MINUTES OF THE

SUPREME COURT ADVISORY COMMITTEE

MAY ~~19~~ 20 - ~~20~~ 21, 1994

The Advisory Committee of the Supreme Court of Texas convened at 8:30 o'clock a.m. on Friday, May ~~19~~ 20, 1994, pursuant to call of the Chairman.

Friday, ~~March~~ May ~~21~~ 20, 1994:

Supreme Court of Texas Justice, and Liaison to the Supreme Court Advisory Committee, Justice Nathan L. Hecht was present.

Members present: Chair Luther H. Soules III, Professor Alexandra Albright, Charles L. Babcock, Professor Elaine Carlson, Honorable Ann Cochran, Professor William V. Dorsaneo III, Anne Gardner, Honorable Clarence A. Guittard, Michael A. Hatchell, Charles F. Herring, Jr., Donald M. Hunt, Tommy Jacks, Joseph Latting, Thomas S. Leatherbury, Gilbert I. Low, John Marks, Honorable F. Scott McCown, Russell H. McMains, Robert E. Meadows, Harriet E. Miers, Richard R. Orsinger, David L. Perry, Paula Sweeney and Stephen Yelenosky.

Ex-Officio Members Present: Honorable Sam Houston Clinton, Honorable William Cornelius, Doyle Curry, David B. Jackson, Doris Lange, Thomas Riney, Bonnie Wolbrueck.

Members absent: Alejandro Acosta, Jr., Pamela S. Baron, David J. Beck, Honorable Scott Brister, Sarah B. Duncan, Michael T. Gallagher, Franklin Jones, Jr., David E. Keltner, Honorable David Peeples, Anthony Sadberry, Stephen D. Susman.

Ex Officio Members absent: Paul Gold and Honorable Paul Heath Till.

Also present: Lee Parsley, Supreme Court Staff Attorney, Holly H. Duderstadt (Soules & Wallace), Carl Hamilton, and Denise Smith for Mike Gallagher.

Meeting called to order by Luther H. Soules III.

Mr. Soules recognized Paula Sweeney to report on the work of the subcommittee working on revisions of the jury charge.

Ms. Sweeney referred the Committee to a report prepared by the subcommittee. The first item for consideration was the propriety of the clause "so help you God" appearing in Rules 226 and 236. The issue was initially presented for consideration by

the ACLU by letter. After discussion, the Committee VOTED in favor of removal of "so help you God" from Rules 226 and 236 with two members voting against the change.

The Committee UNANIMOUSLY APPROVED deletion of "asked you" from Rule 226.

Next item for consideration was the "meddling" and "fair and impartial" language of Rule 226a, Part 1, subdivision 4. Ms. Sweeney suggested that attorneys might not be trying to select impartial juror, but jurors biased in favor of a position, and that the clause was a misstatement. Discussion followed. Mr. Marks moved to insert "trying to select a fair and impartial jury." UNANIMOUSLY ADOPTED. Sentence will now read: "In questioning you, they are not meddling in your personal affairs, but are trying to select a fair and impartial jury free from any bias or prejudice in this particular case."

Next item for consideration was the "disregard that answer" language of Rule 226a, Part 2, subdivision 6. Ms. Sweeney queried whether that language made it improper for an attorney to ask for an instruction during trial to disregard a question. Discussion followed. Consensus was that it would not be improper to ask for an instruction at trial (*i.e.* that the law in that regard would not be changed). Some discussion that a few cases have held that you must ask for an instruction to disregard an answer or the evidence can be considered on appeal and it is unclear if this language will change that law. VOTE: In favor of adopting paragraph as written: - 24; opposed - 0.

Next item for consideration, Rule 272, part (2)(d), disjunctive submission. Is the phrase "as a matter of law" proper? Mr. Dorsaneo suggested either deleting the paragraph or simply stating that the court can submit the question disjunctively. Discussion follows. VOTE: Should something about disjunctive submission remain in the rules? "Almost unanimous" (Soules) in favor. Discussion follows about whether a disjunctive submission can have more than two optional answers. General agreement that it can, but that the current rule's reference to "one or the other" limits it to two options. Mr. Latting moved that rule be amended to: "The court may submit questions disjunctively where appropriate." Favor - 5; oppose - 13. More discussion. Judge McCown moved that subcommittee report be adopted, except strike "as a matter of law" and "or the other" and insert "only" before "one." VOTE: Favor - 19; oppose - 0. "The court may submit a question disjunctively when the evidence shows that only one of the matters inquired about necessarily exists."

Judge Guittard moved that "A proper disjunctive question is not an impermissible inferential rebuttal submission." be added to the disjunctive submission provision. VOTE: Favor - 15; oppose - 2.

Next item for consideration is Rule 274(2). Question is whether the rules should require the complaining party to tell the trial judge how to fix the problem. Discussion follows. VOTE to amend the proposed language as follows: "An objection must identify

that portion of the charge to which complaint is made and be specific enough to enable the trial court to make an informed ruling on the objection." Favor - 20; oppose - 0.

Next item for consideration was whether the following comment should follow Rule 274: "The change in the second sentence, requiring an objection by a party required to tender is intended to modify the rule enunciated in State v. Payne. VOTE: favor including comment - 1; delete proposed comment - 10.

Next item for consideration was whether the following comment should follow Rule 274:

> Comment under Tex. R. Civ. P. 301, a Motion for Directed Verdict is not a prerequisite to a Motion for Judgment notwithstanding a verdict. 4 R. McDonald, Texas Civil Practice Sec. 26.9 (1992 ed.). Under Fed. R. Civ. P. 50(b), a Motion for Directed Verdict is a prerequisite to a Motion for Judgment notwithstanding the verdict. The changes proposed here do not change Texas practice. The Federal rule is not adopted.

Judge McCown stated that he drafted the comment but does not think it is necessary. The rule speaks for itself (*i.e.* the rule does not adopt the federal requirement). VOTE: Favor comment - 0; oppose comment - many.

Ms. Sweeney stated that the subcommittee does not intend to attempt to write Batson rules.

Mr. Soules moved adoption of Rules 226 - 279 as drafted by the subcommittee, and as amended today. Favor - unanimous. Rules recommended to the Supreme Court for adoption. Copy of rules as adopted are attached.

Mr. Soules asks Ms. Sweeney to have the subcommittee consider whether the Rules can be amended to allow trial judges to merge their jury and non-jury dockets.

Judge Guittard moved that all rules be amended to substitute "judge" for "court" wherever the rules are talking about the decision of the judge. ADOPTED WITHOUT OPPOSITION.

Mr. Soules recognized Joe Latting to present the work of the subcommittee working on the discovery sanction rule. Copy of the subcommittee report is attached.

Mr. Latting stated that the draft was the work of Pam Baron, Tommy Jacks, and Chuck Herring and recognized Mr. Jacks. Mr. Jacks explained the latest revisions to the proposed rule, all made in accordance with the prior action of the full committee. A brief discussion followed regarding the sanction for repeated violations of the discovery rules. Mr. Orsinger suggested that the question had been debated previously and should not

be reopened. Mr. Latting and Mr. Herring stated that the subcommittee was of the opinion that the rule should not be adopted by the full committee until discovery rules were adopted and the rule was tabled until the discovery rules are approved.

Mr. Soules recognized Judge Guittard to present the work of the subcommittee working on the appellate rules.

Judge Guittard referred the Committee to the proposed revisions to Rule 4(c) regarding delivery for filing by U.S. mail or by private delivery service. Two alternatives were presented - one which provided for filing if the document were sent via U.S. mail and the other which provided for filing if the document were sent via private delivery service. Judge Guittard recommend adoption of the former. VOTE: Favor alternative 1 - 22; oppose alternative 1 - 0. Alternative 1 adopted.

Ms. Wolbrueck stated that the rule effectively required clerks to keep all envelopes because the clerks will not know when a document is due to determine if it was timely mailed. Discussion about whether there should be any time limit on when the document should be filed if the document is timely mailed (*i.e.* it can be filed no matter when received so long as it was timely mailed). VOTE: Favor keeping some time period in the rule - 15; oppose - 1.

Judge Guittard moved to leave the time period at ten days rather than adopting the proposed 15 day time period. APPROVED WITHOUT OPPOSITION.

Rule 4(c) as adopted:

> **(c) Filing <u>of Papers</u>.** The filing of records, <u>motions, petitions, applications,</u> briefs and other papers in the appellate court as required by these rules shall be made by <u>delivering</u> ~~filing~~ them ~~with~~ <u>to</u> the clerk, except that any justice <u>or judge</u> of the court may permit the papers to be filed with ~~him~~ <u>the justice or judge</u>, in which event ~~he~~ <u>the justice or judge</u> shall note thereon the filing date and time and forthwith transmit them to the office of the clerk. If a motion for rehearing, any matter relating to taking an appeal ~~or writ of error~~ from the trial court to any higher court, or application for writ of error or petition for discretionary review is sent to the proper clerk by first-class United States mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail on or before the last day for filing same, the same, if received by the clerk not more than ten days ~~tardily~~ <u>after the last day for filing</u>, shall be filed by the clerk and be deemed as filed in time~~; provided, however, that a certificate of mailing by the United States Postal Service or a legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.~~ <u>A legible postmark, a receipt for registered or certified mail, or a certificate of mailing</u>

by the United States Postal Service shall be accepted as conclusive proof of mailing, but other proof may be considered.

Judge Cornelius stated that a time marked on a postage meter was not sufficient and that had been a problem in his court. Suggested the rule state that postage meter postmark was not sufficient. Matter referred to subcommittee and Judge Cornelius agrees to serve on the subcommittee.

Judge Guittard moved to adopt proposed Rule 4(e) with the amendment that "12 point" be inserted before "courier." Mr. McMains pointed out that the rule did not restrict briefs to double spacing. Judge Guittard agreed that it should and proposed new language: "fifty double spaced pages. . ." VOTE: Favor 4(e) as amended - 13; oppose - 6. Rule 4(e) as adopted:

(ed) ~~Papers Typewritten or Printed~~ Form. ~~All applications, briefs, petitions, motions and other papers shall be printed or typewritten. The use of recycled paper is strongly encouraged. Typewritten papers must be with a double space between the liens and on heavy white paper in clear type.~~

(1) *Paper.* All documents shall be typewritten or printed on opaque white or near-white paper, size 8 1/2 inches by 11 inches, unless commercially printed. The use of recycled paper is strongly encouraged.

(2) *Binding-Copying.* Briefs and applications shall be bound so as to ensure that the bound copy will not lose its cover or fall apart in regular use. It is preferred that briefs be bound to permit them to lie flat when open, and they must do so if the cover is plastic or any material not easily folded. Every brief must have front and back covers of durable quality. The front cover must clearly indicate the name of the party on whose behalf the brief is being filed. Briefs may be produced by an duplicating process in 8½ x 11 inch size and shall use only one side of each sheet.

(3) *Length of Briefs and Applications.* Appellate briefs and applications in civil cases (including amicus briefs) shall not exceed fifty double spaced pages of 12 point Courier type with one-inch margins, or the equivalent, exclusive of pages containing the list of names and addresses of parties, the table of contents, index of authorities, issues or points of error, and any addendum or appendix containing statutes, rules, regulations, and the like, and excerpts from the record crucial to the issues presented. The court may, upon motion or by local rule, permit a longer brief. The court may direct that a party file a brief, or another brief, in a particular case. If any brief is unnecessarily lengthy or not prepared in conformity with these rules, the court may require it to be redrawn.

(4) *Rejection of Briefs.* Unless every copy of a brief conforms to this rule, the clerk is authorized to return unfiled all nonconforming copies. An extension of ten days is allowed for the re-submission in a conforming format of a rejected brief.

(5) *Amendment.* An application, brief, petition, motion, or other paper may be amended at any time when justice requires upon such reasonable terms as the court may prescribe.

Judge Guittard moved to adopt proposed Rule 12(a) with "or predecessor" inserted in last line of rule. Mr. Soules queried whether the official reporter had the ability to discharge the requirements of the rule. VOTE: Favor Rule 12(a) as drafted with addition of "or predecessor": favor - 22; oppose - 0. Rule 12(a) as adopted:

(a) It shall be the joint responsibility of the trial and appellate courts to ensure that the work of the court reporter is accomplished timely. When a notice of appeal has been filed and the appellant has made a proper and timely request for a statement of facts and has paid the reporter's fee or made satisfactory arrangements for payment, the appellate court and the official court reporter, rather than the parties, have responsibility to see that the statement of facts is filed. If a substitute or predecessor reporter has recorded any part of the trial or other proceeding, the official reporter has responsibility to obtain from the substitute or predecessor reporter a transcription of such proceedings.

Judge Guittard moved the adoption of Rule 40(a)(2) which was redrawn to conform to prior SCAC action. UNANIMOUSLY ADOPTED. Rule 40(a)(2) as adopted:

Contents of Notice. The notice of appeal shall state: (1) the number and style of the case in the trial court and the court in which it is pending, (2) the date of the judgment or order appealed from and that appellant desires to appeal from the judgment or some designated portion thereof, (3) the date on which the notice is filed, (4) the names of all appellants filing the notice and the names, addresses, and telephone numbers of their attorneys, and the address and telephone number of any appellant not represented by an attorney. (5) If the appeal may be filed in one of several appellate courts, the notice shall specify the court to which the appeal is taken. (6) If the appellant is not represented by an attorney, the notice shall be under oath.

Judge Guittard referred Committee to Rule 51(a) and instructed Committee that the words "copies of" should not have been stricken. Ms. Wolbrueck stated that the clerk does not know the cost of the statement of facts and should not be required to include that cost in the certified bill of costs. Committee agreed to delete "and the statement of

facts (if any),". Mr. Orsinger suggested that the "motion to correct, modify or reform" the judgment be called a "motion to modify" the judgment throughout the rules, including this rule. It was suggested that "any request for findings of fact and conclusions of law" be added after "or reform the judgment" and "the" be changed to "any" in the same sentence. Rule UNANIMOUSLY APPROVED AS AMENDED (it is not clear if the suggestion to change to motion to modify was approved). Rule 51(a) as adopted:

> **Contents.** Unless otherwise designated by the parties in accordance with Rule 50, the transcript on appeal shall include copies of the following: in civil cases, the ~~live pleadings upon which the trial was held~~ last petition and answer and any supplements thereto filed by each party; in criminal cases, copies of the indictment or information, any special pleas and motions of the defendant which were presented to the court and overruled, and any written waivers; the court's docket sheet; the charge of the court and the verdict of the jury, or the court's findings of fact and conclusions of law; the court's judgment or other order appealed from; any motions for new trial or to correct, modify, or reform the judgment, and any request for findings of fact and conclusions of law; and the any order of the court thereon; ~~any notice of appeal; any appeal bond, affidavit in lieu of bond or clerk's certificate of a deposit in lieu of bond;~~ any notice of limitation of appeal in civil cases made pursuant to Rule 40; any formal bills of exception provided for in Rule 52; in civil cases, a certified bill of costs, including the cost of the transcript ~~and the statement of facts (if any),~~ showing any credits for payments made; any designation of matters to be included in the transcript pursuant to paragraph (b) of this rule and any filed paper listed in such a designation. ~~and, subject to the provisions of paragraph (b) of this rule, any filed paper any party may designate as material.~~ The clerk may consult with the attorneys for the parties concerning the pleadings to be included.

Judge Guittard moved adoption of Rule 11(a)(3). APPROVED UNANIMOUSLY, as follows:

> filing all exhibits with the clerk, and making copies of the exhibits for inclusion in the statement of facts when a statement of facts is prepared.

Judge Guittard moved adoption of Rule 53(g). Discussion of whether rule should refer to "improper" or "unnecessary." Judge Guittard agrees to use of "unnecessary." Rule REMANDED TO SUBCOMMITTEE to spell out that the appellant is responsible for paying for the transcript.

Judge Guittard moved adoption of Rule 53(*l*) regarding original exhibits. Discussion follows. Mr. Dorsaneo refers Committee to TRCP 75a and 75b which requires the reporter to send the original exhibits to the court of appeals. More discussion. REMANDED TO SUBCOMMITTEE to consider how to deal with exhibits in the custody

of someone other than the clerk. VOTE: favor court reporter sending originals to CA - 20; oppose - 1.

Judge Guittard moved adoption of Rule 74(a) except that the first reference to "and addresses" should be deleted. It was suggested that "the names and addresses of" be deleted. ADOPTED UNANIMOUSLY, as follows:

> ~~**Names of All Parties to the Trial Court's Final Judgment**~~ **Identity of Parties and Counsel.** A complete list of ~~the names and addresses of~~ all parties to the trial court's final judgment and the names and addresses of their counsel in the trial court, if any, shall be listed at the beginning of the appellant's brief, so that the members of the court may at once determine whether they are disqualified to serve or should recuse themselves from participating in the decision of the case and so that the clerk of the court of appeals may properly notify the parties ~~to the trial court's final judgment~~ or their counsel, if any, of the judgment and all orders of the court of appeals. The brief shall include also the address of any party not represented by an attorney, but if the address is not known, shall certify that appellant's attorney has made a diligent inquiry but has been unable to discover it, and the certificate shall give any available information, such as the probable county of residence, that might serve to identify and locate the unrepresented party. If the appellant is not represented by an attorney, the notice shall be under oath.

Judge Guittard moved adoption of Rule 74(f) - cross appeal. Judge Guittard accepts amendment to substitute "perfecting" for "filing" and the insertion of "as to any party" before "without." Discussion follows. VOTE: Favor 74(f) as amended: 11; oppose - 0. Rule 74(f) as adopted:

> **Cross-Appeal.** Unless the appeal is limited in accordance with Rule 40(a)(5), an appellee's brief may include cross-points complaining of any ruling or action of the trial court as to any party without perfecting a separate appeal.

SUBCOMMITTEE WILL FURTHER CONSIDER additional briefing for person targeted by a cross-appeal and whether "appellee" should be defined as any party to the trial court's final judgment who is not an appellant.

Judge Guittard referred the Committee to Rule 101 and stated that the Section Committee is recommending deletion of the rule. Judge Clinton stated that Rule 101 was requested by the judges on the courts of appeals and would like input from those judges before this rule is deleted.

Judge Guittard referred the Committee to the proposed draft of Rule 120 which incorporates all original proceedings into one rule and eliminates the need for a motion for leave to file. Discussion of Rule 120(g) dealing with sanctions for a frivolous mandamus motion. Some sentiment to adopt the standard contained in TRCP 13 or to incorporate the sanction into TRAP 84 and 182. Further discussion on requiring a conference between the parties and the judge before temporary relief is granted. Mr. McMains agreed to attempt to draft a provision for a stay pending a conference. Mr. Soules asks to "take a consensus" on asking the trial judge to participate in the conference: favor making trial judge participation mandatory - 4; favor leaving discretion to invite the trial judge to the appellate court - 4. Judge Cornelius suggested that the court of appeals can participate in the conference "through one or more of its members." That suggest is acceptable to all. Mr. Orsinger pointed out that all briefing rules applicable to appeals are not applicable to original proceedings. Judge Guittard suggest adding "so far as applicable" to the provision. This suggestion was acceptable to all. Ms. Duncan suggested that the briefing rules be moved to subdivision (a). Mr. Orsinger was concerned that the exception in the last sentence of subdivision (a)(3) - "Record" - could allow the parties to bring no record at all. REMANDED TO SUBCOMMITTEE to determine what presumption should be made regarding the record. With all these qualifications, rule was UNANIMOUSLY APPROVED.

Members still present at 5:00 o'clock: Professor Elaine Carlson, Honorable Sam Houston Clinton, Honorable William J. Cornelius, Professor William Dorsaneo, Sara B. Duncan, Anne Gardner, Paul Gold, Honorable Clarence Guittard, Honorable Nathan L. Hecht, Donald M. Hunt, David B. Jackson, Honorable Scott McCown, Russell McMains, Robert Meadows, Richard Orsinger, Paula Sweeney, Bonnie Wolbrueck.

The meeting was adjourned until Saturday, May 21, 1994, 8:30 a.m.

Saturday, May 21, 1994:

Supreme Court of Texas Justice, and Liaison to the Supreme Court Advisory Committee, Justice Nathan L. Hecht was present.

Members present: Chair Luther H. Soules III, Alejandro Acosta, Jr., Professor Alexandra Albright, Honorable Scott Brister, Professor Elaine Carlson, Honorable Ann Cochran, Professor William V. Dorsaneo III, Anne Gardner, Honorable Clarence A. Guittard, Michael A. Hatchell, Charles F. Herring, Jr., Donald M. Hunt, Tommy Jacks, Joseph Latting, John Marks, Honorable F. Scott McCown, Russell H. McMains, Robert E. Meadows, Harriet E. Miers, Richard R. Orsinger, Honorable David Peeples, David L. Perry, Anthony Sadberry, Stephen D. Susman and Paula Sweeney.

Ex-Officio Members Present: Doyle Curry, Paul Gold, David B. Jackson, Thomas Riney, Bonnie Wolbrueck.

Members absent: Charles L. Babcock, Pamela S. Baron, David J. Beck, Michael T. Gallagher, Franklin Jones, Jr., David E. Keltner, Thomas S. Leatherbury, Gilbert I. Low, Stephen Yelenosky.

Ex Officio Members absent: Honorable Sam Houston Clinton, Honorable William Cornelius, Doris Lange, Honorable Paul Heath Till.

Also present: Lee Parsley, Supreme Court Staff Attorney, Holly H. Duderstadt (Soules & Wallace), Carl Hamilton, and Denise Smith for Mike Gallagher.

Meeting called to order by Luther H. Soules III.

Mr. Soules recognized Mr. Susman for a report on the work of the subcommittee revising the discovery rules and Mr. Susman gave a report on that work.

Mr. Soules recognized Mr. Hamilton for a report on the work of the State Bar Court Rules Committee on discovery rules and Mr. Hamilton gave a report on that work.

Judge McCown stated that the difference between the subcommittee work and the Court Rules Committee work was that the former presumed that the trial courts could not supervise discovery and the latter required court intervention to frame a discovery plan. Further stated that there are four matters to keep in mind regarding the subcommittee plan: (1) the opening of the discovery window is controlled by the lawyers and not the court; (2) much information can be gathered before the window is opened; (3) the window is reopened before trial to update the discovery; and (4) it will encourage settlement after the window is closed and discovery is complete.

Discussion about court managed plan v. the "default system" proposed by the subcommittee.

Judge McCown noted that the subcommittee plan does the "standard disclosure" by interrogatory and request for production whereas the Court Rules plan does it by letter request.

Mr. Latting expressed concern about the new standard for failure to disclose - "this is cataclysmic change in the law." Soules opined that the proposed rules transfer the risk of non-disclosure to the innocent party and away from the guilty party. In addition, defendants will purposefully not disclose because they can force a continuance.

Mr. Perry stated that the discovery task force provided that witness not properly disclosed could not be presented unless previously disclosed by anyone else, deposed, or a party. Similar rule regarding documents. The rule of exclusion, however, was not to be applied to lines of testimony.

Mr. Brister stated that court managed docket won't work. He liked the Task Force proposal that requests are deemed to not ask for privileged material.

Mr. Jacks stated that a system where the case was "put in the can" before trial was tried in Harris County and was a failure. Suggested tying discovery to the trial date. Judge Cochran agrees that experiment in Harris County was a failure.

Judge Cochran opined that requiring meetings with lawyers is unnecessary and adds a layer of expense.

Mr. Perry moved that the SCAC operate on the premise that the rules should address the majority of cases and that going to court should be the exception rather than the rule. VOTE: Favor - 17; oppose - 2.

Mr. Soules asked for a vote on whether the information to be disclosed without objection should be on request or mandatory. VOTE: On request - 17; mandatory - 0.

Mr. Soules referred Committee to disclosure rules prepared by Court Rules Committee and Subcommittee.

Mr. Susman stated that the Court Rules report requires substantially more information and requires marshalling of facts, which the subcommittee was trying to avoid.

Mr. Orsinger opined that he is inclined to get more detail and that this seems to be an area where the small to medium sized cases can benefit from the rules -- an attorney shouldn't bill a client very much to ask for standard disclosure and could get all information needed for trial.

Mr. Gold explained that the thought behind the disclosure rules was to prevent objections to items which are clearly discoverable under current law. It was never the intent to make someone prepare the case for the opposition. Expressed concern that the answers will be used against the provider of the information either by a motion for summary judgment or as impeachment at trial and thinks the Court Rules versions therefore asks for too much.

Hamilton stated that the reason for the disclosure of information held by persons with knowledge of relevant facts is to determine if a deposition will be required. Disclosure of unfavorable facts is not required. Thinks that a summary judgment is appropriate if the plaintiff cannot state sufficient facts to sustain his/her case.

Several members support bare bones disclosure and oppose disclosure of facts known to the witnesses. Members concerned that Court Rules version requires party to prepare other party's case.

Mr. Orsinger stated that he would address claims and defenses as a pleading problem and require a party to plead sufficient claims to support case.

Mr. Susman objects to consideration of Court Rules proposal over Subcommittee proposal and that the Subcommittee received no guidance from the SCAC.

Meeting adjourned.