So
4 we hope you continue along the lines of error preservation
5 as well as taking things important to the jurisprudence.

6 I do think that the change to the SCOTUS
7 will be simple, direct, something we all can handle, and I
8 don't think anything will fall through the cracks. So I
9 would urge the committee to vote that out and recommend it
10 to the Supreme Court. That's it.

11 CHAIR TRACY CHRISTOPHER: All right. Anyone
12 else would like to weigh in on this issue?

13 MR. PHILLIPS: Can I plug one thing --

14 CHAIR TRACY CHRISTOPHER: Sure.

15 MR. PHILLIPS: -- I meant to say. David
16 reminded me. And that is that one thing that came up in
17 some of the comments is that, while there's similarity in
18 the practice and in being the Court of last resort between
19 the U.S. Supreme Court and the Texas Supreme Court, and
20 this is along the lines of what David talked about, there
21 are different kinds of cases that come up to this Court
22 than go to the U.S. Supreme Court, and there is sometimes
23 some concern that perhaps even some of those cases laying
24 out all of the reasons for grant might be difficult, even
25 in a longer petition for review, just because of the

1 nature of the kinds of cases we have in Texas and the need
2 for the Texas Supreme Court to review that is different
3 than what is -- what the focus is at the Supreme Court in
4 Washington.

5 So, again, it's just an idea of remembering,
6 while the systems look similar, the kinds of cases that go
7 up are not necessarily the same, and so sometimes there
8 may be reasons for keeping our practice different than
9 what's going on at the Supreme Court.

10 CHAIR TRACY CHRISTOPHER: Judge Kelly, then
11 Judge Miskel, then Lisa.

12 HONORABLE PETER KELLY: It's a very
13 difficult question to be put in here, because the only
14 thing that matters is what y'all do, and we don't know
15 your decision-making process. I mean, there are lots of
16 intermediate appellate judges, lots of trial judges, but
17 knowing that these are in Austin and how they do it, so to
18 come up with recommendations for them is a little bit
19 difficult. You know, like someone who is one of the
20 Supreme Court justices said, "In 90 seconds of picking up
21 a petition, I know whether it's grant-worthy or not." I'm
22 like, great, you might only have 90 seconds of material,
23 but if that's true, then why not have a two-page petition
24 for review -- I'm just suggesting hypothetically.

25 I mean, if it all depends on what each

1 individual decision-making process is of each judge and as
2 a collective body, so we don't know how y'all read it, how
3 much weight you put to the petition, or if you've -- by
4 the time you've requested briefing on the merits, if
5 whether the grant is still truly in play, so it's just
6 there's sort of a black box up there, and prescribing the
7 rules or trying to come up with the rules for y'all is a
8 difficult process.

9 CHAIR TRACY CHRISTOPHER: Judge Miskel.

10 HONORABLE EMILY MISKEL: Pass.

11 CHAIR TRACY CHRISTOPHER: Lisa.

12 MS. HOBBS: I'm torn on this. I don't know
13 really what to recommend to the Court. I think the kind
14 of proposal is that we would still have a petition
15 process. And, Rich, I'm talking to you. We still have a
16 petition process where we say what's important to the
17 jurisprudence, but we would know whether the case was
18 granted before we do briefs on the merits. Is that the
19 gist?

20 MR. PHILLIPS: Yeah, I think our
21 understanding is what they've asked us to study is going
22 to something that looks like what happens at the U.S.
23 Supreme Court, where there would be something that gets
24 filed, arguing why the case is important, why the Court
25 should grant it, but they won't ask for merits briefs

1 until they've decided that they're actually going to take
2 the case.

3 And there's some things in the rules about
4 what we might need to do about that. Like longer
5 petitions.

6 CHAIR TRACY CHRISTOPHER: Judge Gray.

7 HONORABLE TOM GRAY: If this question is
8 inappropriate, I trust that you will reign me in.

9 Justice Young, during your campaign, if I
10 remember correctly, it was you and Busby and a senior
11 judge to the right. Somebody help me. Anyway, the three
12 of y'all were --

13 HONORABLE EVAN YOUNG: Lehrmann.

14 HONORABLE TOM GRAY: Lehrmann -- campaigning
15 at the same time. Y'all were -- you frequently made
16 reference to, particularly when you were, like, meeting
17 with the Bar associations, about the four or five cases
18 that Rich referred to that -- where y'all had granted
19 review before the full briefing. Is there not a reason to
20 make that a more formal process in the rules that as a --
21 kind of a something in the middle?

22 HONORABLE EVAN YOUNG: You're asking me to
23 comment on that?

24 HONORABLE TOM GRAY: I would like for you
25 to, yes.

1 HONORABLE EVAN YOUNG: The rules don't need
2 to be amended for that to be possible. It certainly could
3 be a thing where the Court spells that out, because I
4 don't think the rules expressly say we will not grant
5 until we get full briefs on the merits.

6 HONORABLE TOM GRAY: Right.

7 HONORABLE EVAN YOUNG: It's a custom that
8 has developed, and it's not in the rules, so we don't need
9 the rules to say we don't have to wait that long to do it.

10 HONORABLE TOM GRAY: My experience has been
11 y'all don't need a rule for much of anything, but carry
12 on.

13 CHAIR TRACY CHRISTOPHER: Okay, now, that
14 was out of line.

15 HONORABLE EVAN YOUNG: And there are many
16 options I'm looking for. I'm very -- trying to exercise
17 self-discipline here, because I have a lot of thoughts
18 about this topic, but that's not the purpose, because it's
19 for us to hear from you rather than us.

20 HONORABLE TOM GRAY: Right, I understand.

21 HONORABLE EVAN YOUNG: But among the various
22 options, along those lines, is people could, perhaps,
23 select a track. If I'm filing a petition, I will file
24 this and maybe have longer words, but it's either an up or
25 down at that point, don't call for merits. I might opt to

1 be in that track. That's something the rules would
2 perhaps need to be changed for, if we wanted to give more
3 words for it. So there are a lot of ways to do this,
4 including nothing or something quite dramatic, and
5 hopefully, the benefit -- and I recognize what Justice
6 Kelly says, that it's a little bit of a black box to some
7 degree, but you know that the gist of what it is that
8 we're trying to accomplish, wading through 1,200, 1,300
9 petitions to whittle it down to maybe 65 or so cases that
10 we want the lawyers to come to Austin and maybe another 30
11 or so in which we think we can do it on the papers. So it
12 seems like it's been about a hundred merits decisions from
13 the Court in any year. How do we do that process of
14 selecting better and more efficiently, and that's it.

15 HONORABLE TOM GRAY: Okay. Thank you.

16 HONORABLE EVAN YOUNG: And, by the way, I
17 will just say, I don't think I've ever -- I don't know who
18 would have said they could in 90 seconds know that a case
19 is grant-worthy. It's much more common to know in 90
20 seconds that a case is not grant-worthy. I can't think of
21 a single time that I've been able that quickly to say,
22 yes, for sure, this is a grant. Certainly the other way
23 around.

24 HONORABLE PETER KELLY: I can't recall, it
25 was about 20 years ago at some CLE, so I'm not impugning

1 anybody's honor on the Court. And now that Hecht is gone,
2 we know it's not him.

3 CHAIR TRACY CHRISTOPHER: Roger, and then
4 Lisa.

5 MR. HUGHES: A couple of things, and I guess
6 I'm kind of trying to get a sense of where we're going on
7 this idea of a new petition. Number one, is the -- I
8 gather from the materials, they want this petition to
9 cover all the errors that will be presented for review,
10 that there will be no longer this asserted but unbriefed
11 issues in the statement and only focus on those. And if
12 we're going to say I have -- have to brief all the issues,
13 you know, and I have a word limit, one could argue that,
14 well, I've got -- I've got five issues worthy of -- that
15 prevent reversible error, but only two or three of them
16 are important to the jurisprudence of the State. Why
17 should I weigh down my petition having to argue these
18 other two issues that aren't grant-worthy? I mean,
19 they're not important to all of Texas, but they were
20 worthy of error correction.

21 The second one is the proposal to allow the
22 Court to grant on just one issue and say, no, we're not
23 going to consider the other ones. That would be, I think,
24 a sea change, because the procedure is, now, you take the
25 case, you take all of it. And, of course, I've had some

1 people mention this to me that we have seen a few issues
2 recently where, at the end of the opinion, we get a
3 paragraph in a Supreme Court opinion that there are
4 other errors raised by the issues -- or "other errors
5 asserted by the parties that were dealt with by the court
6 of appeals. We have reviewed the briefs and they present
7 no reversible error." You don't get an opinion. Is it
8 because there was no error or because it wasn't
9 harmful error, or did the judge just not abuse his or her
10 discretion? We don't know.

11 It's essentially you've got an -- a formal
12 opinion on issues one, two, and three, but on issues four
13 and five, all you get is an NRE, like under the old
14 proceeding. I mean, if we're going to continue that, I'm
15 not sure why we need then to limit the issues. And -- or
16 I think -- I think I understood Judge Keltner to argue
17 that or assert that we not go over to the system where we
18 grant only on certain issues, that we persist with the
19 practice of taking the whole case and deal with it as it
20 is. So anyway, that was my comments.

21 CHAIR TRACY CHRISTOPHER: Lisa, and then
22 Rich.

23 MS. HOBBS: Okay. I think what Roger is
24 raising is why I asked Rich about the issues, because --
25 and I know y'all are just asking whether we change the

1 system, and you're not weighing in on what the system
2 would be once changed, but I would still think under a
3 Supreme Court -- a U.S. Supreme Court idea is that we
4 would still have unbriefed issues, right? We would do a
5 petition and say, "Oh, gosh, this is so important" and as
6 a respondent we say, "Oh, gosh, nothing to see here,
7 there's no conflict, nothing." And so I don't think that
8 it would require us to put into the petition anything that
9 would waive anything, unless it was just like, hey, if
10 y'all take this case, which I think respondents already
11 do, if you take this case, you're going to realize, like,
12 they're not going to get the judgment that they want
13 because of this issue that's not the important issue that
14 y'all might be interested in, right? So I don't think it
15 would change the unbriefed issues, unless they would
16 result in a different judgment, and then you would want to
17 raise them.

18 I -- to Roger's point about if you take the
19 case, you take it all, I think y'all are over that. I've
20 seen that many times in that you take a big issue and then
21 you remand to the court of appeals to decide the other
22 issues that weren't decided by the court of appeals. That
23 happens probably in 50 percent of your cases. I mean, I'm
24 not a statistician, but I know it happens a lot. I'm a
25 little bit concerned, like Roger is, that y'all have done

1 -- and I blame Busby for this, just because he's not in
2 the room, so I can blame him. I think he was the first
3 one to do it. It's like, oh, I looked at the court of
4 appeals, it's all good, we're fine on the rest of these
5 issues, and I called him out on it when he did it, but I
6 think y'all have done it more and more, and that's fine.
7 Like, it's just a change. So I don't think when you take
8 the case, you take it all. I do think sometimes y'all
9 summarily say, "And we don't" -- "we've reviewed that, and
10 we don't find that it's error."

11 On limitations of the issues, I go back and
12 forth on this, as an appellate practitioner. 100 percent,
13 if I have a case with three issues that could be, like,
14 maybe I'm getting one vote here, one vote here, one vote
15 here, to get my briefs on the merits or get my grants,
16 I -- any one of them might be grant-worthy, as I call it,
17 but I also sometimes, if I'm the respondent, and somebody
18 says, "I've got three grant-worthy issues," and I'm like
19 great, I have all of these reasons why you won't be able
20 to reach that, right?

21 So, I don't know, I guess I'm -- there's a
22 part of me that wants to know, when I'm a petitioner, why
23 you're granting the case, and then there's a part of me as
24 a respondent where I'm like, well, are you really
25 interested in that, because I've raised kind of an

1 interesting issue as a respondent about why you can't
2 reach that case. So it just kind of gets complicated
3 on -- on limited issues, and I don't know. I'm all for
4 change. If y'all want -- I'll adapt to whatever. I did
5 ask Keltner, I had -- I see, like, I don't know, 10 or --
6 most of this room practices in front of you. None of us
7 practices under the writ system, except for Keltner and
8 maybe Orsinger. And Marcy. Marcy, you did? Okay. I'm
9 thinking you guys are so --

10 MR. PHILLIPS: Old?

11 MS. HOBBS: Yeah, I didn't say old.

12 MS. GREER: Lisa, it changed in '97. I
13 mean --

14 MS. HOBBS: I know, but --

15 MS. GREER: I filed writs of error.

16 MR. ORSINGER: But you all look younger than
17 you are.

18 MS. HOBBS: They are not the new appellate
19 rules. They are the appellate rules. But I just think --
20 I don't know, I mean, I am open to it. Like I am not
21 going to be one who says don't do this. I will say this.
22 Most of the cost for me, whether -- for sure on the
23 petitioner's side, probably not on the respondent's side,
24 most of the money comes up front when I'm drafting the
25 petition. That's where I have to -- whether I was on the

1 court of appeals briefing or not, I'm putting it -- as a
2 petitioner, I am putting all of my thought, all of my --
3 that is the most expensive document I am drafting, and,
4 sure, I get to ignore some other things on the briefs on
5 the merits, because they're unbriefed issues or whatever,
6 but the grabbing your attention is coming on the front
7 end.

8 Respondent is the exact reverse, right? I
9 am like nothing to see here. Like, I am not spending a
10 lot of money until the briefs on the merits. So I guess
11 if I were you -- if I were the Court making this decision,
12 I would ask -- it's not necessarily saving money for our
13 clients to change the system. Okay. Because we're
14 putting so much money on the front end, especially as
15 petitioner. Do you think it would save money on the
16 briefs on the merits stage? Possibly. And so, but I
17 think the big money is on the front end of that. When I
18 do a budget for my client, there's going to be big money
19 on the front of it, and then, sure, I've got to brief some
20 of these other issues. And then, obviously, oral argument
21 is, like, big money, because now y'all are taking the
22 case. So maybe that -- maybe that oral argument money
23 then shifts to the briefs on the merits, because we know
24 you are taking the case, so maybe that shifts the
25 financial thing; but from a financial standpoint from, you

1 know, what's costing money, I wouldn't make the decision
2 based on that; but if it helped you -- that's what I offer
3 you. And just because, again, I will do whatever practice
4 y'all adopt, but, to me, I don't think it's going to save
5 clients money, and I just want to state that, and
6 apparently that aroused a lot of, possibly, opposition.

7 CHAIR TRACY CHRISTOPHER: Rich, and then
8 Harvey, and then Judge Miskel.

9 MR. PHILLIPS: So just reacting to a couple
10 of things. From Justice Kelly, we are not, as a
11 subcommittee, and I should have made this clear, not
12 making a recommendation one way or the other as to whether
13 the Court should change it or not. We laid out sort of
14 the points for discussion and wanted to see what the
15 larger committee's view was on that issue. We echo the
16 same thing, which is basically we kind of need some
17 guidance, and I think what the Court has asked us to do is
18 discuss this so that they have some things to look at in
19 the transcript and consider; but, ultimately, the
20 committee could make a recommendation, if we want today,
21 but it is kind of up to the Court as to which one they
22 prefer. We're just kind of trying to lay out the pros and
23 cons of each side.

24 This issue of granting on issues versus
25 granting on cases, you notice that the memo is very

1 careful not to say one word about that, because we did not
2 see that as being something the Court had asked us to look
3 at. Only whether they should grant cases before or after
4 requesting briefs. I think that's a whole different
5 issue. There's a lot of other things that come up with
6 this question of issues versus cases, and it's something
7 we could discuss if we wanted to, but we discussed it very
8 briefly in the subcommittee meeting and decided it was not
9 within what we had been asked to look at, and I think it,
10 as I say, raises a whole bunch of things that would maybe
11 be a different discussion.

12 And then I just wanted to echo what Lisa
13 said about the expense. I think frequently that is a
14 comment, but as we heard from people, and these were
15 mostly informal, which is why they're not attached to our
16 materials today, but there were other people who had the
17 same thing to say, which is most of the expense is at the
18 front end in trying to put the case in the right posture
19 to get the Court's attention, and once they've done that,
20 the merits briefing kind of falls in, but a lot of the
21 expense is at the front end.

22 And I think it's worth commenting that if we
23 do shift to a process where the Court is going to grant
24 for merits briefing, that will probably increase -- again,
25 the costs are still just going to be at the front end,

1 particularly if the petition needs to be a little bit
2 longer, but there will need to be a different focus there,
3 and so I think those costs will -- they'll still be at the
4 front end. Changing the process, that would probably
5 shift more costs to the petitioner, but Lisa is not alone
6 in thinking that most of the cost is on the front end.
7 That was a frequent comment that we got.

8 CHAIR TRACY CHRISTOPHER: Harvey.

9 HONORABLE HARVEY BROWN: I just wanted to
10 echo Peter's comments that it's really hard to know what's
11 the best way to do when you haven't been on the inside, so
12 I would just suggest that, whatever y'all decide, if you
13 decided to make a change, that you really go out and kind
14 of educate the Bar as to why, because I think the Bar all
15 has one goal, and it's the same goal you have, which is to
16 get the best decision on the cases that take and to write
17 the best opinions, and you know that better than we do,
18 frankly, how much of your time you're spending reading
19 1,200 petitions that you could shorten and put into the
20 actual cases you take and move some of that time and how
21 stressed you are for time.

22 So I hope you'll really get out and explain
23 it to the Bar fully, don't leave any mystery behind it,
24 and I would think it might be worth a pilot, and by that,
25 I mean just try some for a year or two and tell the Bar

1 why, and at least I would think about that. I don't know
2 if that's a good idea, but I would at least give some
3 thought to it.

4 I know it's not in your bailiwick today, but
5 I will say, as a former intermediate appellate justice, I
6 think being able to limit the issues you take would really
7 save a lot of time. We just saw so many cases where there
8 were issues that did not warrant our time, but we had to
9 spend a lot of time on the fourth issue or the sixth
10 issue, and I would trust y'all's discretion to make those
11 decisions and make them well, and I think that would save
12 some judicial resources that could be put to better use.

13 CHAIR TRACY CHRISTOPHER: Judge Miskel, then
14 Lisa, then Kennon.

15 HONORABLE EMILY MISKEL: One related topic
16 that's in the memo that wasn't expressly in our scope but
17 came up was on original proceedings, so whether there
18 should still be a two-phased process in a, for example,
19 mandamus. So after receiving a mandamus petition and
20 requesting or receiving a response, the Supreme Court
21 frequently will then, again, request a new round of merits
22 briefing, which potentially makes less sense on
23 mandamuses, because round one is still about merits. So
24 if we were also looking at reducing costs or implementing
25 this procedure, it might also be easy to implement in the

1 original proceeding context, because the cost of doing
2 essentially two rounds of merits briefing might be even
3 less necessary.

4 CHAIR TRACY CHRISTOPHER: Lisa.

5 MS. HOBBS: I was just going to say, I've
6 been on the end where it was granted and actually set for
7 argument that term. I think we've had three cases where
8 the Court told us, like, "On the petition, we're granting
9 this. Y'all are arguing it," and they expedited briefing
10 for that, you know, to get it fully briefed before the
11 oral argument. That is super, super stressful. I think
12 Kennon has had at least one, too. So I guess just be
13 mindful -- this would probably be in the rule, and I know
14 y'all do it. I know why you do it, and as soon as I get
15 the order, I'm like, should not have been surprised. That
16 is exactly what they're going to do, but it is really hard
17 to get a case granted in December and argue it in February
18 and brief it in the meantime. So that's just an aside,
19 and I bet Kennon is going to have something more wise to
20 say.

21 MS. WOOTEN: Unfortunately, no, but I'll go
22 ahead and say it anyway. In reading through the
23 materials, I did think about what it was like while at the
24 Court as a law clerk and also as a rules attorney, sort of
25 observing how long processes took before the

1 administrative conference began, and I do think that
2 overall it would be more efficient. That's just a
3 takeaway from being in the Court, and on the outside, I
4 agree that there is more money and time spent at the
5 petition for review phase; however, I think about those
6 times, and you've expended all of that effort, all of that
7 time, all of that client money, with full briefing on the
8 merits, and then you say, "We're not interested."
9 Understandably, that's the process, but if there were a
10 way overall to reduce the time and expense for the
11 litigants and the time and expense and burden for the
12 Court, I think it's the right thing to do. And,
13 obviously, you can look at it from a lot of different
14 angles, but if, overall, we're making this more efficient,
15 we're saving the clients money, we're allowing the Court
16 to focus attention more pointedly when it's time, that
17 makes sense to me.

18 CHAIR TRACY CHRISTOPHER: Marcy.

19 MS. GREER: Well, I was going to say, I'm
20 torn on the issue, too, because I understand -- I have
21 such mixed feelings on it, but I do think that if you are
22 going to go to this new procedure, you have to do it on
23 issues. They go hand-in-hand to me, because of the timing
24 constraints. Because the traditional procedure of the
25 Court is that you've got cross-petitions, and if you grant

1 one, you grant the other, right? So everything is there,
2 and the Court has to deal with all of that, in some way.
3 Even if you say "send it back down," you still have to
4 deal with it.

5 And, you know, while I kind of like the
6 bring the whole case before the Court, because sometimes
7 you can get stuff fixed that will save the litigants time
8 below, I think that to leave the grant-it-all process
9 until the last minute and then have the situation Lisa
10 just described, which is, you know, grant in December,
11 brief and argue in February, is a nightmare; but if you
12 say, okay, really, there's this one, maybe two, issues,
13 there are these two issues in the case, then that
14 procedure becomes a little more possible. And that's
15 probably -- you know, it's consistent with the Supreme
16 Court's practice, but what I think would be a disaster
17 would be to leave it all open, and so it kind of gets you
18 into the unbriefed issues and all of that, but I think at
19 some point we have to decide are we an issue certification
20 state or are we merits, and then what do you do with the
21 error correction. So...

22 CHAIR TRACY CHRISTOPHER: Kennon.

23 MS. WOOTEN: I want to second everything
24 that you just said, because I have been where Lisa has
25 been, and you're sitting there at 2:00 a.m., 3:00 a.m.,

1 researching, writing, trying to make zero mistakes on an
2 issue that sometimes you think I don't think the Court is
3 going to care about this one, but I've got to deal with
4 it, and so my client has to pay for it, or whatever the
5 case may be, and so I just want to very much support that
6 comment, because there's a lot of time, effort, energy,
7 money that goes into briefing things that sometimes in
8 your heart of hearts you don't think the Court is going to
9 ultimately want to focus attention on, and over the course
10 of the case, you see that to be true. Sometimes you guess
11 wrong, but other times, you're like, oh, I knew all along
12 in my heart of hearts that this probably wasn't the issue
13 that the Court would be interested in, but I couldn't give
14 it half of my effort because of that. I had to give every
15 issue all of my effort.

16 CHAIR TRACY CHRISTOPHER: I think I had
17 Peter first.

18 HONORABLE PETER KELLY: One issue, though,
19 is let's say you're the respondent. You're plaintiff.
20 You have a judgment, and the defendant/petitioner files on
21 issue one is duty, issue two is damages. And then the
22 Court comes back and says, "We only want to hear briefing
23 on duty." The plaintiff/respondent is going to say, well,
24 then if they're not even interested in damages, we know
25 what's going to happen on the duty issue, so why even

1 bother responding? It sort of telegraphs where the Court
2 is going to go, so that militates in favor of taking the
3 whole case and not just the core, because you still have
4 an outside chance that you might win the duty issue, but
5 if the Court says right out front, "We only want to hear
6 on duty, we're not interested in the damages" then you
7 know you're going to lose on duty, because damages are no
8 longer in play.

9 CHAIR TRACY CHRISTOPHER: Lisa, Rich, Giana.

10 MS. HOBBS: That's a fair point, but I think
11 it would depend on whether the court of appeals reached a
12 damages issue. But I guess, just to give internally to
13 the Court my not-needed advice, but I'm curious under a
14 new system how the study memo process would work, because
15 the benefit of the study memo is you've got Peter Kelly
16 telling me like -- telling y'all, like, y'all have got to
17 take this case, it's so important and, you know, my client
18 was so wronged; and I'm like, not really, but, you know,
19 you're butting heads. And Marcy and I have been opposed
20 to each other, too, and we're kind of butting heads, and
21 we're in some ways, like, talking past each other on
22 important, important issues; and, you know, Peter sees it
23 one way, Marcy sees it one way, I see it a little bit
24 differently; and what I thought the point of the study
25 memo was, was, hey, I'm going to objectively lay out,

1 here's what Peter's arguing. I'm going to objectively lay
2 out, here's what Lisa is arguing, and then I'm going to do
3 a section that is my own view of what's going on and how I
4 would analyze this case, and I'm just curious where that
5 study memo would go.

6 And also, to Rich's point about maybe more
7 IG's, is I think y'all have implemented error jurisdiction
8 and error preservation parts of that study memo that the
9 law clerks do, and so that's really important, and it's --
10 I suspect, because I've been a law clerk where I had the
11 record, but y'all have got to pull up the record and have
12 the -- if you're going to write that memo at the petition
13 stage, it seems like y'all need that record up faster than
14 you're getting it, because I do think that study memo,
15 whether you think this 22-year-old, 25-year-old, whatever,
16 person knows more or less than you, they are kind of
17 culling through and culling out bullshit where they're
18 seeing it, is what I'm guessing they're doing, right,
19 because there's some advocates who might be more full of
20 it than others.

21 So I guess I just -- as you're thinking
22 about doing this, I would think about what the study memo
23 stage of that is and how those study memos would look, and
24 I would tell the Bar that, like, how that's going to --
25 that's going to work within any new system so that we can

1 address that, because I do know that on the briefs on the
2 merits, I think there's two -- two audiences, the nine of
3 you and the person who's writing that study memo, and
4 those are two different audiences. So sometimes I have to
5 back up a little bit and let that law clerk know, like, I
6 know all of these judges know this is the history of why
7 we do it this way, but I need that law clerk to understand
8 it to know -- to jump into my argument, and so I -- again,
9 and I think Marcy said it, too, it's just like the Bar --
10 just we need to know how this is going to work, because we
11 do have multiple audiences with each of these briefs that
12 we're writing to the Court.

13 CHAIR TRACY CHRISTOPHER: Rich.

14 MR. PHILLIPS: Just a couple of additional,
15 I guess, responses. On the mandamus practice, one thing
16 that we noticed, and I actually ran into this in a case
17 recently, the mandamus rules are not terribly clear about
18 the process in the Supreme Court. I've always thought
19 about it as being essentially the petition for review
20 practice, that when I write a mandamus petition to the
21 Supreme Court, because it's limited just like a petition
22 for review, I'm trying to get the Court's attention that
23 this is really important and -- and then you'll ask for a
24 merits brief, and I'll tell you why I'm right. But the
25 rule doesn't say that expressly. It doesn't talk about a

1 two-step process expressly.

2 It's really only there in two places. I
3 went back and looked. One is in the limitation on how
4 long a response to an original proceeding is in the
5 Supreme Court, which you really have to look for. I had a
6 case just recently where the respondent filed a
7 14,000-word response to my mandamus petition in the
8 Supreme Court, and I called them and said, "I'm going to
9 move to strike that, because it's too long," and they
10 voluntarily filed a shorter response because they didn't
11 realize that it was too long.

12 And then there's one spot in Rule 52 where
13 it says that the Court can request briefs on the merit or
14 merits briefing, and that's basically the only two
15 references to a two-step process in the Supreme Court, but
16 I think, internally, unless it's an emergency, they
17 largely get processed the same way that a petition for
18 review does. It's a question of are we going to ask for
19 merits briefs and then the votes are a little different
20 for setting it for argument and then we're not talking
21 about granting those, because if you grant it, you've
22 granted the relief, but we may want to think about,
23 regardless of what else we do, clarifying Rule 52 a little
24 bit for original proceedings in the Supreme Court and the
25 two-step process, however that's going to be.

1 On cases and issues, I still feel pretty
2 strongly that this Court should continue to grant cases.
3 I think it's -- and I talked about it at the beginning. I
4 think it is one of the ways that the issues and the things
5 that come up in this Court are different, maybe, than
6 what's going on at the U.S. Supreme Court, and I think
7 there is a huge benefit to that, and I know I've seen --
8 it would be hard for us to come up with an example right
9 now -- situations where, either in my case or in a case
10 that I've read, the Court has dealt with, talked about,
11 decided an issue, when writing an opinion that clearly
12 wasn't the star. It wasn't the reason they granted the
13 case, but it turns out to be an important issue, and it's
14 helpful to the bench and Bar to have the Court's view on
15 that.

16 So I would very much say that we should --
17 and recognizing there are some precedences related to
18 writing the whole merits brief on a short schedule, and we
19 can talk about that with the rules process if we're going
20 to shift to a new system, but I would very much ask the
21 Court keep granting cases, not issues, because I think
22 that's just a difference in our practice in our state.

23 One other thing we noted was the record.
24 Lisa just mentioned getting the record up there. The rule
25 has a whole thing about paying the costs for shipping the

1 record and all of that, and I remember as a law clerk when
2 the record showed up, because I had to write the study
3 memo, and, you know, if it was just a couple of Redwelds,
4 great. When it came in on a library cart, oh, man, I'm
5 going to be here all night. So I know that's not how it's
6 done anymore. I suspect it's a matter of somebody
7 clicking and pulling the record on whatever the internal
8 version of the attorney portal is, and so I wonder if that
9 rule about the record ought to be -- we ought to look at
10 that as well and how that's being done.

11 And then on educating the Bar, I would
12 second that, whatever we end up doing, I would recommend
13 we make sure that we're doing that. So I started
14 practicing right after the rule change, graduated in 2001,
15 and I still remember that at that time there was still a
16 lot going on at the CLE's where the Court was helping to
17 educate the Bar as to what the internal processes were and
18 how the Court was doing that and recommend we do something
19 very similar with -- if we make a change with whatever
20 that new system is.

21 CHAIR TRACY CHRISTOPHER: Giana and then
22 Pete.

23 MR. ORTIZ: I just want to be a voice for a
24 small solo type practice that is a niche practice, and so
25 when I'm representing clients -- and I feel like a lot of

1 the lawyers who come before your Court are this way, where
2 they're the ones involved at the administrative or, in my
3 case, like at state agency process, and if that client
4 will ever see the Supreme Court, it will be that same
5 practitioner, and to Kennon's point of, you know, if --
6 although, perhaps it is true that most of the work goes
7 into the petition, if it is not going to be granted, it
8 would be a great efficiency for practitioners, I believe,
9 to just not go to that merit brief stage, because it may
10 be less work to somebody who does that regularly, and as
11 their primary practice area, it is a very laborious task
12 for those who don't, and if it's going to be -- if it's
13 because the petition is granted, well, then, of course,
14 you know, we want to do that, but if the petition is not
15 going to be granted and we could save that step, I would
16 say I would support that decision in the same way.

17 And I know there are strong feelings about
18 issues versus taking the case, the entire case, and I
19 don't have an opinion on that, probably because of my
20 practice area. But, recently, the Fifteenth Court did
21 request that I file a response to a motion for rehearing
22 only on one of the three or four or five issues that had
23 been raised in the motion for rehearing, and for me as a
24 practitioner, and in the nature of my practice, that was
25 very helpful, because I was able to, you know, focus on

1 that singular issue that I knew that the Court was paying
2 attention to rather than simply filing a response to all
3 of it, most of which didn't warrant a response according
4 to the Court, so I just wanted to note that.

5 CHAIR TRACY CHRISTOPHER: Pete.

6 MR. SCHENKKAN: It may be that I don't know
7 enough about the tension between error correction and
8 issues important to the jurisprudence of the state to have
9 an intelligent position on this, or it may be that I used
10 to know it and I've forgotten it; but either way, I'm
11 concerned, if you make this change, how is it that you
12 expect practitioners -- and falling into two sets, those
13 who often do this and those who don't very often do this,
14 how are they supposed to think about the crafting of the
15 petition where, at least to a client, the error correction
16 issue is really important? You know, what is it about the
17 nature of the difference between the Texas Supreme Court's
18 job and the U.S. Supreme Court's job in this respect, and
19 how does that affect what the -- what the practitioners
20 are going to have to do if you make this shift? That's as
21 far as I can go in my head at the moment, and I'm not sure
22 I'm picking up from the discussion so far what the answer
23 to that is.

24 CHAIR TRACY CHRISTOPHER: Yes, Marcy.

25 MS. GREER: I was just kind of formulating

1 this idea in my head, too, and this may be crazy, but I
2 had a great mentor who said if you're going to have a good
3 idea, you have to have lots of ideas, but what if we had
4 an alternative error correction track? Because, I mean,
5 there are cases where I know that I'm trying to signal as
6 much as possible that this is really an error correction
7 case, but it's important because it's going to propagate,
8 and then there are cases where obviously, it's more
9 important to the jurisprudence of the state. Would that
10 just be a nightmare for y'all to have to deal with? Yes.
11 Okay.

12 CHAIR TRACY CHRISTOPHER: That was a nod
13 "yes." Yes, Jerry. Judge Bullard. Sorry. I know you as
14 Jerry.

15 HONORABLE JERRY BULLARD: I'm saying this a
16 whole lot more often than I used to, but this is to
17 mentally refresh my memory, I think, but when we went to
18 the petition for review process in 1997, part of the
19 reason also, because the record wasn't requested and sent
20 to the Court until the Court had reviewed the petition and
21 the response and decided whether it wanted to hear more,
22 and so this is a more efficient process to go to this
23 petition stage until we get to the brief on the merits.
24 That makes a lot of sense, because the record's now more
25 readily available, right, so and if that helps the Court

1 make these decisions quicker, it makes sense to me. I
2 don't have a dog in the hunt like I used to, but that was
3 the -- that was one of the reasons, too, you had petitions
4 for review first, because you didn't have to look at the
5 record. Isn't that right? Okay.

6 CHAIR TRACY CHRISTOPHER: Richard.

7 MR. ORSINGER: Well, I really have mixed
8 feelings about this, like so many people have said, but
9 the way I look at the situation, we're really balancing
10 four factors here. The cost to the clients; the workload
11 of the Court, which I can't speak to, because I have no
12 understanding; correcting errors where someone has been
13 harmed at the lower level; and then the orderly
14 development of the law. I'm not too persuaded by the idea
15 that cost is an important factor, because it's optional
16 with the client who wants to go to the Supreme Court
17 whether they want to incur the cost of going to the
18 Supreme Court, and if the cost of victory is to file a
19 petition and then get invited to file a brief and then
20 file a brief, clients should be willing to pay for that,
21 and if they're not willing to pay for that, then they
22 should just give up and take their loss at the court of
23 appeals level.

24 My biggest concern is the development of the
25 law, because the role of the Supreme Court of Texas at

1 this point is to find errors that occur in the trial court
2 or the court of appeals that may replicate or may really
3 affect public policy in a major way; and in cases that
4 have multiple issues, not just a question of negligence,
5 proximate cause, and damages, but there are lots of
6 appeals, including a lot of ones that I do where there are
7 multiple issues, that may impact constitutional rights or
8 impact statutory directives or require an assessment of
9 whether a court has exceeded their -- the scope of their
10 broad discretion.

11 Those are not cases that are easy to brief
12 in 15 pages, and in my work in the Supreme Court, I'm
13 bumping up against that 15-page all the time. I spend as
14 much time taking words out of my petition as I do putting
15 them in, and it would concern me if the development of the
16 law of Texas was being decided on 15-page submissions
17 where adequate explanation could not occur. You know,
18 some cases, black letter law applies. It's easy to see
19 what it is. In other areas, it's not clear what the law
20 is or there's a conflict in decisions about the law, and
21 in other areas, it's a question of, well, the trial court
22 has discretion, but where is the limit of discretion? How
23 far can they go? And those are nuanced issues that
24 require more -- more communication with the justices than
25 a 15-page petition.

1 So what concerns me in weighing these
2 different things to balance, and the one I can least
3 comprehend, is the workload on the Court, but I would feel
4 better if I knew that the Supreme Court was making
5 important decisions about the jurisprudence based on full
6 briefing, rather than just a review of the 15-page
7 petition, and that's why I have a sense of caution or a
8 sense of concern about making this transition a way to
9 letting the development of the law be determined on
10 15-page petitions, which I find to be too constrained, too
11 confining.

12 CHAIR TRACY CHRISTOPHER: Lisa.

13 MS. HOBBS: I mean, I don't think the
14 development of the law would change much, because they're
15 still going to get the briefs on the merits, but you
16 actually raise a good point, and I guess maybe I'm just
17 cost sensitive, because I see how much going to the
18 Supreme Court happens is, first of all, a respondent did
19 not choose to go to the Supreme Court. We won in the
20 court of appeals, and we thought it was over, and we spent
21 a lot of money getting that decision at the court of
22 appeals, but I do -- and I'm a petitioner and a
23 respondent, and every appellate lawyer in here is, because
24 we both win and lose in the court of appeals, but it did
25 dawn on me how much more money I would spend on the

1 response to a petition for review than I currently do.

2 So if -- if money is coming into the
3 equation, a respondent that y'all -- and on a petition
4 that one of y'all is interested in and asks for a
5 response, because that's all it takes to get the response,
6 right? One of y'all is interested in, you are going to
7 shift a ton of money to -- in that response to the
8 petition for review, like, no, no, no, no, don't take this
9 case and here's all the reasons to take it, but I will --
10 I mean, I'm not saying responses are cheap anyway, but
11 they will double in cost, I think, if that's my last
12 chance to convince you that you do not need to grant this
13 case.

14 CHAIR TRACY CHRISTOPHER: Rich.

15 MR. PHILLIPS: Just on the one comment of
16 15 pages, Richard, everybody that we've talked to about
17 this has recognized that if the Court's going to change
18 their process, we're almost certainly going to have to
19 extend the length of the petition for review, whether it
20 goes all the way to the 9,000 words, which is what the
21 limit for a cert petition is in the United States Supreme
22 Court, or it's somewhere between 4,500 and 9,000, but I
23 think everybody that's thought about it realizes that,
24 given that they're going to have to make that decision
25 without merits briefing, that there probably will need to

1 be an extension in that word limit. What that would be is
2 up for discussion, probably at another meeting, but that
3 would be something we would want to talk about.

4 CHAIR TRACY CHRISTOPHER: Marcy.

5 MS. GREER: And I just want to point out
6 it's not 15 pages.

7 MR. PHILLIPS: Right.

8 MS. GREER: It's 4,500 words, and I did a
9 really great job at one of these SCAC presentations where
10 I took briefs and showed that 4,500 -- that very good
11 petitioners can write way more than 4,500 words in a
12 petition, and I was politely nodded to, and it was
13 ignored, but it was peer-reviewed even and demonstrated
14 that the 15-page briefs and the eight-page briefs, you
15 could get a lot more words in than what the word count
16 permits, so keep that in mind.

17 MS. HOBBS: Marcy, did you and I -- I don't
18 know if it was you, and if it wasn't you, then I'm sorry.
19 Didn't we talk about how, like, I'd rather do two pages of
20 like, hey, here's the issue, do y'all care about it, and
21 just do like something super short that just says, "Are
22 y'all interested in this or not," and the respondent can
23 say, "Y'all shouldn't be interested in this," and we
24 narrowed it down to less on the front end if we're going
25 to -- if the briefs are really what's going to matter. It

1 may not have been you, and I don't mean to put you on the
2 spot. It was one of my other appellate practitioner
3 friends.

4 MS. GREER: I think we've talked about that.

5 MS. HOBBS: Yeah.

6 MS. GREER: You know, is there like a third
7 alternative.

8 MS. HOBBS: Yeah.

9 MS. GREER: But I'm not bitter about it.
10 That was only how many years ago? Therapy has helped.

11 CHAIR TRACY CHRISTOPHER: All right. Let's
12 move to possible changes to the rules --

13 MR. PHILLIPS: Okay.

14 CHAIR TRACY CHRISTOPHER: -- to implement.

15 MR. PHILLIPS: So in the memo, let me get
16 that back up again. So this is starting on page 269 of
17 291. We talked about the changes that we would need to
18 consider if we're going to change the process, so the
19 first one was the deadline. Right now it's 45 days after
20 the court of appeals' judgment or the Court has denied the
21 last time we filed a rehearing motion. Some people
22 considered do we need to consider extending that deadline
23 out. The U.S. Supreme Court, it's 90 days for a cert
24 petition. I don't think we need to do 90 days, but if we
25 are going to have a longer petition that needs to address

1 more of these things up front, whether the -- the deadline
2 maybe should be 60 or 75 or something other than 45.

3 The next one is the length of the petition.
4 We've already talked about that. Is it 9,000, or is it
5 somewhere in between 4,500 and 9,000 but probably does
6 need to go up?

7 What contents would need to be in the
8 petition? There was some suggestion -- the U.S. Supreme
9 Court, the issue presented goes right on the first page.
10 You open up the booklet, and that's what's there first,
11 rather than in the certificate of interested parties and
12 table of contents. We could put that up front to make it
13 easy for the Court's review. The Court did recently adopt
14 a rule that requires an introduction in the petition for
15 review that is supposed to state the reasons for granting.
16 There was some question about whether that could even go
17 earlier. I know some of the justices have said they use
18 the table of contents, if it's well done, as a good
19 summary, so maybe we leave that there, but it's something
20 to consider about the order of the presentation.

21 Do we want to change what goes into the
22 appendix? Right now, the required parts of the appendix
23 are the court of appeals' opinion and judgment. Judgment
24 is important. I had a couple of bounced early in my
25 career because I attached the opinion and forgot the

1 judgment. And the issue -- the order from the trial
2 court, or if it's after a trial, you need the jury's
3 verdict. That's, basically, I think, all that's required
4 in the appendix now. Would we want to require additional
5 things to be included in that, given the decision is going
6 to be made based solely on that, or perhaps we don't need
7 to, given the record is easier to get? We maybe would
8 want to think about that.

9 On the response practice, would we want to
10 keep the option for the respondent to be able to choose
11 whether to file a response or not, or do we want to make
12 it they only file a response if the Court asks for one?
13 Or they don't have the option. Another thing that's sort
14 of out of the box, but I like the idea, and I can't
15 remember which memo I read this in, but the idea was do we
16 put a deadline on the respondent? They have 14 days to
17 tell the Court, "I'm going to file a response" or "I'm not
18 going to file a response," so the petition doesn't sit,
19 metaphorically. They used to sit on the shelf in the
20 clerk's office, but it doesn't sit there for 30 days
21 before they're put on the vote sheet, and then the
22 respondent can say, "I am going to" so the Court knows
23 what's going on.

24 Also, we may want to make some changes to
25 contents of merits briefs. One -- and query whether the

1 statement of jurisdiction does anything anymore, but in
2 the merits brief, there may not be any reason for the
3 statement of jurisdiction, because the Court's already
4 granted the petition at that point, and so there's not
5 really a question about their jurisdiction.

6 Issues presented. Right now, the rules
7 allow that in your brief on the merits your issue
8 presented can be reformulated a little bit from what you
9 put in the petition for review. You can't raise new
10 issues. You do have the practice where you can list an
11 issue and say it's unbriefed. You can't add new issues in
12 the merits brief, but the issue can be slightly
13 reformulated. Would we want -- since the Court has
14 already granted on the issue, do we want to make the issue
15 statement be the same so that the party can't, sort of,
16 maybe reduce the chances that somebody is sort of bait and
17 switching the Court on the issue?

18 Timing of merits briefs has been discussed a
19 little bit here. Right now, the rules have deadlines for
20 when the merits brief has to be filed, but when the Court
21 requests merits briefs, they also set -- the request sets
22 out all of those deadlines and then they can be extended
23 on motion. Would the rules continue to have standard
24 deadlines, or will it just be like -- you know, would the
25 Court just set that schedule when they set it, and they've

1 set the argument? And that would definitely be something
2 that would need to be accounted for, obviously, with the
3 time between the grant decision and when the argument is
4 going to be done, something for the Bar to adjust to,
5 where now we know we can get a couple of extensions
6 without a lot of sweat on a merits brief, and that may be
7 one the Bar will have to adjust to if it's got to be done
8 before the argument.

9 The -- does the rule on extensions of time
10 then need to address getting the briefs in a certain
11 amount of time before the argument? The U.S. Supreme
12 Court rules talk about the reply brief has to be filed no
13 more than 10 days before the oral argument, and that's
14 expressed in there, even with extensions of time. I also
15 would note the current rules don't provide any deadline
16 for reply briefs on the merits, and that has always kind
17 of driven me crazy. So it may be something we could
18 consider on that one.

19 Given the -- well, I'm not going to say --
20 but if there is a chance that doing this would increase
21 the possibility of a -- the need to dismiss petitions as
22 improvidently granted, should the rules expressly put that
23 in there as something the Court can do? Right now, there
24 isn't -- there's a whole list of things the Court can do
25 in petitions for review. There isn't an express

1 acknowledgement in the rules about petitions improvidently
2 granted, so would we want to think about doing that?

3 We already talked a little bit about the
4 record rule and also about the mandamus, should those
5 rules more expressly address the two-step process and
6 should they also provide essentially the same thing, that
7 the Court's only going to ask for merits briefs after the
8 Court has decided to set a mandamus or other original
9 proceeding for oral argument.

10 And then finally, it's not in the memo. We
11 talked about it briefly, but it is the per curiam practice
12 and would we need to address that somewhere, because,
13 again, generally the Court grants after getting merits
14 briefs and writing the per curiam opinion, so I'm not sure
15 how that process would work in a situation where they
16 don't ask for merits briefs until the end, so that would
17 be something we need to think about.

18 So that's what we identified. We're happy
19 to take a crack at those rules, if that's what we think is
20 the direction from the committee, and any other rules
21 anybody has thought about, we can address those as well,
22 so...

23 CHAIR TRACY CHRISTOPHER: All right. With
24 respect to possible rule changes, do we have any people
25 that would like to weigh in? I know length is probably a

1 big one for most people.

2 Judge Kelly.

3 HONORABLE PETER KELLY: It might be
4 beneficial for the black box to maybe emanate a couple of
5 ideas, and maybe we could work on that, because we could,
6 like, discuss lengths, but if they're not even interested
7 in that path, that would be a lot of discussion about
8 4,500 words.

9 CHAIR TRACY CHRISTOPHER: The black box said
10 please discuss potential rule changes, without knowing
11 whether they're going to adopt it or not.

12 HONORABLE EMILY MISKEL: We are merits
13 briefing the rule changes without knowing if they're
14 granting.

15 HONORABLE PETER KELLY: All right. So just
16 an overall question of process, amicus participation
17 presents an interesting issue, because I have had Supreme
18 Court justices tell me they're very helpful at the
19 petition stage because that helps us know whether or not
20 it's an important issue going forward and whether we
21 should grant a review. You know, and at the U.S. Supreme
22 Court it's very different. You can't file until it's
23 actually been granted, but the -- how would the Court
24 handle -- how would amicus participate in the decision to
25 explain that it is important to the jurisprudence of the

1 state if you're going straight from petition to grant?

2 Having the extra step in there encourages amicus

3 participation.

4 CHAIR TRACY CHRISTOPHER: Rich.

5 MR. PHILLIPS: Can I just -- on the amicus

6 thing, that's a whole additional can of worms. The

7 U.S. Supreme Court has very strict rules about amicus

8 briefs and when they can be filed. They can be filed at

9 the petition stage.

10 HONORABLE PETER KELLY: But nobody will do

11 it.

12 MR. PHILLIPS: Oh, no, they even -- yeah,

13 they file them all the time.

14 HONORABLE PETER KELLY: I cannot get anybody

15 to file a petition until a petition is granted.

16 MR. PHILLIPS: Yeah, I know, but I've seen

17 it, and it happens a lot up there. There's a tight

18 deadline. It's seven days after the party you want to

19 support, but they can be filed up there.

20 Right now, our rules are, as everybody

21 knows, wide open. You can file an amicus brief basically

22 whenever, and I'm not even going to suggest that we should

23 think about those rules, but I'm not -- and I don't know

24 that amicus practice would need to be adjusted or changed.

25 The amici will know how to continue to do this within the

1 process, whether it's pre-grant briefing or post-grant
2 briefing, but I just want to clarify, at the U.S. Supreme
3 Court you can file amicus at that point.

4 CHAIR TRACY CHRISTOPHER: Kennon.

5 MS. WOOTEN: I'd like to speak to the
6 response practice, and I think, regardless of what the
7 Court decides to do on this particular issue, it might be
8 helpful to revise the rules such that that response waiver
9 does have a deadline, and if it's not filed within a set
10 period, it's assumed that the Court wants a response,
11 because I've had it happen several times where somebody
12 just waits until it's almost the deadline, and then they
13 know that's going to extend the period about a month
14 internally at the Court, and there's nothing I can do
15 about that. It just bakes in more time, and time isn't
16 necessarily a bad thing, but the more time that passes
17 between when you write the petition for review and when
18 you write the brief on the merits, the less efficient you
19 are. The more you have to reread and whatnot, at least
20 for me, because I can't retain all of that in my head the
21 way I need to for the brief on the merits.

22 So I do think it would be very helpful to
23 put some kind of time period, time limit on that, but I
24 love the idea in the current practice of not having to
25 file a response unless it's requested, because that's a

1 lot of time, money, and effort, that is saved if the Court
2 says, you know, "Thanks." And so that's something I
3 definitely want to speak to, regardless of what we do.

4 HONORABLE EMILY MISKEL: I think the change
5 was actually to say you can't file a response unless --

6 MR. PHILLIPS: Unless, right.

7 HONORABLE EMILY MISKEL: -- invited to.

8 MS. HOBBS: Unless invited. But I support
9 that.

10 MS. WOOTEN: That you can't file a response
11 unless invited?

12 I mean, I see no harm in that. It seems
13 more efficient.

14 MS. HOBBS: Most of us do anyway.

15 MR. ORSINGER: I never do it anyway. I
16 mean, why would you do that? You just call attention to
17 the case.

18 MS. HOBBS: Yeah. Most of us waive our
19 response.

20 MS. WOOTEN: Yeah, no, that seems --

21 MS. HOBBS: Unless it's just like what are
22 the water rights under -- like, it's some huge thing that
23 we know y'all are going to take, like --

24 MS. WOOTEN: Right.

25 MS. HOBBS: But for most of our commercial

1 cases, we're waiving the response anyway.

2 MS. WOOTEN: Right. And then on timing, it
3 strikes me if you're going to require more up front,
4 giving more time is a good thing to do. I don't know the
5 magic number, especially in light of the practice that I
6 assume, perhaps mistakenly, will continue, but the
7 practice where if you ask for more time the first time,
8 you get that time. And so if that's going to remain as
9 the practice of the Court, the deadline matters less to
10 me, but if that practice is going to change, it becomes
11 more important to extend the period, I think, for filing
12 that petition.

13 MS. HOBBS: I think I generally agree with
14 you, except for -- and when you're waiting for a mandate
15 from the court of appeals, so what happens in the court of
16 appeals is they usually wait 60 days. So they wait
17 45 days to see if a petition for review is filed and then
18 15 extra days, and so it's usually around day 65 that you
19 get a mandate, if it's not going up to you. So extending
20 that can affect when we're, like, just get me back down to
21 the trial court if y'all aren't going up, you know. So I
22 kind of -- like, y'all are super liberal on extensions. I
23 would just keep it 45 days, and as long as y'all are going
24 to be super liberal on your extensions, I think -- I think
25 there's mandate issues that y'all might not realize happen

1 on cases that never come up to you.

2 CHAIR TRACY CHRISTOPHER: Giana.

3 MS. ORTIZ: Just a note on -- as this
4 committee is looking at changes to make, you may also look
5 at 55.1, which right now says with or without granting
6 petition for review the Court may request the merits
7 briefing, so, you know, modifying that might signal to the
8 Bar, to the point made earlier, what we're doing here.
9 That "upon granting a petition for review," that should
10 maybe be on your list of things to consider.

11 CHAIR TRACY CHRISTOPHER: Rich.

12 MR. PHILLIPS: Just on the timing issue, I
13 mean, I, as many in the room have, have taken full
14 advantage of the Court's granting of extensions of time,
15 but there is something to be said for having a time maybe
16 that we expect and not that everybody is just -- that we
17 expect people will just ask for more time and it will get
18 granted. I would still encourage the Court to think about
19 extending that time for petition for review, even if there
20 still will be extensions of time granted, because I think
21 the idea is this is the time in which we think you can do
22 it, and if you need more time, come and ask us, but let's
23 maybe -- if we expect the standard to be 60 days, let's
24 set it at 60 days, rather than saying 45 and you can ask
25 for 15 more if you want.

1 CHAIR TRACY CHRISTOPHER: I'll just say,
2 from my point of view, and I have no idea whether this
3 would apply at the Supreme Court, on the appendix, I would
4 find, you know, key, like a jury charge. You know, you'd
5 be surprised how rarely people attach the jury charge to
6 their brief, and you've got to dig through and find it,
7 you know, in the record when it's a huge part of the
8 appeal, so, or the actual contract that they want us to
9 actually look at and, you know, and then they refer to it
10 as, you know, "Plaintiff's Exhibit 25" and then I've got
11 to find what volume is that in, where is 25. I mean,
12 there are a lot of things that you could add to an
13 appendix, from my point of view, that would make it much
14 more user-friendly. You don't want cases. You know, you
15 don't want law given to the Supreme Court. They know
16 their law, but, you know, to the extent that I think it
17 would be, you know, better for them to be able to get a
18 handle on whether to grant or not with some key other
19 items. But it would depend on the type of case as to, you
20 know, what those key items are.

21 MR. PHILLIPS: I do think the rules right
22 now require the jury charge in the appendix.

23 CHAIR TRACY CHRISTOPHER: They do? Oh,
24 okay. Well, not in our court, apparently.

25 MR. PHILLIPS: Maybe we should look. We

1 should look at the appendix rules in the intermediate
2 courts.

3 CHAIR TRACY CHRISTOPHER: Right. Right.

4 MR. PHILLIPS: For sure. Yeah, the
5 interesting thing would be how to tell people what those
6 key documents are, other than just -- I think what the
7 rule right now says, "Any other documents that would be
8 useful to the Court." I would think if I'm bringing up a
9 contract case, I'm putting the contract in there, unless
10 it's like that long.

11 MS. HOBBS: Rich, I would -- and if we're
12 going to granting on the petition, I do think -- I agree
13 there's certain items that should be in the appendix, but
14 the record needs to come up right away.

15 MR. PHILLIPS: Yeah. We can address that
16 maybe in the record rule, but --

17 MS. HOBBS: Yeah. Yeah.

18 MS. WOOTEN: I guess, one other comment.
19 This is on the bullet point "Changes to the content of the
20 merits brief." I think anything that's no longer
21 needed --

22 MR. PHILLIPS: Right.

23 MS. WOOTEN: -- should be removed, right, as
24 a matter of course, because the Court doesn't want to see
25 it and the clients don't want to pay for you to write

1 things that don't need to be there.

2 MR. PHILLIPS: Right.

3 CHAIR TRACY CHRISTOPHER: Yes, Tom.

4 HONORABLE TOM GRAY: Sort of in line with
5 your idea about the appendix, having never decided whether
6 or not a petition should be granted, given the places that
7 you might be sitting and what you might be drinking at the
8 time that that decision is made, given that it's
9 relatively easy to electronically attach things -- and I'm
10 partially thinking about the collateral consequences that
11 this might have for the courts of appeals, but I would at
12 least want someone to consider, if they're rewriting this
13 rule, for attaching the briefing at the court of appeals,
14 because it may mean that we get a whole lot better briefs
15 at the court of appeals.

16 CHAIR TRACY CHRISTOPHER: I always enjoy
17 reading the briefs at the Supreme Court, because they're
18 so different.

19 HONORABLE TOM GRAY: It is amazing. Yes, it
20 is amazing how much better they are, and I'm just thinking
21 -- but, in a way, if I was a Supreme Court justice, that
22 would help inform me of what the court of appeals was
23 thinking when they wrote this opinion. What was that?

24 CHAIR TRACY CHRISTOPHER: I said they don't
25 care what we were thinking. Sorry. That's just our

1 impression.

2 HONORABLE TOM GRAY: You remember while ago
3 when --

4 CHAIR TRACY CHRISTOPHER: Out of order. I
5 agree. Any other comments on what sort of rule -- you
6 know, the potential rule changes?

7 MS. HOBBS: I do.

8 CHAIR TRACY CHRISTOPHER: Lisa.

9 MS. HOBBS: So in the courts of appeals, we
10 obviously -- let me start by saying what I'm nervous
11 about. I'm nervous about you granting in a term, and
12 again, I'm going back to, like, it's happened to me. It's
13 hard. It disrupts my life. I like my children. I like
14 to spend time with my family. I have a busy docket. I
15 move things around all the time, probably more than y'all
16 want me to, but so I just -- I would think about --
17 because when we file a petition for review, I can
18 calculate out, okay, so then you're going to grant briefs
19 on the merits and then I can calculate whether that's
20 going to be argued this term or next term, based on when
21 the briefs are. And so, now, if you conflate that, right,
22 then I'm like, oh, gosh, does that mean if it's granted
23 before briefs, I'm briefing and arguing it in the same
24 term? It's going to be really, really compressed.

25 And that's fine if y'all want to do it.

1 It's a lot of pressure on practitioners. They're not
2 going to like it, but the one thing I want to remind you
3 of is that in the court of appeals rules, they require
4 21 days' notice of argument. Y'all don't technically have
5 that rule, although y'all have honored it more often than
6 not, unless it's some election case, you know, something
7 that y'all had to move forward to. But when Rich says the
8 reply brief can't be done more than 10 days before, I
9 would like -- no, 20 -- isn't it 21 what we're looking for
10 here? It's hard in 10 days.

11 For big arguments, by the time I'm in 10
12 days, I've already had my moot with a client, you know,
13 like, it's just to get a brief in -- and amici do this to
14 us all the time, and we've got to deal with it because
15 there's no rule on it, but to get a brief from the party,
16 10 days, we're in super prep mode at that. I don't need
17 to be, like, rethinking my argument, so I would just kind
18 of think about how that works with the timing between the
19 grant, the briefing, are you setting it for this term or
20 next term. And I know it works for the U.S. Supreme
21 Court, but those guys are way smarter than me. I'm just,
22 like, a Texas Supreme Court practitioner, so just give
23 me --

24 CHAIR TRACY CHRISTOPHER: Oh, Rich.

25 MR. PHILLIPS: Just to be clear, I was not

1 suggesting that 10 days is the right time for filing the
2 reply brief for. That was just noting that's the
3 U.S. Supreme Court rules, and really, it was an example of
4 we probably need to have something in our rule that says,
5 you know, whatever the cutoff is, and maybe 21 is the
6 better one, that's when the reply brief has to come in.
7 And I do think it raises an issue that most likely those
8 that are thinking about this have already thought about,
9 which is the whole rhythm of the case and the term is
10 going to change if we do this, because right now you're
11 looking at -- you know, you've done your merits briefs,
12 and in the spring or sometime over the summer, and you're
13 going to argue it in the fall. And, now, the request for
14 the merits briefs is going to come at the end of August
15 after the Court has their conference, and you're going to
16 get that in quick, and we're going to do argument maybe
17 later in the term. For the September arguments, that
18 grant is going to have to come before the summer recess,
19 so the whole rhythm of the -- it will take it a term or
20 two for the practitioners to get used to, but the whole
21 rhythm of a case is going to change.

22 HONORABLE EVAN YOUNG: Can I just say one
23 thing about that as background?

24 CHAIR TRACY CHRISTOPHER: Yes.

25 HONORABLE EVAN YOUNG: The 10 days at the

1 U.S. Supreme Court, as a law clerk at the U.S. Supreme
2 Court, I hated that so much. I think it might have even
3 been less than that at that point, because I was working
4 to try to prepare for argument and help -- that is
5 designed to help the lawyers, and the reason is the date
6 is set at some point, and so by saying that the brief can
7 come in up to 10 days, that allows more time for
8 extensions in the briefing. Whereas, if it's 21 days, if
9 that date is set, well, at a certain point there's no more
10 extensions. So it kind of cuts both ways, but I would
11 think that the Court, I would think, from my perspective
12 now on the inside, I would much prefer that to come in
13 earlier, because then we have a chance to really work
14 through them before the argument.

15 Your doing the brief close to the argument
16 also has the additional benefit -- and Kennon kind of
17 mentioned this, things get stale in the mind, and if that
18 reply brief is due, even if it's three weeks beforehand,
19 you know you're arguing the case, so as you're working on
20 the briefing, it's all staying fresh, and the argument
21 comes, could be a few weeks. It's often, at the U.S.
22 Supreme Court, months later. It's not always just the
23 minimum, but for cases that are granted in January and
24 argued in April at that court, that's pretty tight, and
25 I've done that. I've argued cases like that. It's

1 fearsome. I don't dispute that, but more often, they'll
2 grant a case in February, and it's going to be argued in
3 September or October, right? So then you have more time
4 for it, and yet we would still get reply briefs in
5 September or October, coming in 10 days before the oral
6 argument, which is just rough on everybody, but that's the
7 background. It actually kind of cuts sometimes the
8 opposite of what you would think it would.

9 MS. HOBBS: That's so fair, Justice Young,
10 and one of the things I would say about changing Texas
11 procedure, just I know I used to laugh when I was rules
12 attorney about, like, how resistant lawyers were to
13 changes in the rule, and the example I would give is that
14 even though all of us are using letter paper, all of us in
15 these big firms had these legal-size red ropes, right,
16 like all of our files were like legal-sized, even though
17 we were all using letter paper, and that was when I
18 started in 2000, right, and like, it probably -- people
19 probably were using letter paper for, like, 20 years
20 before that. So I don't mean to be that person, but I do
21 think, just philosophically, because, you know, the point
22 of this committee is to give the Court advice.

23 One of the things that we talk about as a
24 Bar is efficiency versus accuracy, right? So our courts
25 of appeals are looking to get things out as quickly as

1 possible. So, you know, like, look, someone else is
2 grading my paper, so if I get it wrong, I'm just trying
3 to, like, get it out on these time frames that the
4 Legislature has decided for me or just my own internal
5 thing, and so we can -- the courts of appeals can knock
6 out opinions quicker for efficiency point, and when -- and
7 I might be -- but when Jefferson -- Chief Justice
8 Jefferson started doing, let's get all of the opinions out
9 in the same term, Phillips never had that idea, right,
10 because Phillips wanted to be, like, we got to get it
11 right. This is the last court of -- you know, and so I
12 will value accuracy -- not accuracy. That's the wrong
13 word. I'm sure y'all are -- look, I don't mean to suggest
14 that it's not accurate, but I want to, like, sit with it,
15 make sure I'm right, you know, like, get -- and so with
16 the getting all of the opinions out by the same term that
17 they're argued, I think some criticism, whether I believe
18 it or not, has been that maybe opinions should have
19 marinated a little bit or maybe the --

20 HONORABLE EVAN YOUNG: Do you have some
21 specific examples in mind?

22 MS. HOBBS: Just where I lost, Justice
23 Young, just where I lost. But, I mean, I think you need
24 to think about that, too, because, I mean, it has been
25 something that the Bar is getting used to, is opinions

1 getting out that term, and now we're creating -- because,
2 for you, what you need is for all of the advocates to be
3 their best in the briefs on the merits, right? And, yes,
4 knowing that it is granted probably makes me be better,
5 especially as a respondent briefs on the merits, but I
6 think -- I think y'all need to reconcile that a little bit
7 of, like, this is not U.S. Supreme Court practice. We're
8 all in trial court -- like, none of us are just, you know,
9 living the Rob, whatever his name was, who is now
10 whatever.

11 But I just -- I want you to think about we
12 don't get extensions just because we're lazy or anything.
13 Like, we really are trying to give you the best product
14 that we can, and rushing it might hurt the development of
15 the law is all I'm going to say. It's just kind of a
16 global thing, but like I said, I'm torn on this. I don't
17 have a strong opinion either way. I may, after y'all
18 write rules. In concept, I don't have a problem.

19 CHAIR TRACY CHRISTOPHER: Can I just say,
20 that I think when we identified this timing issue, that
21 that is a really key question that the Supreme Court needs
22 to decide, whether they want to really change the timing
23 of granting and oral argument, because, I mean, when you
24 call for briefs on the merits, you know, that can take up
25 to a year, you know, to -- before all of the merits come

1 in, and then you decide, you know, whether to grant.

2 Here, you're deciding to grant early, you're
3 ready to slot it in, but you have to wait for that, you
4 know, briefs on the merits. I mean, that's going to be a
5 big sea change that you-all have to consider.

6 HONORABLE EVAN YOUNG: And does it leave
7 enough flexibility for the very reasonable points that are
8 made? Maybe six months from grant to argument. I don't
9 know. You-all can help us think about that.

10 MS. HOBBS: Thank you.

11 CHAIR TRACY CHRISTOPHER: Anything else on
12 the contents and the potential rule changes? And then I
13 guess the Supreme Court will go back and talk about it and
14 see where they want us to go from here.

15 MS. HOBBS: And I'm sorry. I know the red
16 light is on, and I probably shouldn't, but on the
17 mandamus, I do agree with what's being said, is that it's
18 more work to turn a -- we have to go to the court of
19 appeals first, and we have to turn that into a 15-page
20 mandamus, which is often difficult, depending on what the
21 issue is and how the record is. So I would, actually,
22 encourage us to see how mandamus is going to work in a new
23 system, like would mandamus just be a one-step process? I
24 think that's definitely worth discussion on, is would
25 mandamus be different than a petition for review, or any

1 of the writs, any of the writs.

2 CHAIR TRACY CHRISTOPHER: Actually, I've
3 gotten whispered instruction that you are to go ahead with
4 the rule drafting process.

5 HONORABLE JANE BLAND: I think it was in
6 the --

7 MR. PHILLIPS: We got the referral, but --

8 HONORABLE JANE BLAND: Yeah, it was in the
9 referral letter to go ahead and go forward with some
10 suggestions for rule changes.

11 MR. PHILLIPS: Okay.

12 HONORABLE JANE BLAND: So...

13 CHAIR TRACY CHRISTOPHER: All right. Any
14 other comments on rule changes before it goes back to the
15 committee?

16 All right. Then I think we are finished a
17 little bit early. Thank you very much for being here.

18 HONORABLE EMILY MISKEL: Are we supposed to
19 be getting, like, parking validation?

20 MS. ORTIZ: At the front desk they gave it
21 to me.

22 CHAIR TRACY CHRISTOPHER: Our next meeting,
23 I don't even have it in front of me. I know Chip always
24 talks about it.

25 MS. WOOTEN: June 27th.

1 CHAIR TRACY CHRISTOPHER: Yeah. And it's
2 going to be at the Travis County facility.

3 (Adjourned)

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REPORTER'S CERTIFICATION
MEETING OF THE
SUPREME COURT ADVISORY COMMITTEE

* * * * *

I, D'LOIS L. JONES, Certified Shorthand Reporter, State of Texas, hereby certify that I reported the above meeting of the Supreme Court Advisory Committee on the 7th day of March, 2025, and the same was thereafter reduced to computer transcription by me.

I further certify that the costs for my services in the matter are \$ 1,962.00, which was paid or will be paid by The State Bar of Texas.

Given under my hand and seal of office on this the 1st day of April, 2025.

/s/D'Lois L. Jones
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