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MEETING OF THE SUPREME COURT ADVISORY COMMITTEE

April 14, 2012

(SATURDAY SESSION)

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[COPY

Taken before *D'Lois L. Jones*, Certified
Shorthand Reporter in and for the State of Texas, reported
by machine shorthand method, on the 14h day of April,
2012, between the hours of 9:01 a.m. and 12:57 p.m., at
the State Bar of Texas, 1414 Colorado, Room 101, Austin,
Texas 78701.

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INDEX OF VOTES

No votes were taken by the Supreme Court Advisory Committee during this session.

Documents referenced in this session

- 12-02 Protective Order Kit (2-17-12)
- 12-03 Protective Order Kit Memo from F. Gilstrap (4-6-12)
- 12-04 Divorce Kit - No minor children, no real property
- 12-05 Uniform divorce forms, SCAC subcommittee report (4-11-12)
- 12-06 Report to SCAC of Texas Access to Justice (4-6-12)
- 12-07 Brief of Access to Justice Commission (4-6-12)
- 12-08 Family Law Solutions 2012 Final Report
- 12-09 Family Law Groups' ideas for pro se litigants
- 12-10 Family Law Groups' response to proposed forms (4-10-12)
- 12-11a Letter from Bob Black (1-5-12)
- 12-11b Email from Lewis Kinard (4-3-12)
- 12-11c Email from Patricia Baca (4-11-12)
- 12-11d Letter from Hispanic Bar Association of Austin (4-5-12)
- 12-11e Letter from Hugh Lindsay (4-16-12)
- 12-11f Letter from several judges (4-12-12)
- 12-11g Letter from Timothy Daniels (4-9-12)

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- 12-11h Memo from Alicia Keys of AG's office to SCAC
(4-12-12)
- 12-11i Letter from P. Baca
- 12-11j Letter from P. Friday
- 12-11k Letter from Texas Advocacy Project
- 12-11L Written Statement of R. Shannon
- 12-12 Forms currently used in Travis County

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2 CHAIRMAN BABCOCK: Okay. We finished
3 yesterday with the instructions, and we are now on the
4 affidavit of indigency, and if people will sit down we'll
5 get started with it. Let's talk about the first page.
6 Richard, you got any comments about the affidavit of
7 indigency?

8 MR. ORSINGER: Well, just so the record is
9 clear, I wasn't on the task force that designed this, so
10 I'm really looking at this as an observer, but the
11 affidavit of indigency is -- the forms for those that
12 existed in this state on a county-by-county basis for ages
13 because they're used for a number of different purposes,
14 including the appointment of lawyers and the free
15 reporter's record and things of that nature. The
16 subcommittee had -- I didn't note anything of controversy
17 about the form affidavit of indigency, but we just point
18 out for informational purposes that on page two there is a
19 box for you to disclose what real estate you have, and, of
20 course, the forms -- the form packet is not supposed to be
21 used by anybody that has real estate, but this --

22 CHAIRMAN BABCOCK: The answer to that should
23 be zero.

24 MR. ORSINGER: The answer to that should be
25 zero, but the answer to that may not be zero.

1 MR. GILSTRAP: Put a compulsory checkmark.

2 MS. BARON: Can everyone talk louder,
3 please?

4 MR. ORSINGER: Yes. You can't hear me,
5 that's a surprise. I'm sorry.

6 MS. BARON: We've got some noise from the
7 kitchen, I guess.

8 MR. ORSINGER: Oh, well, let's close the
9 door over there. Okay. I don't know how much of that you
10 missed, Pam, but there are form affidavits of indigency
11 across the state because they're used for many purposes
12 that have nothing to do with this set of forms. The
13 subcommittee's only comment was that it has a blank for
14 real estate, and the form packet is not supposed to be
15 used by people that have real estate, but it might be an
16 important safeguard to smoke out the people who are using
17 these forms for the manner for which they're not designed,
18 and so at any rate that was the only subcommittee comment,
19 and so I don't know if there's comments from the committee
20 at large.

21 CHAIRMAN BABCOCK: What does it mean when
22 you "receive a public benefit called CHIP"? I didn't
23 realize I was in that business.

24 HONORABLE TRACY CHRISTOPHER: Kids health
25 care.

1 CHAIRMAN BABCOCK: That's what I figured.

2 Okay. Frank.

3 MR. GILSTRAP: When these are filed are they
4 vetted in any way? Does any official, say, you know, "I
5 don't think this person is indigent and we're going to
6 make you pay court costs," or does it just slide through
7 as a matter of course?

8 MR. ORSINGER: When they're filed in
9 connection with the filing of a petition and you're trying
10 to waive the filing fee, I think that it has to be vetted
11 by the clerk right then and there. I don't have any
12 practical knowledge of whether they do or don't, but I
13 would assume that the clerk is probably not in a position
14 to contest these every time they're filed. I don't know.
15 I heard someone say that some counties contest every
16 single affidavit of indigency, but is that for the
17 appointment of counsel, or is that for the waiver of the
18 filing fees that they contest every affidavit? I don't
19 know the answer to that.

20 MS. McALLISTER: Waiving of the filing fees.

21 MR. ORSINGER: It does apply to filing fee
22 as well?

23 MS. McALLISTER: There's several counties
24 that are doing that.

25 MR. ORSINGER: Okay. Trish McAllister says

1 that there are several counties that contest the affidavit
2 of indigency even insofar as waiving the filing fee is
3 concerned, but apparently it's not a universal practice?

4 MS. McALLISTER: Not a universal practice,
5 but Bexar County does it and Harris County does it. A lot
6 of counties do it.

7 MR. ORSINGER: Okay. Widespread.

8 CHAIRMAN BABCOCK: Well, whether they do it
9 or not, let's focus on the form. Judge.

10 HONORABLE ANA ESTEVEZ: All of the forms are
11 misstated, the court, they all say "County courts." These
12 should not be filed in county court. They'll either be in
13 district court or county court at law, and so that's just
14 for all of the forms they need to be changed. I don't
15 know of county courts that do perform what we're talking
16 about, the divorces, so --

17 CHAIRMAN BABCOCK: This one says both
18 district court and county court. You're saying take --

19 HONORABLE ANA ESTEVEZ: It should say
20 "county court at law." It's not a constitutional county
21 court that does this. If they have a divorce it's either
22 going to be filed in district court or county court at
23 law.

24 CHAIRMAN BABCOCK: So you would say add "at
25 law."

1 HONORABLE ANA ESTEVEZ: Yes. It's not a
2 county court.

3 CHAIRMAN BABCOCK: Okay. Any other comment
4 on the forms? Frank.

5 MR. GILSTRAP: Well, if the Court decides to
6 impose some kind of means test, something that so far I
7 haven't agreed with, this would be the vehicle to do it.
8 I mean, it's just going to be something like this. I'll
9 just make that in passing.

10 CHAIRMAN BABCOCK: Okay. Any other comments
11 about this affidavit of indigency? Yes, Justice
12 Christopher.

13 HONORABLE TRACY CHRISTOPHER: The form
14 speaks of monthly gross income before deductions are taken
15 out, but they don't include a spot for taxes withheld on
16 the monthly expenses. I actually think it would be better
17 to have "take home pay" there and then they don't have to
18 worry about gross versus net.

19 CHAIRMAN BABCOCK: Okay.

20 HONORABLE TRACY CHRISTOPHER: And I think
21 most people are going to put down the net amount, and it
22 just makes more sense on a form like this. I think
23 "value" is -- the description of the value and what that
24 means is way too small on this form for someone to
25 understand that they're supposed to take the, you know,

1 what you could sell it for less what you owe on it, if
2 that's what you want them to put down with respect to a
3 car, for example; and it is not required that you attach
4 proof that you're receiving a public benefit under Rule
5 145, so I'm not sure why we're requiring it here.

6 CHAIRMAN BABCOCK: Okay. Somebody else had
7 their hand up. Was it Gene? Was it you?

8 MR. STORIE: I did, but I'm going to pass.

9 CHAIRMAN BABCOCK: You're going to pass to
10 Frank? Frank.

11 MR. GILSTRAP: There's no instruction for
12 this that I've seen. It's just handed out, I guess, as
13 part of the packet, and I come to it, I'll just start
14 filling it out. At some point down in the second page I
15 see a line saying, "I'm unable to pay court costs," and I
16 guess if I go -- at that point I say, "Gosh, I think I am
17 able to pay court costs," what do I do, not file it? I
18 mean, there needs to be some instruction saying that this
19 document is to be filled out if you don't think you can
20 pay the filing fee; and, of course, if you can't afford a
21 lawyer for the divorce, you probably can't afford the
22 filing fee. That's just an observation, but there needs
23 to be some statement there to tell people what this is for
24 and whether they should fill it out.

25 CHAIRMAN BABCOCK: Lisa.

1 PROFESSOR HOFFMAN: I think it's in that box
2 right under the -- right here. "You can only use this
3 form if, one, you get government benefits because you are
4 poor or, two, you can't pay court fees."

5 MR. GILSTRAP: Yeah, well, I kind of skipped
6 over that because it was in the middle of the form and
7 small type. I suspect other people will, too.

8 CHAIRMAN BABCOCK: That's because you're not
9 indigent. That's why.

10 MR. HAMILTON: It's right after "affidavit
11 of indigency." It's right under that. It says, "Request
12 to not pay court fees."

13 MR. GILSTRAP: Well, I don't want to pay
14 them. Of course not. Who wants to pay court fees?

15 CHAIRMAN BABCOCK: All right. Gene, are you
16 back in the game? No, Justice Christopher, sorry.

17 HONORABLE TRACY CHRISTOPHER: On the
18 protective order kit we eliminated the notary and did
19 declaration under penalty of perjury. Is there some
20 reason why we're not doing that on this form?

21 MR. ORSINGER: Stewart Gagnon commented on
22 that yesterday that they did that intentionally because
23 they felt like there was some advantage to the formality
24 of swearing it out. I believe he said that yesterday.

25 MS. McALLISTER: That's correct. That's

1 what happened in -- that was the discussion that happened
2 in the meeting.

3 MR. ORSINGER: You want to have Trish
4 explain what the task force thinking was on that?

5 CHAIRMAN BABCOCK: Sure.

6 MS. McALLISTER: Well, I have some comments
7 to other things, too. The reason why we just -- I just
8 kind of want to go through them. The reason why we did
9 gross income before deductions versus net income is
10 because a lot of people -- if someone is trying to use the
11 form inappropriately, if you put net income down, that
12 means that -- or your take home pay, that means you also
13 are not including things that you should be including as
14 to form, like contributions and all sorts of other things
15 that make your net pay a lot lower than they would be
16 otherwise if you were just looking at gross pay, and
17 that's -- when we talked about it at the committee level,
18 gross pay is something that, you know, the judge could
19 have a chart to look at indigency levels that -- you know,
20 that the various Legal Aid programs use or whatever
21 indigency level that is decided, and that is uniform
22 versus take home pay you don't know what people are
23 actually taking out of the of their paycheck. They could
24 have union dues. They could have all sorts of things
25 taken out, and as you know, people don't know that that's

1 not supposed to be counted.

2 One of the other things, let's see, I can't
3 remember what it was, the other one. Well, the notary
4 thing, we did just wanted to add that formality. Some of
5 the judges on the committee felt like it was important to
6 have them take an extra step to make sure that they
7 understood the importance of it and swear it out and just
8 felt like that would add to a level of -- you know, to
9 give meaning to the form.

10 HONORABLE TRACY CHRISTOPHER: You know, I
11 understand that point, but don't we have some new statute
12 that says --

13 MS. McALLISTER: We do.

14 HONORABLE TRACY CHRISTOPHER: -- declaration
15 is just as good? I mean --

16 MS. McALLISTER: We do. But that's what
17 they decided.

18 MR. ORSINGER: So the question is, do we
19 want to ignore the law in the form, or do we want to have
20 the form conform to the statute?

21 CHAIRMAN BABCOCK: That's the issue.
22 Richard.

23 MR. MUNZINGER: How can the Supreme Court
24 ignore a statute in its form? What an embarrassment.

25 MR. ORSINGER: Some people might argue that

1 they do that routinely.

2 HONORABLE TOM GRAY: Wait a minute. Wait a
3 minute.

4 CHAIRMAN BABCOCK: Justice Gray.

5 HONORABLE TOM GRAY: The statute did not
6 replace the ability to do anything by a notary. What it
7 allows is to do by a declaration what is required to be
8 done by a notary. Very different. We are not changing
9 the substantive law here if we do the ability to do a
10 declaration here. By making it done in front of a notary
11 on the form, we are not requiring that a notary be used.
12 You could still use a declaration in the form, unless the
13 Supreme Court says you can only do it by declaration or
14 only do it by notary, and if you say you can only do it by
15 notary then maybe we've got a question.

16 CHAIRMAN BABCOCK: Marisa.

17 MS. SECCO: I agree with Judge Gray, but I
18 also wanted to say that we haven't changed any of the
19 other rules that require things to be done by affidavit
20 for the exact reason that Justice Gray mentioned, that
21 it's still okay to do everything by affidavit. It's just
22 that you can do -- use a declaration in lieu of an
23 affidavit, and there is one drawback to using a
24 declaration, and the protective order kit might need to be
25 altered because of this because it requires a jurat that

1 requires the date of birth and the address of the
2 declarant, which could be a problem in something like a
3 protective order, so that's just another thing.

4 MR. ORSINGER: Chip?

5 CHAIRMAN BABCOCK: Yeah, Richard.

6 MR. ORSINGER: The block on the affidavit of
7 indigency, front page, says, "You must sign this form in
8 front of a notary public." Is that accurate, or is that
9 inaccurate?

10 MS. SECCO: The form is an affidavit, so it
11 does have to be signed in front of a notary public. If
12 the form was a declaration it would not need to be signed
13 in front of a notary public because it doesn't have the
14 requirements that the declaration -- that the statute
15 requires for a declaration, so it couldn't be signed under
16 penalty of perjury unless the form included that jurat
17 that's required by the CPRC.

18 CHAIRMAN BABCOCK: Okay. Yeah, Richard
19 Munzinger.

20 MR. MUNZINGER: In many Latin countries,
21 Mexico included, a notario publico is a quasi-public
22 official. If you tell -- translate this form into Spanish
23 and you tell them they have to go to a notario publico,
24 they pay fees for these things. These people have offices
25 on the street. I don't know if Carl sees it, but I know

1 we've had trouble for years in El Paso with notario
2 publico, because the people come from Mexico and they
3 think that they have to do what they do in Mexico to get
4 something signed, and a lot of these people abuse them and
5 take money from them and inflate themselves as to their
6 importance and what have you. It's not a healthy thing
7 for the Supreme Court, in my opinion, to require something
8 that the law doesn't require, particularly in these
9 circumstances. Maybe Eduardo has a different attitude
10 about it, but I --

11 MR. RODRIGUEZ: I agree with that.

12 CHAIRMAN BABCOCK: Pete.

13 MR. SCHENKKAN: Also in that connection, in
14 the instruction box at the beginning we say, "You must
15 sign this form in front of a notary public," and we have
16 at the end, "Do not sign until you're in front of a
17 notary." I'm not sure that a lot of people, even
18 independent of ones whose primary language is Spanish,
19 that a lot of people know what you're talking about or
20 where you would go to get a notary, what's involved in
21 that. So I'm thinking the instructions ought to consider
22 giving people some guidance on that.

23 There's a couple of other aspects of the
24 instructions as well. In my printout copy -- maybe this
25 is highlighted in a multi-color copy, but in my printout

1 copy about, I don't know, three quarters of the way down
2 the page that it has the affidavit of indigency starting
3 on it, just above "My income sources are stated below,"
4 there is a very faint instruction "If you receive any of
5 the above public benefits, attach proof and label it
6 'Exhibit, proof of public documents.'" If what we're
7 talking about is attaching a piece of paper reflecting
8 what you get from that -- of that benefit, I think we
9 should say so, so that people know how to do this.

10 MS. McALLISTER: I agree, and actually, that
11 was one of the other things I wanted to address. I think
12 a question came up about the reason why we're attaching
13 proof, and the reason why we're attaching proof because
14 there is sort of a movement from the county clerk's
15 offices within the counties itself to automatically
16 contest these, so we just wanted to -- although Rule 145
17 does not require proof, we wanted to go ahead and just
18 have it there so they didn't -- they didn't have to go to
19 a hearing. Because as I had mentioned earlier is one of
20 the things that's concerning is that if you require
21 someone to go to a later date on a hearing on affidavit of
22 indigency, most of the time they default. I mean, it's
23 common, so then you are preventing someone who actually is
24 indigent from using the forms or from using this form. So
25 we just wanted if they had -- if they had the proof, there

1 should be no question and no reason to contest it at all.

2 CHAIRMAN BABCOCK: Justice Bland.

3 HONORABLE JANE BLAND: But if we require the
4 proof when someone files it, would that be a basis for
5 rejecting the affidavit that it lacks the attached proof?

6 CHAIRMAN BABCOCK: You have to speak up a
7 little bit.

8 HONORABLE JANE BLAND: I'm sorry. No one
9 has ever said that to me before. If we require the proof
10 as an attachment to the affidavit, won't that be a basis
11 for then rejecting the affidavit and then the person who
12 might otherwise qualify not be qualified because they
13 failed to show that they truly are on public assistance?

14 MS. McALLISTER: I don't understand your
15 question. Are you saying if they fail to attach it
16 that -- well, no, I --

17 HONORABLE JANE BLAND: Right.

18 MS. McALLISTER: I mean, that's part of the
19 instructions. If they fail to instruct it then I think --
20 attach it then, you know, it's a legitimate reason to
21 contest it, but --

22 HONORABLE JANE BLAND: Well, I don't know
23 about you, but every time I go now to the Department of
24 Public Safety or anywhere else I need about four things,
25 and it's the most frustrating thing ever that I don't have

1 the four things. So the question is, does the law require
2 proof as an attachment, and if it doesn't then why are we
3 requiring it, because sometimes people are going to show
4 up, fill out the form on the spot at the clerk's office,
5 and not have the sort of financial documentation on their
6 person, which for somebody who is struggling means finding
7 another ride down to the courthouse or getting on the bus
8 again and a whole other several-hour trip. So -- and so
9 for the counties that don't routinely contest affidavits
10 of indigency this might set up a basis for contesting
11 them. We don't want to encourage the blanket contesting
12 of affidavits.

13 CHAIRMAN BABCOCK: Lisa.

14 MS. HOBBS: You might be able to word it in
15 a permissive form, like "It would be helpful in some
16 counties if you attach," da, da, da, da, da, so it's not
17 as a requirement like it's required by law but just if you
18 have these documents that might be helpful.

19 CHAIRMAN BABCOCK: Justice Moseley.

20 HONORABLE JAMES MOSELEY: Which counties
21 routinely contest the affidavits?

22 MS. McALLISTER: We know that Bexar County
23 does. We know that Harris County does. A lot of them.
24 So some of the major ones, and there is -- I mean, even
25 the family law section has included in their information

1 that they know that there's a leaning towards that, or
2 maybe it was the Solutions 2012, so one of the -- the
3 district clerk at the Bexar County when we were at that
4 meeting stated that she did and lots of other folks did,
5 too.

6 CHAIRMAN BABCOCK: Okay. Justice Patterson.

7 HONORABLE JAN PATTERSON: I, too, would read
8 it if I were reading that, "Oh, gee, I failed to provide
9 it and I failed to submit it," and I would probably not
10 submit the form if it looks like a requirement to me. I
11 wonder whether you can say, "You may attach proof" because
12 there's sort of a complicated subtext to what this whole
13 sentence means, whether there's a hearing or not or
14 rejection or not, so I agree with the permissive, and I
15 think you can accomplish that by saying "you may" and
16 that --

17 MS. McALLISTER: Well, you probably know the
18 Rule 145 a little bit better than I do, but although it's
19 not stated in there, you know, there is the ability to
20 have a hearing on all of this stuff, and I think that's
21 the reason why it's concerning to us, because even though
22 it's not required, I think that's what the trend has been,
23 is to make people prove that they are on public benefits,
24 so, you know, it's just -- I think what everybody is
25 saying are very good comments because we don't want to

1 prohibit them if it's not required up front, but there may
2 be a point in time where it is required, so --

3 CHAIRMAN BABCOCK: What other comments about
4 this form? Justice Gray.

5 HONORABLE TOM GRAY: Chip, I sort of have to
6 withdraw some of what I said about the affidavit or the
7 declaration because the way the rule is currently drafted,
8 it has to say what the proposed form says, because the
9 proposed form is drafted to comply or at least apparent
10 compliance with Rule 145 and the way it's worded, so if we
11 change the form, it's going to be the form driving the law
12 rather than the rule driving the law.

13 CHAIRMAN BABCOCK: Okay. Any other
14 comments? Tracy.

15 HONORABLE TRACY CHRISTOPHER: Well, I do
16 think it might be useful if we changed the rule to say,
17 "If you provide proof that you are receiving government
18 benefits, this cannot be contested." I'm not really sure
19 that, you know, putting it in this affidavit and hoping
20 that that will stop these contests will work.

21 CHAIRMAN BABCOCK: Gotcha. All right.
22 Let's turn over to the next page, which is the original
23 petition for divorce, and let's go page by page, and so
24 confine our comments now to the first page that says,
25 "Original Petition for Divorce." It's got the standard

1 warning up at the top about you should look -- you should
2 try to get a lawyer if you can, and then there's another
3 box of warnings right under the original petition.

4 Comments about this first page, Frank.

5 MR. GILSTRAP: Paragraph 1, discovery level
6 one, "If you and your spouse do not have children under
7 age 18, children who are 18 or over and still in high
8 school, or disabled children of any age, the wife is not
9 pregnant, and you have less than \$50,000 in property,
10 check this." So if the wife is pregnant or if I have kids
11 I check level two, right? It says "all other cases."
12 "All other."

13 CHAIRMAN BABCOCK: "All other couples."

14 Yeah.

15 MR. GILSTRAP: I mean, that's probably not
16 the intent.

17 CHAIRMAN BABCOCK: Because your point is
18 this form is not supposed to be used.

19 MR. GILSTRAP: Yeah, it's not for people
20 with kids or where the wife is pregnant. I mean, read up
21 at the top, "No minor children."

22 CHAIRMAN BABCOCK: Right. Got it.

23 MR. GILSTRAP: So, you know, that needs to
24 probably be redone.

25 CHAIRMAN BABCOCK: Carl.

1 MR. HAMILTON: On the basic information page
2 it talks about bankruptcies and don't use it if you're in
3 bankruptcy and don't use it unless you and your spouse
4 agree on all issues. That's left out of the warning block
5 on there for some reason, and I don't know whether it
6 doesn't need to be there, but it's in one place and not
7 the other.

8 CHAIRMAN BABCOCK: Okay. Good point.
9 Richard the younger.

10 MR. ORSINGER: In response to Frank's
11 comment, I think that it's wise to leave the check box of
12 level one and two because the people who are using the
13 form properly will check level one.

14 MR. GILSTRAP: No. If they have more than
15 50,000 in property they won't.

16 MR. ORSINGER: Well, I think they -- the
17 subcommittee -- this yellow, I don't know how many of you
18 have the colored forms, but level one is yellow on the
19 original form or the official form, and that means that it
20 was a change made to the form as a result of the
21 subcommittee meeting with the representatives of the task
22 force, and they acceded to the suggestion of the
23 subcommittee that we have an indication of whether the
24 estate was worth less or more than 50,000, including
25 personal property, and that's not an exclusion unless the

1 Supreme Court adopts it as an exclusion, but it's a
2 warning so that if a district judge sees that box one is
3 checked or county court at law judge, they can say, "These
4 are people that are using the form the way it was designed
5 to be used," but if level two is checked they are saying,
6 "These are people who are not using the form the way it
7 was designed to be used" and then they can react
8 accordingly, depending on what the Supreme Court order
9 says.

10 If the Supreme Court order says that if the
11 form is being used within its limitations you can't reject
12 it, or the order may say you can't reject it even if it's
13 not being used, but at least that information is important
14 because the district judge can ask questions then about
15 real estate or kids or whatever, so I think that we ought
16 to leave it in there so we can know whether the form is
17 being used properly.

18 MR. GILSTRAP: It's kind of a trap.

19 MR. ORSINGER: No, I don't think it's a
20 trap.

21 MR. GILSTRAP: If I say the wife is not --
22 "Well, my wife is pregnant, I'm checking level two," I've
23 disqualified myself and probably need to tell the people
24 before they pay their 150-dollar filing fee.

25 MR. ORSINGER: Well, now, my perspective on

1 it is, is if you're pregnant and you're trying to use this
2 form to get a divorce, somebody ought to know about it.

3 MR. GILSTRAP: Well, that's right. How
4 about the person who is filling it out should know that,
5 and when you say, "The wife is not pregnant," I'll check
6 level two. File my petition.

7 MS. McALLISTER: But it's just said up here
8 not to use the form.

9 MR. GILSTRAP: I understand.

10 CHAIRMAN BABCOCK: Richard the elder.

11 MR. MUNZINGER: The information packet that
12 is given to the person who is going to use this is given
13 to the petitioner. The court has no assurance that the
14 respondent will receive the information that is in the
15 package. There's nothing that requires the respondent to
16 receive the same information, so just -- and to me that's
17 a weakness here, because both parties have their rights
18 affected. These are people who are seeking a divorce
19 without the benefit of legal advice, which in my opinion
20 is akin to seeking medical treatment without a doctor, but
21 they are getting -- they're making a major decision in
22 their life that's going to affect them, the paternity of
23 their children, whatever estate they may have. Whatever
24 it is, it's a very serious matter, and they're doing so
25 without any legal advice at all. The Supreme Court is

1 promulgating a form which doesn't have any assurance to
2 the court that the respondent is given the same
3 information as the petitioner. That doesn't make sense to
4 me.

5 So the husband -- just in this example, the
6 husband comes in, checks "My wife isn't pregnant," but she
7 is, and he goes home and he tells her "Sign this thing"
8 and she signs it, and it's a waiver of all of her rights,
9 and it says, "I'll let you enter the divorce." Okay. So
10 we've had that and that's what the Supreme Court has said,
11 you can do this, because we don't have any provision to
12 give advice to the respondent, male or female of any age,
13 any English command or anything else. We just say, "Here
14 it is," and you get it done. I think it's a weakness, and
15 I think it's counterproductive to the interest of the
16 citizens.

17 CHAIRMAN BABCOCK: Justice Jennings.

18 HONORABLE TERRY JENNINGS: I have a question
19 about the 50,000 in property. My understanding of the
20 mandate of the commission is they establish these
21 committees to check -- to check into the establishment of
22 forms for self-represented litigants who cannot afford
23 representation and who are unable to otherwise obtain
24 representation for a legal service provider. It's to
25 improve and develop strategies for self-representation of

1 the poor. I don't know of any other context where someone
2 has \$50,000 in assets where a court is going to say
3 they're indigent.

4 CHAIRMAN BABCOCK: Okay.

5 HONORABLE TERRY JENNINGS: You know, are you
6 poor, and is this for the poor as was the mandate of the
7 commission if someone has \$50,000 in assets?

8 CHAIRMAN BABCOCK: Carl. Richard.

9 MR. ORSINGER: Understand that while for
10 practical purposes this paragraph 1 may be used to divide
11 those who are using the form properly and those who are
12 not, actually this is a discovery paragraph which the
13 rules require to be in your initial pleading, and Rule
14 190.2 defines level one, which is suits involving 50,000
15 or less, and for -- this is for your discovery disclosure
16 in your original petition. "Any suit in which all
17 plaintiffs affirmatively plead they seek only monetary
18 relief aggregating 50,000 or less and any suit for divorce
19 not involving children in which a party pleads that the
20 value of the marital estate is more than zero but not less
21 than \$50,000."

22 HONORABLE TERRY JENNINGS: So the form is
23 consistent with the rule, but it doesn't seem consistent
24 with the mandate of the commission in establishing the
25 forms.

1 CHAIRMAN BABCOCK: Gene.

2 MR. STORIE: Did anyone consider level
3 three, because if you really have an agreed divorce, why
4 do you need discovery? If you need something, maybe you
5 need to ask the judge about that.

6 CHAIRMAN BABCOCK: Okay. Elaine.

7 PROFESSOR CARLSON: You know, this is a
8 little bit confusing to read because in the first big box,
9 "Do not use this form if," "including if you and your
10 spouse own or are buying a home." Then it goes down to I
11 guess the italicized warning in the same box. "You may be
12 able to ask the judge to order a sale of your home and
13 divide the proceeds of the sale," da, da, da, but you
14 can't -- "you will not be allowed to use this kit to do
15 any of these things." I think that should be worded
16 differently.

17 CHAIRMAN BABCOCK: Yeah. Yeah.

18 PROFESSOR CARLSON: To me that's confusing.

19 MR. GILSTRAP: One more thing, I mean, let's
20 suppose they check level two. The judge says, "Well,
21 okay, you've got more than \$50,000?"

22 "Yeah, my wife and I have a million dollars,
23 and we're splitting it. I'm getting 500,000 and she's
24 getting 500,000. Here are the checks." What's he going
25 to do, throw them out of court? There is nothing in here

1 that prohibits a person who is not indigent from using
2 these forms. That may be the idea, but the reality is
3 that ain't the way it's going to work.

4 CHAIRMAN BABCOCK: Justice Bland.

5 HONORABLE JANE BLAND: Richard, the question
6 I have is about the reference to "spousal support,
7 sometimes referred to as alimony"; is that correct, and
8 should it say "temporary spousal support"?

9 MR. ORSINGER: No.

10 HONORABLE JANE BLAND: And really alimony is
11 something different, isn't it?

12 MR. ORSINGER: This is not a reference to
13 temporary support in my opinion, even though it's not
14 clear. I think it's post-divorce maintenance under
15 Chapter 8 of the Texas Family Code, but since that's a
16 lawyer-only concept that no one in Texas would call
17 something "spousal maintenance," everyone talks in terms
18 of alimony. I think this has to do with not temporary
19 support but permanent support, and we use -- or the form
20 uses the word "alimony" because nobody is going to
21 understand the word "maintenance," so it's admittedly
22 inaccurate from a technical standpoint in that it's using
23 words that Texas law doesn't recognize, because Texas
24 doesn't recognize alimony, but it does have something
25 that's alimony equivalent, and so the sentiment here is

1 that if you intend to ask the judge to give you
2 post-divorce support then you shouldn't use this form, but
3 I don't think the information booklet really explains what
4 the criteria are, and I might point out they're extremely
5 complex, if you ever -- if you've looked at the most
6 recent amendments to the Family Code on maintenance, it
7 takes -- it took me a number of hours to finally figure
8 out how it worked, and I actually follow this closely.

9 CHAIRMAN BABCOCK: Okay. Justice Frost.

10 HONORABLE KEM FROST: Richard's comments
11 really bring up an issue that I think has been floating
12 around; and that is when we have looked at this divorce
13 kit there are really four sort of main component parts
14 that are interwoven in it; and that is the standardized
15 form, the warning, the instructions, which in several
16 places contain substantive commentary, and then the sample
17 testimony. I think the consideration of whether the Court
18 might promulgate standardized forms and the analysis that
19 goes in there is very different than the analysis that
20 would go into whether the Court should also issue
21 instructions and commentary in connection with
22 standardized forms. Traditionally the Supreme Court has
23 spoken through written opinions, and that is where we
24 learn what statutes mean, what you must prove to get
25 entitlement under statutes, what you must prove to

1 establish your entitlement to a divorce, and the bar
2 associations have given the how-to guides, the
3 instructions, and the commentaries; and this divorce kit
4 sort of blends those two; but I think it makes more sense
5 to think about it in two component parts because to the
6 extent the Court through something other than a judicial
7 process is going to be opining on matters of substantive
8 law that arise in some of this commentary then that is
9 sort of a new paradigm shift.

10 So to the extent that the Court issues
11 standardized forms we need to consider whether it would be
12 better for the bar associations to do the instructions and
13 the commentary, because most of the difficulty it seems
14 that has arisen in connection with those is in the
15 instructions and the commentary. You know, the Texas
16 Young Lawyers published this pro se divorce handbook that
17 goes into a lot of these issues, but the forms, let me
18 give an example from this original petition. Under
19 paragraph 5, it has a statement that is taken from the
20 statute that says, "The marriage has become insupportable
21 due to discord and conflict of personalities that destroys
22 the legitimate ends of the marital relationship and
23 prevents any reasonable expectation of reconciliation."

24 Now, that tracks the statutory language, but
25 the meaning of that statutory language has divided

1 intermediate appellate court judges. Last time I checked
2 the Supreme Court of Texas had not opined as to what that
3 language meant, yet there is a parenthetical that follows
4 that passage I just read that says, "This means you and
5 your spouse do not get along and do not plan to get back
6 together." Some might construe that as a statutory
7 interpretation that's outside the judicial process, and so
8 that is where those two, you know, roles sort of merge.
9 So I would think that we might want to give some good
10 consideration to taking the instructions in the divorce
11 kit and the commentary and the proposed testimony and
12 putting that in one place and putting standardized forms
13 as a standalone option.

14 CHAIRMAN BABCOCK: Okay. Lisa.

15 MS. HOBBS: I think that's something that
16 the Court could definitely consider, but I don't think
17 this is the first foray down this road. I think the Court
18 has already done forms, as we've seen in the protective
19 order, and they arguably interpret statutes outside of the
20 judicial process, and I personally don't find it
21 problematic. I think that the Court could probably put
22 some language in the order promulgating the form that
23 disclaims any intent to, you know, statutory
24 interpretation. We see the Fifth Circuit does this. They
25 actually approved the jury charges, and that doesn't mean

1 that -- just because they approved the jury charge that
2 people are using across the district it doesn't mean that
3 they don't later say, "You know what, that charge is
4 written improperly." So I think it's a fiction that
5 courts -- not just this court but other courts -- are
6 comfortable with -- in promulgating forms. It doesn't
7 mean that you're precluding review later or deciding an
8 issue later contrary to the form.

9 CHAIRMAN BABCOCK: Yeah, we should note that
10 Professor Hoffman, our very own Professor Hoffman, is
11 rewriting the Fifth Circuit pattern jury charges, right?

12 PROFESSOR HOFFMAN: With a whole lot of
13 help.

14 CHAIRMAN BABCOCK: He's got people.
15 Professor Carlson. She wants nothing to do with that.
16 Somebody had their hand up over there.

17 HONORABLE JAN PATTERSON: I did.

18 CHAIRMAN BABCOCK: Justice Patterson, sorry.

19 HONORABLE JAN PATTERSON: I agree with the
20 comment that they should be integrated within the form.
21 As a practical matter, a separate source will not be
22 consulted, and to make this accomplish the purpose of the
23 forms if we go that route then I think it's important that
24 it all be in one place. I would suggest at the bottom of
25 the warning box that really what you're doing there is

1 saying what this divorce kit will not allow you to do, and
2 I think you could make use of a colon there by saying,
3 "Using this divorce kit will not allow you to do any of
4 these things," colon, and then list what it cannot be
5 used, sort of reverse the thrust of that paragraph there.
6 And I think there's so many aspects of this that really
7 are -- that need to be tweaked or that just need to be
8 corrected, but I think --

9 CHAIRMAN BABCOCK: Okay. Is there any
10 tweaking on page one that you have?

11 HONORABLE JAN PATTERSON: That last
12 paragraph, using --

13 CHAIRMAN BABCOCK: Okay. Other than that.

14 HONORABLE JAN PATTERSON: -- this divorce
15 kit. No.

16 HONORABLE TERRY JENNINGS: It also has -- it
17 has this comment about "You may be asked by the judge to
18 order or the judge may order a sale of your home," and
19 aren't we dealing with folks who don't have real property?

20 HONORABLE JAN PATTERSON: Well, that's the
21 point of that paragraph, is that -- that's why I say
22 "using this divorce kit" --

23 HONORABLE TERRY JENNINGS: Oh, do not use --

24 HONORABLE JAN PATTERSON: -- "will not allow
25 you to do these things," colon, and make it clear what

1 it's not because the way it's -- it's not understandable
2 the way it is now.

3 HONORABLE TERRY JENNINGS: I think that
4 makes the point.

5 CHAIRMAN BABCOCK: Okay. Let's move on to
6 page two.

7 HONORABLE JAN PATTERSON: Thank you for
8 making my point, Judge.

9 CHAIRMAN BABCOCK: Starts with the paragraph
10 that says, "Notice of Citation." What comments do we have
11 on page two? Frank. I didn't even look up.

12 MR. GILSTRAP: Well, is there any provision
13 there for private process server?

14 PROFESSOR HOFFMAN: First box.

15 MR. GILSTRAP: Okay.

16 CHAIRMAN BABCOCK: First box does. Okay.
17 Pete.

18 MR. SCHENKKAN: We use in this section two,
19 "notice," "citation," and "citation of service." Those
20 are not terms that ordinary people understand. I think we
21 need to tie the use of those words to a clear explanation,
22 or we need to not use them and use ones that people do
23 understand.

24 CHAIRMAN BABCOCK: Okay. Justice Bland.

25 HONORABLE JANE BLAND: Under "Notice of

1 Citation" for the second option, you need to -- we need to
2 add that you should not use this option if you or your
3 spouse is subject to a protective order. In other words,
4 no handing things if there's a protective order in place.

5 CHAIRMAN BABCOCK: Right. Gotcha. Carl,
6 did you have your hand up?

7 MR. HAMILTON: Well, I just think we ought
8 to use the word "serve" instead of "give" to the
9 constable. I know constables if you ask them to go give
10 this to the defendant, that's all they do, is just give it
11 to them. They wouldn't make a return of service or
12 anything else.

13 CHAIRMAN BABCOCK: They're literal.

14 MR. HAMILTON: They're literal.

15 CHAIRMAN BABCOCK: They're a literal group.
16 Okay. Very good. Frank, I knew you would come back for
17 something.

18 MR. GILSTRAP: Well, I want to go back to
19 private process server because it says, "I will have the
20 sheriff or constable process server give a copy of this
21 petition to my spouse." Great. Okay. I file the -- does
22 the clerk -- how does the clerk know whether to -- does
23 the clerk collect the fee for the private process server
24 when it's filed? I thought the clerk didn't collect it
25 and you paid that yourself. So, I mean, I don't --

1 there's no guidance as to how to proceed. I mean, the
2 petitioner is supposed to tell the clerk how the process
3 is going to be served.

4 CHAIRMAN BABCOCK: Frank, doesn't it say it
5 right in the last paragraph?

6 MR. GILSTRAP: "I ask the clerk to issue" --
7 okay.

8 CHAIRMAN BABCOCK: Marcy.

9 MS. GREER: I just had a comment. I think
10 this paragraph, the very first paragraph under "Notice or
11 Citation," could explain. There are some disconnects
12 there. I think we just ought to say, "You need to ask the
13 clerk to issue citation and arrange for service," because
14 we have this same sentence here and here, and it's
15 confusing, and maybe by combining it up there and explain,
16 "This is step one. This it step two, step three."

17 CHAIRMAN BABCOCK: Okay. Carl.

18 MR. HAMILTON: I have a question about the
19 fee. If the person files an affidavit of indigency does
20 the clerk then pay the sheriff's fee for service, or does
21 the person still have to pay that? I guess they wouldn't
22 do it with a process server, but if they're doing it with
23 the sheriff I guess that would cover that fee, too?

24 CHAIRMAN BABCOCK: I would think so.

25 MS. McALLISTER: The county pays for it.

1 CHAIRMAN BABCOCK: Gene, was that you or is
2 that Justice Gaultney? You're just scratching your head,
3 aren't you? Aren't we all. Pete.

4 MR. SCHENKKAN: On the same page but on the
5 jurisdiction point are we going to talk about the
6 criticism that we don't deal with the situation -- the
7 form doesn't deal with the situation where the other
8 spouse has -- doesn't have or may not have minimum
9 contacts?

10 MR. ORSINGER: I'm going to raise that if
11 you don't.

12 MR. SCHENKKAN: Would you, please? That was
13 one of the two highest profiled points.

14 CHAIRMAN BABCOCK: And you're now talking
15 about personal jurisdiction.

16 MR. ORSINGER: Well, it's a combination, so
17 if I may set the stage for the discussion.

18 CHAIRMAN BABCOCK: If you have to.

19 MR. ORSINGER: Under "Jurisdiction,"
20 paragraph 3, the first set of blocks called "County of
21 Residence" is probably what you-all would be familiar with
22 as venue, it's which county in Texas is the appropriate
23 county to initiate a divorce. The second paragraph
24 initialed or identified as "State of Residence" is more
25 what we would consider the subject matter jurisdiction.

1 In other words, the State of Texas has created
2 jurisdiction in its divorce courts only to divorce people
3 who at least one of the spouses is a domiciliary of the
4 State of Texas for at least six months prior to filing,
5 could be the petitioner, could be the respondent, could be
6 both, but at least one of them must have been a
7 domiciliary of Texas for six months prior to filing or the
8 Court doesn't have jurisdiction to grant the divorce.

9 Now, that's just our jurisdictional
10 authorization to our own courts. If there's a nonresident
11 respondent, there's a due process consideration, which you
12 will remember from your study of *International Shoe vs.*
13 *Washington*, and all of those cases involving long-arm
14 jurisdiction.

15 CHAIRMAN BABCOCK: *Hanson vs. Denckla* was
16 always my favorite.

17 MR. ORSINGER: Yeah. That came along a
18 little later. I was going back all the way to the
19 headwaters. Now, section 6.305 of the Texas Family Code
20 is our long-arm jurisdiction statute for divorce purposes,
21 and mind you, there are different rules for children.
22 They're not supposed to use this form for children. If
23 they do, this jurisdictional paragraph will not work, so
24 we're just discussing dissolution of marital bonds and
25 property division right now. There are two grounds in

1 the -- in Family Code section 6.305 for long-arm
2 jurisdiction. One is that this state is the last state of
3 the marital residence of the spouses and the suit is filed
4 before the second anniversary of the date in which the
5 marital residence ended. So what that means is that if
6 you were living together here with your spouse and you're
7 still a domiciliary but your spouse has moved, as long as
8 you file within two years of when your spouse leaves you
9 have long-arm jurisdiction under our Family Code, may or
10 may not be constitutional, but at least it complies with
11 our Family Code.

12 The second ground is if there is any basis
13 consistent with the Constitutions of this state and the
14 United States for the exercise of personal jurisdiction.
15 That second ground essentially imports into our Family
16 Code the United States Supreme Court case law on minimum
17 contacts. So we have a specific allocation of last
18 marital residence within two years or anything that
19 comports with the minimum contacts requirement of the U.S.
20 Supreme Court.

21 Now, you don't have to have minimum contacts
22 jurisdiction to dissolve a marriage. All that's required
23 is that you have at least one of the spouses is a
24 domiciliary of the state. That's *Williams vs. North*
25 *Carolina*, a famous U.S. Supreme Court case. That's still

1 the law. You must -- you only require domicile to deserve
2 marital bonds, but in a case that Justice Hecht wrote the
3 majority opinion on here in Texas, you can't divide
4 property of a nonresident or litigate their personal
5 rights without having minimum contacts. So in order to
6 divide -- in order to dissolve -- you remember that case.

7 HONORABLE NATHAN HECHT: I do.

8 CHAIRMAN BABCOCK: Just checking.

9 MR. ORSINGER: I happened to be the losing
10 party in that case, I remember it well.

11 CHAIRMAN BABCOCK: Now it all comes out.
12 Settling old scores.

13 MR. ORSINGER: Right, and so at any rate,
14 there's two things going on in this paragraph. We're
15 trying to figure out if we have the subject matter
16 jurisdiction that's constitutionally approved to dissolve
17 the marital bonds, and we're also trying to figure out if
18 we have minimum contacts in order to divide property. So
19 the first block, "I lived in Texas for six months," that's
20 the domicile for dissolution. The second block, "My
21 spouse has lived in Texas for the last six months."
22 That's domicile for dissolution purposes. The third block
23 is "My spouse does not reside, but we lived together and
24 we filed within two years." That's long-arm jurisdiction
25 for purposes of dividing property, and the last two on

1 here that have to do with armed services are -- is a
2 fusion of domicile and long-arm jurisdiction because we
3 have a special statute that says if you've entered service
4 from Texas you're considered to be a continuing
5 domiciliary even if you're stationed somewhere outside the
6 country.

7 So this jurisdiction paragraph is doing two
8 things. It's figuring out whether we can dissolve the
9 marital bonds, and then it's sort of asking whether we
10 have minimum contacts to divide property, but only on the
11 two-year premise and not on anything that's consistent
12 with the Fourteenth Amendment.

13 CHAIRMAN BABCOCK: No, that's not right.
14 Because the second box, if it's checked, that would
15 satisfy minimum contacts.

16 MR. ORSINGER: Yes. Yes. So I will amend
17 to include what Chip just said.

18 CHAIRMAN BABCOCK: Thank you. But what
19 you're saying is there's another way to satisfy due
20 process. You don't know what it is, but there's another
21 way other than this just two-year thing or living in
22 Texas, and you want to capture that.

23 MR. ORSINGER: I'm not sure that I want to
24 capture that. I mean, I feel like --

25 CHAIRMAN BABCOCK: Well, it's the frontiers

1 of due process.

2 MR. ORSINGER: Yeah, I mean, the thing is,
3 is that within two years is a -- is kind of a bright line.
4 It's reasonable to argue that the minimum contacts haven't
5 attenuated within two years. I don't think this form or a
6 pro se litigant is going to be able to capture the
7 information we need to decide whether there is minimum
8 contacts outside the context of a two-year termination of
9 residency.

10 CHAIRMAN BABCOCK: Okay. Yeah, Pete.

11 MR. SCHENKKAN: So would it be fair to say
12 that what we in substance want to do -- we question how to
13 do it best, but in substance what we want to do is tell
14 people if you haven't checked box -- the second or third
15 box and you want to divide property or take away some
16 other right of the respondent, this form won't do it. You
17 need to go talk to a lawyer about your -- the other
18 spouse's contact with Texas in some other way. Is that
19 really what we're saying, that if you don't get in under
20 these -- one of these two then we may have a problem?

21 CHAIRMAN BABCOCK: Professor Albright.

22 PROFESSOR ALBRIGHT: I just want to make a
23 pitch to make these simple. I think most of the people
24 who are using these forms are not going to have minimum
25 contacts problems, and if they do, personal jurisdiction

1 is waivable. These people probably want to be divorced,
2 and they'll waive personal jurisdiction. I think we are
3 making these so complicated that the people that we're
4 trying to get them to use it for can't deal with it.

5 CHAIRMAN BABCOCK: Lisa.

6 MS. HOBBS: I mean, one solution that kind
7 of takes into account both comments is to put a note
8 underneath those two boxes that's kind of a note to the
9 judge more than anything that says, "Hey, Judge, if
10 neither of these two boxes are checked and the dude is not
11 appearing before you, maybe you should think about whether
12 you have minimum contacts."

13 PROFESSOR ALBRIGHT: Well, the judge doesn't
14 have to have minimum contact if they're served and he
15 answers.

16 MS. HOBBS: Yeah. But if it's a default, I
17 guess, because this applies to uncontested --

18 PROFESSOR ALBRIGHT: But that's not any
19 different than any other case.

20 CHAIRMAN BABCOCK: Whoa, whoa, whoa. Don't
21 talk over each other.

22 MS. HOBBS: Yeah, sorry.

23 PROFESSOR ALBRIGHT: But that's not
24 different from any other default case.

25 CHAIRMAN BABCOCK: Frank.

1 MR. GILSTRAP: Okay. I've still got to
2 trudge through paragraph 2. I guess I'm like the pro se
3 person, but I read paragraph 2. Okay, I'm not going to do
4 a waiver. I want my spouse served, so I check the first
5 box. That tells the clerk to collect some extra money for
6 issuing the process, and so the clerk does that. Now, I
7 guess at that point the clerk has got to ask me, "Do you
8 want the constable or sheriff to serve it, in which case
9 I'll collect the fee here, or do you want a private
10 process server to serve it?" I think is that what the
11 sequence is, because there's no explanation for this pro
12 se person to know that? I guess we're going to rely on
13 the clerk to do that, but there needs to be some
14 instructions, because, you know, it took me a while to
15 figure it out.

16 CHAIRMAN BABCOCK: Frank, you are such a
17 buzzkill on our esoteric minimum contacts discussion.

18 MR. GILSTRAP: I'm still trudging through
19 the pro se -- how the pro se does it.

20 CHAIRMAN BABCOCK: Justice Peeples.

21 HONORABLE DAVID PEEPLES: I think I would
22 find it helpful to add another box under "County" and
23 "State of Residence" that says, "None of these boxes apply
24 to my situation." I think it might help us get to the
25 truth because there may be sometimes where this doesn't,

1 and I think it ought to be flagged for people if that's
2 the truth of the matter.

3 CHAIRMAN BABCOCK: Yeah, good point. Okay.
4 Any -- yeah, Carl.

5 MR. HAMILTON: Well, I just want the record
6 to be clear that the form changes the law because the law
7 is not that they've lived there. It's that they've been
8 domiciled.

9 CHAIRMAN BABCOCK: I was wondering when we
10 were going to get to that. Yeah, what do we -- Richard,
11 what do we do about the domicile problem?

12 MR. ORSINGER: Well, Stewart's attitude
13 yesterday was that it doesn't really make much of a
14 difference, so let's just ignore it. That was essentially
15 what he said, and that's probably true in a lot of cases,
16 but I myself have been involved in cases, a number of
17 cases, where there's dueling divorces going on in two
18 states and whether the domicile requirement is met or not
19 determines on whether you pay enormous alimony for life or
20 not, but that's cases involving money, which we hope
21 people with that kind of money are not going to be using
22 the form. So we're kind of in a situation, aren't we,
23 where if we're going to follow the law strictly we're
24 going to have a form that's complex, but if we want a
25 simple form we need to just kind of ignore the law

1 strictly and just kind of have a simplified version of the
2 law for purposes of these divorce cases that don't really
3 count because there's no property and no kids.

4 CHAIRMAN BABCOCK: Justice Jennings.

5 HONORABLE TERRY JENNINGS: I thought
6 Professor Albright hit on I think an important point,
7 maybe it's better left for discussing later when we're
8 doing a more general overview, but couldn't all of this be
9 simplified in regard to jurisdiction and service if you
10 just had an agreed petition for divorce signed by both
11 people? I realize there may be some problems in doing
12 that, but the whole point here is you and your spouse have
13 to agree on every issue in your divorce. If they both
14 agree, if they're poor, they don't have the money to hire
15 a lawyer, but they both agree it's time to go our separate
16 ways, why couldn't you just do a joint petition for
17 divorce where both parties swear to all of this
18 information that's critical to establish the jurisdiction
19 of court and so on, and that would solve a lot of these
20 service problems, so I think she has an excellent point in
21 that regard, just --

22 CHAIRMAN BABCOCK: Okay.

23 HONORABLE TERRY JENNINGS: There may be some
24 problems if they're not talking, but if they have some
25 kind of intermediary where one can sign and the other one

1 can sign.

2 CHAIRMAN BABCOCK: Carl.

3 MR. HAMILTON: Wouldn't we be like Las Vegas
4 then, if they just come in and agree on --

5 HONORABLE TERRY JENNINGS: It's a policy
6 change.

7 CHAIRMAN BABCOCK: Vegas without the
8 gambling?

9 MR. HAMILTON: Yeah.

10 CHAIRMAN BABCOCK: I don't know. It's not a
11 pleasant thought.

12 MS. McCALLISTER: I think Stewart clarified
13 yesterday that you can't -- I mean, unless you're talking
14 about changing the code, but yesterday he clarified that
15 you cannot do a joint provisional petition.

16 HONORABLE TERRY JENNINGS: Well, I mean, a
17 lot of people are going to argue that this is kind of
18 what's being accomplished anyway, that this, in fact, is a
19 change in policy.

20 CHAIRMAN BABCOCK: Justice Christopher.

21 HONORABLE TRACY CHRISTOPHER: Well, I was
22 going to say the same thing. If you did have an agreed
23 petition for divorce that both people signed then that
24 solves the concern of Richard about whether the respondent
25 is getting the same information.

1 CHAIRMAN BABCOCK: Okay.

2 HONORABLE TRACY CHRISTOPHER: You know, do
3 they know what the form is really supposed to be used for,
4 do they know they have separate property. Right now, you
5 know, whose ever in charge of the kit and filling it out
6 is the only one that sees the warnings and knows about
7 rights.

8 CHAIRMAN BABCOCK: Yeah. The -- on the
9 issue of jurisdiction, I think the Court has been alerted
10 to the domicile issue, which is a thorny one, so let's
11 move on to the next page, which starts with paragraph 4,
12 "Protective Order Statement." Lisa.

13 MS. HOBBS: I guess as a general statement I
14 wonder how many agreed divorces involve a protective
15 order. Because it seems to me that if your spouse has
16 been abusive and you've gotten a protective order or
17 you've filed to get a protective order, the chances of you
18 guys getting together and saying, "Hey, I think we can
19 agree on every issue in our divorce is probably slim to
20 nothing," and it complicates things to have this in here.
21 I might suggest because of the service, particularly where
22 we're I think -- I forgot who raised, maybe Jane raised a
23 good point about we don't want them to hand something to
24 their spouse if they have a protective order.

25 And I wonder if we can't strike anything

1 about protective order and tell them up front, "Do not use
2 this form if you are having a protective order." Go to
3 your, you know -- because those people you really do maybe
4 want them -- I just don't think the form is intended for
5 them. I don't think they're going to get an agreed
6 divorce, so I don't know why we want this in our form. We
7 might want them to find a Legal Aid lawyer.

8 CHAIRMAN BABCOCK: Judge Estevez.

9 HONORABLE ANA ESTEVEZ: And I was just going
10 to agree with the last statement she made right before I
11 -- or right after I raised my hand. Usually when they do
12 have a protective order they're seeking that is when our
13 legal services will take those cases.

14 MS. HOBBS: Yeah.

15 HONORABLE ANA ESTEVEZ: Because that's --
16 when they are ranking who they're going to help, those are
17 the number one people they take, so those are the people
18 that need to go to a lawyer.

19 CHAIRMAN BABCOCK: Okay. Good. Frank.

20 MR. GILSTRAP: Well, how many people are
21 going to make it through paragraph 4 and get it right? I
22 mean, you know, it's just gobbledygook, and you know,
23 it's -- this becomes a very complicated form with
24 paragraph 4, and that's not the purpose.

25 HONORABLE JAN PATTERSON: Or how many people

1 are going to go file one right then?

2 CHAIRMAN BABCOCK: Say, "Ooh, good idea."

3 HONORABLE JAN PATTERSON: Say, "Maybe I
4 should have one."

5 CHAIRMAN BABCOCK: Okay. Any other comments
6 about this page, page three of five?

7 MR. GILSTRAP: We've talked -- have we
8 covered the concerns about the grounds in the last
9 paragraph? Has that already been talked about?

10 CHAIRMAN BABCOCK: It has been. Somebody
11 jumped ahead. I was not vigilant enough to keep the --
12 Peter.

13 MR. KELLY: Just on that point about the
14 grounds and the restatement of the grounds in plain
15 English below it, and this is touching on what Judge Frost
16 said about this is a Supreme Court-approved restatement of
17 the statute. So what's to stop in a regular divorce,
18 fully contested, someone saying, "Well, this is the
19 language the Supreme Court's approved. We don't need what
20 the statute says anymore, because my spouse and I do not
21 get along, we don't plan to get together. We don't have
22 what the statute says, but we have the Supreme Court
23 interpretation of the statute," and it seems to me to be a
24 substantive change in the law, and there's certain other
25 points in here where you have -- you know, I understand

1 the desire to have plain language, plain English forms,
2 but the statute isn't written -- the Family Code is not
3 written like that, and I think we have an obligation to
4 track the statute and not encourage substantive changes of
5 the law for simple expedience.

6 CHAIRMAN BABCOCK: Peter, do you think that
7 this parenthetical does not correctly state the law?

8 MR. KELLY: The Legislature has an
9 expression of the public policy of the State of Texas that
10 said that this long sentence up here is the proper grounds
11 for divorce. It can be summarized as this, but are
12 they -- are they legally the same? And is the Supreme
13 Court now saying if they adopt this form that this
14 restatement is now a proper statement of the law and what
15 the Legislature intended by adopting this statute with all
16 these flat-named words in it.

17 CHAIRMAN BABCOCK: Yeah, I'm with you, but
18 I'm just wondering if you think it's different.

19 MR. KELLY: I think in the end it might well
20 mean the same thing, but I don't do family law. We can
21 ask somebody who does, I mean, is there a substantive
22 difference. Can the argument be made? I think the
23 argument can be made.

24 CHAIRMAN BABCOCK: Judge Estevez, and then
25 Skip.

1 HONORABLE ANA ESTEVEZ: I think it's a --
2 they don't mean the same. I don't ask them, do you plan
3 -- when I do a pro se divorce I don't ask them if they
4 plan to get back together. I ask them, "Is there any
5 reasonable expectation of you guys getting back together?"
6 Which is different. To me it's different. One is like a
7 beyond a reasonable doubt type of standard, and the other
8 one might be a preponderance of the evidence. I don't
9 know, but that's just for an example. I don't think it's
10 the same standard. I might not plan to be at the meeting
11 tomorrow, but I might be. They may say --

12 CHAIRMAN BABCOCK: There's going to be no
13 meeting tomorrow.

14 MR. ORSINGER: Unless this meeting carries
15 over.

16 CHAIRMAN BABCOCK: Unless we're still going,
17 yeah.

18 HONORABLE ANA ESTEVEZ: I think we need to
19 be -- I think they need to be cautious, I do, about giving
20 any restatement of the law.

21 CHAIRMAN BABCOCK: Okay. Skip.

22 MR. WATSON: I think there's a difference
23 between literally reciting the law and what a pleading
24 needs to say and what evidence will support the statutory
25 standard. I think this is evidence, if this were the

1 words coming out of the person's mouth under oath, will
2 support an inference that supports the statute.

3 CHAIRMAN BABCOCK: Yeah.

4 MR. WATSON: But the only thing that I would
5 suggest is that it would be closer if "do not plan" would
6 be "cannot," you know, or "will not" or something that's a
7 little stronger than just "We're not planning to at the
8 moment."

9 CHAIRMAN BABCOCK: Gotcha. Roger. I
10 thought you had your hand up.

11 MR. HUGHES: I just wanted to chime in that
12 I think it's probably more prudent to follow the statutory
13 languages on what the grounds for divorce are, because, I
14 mean, we just, you know, two sessions ago we had the
15 energy case where you had a change in the language of I
16 believe it was the Labor Code of who would be a statutory
17 employer for the -- for some -- for purposes of comp and
18 insurance matters, and you had a decision interpreting
19 what the code -- what the statute meant before it was
20 codified. You have the codification of the statute when
21 the legislative pronouncement is, "We don't mean to change
22 the meaning, but we changed the language," and then you
23 had an opinion saying, "Well, they changed the language,
24 and they really must have intended to have changed the
25 meaning," and so this is an example -- I think what

1 Justice Gray said -- we're going to have the forms start
2 driving the law, and I'm a -- I'm what they sometimes call
3 a legal realist, old Karl Llewellyn, that the law is what
4 most of the courts are doing; and if most of the courts
5 treat these forms as a statement of the law, then they
6 will be the law.

7 CHAIRMAN BABCOCK: Peter. We really are
8 getting esoteric, if we're getting Karl Llewellyn into our
9 discussion. Peter.

10 MR. KELLY: I don't think it is purely
11 esoteric, and one example of a form that is legislatively
12 adopted is CPRC 18.001 about medical billing affidavits;
13 and the Legislature distilled its intent, distilled what
14 it considered to be adequate proof of reasonable and
15 necessary medical charges, and said, "This is the
16 affidavit you use" and promulgated a form for it. I'm not
17 sure the Supreme Court should be promulgating plain
18 English forms. Instead it should be a legislative
19 function so they can say, "This is what we mean by these
20 legal requirements, and this is the plain language
21 interpretation of it." And I think we can -- the Supreme
22 Court would be running afoul of the separation of powers
23 as rendering advisory opinions and statutory
24 interpretation by adopting a plain language form that may
25 not properly embody the legislative intent of the Family

1 Code.

2 CHAIRMAN BABCOCK: Gotcha. Justice Peeples,
3 I'm sorry, I missed you.

4 HONORABLE DAVID PEEPLES: That's okay. Skip
5 Watson was correct a minute ago when he said there was a
6 difference between what's stated in a form and what might
7 be litigated if it's contested, and this is hardly ever
8 going to be contested. Now, there's just a tradeoff when
9 you try to simplify the law for these lay readers. You
10 know, you've got to make some tradeoffs. Do we want to
11 get it exactly right at the expense that nobody is going
12 to understand it, or do we want to get it 98 percent right
13 and have a lot of people understand it? And I think the
14 task force did a good job, and I will tell you that in a
15 lot of courts all across this state when divorces are
16 proved up it's phrased pretty much in the way it's
17 italicized there rather than with all of these nouns that
18 nobody -- laypeople don't understand. So I think the
19 forms are good in that sense. If the Supreme Court is
20 concerned about it, I think there could be a disclaimer
21 somewhere that says, "These are an effort to explain
22 things and it's not changing the law" and so forth; or the
23 task force could say, "This means essentially that you and
24 your spouse do not get along," et cetera. You know, they
25 could hedge it with some words like that, but I think it

1 would be a bad decision to try to make these a hundred
2 percent in conformance with the statute, which was written
3 by the Legislature, of course, at the expense of people
4 not understanding it. That would be a bad mistake.

5 CHAIRMAN BABCOCK: Pete, and then Lisa.

6 MR. SCHENKKAN: I want to respond briefly on
7 the separation of powers calling on my ancient memories of
8 three years teaching administrative law. There is not a
9 separation of powers problem here. The Texas Supreme
10 Court has its independent state constitutional
11 responsibility power over judicial efficiency and
12 efficient administration. It has statutory authority to
13 do rule making. It is exercising legislative power when
14 it makes rules grounded on either or both of these
15 authorities, either it's independent state constitutional
16 authority or its statutory power. It is exercising a
17 legislative function even though it is in another branch,
18 and we are 250 years past the point of saying there's
19 anything wrong with that.

20 So we are instead dealing with the question
21 -- we are instead dealing with the question, what are the
22 practical risks for the system of the Court exercising
23 that power to make these particular forms with these
24 particular instructions. There are some risks. I think
25 the single greatest risk is to the Court, is to have a

1 case arise in which they are badly embarrassed by having
2 prescribed a form that led to a controversy that has led
3 to a problem. I think that's a good reason to expect
4 they're going to look at this very carefully, but we have
5 in the system a lot of experience with people making
6 rules, and then later having to live with the rules they
7 made and even litigate, adjudicate what they meant by
8 those rules. That's a large portion of what
9 administrative agencies that have both rule making in
10 Texas-based power do. That's what I do for a living, have
11 done for a living for 37 years.

12 CHAIRMAN BABCOCK: Thanks, Peter. Lisa.

13 MS. HOBBS: I was going to say something
14 very similar but not near as eloquent, so thank you for
15 that, Pete.

16 CHAIRMAN BABCOCK: All right. Frank.

17 MR. GILSTRAP: Then that restraining -- then
18 that restraining that is the fact that there is -- the
19 last line purports to interpret the first two lines, which
20 is the statutory grounds. Let's just say -- strike that
21 all out and say, "My spouse and I do not get along and do
22 not plan to get back together." That's an adequate
23 pleading, you can go on down the road.

24 CHAIRMAN BABCOCK: Okay. Richard.

25 MR. ORSINGER: On the first line, "My spouse

1 and I got married on," is an easy thing if you have a
2 ceremonial marriage. It's a hard thing if you have an
3 informal marriage, and I don't even know --

4 CHAIRMAN BABCOCK: "On or about."

5 MR. ORSINGER: I'm sorry. I don't even know
6 if a layperson is going to know that there is an informal
7 marriage and, if they do, what the standard for it is. I
8 don't know what to suggest about that, and the second
9 sentence that "We stopped living together as spouses on,"
10 the law doesn't require that you be separated in order to
11 file a divorce. I don't know that it makes any difference
12 when or whether they separated, and I wonder if we could
13 consider removing this sentence. Trish, why is this in
14 here?

15 MS. McCALLISTER: The judges on there wanted
16 to know that, mainly as a flag in case there -- you know,
17 to know how long they've been married in case they might
18 have accumulated assets that they aren't listing. One of
19 the judges in particular wanted that. We had talked about
20 removing it, but that's the reason why that was left in.

21 MR. ORSINGER: Well, the accumulation starts
22 when you marry, not when you separate, so what difference
23 does it make whether you've been separated one day, not
24 separated at all, or separated 20 years? You're still
25 entitled to a divorce. If a layperson is going to fill

1 this form out and says, "Well, we haven't separated, so I
2 can't use it," then maybe they don't make the decision to
3 file the pro se divorce. The information has no added
4 value to me. I don't know who was advocating it, but to
5 me it doesn't add any value, and it may result in someone
6 not using the form when they're entitled to, and they
7 don't realize it.

8 CHAIRMAN BABCOCK: Aren't they just going to
9 say "not applicable"?

10 MR. ORSINGER: Well, I don't know, what
11 is --

12 CHAIRMAN BABCOCK: I mean, there's lots of
13 forms where, you know, you read it and you say, you know,
14 "This doesn't apply to me because I'm still living with my
15 spouse."

16 MR. ORSINGER: You know, maybe they'll
17 understand that, Chip, but why do we even have to run the
18 risk that they won't? It's completely unimportant whether
19 they're separated or not in my opinion.

20 CHAIRMAN BABCOCK: Okay. Sarah.

21 HONORABLE SARAH DUNCAN: I don't even know
22 what it means, "stopped living together as spouses." I
23 don't know what that means.

24 CHAIRMAN BABCOCK: Okay.

25 HONORABLE SARAH DUNCAN: I don't know that

1 other people will know. I mean, everybody around the
2 table may have their own interpretation of it.

3 CHAIRMAN BABCOCK: Yeah. Marcy.

4 MS. GREER: I could see how it would be
5 helpful for the judge to know if they're living together
6 or apart, so I agree with the "as spouses" we could drop
7 that and put "if applicable." That would just simplify
8 it, and then as to the last one, instead of saying "This
9 means," which is a loaded term, why don't we say, "For
10 example, you and your spouse do not get along." That's
11 clearly one of the alternatives.

12 CHAIRMAN BABCOCK: Yeah, good point. Okay.
13 Let's move to the next page, page four. That starts with
14 paragraph 6, "Children." Comments on page four. One of
15 the things we received from the family bar made a comment
16 about paragraph 7 and the phrase, "According to Texas
17 law," and I think the point that was made was there's
18 nothing in the forms or in the instructions that talk
19 about what Texas law is, and that may be a defect. What
20 do people think about that?

21 MR. ORSINGER: I'm not finding that. Is it
22 in paragraph 7?

23 CHAIRMAN BABCOCK: Yeah. It says "community
24 property," and it's those very last words in that first
25 paragraph. Starts "my spouse and I will try," and it says

1 "If we cannot agree, I ask the court to divide our
2 personal property and debts according to Texas law." I
3 mean, what other law would the judge apply, but --

4 MR. KELLY: Administrative law.

5 CHAIRMAN BABCOCK: Huh?

6 MR. KELLY: Administrative law, apparently.

7 CHAIRMAN BABCOCK: Okay. Peter.

8 MR. KELLY: On No. 7 generally, first of
9 all, it doesn't mention debts anywhere. The title says
10 "Property and Debts," but there's no slot, at least the
11 version I have, for recording debts, recording and
12 reporting debts. There's no definition of "personal
13 property." Stocks, bonds, brokerage accounts, I think
14 could be included in personal property for certain
15 circumstances. Then at the end, we touched on this
16 yesterday, where it says, "Received the following money
17 damages from a lawsuit during my marriage." That doesn't
18 address issues where there's a settlement without a
19 lawsuit or just compensation payments, payments according
20 to an ERISA plan, payments under the table by
21 nonsubscribers to avoid workers comp liability, or pending
22 causes of action or potential causes of action, all of
23 which can be property, can be separate property and can
24 have community property implications, and none of those
25 are addressed here, and that's what I was trying to talk

1 about yesterday. We have potential for waiver of future
2 rights if someone is making representations on this in a
3 petition to the court, they cannot take contrary position
4 in a subsequent proceeding, and without a full
5 description, a full list of these assets and potential
6 assets, you run the risk of judicial estoppel later on.

7 CHAIRMAN BABCOCK: Okay. The family law
8 section notes that the money damages description they
9 think is inadequate, and they note that not all money
10 damages are separate property.

11 MR. ORSINGER: Yeah, the subcommittee also
12 came in on that. It's only lost wages during marriage
13 that are community, number one, and number two, recovery
14 for medical expenses incurred during marriage are also
15 community, and that was omitted from the forms, so I'm
16 sure the task force will rewrite that paragraph because
17 it's clearly wrong.

18 CHAIRMAN BABCOCK: Yeah. Okay. Richard
19 Munzinger.

20 MR. MUNZINGER: Here we have people who are
21 entering into a transaction that has far-reaching effects,
22 legally and personally. If I understand the law
23 correctly, the place where child support or issues of that
24 nature can be raised in the future is determined by where
25 the judgment is entered. Now we say that this isn't going

1 to apply if they have children under 18, but yet at the
2 same time we ask all of these questions. We say this
3 isn't going to apply if there's property, and yet we say,
4 "I want you to divide the property." Nowhere are these
5 citizens told of the effects of the divorce. Nowhere does
6 anybody try and tell these people who are not seeking
7 legal advice to understand the severity and the importance
8 of what they're doing, and it is a form promulgated by the
9 highest judicial authority in the state. Somewhere there
10 should be some statement warning people, for goodness
11 sakes, if you do this, this can be the result, even if
12 it's a half page or a one page.

13 How can the Court promulgate forms, turn
14 people loose to wreak havoc possibly in their lives? And
15 all the speeches we heard yesterday were about child abuse
16 and spousal abuse. That isn't the issue here. The issue
17 here is letting people get a divorce without a lawyer,
18 which is fine. They don't need to have a lawyer, but
19 especially the poor people who aren't sophisticated need
20 to somehow be warned of what they can do to themselves by
21 a court which is promulgating a form in essence saying
22 there's nothing to this.

23 CHAIRMAN BABCOCK: Judge Estevez, this does
24 say "Property and Debts," and I see there is no -- there
25 is no place for debts. Is that important information to

1 you?

2 HONORABLE ANA ESTEVEZ: No, because they'll
3 have it in the petition. I mean, in the decree at the
4 end. They don't need to list everything. I don't believe
5 they have to list every single piece of property before
6 you get a divorce anyway.

7 CHAIRMAN BABCOCK: Well, what about debts?
8 I mean, it says "Property and Debts."

9 HONORABLE ANA ESTEVEZ: I guess --

10 CHAIRMAN BABCOCK: It doesn't make any
11 mention of debts.

12 HONORABLE ANA ESTEVEZ: I guess I don't
13 understand. I mean, I think this is sufficient. We're
14 under notice of pleading, so, I mean, I'd let Mr. Richard
15 over there respond to that.

16 MR. ORSINGER: Well, I think the form is
17 designed to make the petitioner inventory the property and
18 debts for their own benefit and for preparing the decree.
19 You could just omit this. You could have a one-page
20 petition and let all the work be done in the decree. I
21 don't think that's wise, and the task force didn't do
22 that. The task force decided that they would put the
23 petitioner to the thinking task before the petition was
24 filed, and I think that's a good policy decision. So I
25 think it is an oversight to say that we want you to list

1 the property you have, and one -- one function of that is
2 to determine if the form is being misused, because if they
3 put five pieces of real estate down there that's a signal
4 to the district judge not to set the case for trial,
5 unless the order promulgating the form requires them to do
6 that, and so why would you omit debts, because that's as
7 important a part. In fact, in a lot of these cases the
8 debts probably will exceed the assets.

9 CHAIRMAN BABCOCK: Justice Jennings.

10 HONORABLE TERRY JENNINGS: Why give them the
11 option of disagreeing about how to divide their property
12 and debts because the whole form is premised on the
13 assumption they agree about every issue? Why not rephrase
14 the sentence and say, "We agree to divide our community
15 property as follows. We agree to divide our debts as
16 follows."

17 CHAIRMAN BABCOCK: Right. Justice Bland had
18 her hand up, and then --

19 HONORABLE JANE BLAND: Under "Property and
20 Debts" we keep referring to "personal property" in about
21 five places, and I don't think that's very informative,
22 and it could be misleading, because some people will think
23 of personal property as their clothes and shoes and
24 jewelry, but not their household furnishings, their guns,
25 or their lawn furniture; and in the divorce decree a lot

1 of places we just say "property," but there are a couple
2 of places we say "personal property." I don't think we
3 need "personal" in there, and I think it would maybe
4 narrow the universe for some people of what they need to
5 think about when they're dividing the property.

6 CHAIRMAN BABCOCK: Okay. Somebody had their
7 hand up. Was it Peter?

8 MR. KELLY: Touching on what Richard
9 Munzinger was talking about, the warning of the effects of
10 what they're signing, there is going to be a listing of
11 assets and we're talking about contingent assets or assets
12 being because of injury, there might be some warning that
13 if you have another lawyer working for you right now, say
14 pursuing a personal injury claim, notify him or consult
15 with him before signing this form, because you could have
16 a personal injury lawyer working on contingency who is not
17 handling your divorce, but he would probably want to know
18 if you're making representations about your assets.

19 Secondly, one warning that is not in here is
20 that you're giving up the right to -- you're waiving your
21 right to a jury, that if you are agreeing to a divorce,
22 that you are giving up your -- waiving your right to have
23 a jury determine anything, and the enforceability through
24 waiver laws requires that it be conspicuous, just like in
25 no negligence clauses, and there should be something, a

1 procedural warning, of what you're actually giving up by
2 going forward with this type of form, that you're waiving
3 the jury, you're waiving the right to further due process,
4 et cetera.

5 CHAIRMAN BABCOCK: Okay. Yeah, Professor
6 Hoffman.

7 PROFESSOR HOFFMAN: I have heard a couple of
8 remarks that the form is only used for agreed divorces,
9 but I thought there was a default was one of the other
10 possibilities, so I want to make sure we don't get ahead
11 of ourselves, so you don't want to change the inventory
12 list.

13 CHAIRMAN BABCOCK: Okay. Gene.

14 MR. STORIE: Yeah, I agree with Justice
15 Jennings' comments, and also I think it was Justice
16 Christopher said yesterday that maybe we do need some kind
17 of separation between a genuine agreement and a default or
18 uncontested in some other sense form. I was also a bit
19 puzzled by the inclusion of money because I would've
20 thought money is generally commingled, and I think that
21 could be a problem later on as well when you're purporting
22 to share out the separate property, if you have less money
23 available for both spouses in that either of them or both
24 of them had going into the marriage. You've got an
25 automatic problem there.

1 CHAIRMAN BABCOCK: Richard.

2 MR. ORSINGER: The subcommittee recommended
3 by an eight to zero vote, which is the highest vote we
4 were able to get, that we ought to require the petitioner
5 to list the respondent's separate property as well because
6 we felt like this form was tacitly biased in favor of
7 protecting the petitioner's separate property and not the
8 respondent's; and in fact, that's a danger of any
9 form-driven system that focuses on the perspective of the
10 petitioner and not the respondent; and so it was our view
11 that in the support of candor and in the support of
12 balance of the forms so they don't appear to be or don't
13 act as a bias in favor of petitioner, that when the
14 petitioner is required to list their separate property
15 that they're also required to list the respondent's
16 separate property.

17 CHAIRMAN BABCOCK: Okay. Lisa had her hand
18 up that I couldn't see, but Angie spotted you.

19 MS. HOBBS: I might qualify the word "gift."
20 I can see in a marriage when a husband buys a wife a car
21 or something that she might think that that was a gift
22 when, in fact, it was bought with community funds, so I
23 might just say it "a gift from someone other than my
24 spouse," or something that --

25 HONORABLE TOM GRAY: If a spouse gives a car

1 to the other spouse, it becomes the other spouse's
2 separate property.

3 HONORABLE ANA ESTEVEZ: And all that
4 jewelry, not that they're going to have jewelry, but all
5 my jewelry is my separate property.

6 MS. HOBBS: Well, I'm thinking about the
7 Beyonce' song, To The Left.

8 MR. ORSINGER: By silence from your husband.

9 CHAIRMAN BABCOCK: There's no dispute about
10 that now.

11 HONORABLE ANA ESTEVEZ: That's okay, I've
12 given him some pretty nice gifts, too, and I'm sure he'll
13 be the first one to say it's his separate property.

14 CHAIRMAN BABCOCK: We're creating the record
15 here. Let's go to page five.

16 HONORABLE ANA ESTEVEZ: Well, I'm next.

17 CHAIRMAN BABCOCK: Oh, sorry.

18 HONORABLE ANA ESTEVEZ: I just wanted to go
19 back on the debt. As surprising as it seems, the people
20 that we are focused on, these pro ses with no property, no
21 kids, I rarely have true indigent clients that have a lot
22 of debt. They've been renting, so they have to pay rent
23 every month. They don't have credit cards; they don't
24 qualify. So that's probably why it doesn't come up very
25 often with my true pro se indigent clients. The debt

1 isn't usually an issue.

2 CHAIRMAN BABCOCK: Okay.

3 HONORABLE ANA ESTEVEZ: It's usually just a
4 car. One car.

5 CHAIRMAN BABCOCK: Let's go to page five.
6 We've already talked about a little bit of page five, but
7 now we're up to 8, "Name Change" and 9, "Prayer." Frank.

8 MR. GILSTRAP: All right.

9 CHAIRMAN BABCOCK: And then Elaine.

10 MR. GILSTRAP: This box says, "You cannot
11 use this form to change your name to anything other than a
12 name you had before you got married." Is that the law,
13 you can only do that in the divorce?

14 HONORABLE ANA ESTEVEZ: To a previous name.

15 MR. GILSTRAP: Or could I change my name to
16 Chad Ocho Cinco or Sting?

17 MS. McALLISTER: Not in a divorce.

18 MR. GILSTRAP: I mean, is it the law, or I
19 mean, this may just be a prudent limit on creative
20 self-expression and be justifiable, but the fact that you
21 don't want to have the judge to have to deal with all of
22 these people that want exotic names, but I'd just like to
23 know.

24 MS. McCALLISTER: You can't change it in a
25 divorce decree to something other than your original --

1 MR. GILSTRAP: That's the law.

2 MS. McALLISTER: That's the law. They can
3 do it in another pleading.

4 MR. GILSTRAP: Okay. And there's several
5 provisions in the response, and in the decree this is
6 unclear because if you read it then it has first, middle,
7 and last. I gather from that that's the name I want, but
8 it doesn't really tell me. That needs to come after the
9 second line, which needs to say, "I ask the court to
10 change my name back to the name I had before marriage,
11 which is as follows," and then the blank needs to be
12 there.

13 CHAIRMAN BABCOCK: The lawyer formerly known
14 as Frank. I like that. And we've got little Richard over
15 here, too. Yeah, Professor Carlson.

16 PROFESSOR CARLSON: I had my hand up before
17 back on page four, and I'm sorry to digress.

18 CHAIRMAN BABCOCK: I'm sorry.

19 PROFESSOR CARLSON: Is there a definition
20 anywhere of "separate property," or are these people just
21 supposed to know that? Do we mean the legal definition of
22 "separate property" here?

23 MR. ORSINGER: I think there is an effort to
24 practically translate that by saying what it says about
25 gift. Let's see.

1 CHAIRMAN BABCOCK: Well, the second sentence
2 says, "I owned this personal property before," italicized,
3 "I was married."

4 MR. ORSINGER: That's the effort to explain
5 what separate property is, and it leaves out several
6 categories of separate property, although they're not
7 likely to arise, and I don't want to hear David Peebles'
8 withering consent to my next comment, but, you know,
9 partition agreements, and there's other ways that the
10 Constitution and Family Code recognize separate property,
11 unlikely to appear by people who are truly poor, who are
12 the ones who are supposed to be using this form.

13 PROFESSOR CARLSON: And do you think most
14 people know what biological children are, as opposed to
15 saying, "My spouse and I do not have any children born of
16 our marriage" or "born during our marriage"? They may
17 think that's, you know, some science fiction --

18 CHAIRMAN BABCOCK: Test tube babies. Could
19 be. Okay. Any other comments about "Name Change" or
20 "Prayer"?

21 MR. ORSINGER: Well, I had -- I'm sorry.
22 I'll go last. Go ahead, Frank.

23 CHAIRMAN BABCOCK: Frank.

24 MR. GILSTRAP: On the last line, boldface,
25 "I understand that I must let the court and my spouse know

1 in writing if I change my address." Is -- does the law
2 require that? Does the law require you to do that, or is
3 this just good advice?

4 CHAIRMAN BABCOCK: I think the law requires
5 that.

6 MR. ORSINGER: I don't think it requires it
7 before there's a decree.

8 MR. GILSTRAP: Well, this points up to a --
9 this points up a problem with these forms, and that's
10 this: What we're doing is we need to let this person know
11 that he really ought to tell everybody about when he
12 changes his name, which is what he ought to do, so but we
13 put it in there as a statement as something I state in
14 court that I understand and must do this. The problem is
15 these forms don't really have adequate instructions, and
16 the way -- and that may not be a problem because what will
17 probably happen is this, is that the forms if they're
18 approved at the Supreme Court, the next day some private
19 company is going to put out a set of forms with a set of
20 instructions, and that may be the best way for it to work,
21 but, again, this points up a problem with the forms. If
22 we want people -- people to have instructions, we've
23 either got to write them or let someone else write them,
24 because they're inadequate now, they don't have enough
25 instructions.

1 MR. HAMILTON: I think the Court ought to
2 copyright their forms.

3 MR. ORSINGER: I don't think the Court can
4 copyright anything. Governmental agency.

5 MR. GILSTRAP: I don't think you can
6 copyright the form, and what's the Court going to do, sue
7 somebody to stop them from using the official forms?

8 CHAIRMAN BABCOCK: Yeah, we'll license the
9 forms. Richard.

10 MR. ORSINGER: We may have run out of
11 comments on the name change and the prayer.

12 CHAIRMAN BABCOCK: We have.

13 MR. ORSINGER: So is now is the time to say
14 something about anything that should be added to the end
15 of this petition, so I would like to say that the
16 subcommittee felt there were two things that should be
17 added. One has been mentioned, an affidavit, that these
18 allegations are true, and the reason is that when a
19 petition is filed by an officer of the court they have an
20 ethical obligation to plead truthfully, and they're
21 subject to Rule 13 sanctions, and they know it, but a
22 layperson has no ethical obligations at all, and they will
23 not know anything about Rule 13 sanctions. So it was our
24 view that if you don't have an officer of the court
25 performing a kind of a truth verification process for

1 pleadings and you have laypeople without any constraints
2 on what they say, that putting them under oath was a good
3 substitute. The other suggestion we made --

4 CHAIRMAN BABCOCK: Can I just stop you for a
5 minute?

6 MR. ORSINGER: Yes.

7 CHAIRMAN BABCOCK: Rule 13 says, "The
8 signatures of attorneys or parties constitute a
9 certificate by them that they have read the pleading,
10 motion, or other paper to the best of their knowledge," et
11 cetera, et cetera.

12 MR. ORSINGER: Okay. So how many of the
13 people that are signing this are going to have read Rule
14 13?

15 CHAIRMAN BABCOCK: But you just said that
16 Rule 13 only applies to lawyers, and that's not true.

17 MR. ORSINGER: Well, I'll amend my statement
18 that Rule 13 sanctions can be brought against a layperson
19 if you can show -- I believe that you have to show a
20 subjective effort to -- I'm writing a paper on that right
21 now, which is way overdue, by the way.

22 CHAIRMAN BABCOCK: Well, we'll pause for a
23 minute to cry about your whining.

24 MR. ORSINGER: The other point I wish to
25 make is that there is a practice in this state, which is

1 prevalent, but I don't think is in accordance with the
2 Rules of Procedure, and that is for local judges to adopt
3 standing orders that have the effect of automatic
4 temporary restraining orders when a divorce petition is
5 filed. To my knowledge none of them have been submitted
6 to the Supreme Court approval or have been -- or have
7 received the Supreme Court approval, but it's prevalent.
8 In fact, Bexar County's in the process of adopting them
9 right now. Have some of them been approved?

10 MS. SECCO: Well, there are local rules that
11 have been approved previously by the Supreme Court, which
12 include those standing orders as appendices.

13 MR. ORSINGER: Oh, okay.

14 MS. SECCO: This has come up recently, and
15 I've been researching to see if there was ever any actual
16 discussion of the approval of the appendices by the Court,
17 but they have been approved. It's unusual, though, and it
18 doesn't -- I'm just not sure if they were approved as a
19 matter of course because they were attached to the back of
20 the local rules or if there was -- you know, if the Court
21 actually evaluated the standing order.

22 CHAIRMAN BABCOCK: Let me just stop you for
23 a second. You say we should consider adding two things.
24 One is an affidavit. What's the other one?

25 MR. ORSINGER: The other one is that the

1 local rules in the counties that have adopted these
2 standing orders require that the standing orders be
3 stapled to the back of the petition and that they have the
4 effect of a court-signed temporary restraining order, even
5 though there is no court's signature, and that some of
6 these judges feel like they're enforceable by contempt
7 while many of the practicing lawyers feel like all of this
8 is a violation of due process of law; however, the local
9 rules do require that petitions attach these standing
10 orders, and this form doesn't recognize that.

11 Now, Travis County has its own set of forms,
12 and their set of -- their forms that have a petition in it
13 have a little block there telling them about the Travis
14 County standing orders and about how they have to attach a
15 copy of it and that the respondent has to be given notice
16 that if he violates a standing order that he can be held
17 in contempt. It does seem ill-advised to me, even if the
18 practice is not officially approved, just that it's
19 prevalent, for us to design a form that violates the local
20 rules in so many jurisdictions.

21 CHAIRMAN BABCOCK: How did the subcommittee
22 feel about the affidavits? What was the vote on that?

23 MR. ORSINGER: The vote on affidavits was --
24 -- that was five to one, five to one vote in favor of an
25 affidavit to back up the petition.

1 CHAIRMAN BABCOCK: Okay. What about the
2 second thing, the attaching the --

3 MR. ORSINGER: That was also a five to one
4 vote. There was one member of the subcommittee who said
5 he didn't think that -- he thought the form should say
6 that the standing order shouldn't apply if you're filing a
7 pro se petition, which I don't think it should apply ever
8 because it may be a due process issue, but they're there,
9 and so the question is, are we just going to promulgate a
10 form that we know violates all of these unofficial local
11 rules?

12 CHAIRMAN BABCOCK: Frank.

13 MR. GILSTRAP: It's a big problem. I'd like
14 if possible to see some way to say that the standing
15 orders do not apply. One problem is this. If there's a
16 standing order that's issued, the respondent has notice,
17 assuming it's valid; and he has a gun at home, he is
18 committing a crime under Texas law, by the existence of
19 the restraining order or the temporary injunction, and
20 he's -- that is law. It's a case out of the Fifth Circuit
21 which dealt with Federal law called Emerson that's well
22 known in this regard. Some poor doctor down in Tom Green
23 County got sued for divorce. They put a temporary order
24 in place. He's in violation by the fact that he had a
25 derringer at home that he had bought, it was a collector

1 item, and he was convicted of a violation of Gun Control
2 Act. It may not be applicable here because there is no
3 hearing, but under state law all you have to do is have
4 notice.

5 CHAIRMAN BABCOCK: Justice Patterson.

6 HONORABLE JAN PATTERSON: We still have
7 Judge Sheppard here from Travis County, and I wonder,
8 Judge, what your view of whether we need an affidavit here
9 would be.

10 HONORABLE SUSAN SHEPPARD: I guess I don't
11 have an opinion on that at all, but I was kind of thinking
12 in my mind about the comments on the standing order
13 because I know our local rules require the clerk to attach
14 the standing order if the petitioner or the petitioner's
15 attorney has not done so, so the responsibility ultimately
16 falls on the clerk for making sure that the standing order
17 is attached.

18 CHAIRMAN BABCOCK: Richard Munzinger, and
19 then Justice Christopher.

20 MR. MUNZINGER: This is a related question.
21 I would like to direct it to Richard as well as to the
22 rest of the group. Did your subcommittee give thought or
23 does it have a recommendation to the Court as to whether a
24 specific rule be promulgated or a series of rules be
25 promulgated by the Court directed towards defining when

1 these forms may be used, not used, and how? Because we
2 make a number -- we're making a number of assumptions here
3 that this person will do that or not do that, trial courts
4 will or won't use a particular form if property is
5 involved, et cetera, raising the question with -- to me at
6 least, whether the Court should promulgate a rule
7 regarding the use of these forms by trial courts and
8 whether your committee thought of that.

9 MR. ORSINGER: Our committee definitely
10 thought about and our committee was extremely divided on
11 what we should say about it, but the order that was used
12 to implement the protective order kit, to my recollection
13 and to my study of the record, was not vetted with the
14 Supreme Court Advisory Committee before it was issued, and
15 so I think that members of the subcommittee thought it
16 would be desirable if the order that was implementing
17 these forms would be sent through the committee process
18 and also open to public comment before it was implemented.

19 Now then, what the order says is something
20 that we've been discussing throughout yesterday and today,
21 which is if we're going to mandate that the forms not be
22 rejected merely because they're forms, how far does that
23 go? Is a district judge or a county court at law judge
24 entitled to refuse to sign an order or a decree even
25 though it's a form because they don't think it's supported

1 by the pleadings because the pleadings are inartfully done
2 by a pro se, or do you have to forgive the formalities
3 that are not met or the requirement of pleadings? And
4 then what do you do if the proof of the pro se is
5 inadequate to support the totality of the relief in the
6 decree? Does the judge just deny the unproven part, or
7 does the judge elicit the information to support the full
8 relief granted, or does the judge just sign the decree
9 even though there's no evidence to support that part of
10 the decree?

11 We feel like the Supreme Court needs to be
12 very careful about the way it mandates the use of the
13 forms so that it doesn't encroach on the duty or the
14 prerogative of the trial court to be responsible for the
15 contents of their orders and decrees. I don't know if
16 that's responsive or not.

17 CHAIRMAN BABCOCK: Justice Christopher, and
18 then Justice Bland.

19 HONORABLE TRACY CHRISTOPHER: I would like
20 to speak out against a requirement of having these
21 petitions be notarized or a declaration of perjury,
22 whichever -- declaration under penalty of perjury,
23 whichever we decide on. We are asking them, especially in
24 paragraph 7, to make fairly complicated statements about
25 what is or is not separate property versus community

1 property; and if we include it -- if we add a paragraph in
2 there about debts also, we could have problems about
3 they've forgotten something and they don't put it in there
4 and somehow that could affect them farther down the road;
5 and if you're having a statement that every fact is true
6 and correct in connection with the pleading, I think
7 that's a little higher standard than we should hold them
8 to.

9 CHAIRMAN BABCOCK: Justice Bland.

10 HONORABLE JANE BLAND: I agree with Judge
11 Christopher, and perhaps a middle ground would be to
12 include in the form a representation that "I do not own
13 real property, I have no present or future interest in a
14 401(k) or retirement plan." That wouldn't be sworn under
15 oath, and so it could be amended, or the matter could be
16 tried by consent if the evidence of the prove up is
17 somehow different than what's in the petition, but it
18 still would be subject, as you pointed out, Mr. Chairman,
19 to Rule 13, so that if there was an attempt to do this in
20 bad faith then the trial judge in his or her discretion
21 could, you know, take appropriate measures and it has all
22 the kind of due process considerations that are built into
23 Rule 13. It also would get rid of the idea that somebody
24 has now sworn under oath and could be estopped from taking
25 a different position in other proceedings. We tend to

1 allow free amendment of pleadings, but affidavits and
2 declarations are a little more difficult to amend, and
3 they're a little more weighty when it comes to using them
4 in other proceedings.

5 CHAIRMAN BABCOCK: Judge Estevez.

6 HONORABLE ANA ESTEVEZ: When we talked about
7 the affidavit or declaration, we -- I think the people
8 that were in favor of them were in favor for different
9 reasons, and several reasons. One of them was to vet who
10 is going to use the form, but as far as judicial economy
11 goes, if that's part of their form and they're filling it
12 out at the time of their petition when they start then
13 they'll notice it's another way of saying "stop," and it
14 won't waste the judicial resources when they show up and
15 all of the sudden they go, "Oops, I am pregnant," or "She
16 is pregnant" or whatever issue it is, because it wasn't --
17 no one ever intended it to be everything in the petition,
18 is true and correct. It was the guidelines of who uses
19 the form, so it would be either "I swear" or "I state" or
20 whatever the statement may be, "I state that I am not
21 pregnant" or "My wife is not pregnant at this time. I
22 state that there has been no children born by my wife
23 during this period of time, that there is no real
24 property, land," and it's just specifically for the
25 criteria that someone must meet in order to use the form.

1 It wasn't intended to go specifically to
2 every piece of property, but obviously if they say they
3 have no property and then it turns out, well, yeah, they
4 did have the retirement plan then I think it's okay to
5 have those consequences because those are the type of
6 consequences they should have because they're
7 intentionally lying about it. Now, if they just didn't
8 know about it because some people may not know the
9 benefits they're getting in their job for years and years,
10 I think that's probably something that could happen, and
11 if they can prove that then I don't think that it would
12 have the same consequences anyway.

13 CHAIRMAN BABCOCK: Peter, and then we're
14 going to take our morning break.

15 MR. KELLY: A few years ago Lonny and I
16 worked on a brief in the Court of Criminal Appeals where
17 it's a criminal act to file a false government document in
18 court, and so a misrepresentation or a misstatement made
19 in a verified pleading could subject a pro se litigant to
20 criminal prosecution by the district attorney.

21 CHAIRMAN BABCOCK: Okay. Let's take our
22 morning break. Let's confine it to 10 minutes, and we'll
23 get right back at it, and we'll start with "Respondent's
24 Answer to Divorce."

25 (Recess from 10:41 a.m. to 10:49 a.m.)

1 CHAIRMAN BABCOCK: All right. We're back on
2 the record, and we're going to finish these forms today,
3 so if that requires us to stay a little bit after noon,
4 we'll do it. I think we're making good progress, but --
5 and we want to have a full record, so don't anybody in
6 their haste not say what needs to be said, but on the
7 other hand, try not to do duplicative comments. Yes,
8 Steve.

9 MR. BRESNEN: Mr. Chairman, I'm not trying
10 to insert myself at any time, and I don't intend to
11 further, but I would request, we've given an extensive
12 list of problems with these forms that are very specific
13 and drawn to page and line number, so I would request that
14 that be included as part of the record, since it's not
15 going to make it into the transcript.

16 CHAIRMAN BABCOCK: Yeah, it already is in
17 the record, but it will be included and considered, and,
18 Steve, I've got your seven-page document, and there's some
19 things --

20 MR. BRESNEN: Some are and some are not.

21 CHAIRMAN BABCOCK: Some I've already talked
22 about today, and there are a couple that are coming up.

23 MR. BRESNEN: Okay. Thank you very much.

24 CHAIRMAN BABCOCK: Okay, Brandy, come on,
25 let's go. Chop, chop. So before our number dwindles so

1 we can't see that we're here anymore, let's get through
2 these things. "Respondent's Answer to Divorce." Frank,
3 do you have any comments about it?

4 MR. GILSTRAP: No.

5 CHAIRMAN BABCOCK: Okay. Peter.

6 MR. KELLY: I just wanted to correct my
7 earlier statement. Apparently, Valsames is a brand of
8 pickle. The name of the case is V-a-s-a-l-i-s. And also,
9 it makes criminal any representation to the court that
10 does not have to be verified, and there are prosecutions
11 occurring statewide on that basis. The representations,
12 even if it's not made in a verified context, if they are
13 false or misleading can be prosecuted as a false
14 government document.

15 CHAIRMAN BABCOCK: Okay. Thank you. All
16 right. The record will stand corrected in that regard.
17 Any other comments about the respondent's answer?
18 Professor Carlson.

19 PROFESSOR CARLSON: I just want to echo
20 what's been said earlier, and I know you don't want me to
21 do that, but I really think there need to be additional
22 warnings to the respondent that parallel with the
23 petition, and I still would prefer an agreed petition.

24 CHAIRMAN BABCOCK: Okay. Justice Gray.

25 HONORABLE TOM GRAY: Just so that it's

1 clear, just because I'm commenting doesn't mean that I
2 agree with the use. Okay?

3 CHAIRMAN BABCOCK: Yeah.

4 HONORABLE TOM GRAY: I mean, since we
5 haven't had that vote.

6 CHAIRMAN BABCOCK: No estoppel.

7 HONORABLE TOM GRAY: The -- evidence of the
8 fact that we're having a hard time getting our mind around
9 this because of the lack of focus on the scope of the use
10 of these particular forms I don't think could be better
11 demonstrated than in the warning that says, "You need an
12 attorney. You may be putting yourself, your children, and
13 personal property and money at risk. You're not supposed
14 to be using the forms if you have children," that we have
15 this warning attached to, but it doesn't mention the real
16 property in the warning; and so you're not supposed to be
17 using the form if you have children or real property, but
18 yet you're only warned about the need for the attorney in
19 the event there's children, and it just -- that's just
20 evidence to me of a real problem of why we're having a
21 problem focusing on a particular form or group of forms
22 that's just -- it's there. I mean, that's just an example
23 of how it's not comprehensive and we're not able to focus
24 on how to get it right with regard to a batch of forms.

25 CHAIRMAN BABCOCK: Justice Jennings.

1 HONORABLE TERRY JENNINGS: And again,
2 focusing on the respondent's answer; is that right?

3 MR. ORSINGER: Yes.

4 CHAIRMAN BABCOCK: We are on respondent's
5 answer.

6 HONORABLE TERRY JENNINGS: You know, with
7 the idea that maybe a respondent might be feeling
8 pressured into this, that we have the warning box on the
9 waiver of service, and it occurs to me that that same
10 warning box should be in regard to the answer, and there
11 ought to be something to the effect of "You do not have to
12 agree to this divorce if you don't want to" or something
13 like you would have in a guilty plea in a criminal case
14 where it's, you know, "I freely and voluntarily waive my
15 right to see a lawyer and agree to this divorce" and that
16 they shouldn't sign it if they feel under pressure to sign
17 it, that they're doing it freely and voluntarily. There
18 ought to be something in there to protect someone if
19 they're feeling pressured to sign something like this.

20 CHAIRMAN BABCOCK: Okay. Thank you. Lisa.

21 MS. HOBBS: I have three comments. One, the
22 first thing, "Print court information exactly as it
23 appears on your original petition for divorce." I would
24 say "the." It was presumably the other spouse that filed
25 the petition, and then I'm just going to go on the record

1 to say that the civil procedure -- the code of CPRC
2 provision that requires Texans to put in their driver's
3 license numbers and last three of their Social Security
4 number is the worst law I think the Texas Legislature has
5 ever passed that we are requiring these people to put in
6 this kind of sensitive information into every court
7 pleading when most of the time it won't matter in the case
8 at all. I know this is required by statute, but this is
9 just horrible law to require these numbers in these
10 petitions. I don't think it requires it in answers, and I
11 wonder if we might want to exclude it in answers so that
12 we're just complying with the law and not adding more
13 sensitive information in our court case records.

14 And then third, we might want to -- under
15 "Contact Information" we might want to put a line in there
16 that says, "Local rules may allow service by e-mail" or
17 something, because the three ways that you have to serve
18 under the Rules of Civil Procedure -- or actually, two of
19 them actually cost these people money, in a way if they
20 could e-mail the documents, which is what a lot of us are
21 able to do in most of the big counties now, so I would
22 just put in here that "Local rules may allow you to e-mail
23 those," just so they can check with the local rules on
24 that.

25 CHAIRMAN BABCOCK: Okay. Any other comments

1 about the respondent's answer? Richard Orsinger.

2 MR. ORSINGER: The subcommittee's only point
3 that it noted, which was also another eight to zero vote,
4 was that it doesn't provide for the respondent to plead
5 his or her separate property, and we felt like that was an
6 imbalance in the form kit that petitioner is encouraged to
7 disclose the petitioner's separate property, but the
8 respondent is not encouraged to disclose the respondent's
9 separate property, and there's no definition of separate
10 property or even simplified explanation of separate
11 property, and we feel like that that's a danger in
12 adopting a set of forms that are evaluated mostly from the
13 petitioner's perspectives, that the forms are not balanced
14 and they are biased, and so it was our feeling that there
15 should be the same disclosure provisions in here for
16 property as there are in the petition.

17 CHAIRMAN BABCOCK: Okay. Any other comments
18 about this? All right. I want to skip over temporarily
19 "Waiver of Service" so we can get to the final decree of
20 divorce. I want to be able to have as many of our
21 committee here present when we're talking about this.
22 We're going to go to that next. "Final Decree of
23 Divorce," seven-page document. Let's go page by page, and
24 let's start with the first page, paragraph 1,
25 "Appearances." Any comments on page one? Yeah, Pete.

1 MR. SCHENKKAN: We talked briefly about this
2 before, the retirement plan issue in the instructions. I
3 think one of the confusions that I understand is common,
4 I've had one personal experience myself dealing with a
5 person without a lot of assets, a couple without a lot of
6 assets, about pension, retirement plan, 401(k). A lot of
7 people think "I don't have a retirement plan unless I am
8 already retired." They don't understand that they have an
9 interest in something that will give retirement benefits
10 later and that that is covered by this. So I think some
11 words like even if we are -- you know, "either my spouse
12 is now retired" is necessary to make sure they understand
13 they're supposed to talk about retirement stuff they will
14 get or may get.

15 CHAIRMAN BABCOCK: Okay. For those of you
16 just joining us, we're on the final decree of divorce,
17 page one. And Justice Gray.

18 HONORABLE TOM GRAY: I know you've said you
19 wanted to start with the appearances, but the box up there
20 that has the warnings in it, you have to remember this is
21 now the final decree. It's the Court's decree. It's
22 their order, and I'm going to get the appeal that says,
23 "This divorce decree is invalid because, in fact, there
24 was real property" or "There was a pension or retirement
25 plan that we wanted to divide," or "We did want spousal

1 maintenance" and you've told the judge, "Do not use this
2 form if." Although it says "you," it's talking to the
3 judge, because this is a -- the judge's form, not the
4 party's form.

5 CHAIRMAN BABCOCK: So if the judge has kids
6 under 18, no chance this form could be used. Good point.
7 Okay. Anything else, Judge?

8 HONORABLE TOM GRAY: (Shakes head.)

9 CHAIRMAN BABCOCK: All right. Lisa.

10 MS. HOBBS: I would strike the line in the
11 opening paragraph that says, "The following people were
12 present," because in the boxes below you're asking them to
13 check who was present, and sometimes the box is going to
14 be checked that they were not present, so I would just
15 strike it out of the -- I would just say, "A hearing took
16 place on" what date, period, "There were no jury" -- "no
17 husband or wife requested jury" and then let the
18 appearances speak for themselves as to who is present.

19 CHAIRMAN BABCOCK: Good point. All right.
20 Anything else? Richard.

21 MR. ORSINGER: The subcommittee was very
22 active on the appearances paragraph of this form. It
23 might be to your surprise.

24 CHAIRMAN BABCOCK: Yes, shock.

25 MR. ORSINGER: And I don't want to take the

1 time to burden the record, but I would like whoever is
2 reading this record to make an important decision about
3 these forms to look at the subcommittee report on that
4 issue because we have five subparts of comments about this
5 one paragraph in this decree.

6 CHAIRMAN BABCOCK: Okay. Good point.
7 Thanks. All right. Anything else on page one? Page two,
8 starting with paragraph 2, "The Record." Comments about
9 page two. Richard.

10 MR. ORSINGER: Okay. The subcommittee was
11 divided. Let's see. I don't know that -- it was three in
12 favor and three opposed to putting a blank in here to
13 identify the court reporter. Those of us who were in
14 favor of having the court reporter's name is, is that
15 some -- at some point a pro se respondent might wake up
16 and realize that something really awful happened, and they
17 may want to go back and order the record that was made at
18 the time of the divorce for an appeal or a bill of review
19 or for whatever, and after a period of time, particularly
20 in these uncontested dockets where the court reporter may
21 be taking 10 or 20 prove-ups all in one take, it's going
22 to be well nigh impossible to figure out who was recording
23 all of the defaults or uncontested on the same -- on a
24 particular day, and so three of the committee wanted the
25 name of the court reporter in here so we know who to

1 contact and three thought that it was undesirable; and so
2 that -- I'd like to throw that out for discussion or
3 consideration.

4 CHAIRMAN BABCOCK: Okay. Any comments about
5 that? Judge Peeples.

6 HONORABLE DAVID PEEPLES: I just don't
7 understand what you lose by naming the court reporter, and
8 it does help later on to know who did the record. It was
9 reported, and I just don't understand any possible
10 argument not to do it. I think the task force ought to do
11 it.

12 CHAIRMAN BABCOCK: Any possible argument not
13 to do it? Raise your hand. Justice Moseley.

14 HONORABLE JAMES MOSELEY: Trial judge is a
15 court of general jurisdiction in Texas and is the primary
16 repository of judicial power for trials, and I think any
17 time either by committee or by promulgated forms or orders
18 we start telling trial judges what they have to put or the
19 form in which they have to put their judgments, we are
20 stepping on some thin ice.

21 CHAIRMAN BABCOCK: Okay. Justice Patterson.

22 HONORABLE JAN PATTERSON: I agree with Judge
23 Peeples, and I don't think it's asking the trial judge to
24 do something here. There are a surprising number of
25 questions that come up about the record and the identity

1 of the court reporter, so I think it's a good suggestion.

2 CHAIRMAN BABCOCK: Okay. Judge Estevez.

3 HONORABLE ANA ESTEVEZ: It's on our docket
4 sheet, and I think it's extra work.

5 MR. ORSINGER: It's on your docket sheet.

6 HONORABLE ANA ESTEVEZ: It's on my docket
7 sheet.

8 MR. ORSINGER: It's not on everybody's
9 docket sheet.

10 HONORABLE ANA ESTEVEZ: Well, they can look
11 back and see what date it was, and they can always go back
12 and find out who the court reporter was.

13 MR. ORSINGER: As an appellate lawyer that
14 has had this problem multiple times and spent lots and
15 lots of my client's money trying to reconstruct it, you
16 run your court in a more orderly way than some courts.

17 HONORABLE ANA ESTEVEZ: Well, thank you.

18 CHAIRMAN BABCOCK: Roger.

19 MR. HUGHES: Well, first, I sympathize with
20 trying to figure out who the court reporter is because,
21 for example, in Hidalgo County you may start out the
22 morning with court reporter A and the middle of that that
23 court reporter has to go do something so they'll bring in
24 a pool court reporter and starting at 10:30 it was court
25 reporter B, but I think what has happened under the

1 current appellate rules is all you have to do is get it to
2 the official court reporter of that court, a request for a
3 record, and it's up to the official court reporter to
4 figure out who the heck was actually sitting in the steno
5 chair at the time of the hearing. That said, I mean, I
6 think, once again, it probably is a good idea for -- maybe
7 for the judgment to reflect who the court reporter is, but
8 it's not a requirement, and as they've said before, once
9 again, we're now freighting down another requirement that
10 isn't law, but soon will be.

11 CHAIRMAN BABCOCK: Eduardo.

12 MR. RODRIGUEZ: Yeah, I just don't know why
13 we even have an issue about whether or not it ought to be
14 recorded. I think it needs to be recorded. I think it
15 takes away from the importance of the matter if they can
16 just agree to not have something done as it's done
17 normally in the district courts, and so I would not -- I'm
18 in favor of not -- just not having an issue about it and
19 just have every divorce be taken down by a court reporter,
20 like it should be.

21 CHAIRMAN BABCOCK: Lamont.

22 MR. JEFFERSON: I mean, I understand the
23 argument why you want to identify a court reporter, but
24 that's in every case, and the case where it's the least
25 important, you would think, are these cases. So if you're

1 going to change a rule or add a rule that you're going to
2 identify the court reporter, it just seems like an odd
3 place to do it, given all of the complex cases.

4 CHAIRMAN BABCOCK: Justice Bland.

5 HONORABLE JANE BLAND: I agree about naming
6 the court reporter. I don't think it's necessary. I
7 agree that we need to take this out with a check box about
8 agreeing not to make a record. That's just inviting there
9 never to be a record in a default case in every kind of
10 case, and the presumption should be that a proceeding like
11 this should be recorded, and that's a presumption under
12 our rules, and absent affirmative waiver we don't allow a
13 court reporter not to make a record, and so by putting
14 this in the form we're going to make that a routine, and I
15 don't think it should be routine.

16 CHAIRMAN BABCOCK: Justice Christopher.

17 HONORABLE TRACY CHRISTOPHER: We don't
18 mention court recorders in this particular spot, and I do
19 know, for example, in Harris County we are having
20 budgetary considerations with respect to court reporters
21 when you have a magistrate judge and an official -- and a
22 district judge and you only have one reporter for the two
23 judges, and I know they're looking to use court recorders,
24 maybe even having the associate judge be the court
25 recorder, you know, turn on the videotape machine. I

1 think we have to keep costs in mind, and we can have an
2 inexpensive record of something like this via videotape.

3 CHAIRMAN BABCOCK: Judge Peeples.

4 HONORABLE DAVID PEEPLES: When the court
5 reporter is in the courtroom reporting things like this or
6 is summoned from his or her office to come do it that
7 means that reporter is not working on the records that
8 you-all want and you-all get mad and everything else when
9 the court reporter can't stay current, and on something
10 that is just absolutely is not necessary to report it you
11 shouldn't summon the reporter away from his or her work.
12 It's very inefficient to do that and something we
13 shouldn't mandate.

14 CHAIRMAN BABCOCK: Judge Estevez.

15 HONORABLE ANA ESTEVEZ: And I'm going to
16 agree with Judge Peeples. I have a rule that if it's an
17 agreed no children divorce they don't have to have a court
18 reporter. I mean, that's the only time I allow them to
19 waive it because even if they want to waive a recording, I
20 may not want to. So if it's an agreed divorce with no
21 children then they have the option of not having it
22 recorded. I usually let them know if you want a reporter
23 -- because my court reporter is behind on all of the
24 transcripts that other people have requested, usually
25 criminal cases, but, you know, I'm drawing her out from

1 work that other people are asking for to do something that
2 should never be appealed because it's agreed and there
3 shouldn't be any issues to appeal, and so I don't think
4 you should require it so that the judge can determine
5 what's best for that situation.

6 CHAIRMAN BABCOCK: All right. Any comments
7 about "Jurisdiction," "Children," paragraph 5, "Divorce"
8 or paragraph 6? Richard Munzinger.

9 MR. MUNZINGER: I note that the court finds
10 that the original petition for divorce was filed more than
11 60 days ago. It does not find the other facts
12 specifically, and I don't know if that's a requirement
13 that the court, for example, find the husband and wife do
14 not have any biological or adopted children together, but
15 I don't know why the phrase that the court has found this
16 judicially based upon evidence is excluded from paragraph
17 4. I don't know why the grounds for divorce are excluded
18 from paragraph 5. I don't do divorce work, but when I did
19 many years ago I always had the court rule that the court
20 finds that the -- whatever the statutory language is,
21 people don't like each other and whatever, that that is
22 made a judicial finding as distinct simply from saying
23 that they're divorced. There's no judicial finding here
24 to direct that some statute have been met.

25 CHAIRMAN BABCOCK: Peter.

1 MR. KELLY: Just on paragraph 6 I want to
2 reiterate the comments made earlier when we were looking
3 at the petition, and I assume that whatever modifications
4 the subcommittee is going to be making to the petition
5 will also be reflected in the decree, and just a more
6 random comment, on the very first line we were talking
7 about retirement, pensions, and 401(k). I'd also like to
8 add deferred compensation, which is an increasingly common
9 tactic, particularly on municipalities, for
10 post-employment compensation for costs.

11 CHAIRMAN BABCOCK: Okay. Frank.

12 MR. GILSTRAP: On Richard Munzinger's
13 comment, Richard Orsinger, isn't a statement of the
14 grounds of divorce required?

15 MR. ORSINGER: I don't know that I would say
16 that it is. Certainly the evidence has to be there to
17 support it, but I'm not sure that you have to state the
18 grounds.

19 MR. GILSTRAP: Okay.

20 CHAIRMAN BABCOCK: Okay. Let's go to
21 pages --

22 MR. ORSINGER: Well, I have a comment on
23 "Property and Debts," Chip.

24 CHAIRMAN BABCOCK: Okay. Yeah, on this
25 page.

1 MR. ORSINGER: The subcommittee just wanted
2 the full committee to note that in the allocation of debts
3 to the wife it includes debts on real property that are in
4 her name alone, and the committee four to two felt like
5 that this should be removed from the decree because it's
6 an acknowledgement that the form packet is being misused.

7 CHAIRMAN BABCOCK: Say that again, Richard.
8 I'm sorry.

9 MR. ORSINGER: Under the debts clause for
10 the debts that are assessed against the wife they include
11 liabilities associated with the real estate.

12 CHAIRMAN BABCOCK: What page are you on?

13 MR. ORSINGER: Well, I'm looking for that.

14 CHAIRMAN BABCOCK: Page six? Page six?

15 MR. ORSINGER: Yeah, wife's debts, right.

16 CHAIRMAN BABCOCK: Okay. And what's your
17 point again?

18 MR. ORSINGER: That the debt includes debts
19 associated with the real estate in wife's name, but now
20 that you --

21 MS. BARON: There's a parallel provision for
22 the husband's debts also, Richard, on page four.

23 MR. ORSINGER: Okay. On page four and page
24 six, in both instances they talk about assessing the debts
25 to the husband or to the wife on personal or real property

1 that are in that spouse's name or that this order awards
2 to that spouse, and so once again we're confronted with
3 the question that our form decree appears to anticipate
4 that these forms are being misused, and so we have to ask
5 ourselves the question are we serious about limiting the
6 use of the property to people that have real estate or
7 not, because if we are then the form decree shouldn't
8 acknowledge that they have real estate.

9 CHAIRMAN BABCOCK: Okay. The family law
10 section also raises a point, Richard, about the husband's
11 debts and the wife's debts and notes that the decree does
12 not include any indemnification language, and even though
13 the debts are apportioned to one party, without
14 indemnification the division of the debts is meaningless.
15 Is that something that we should be concerned about?

16 MR. ORSINGER: Yeah, probably so. I think
17 that's a valid concern. Let me explain that --

18 CHAIRMAN BABCOCK: It struck me that it was.

19 MR. ORSINGER: -- under Texas law a trial
20 court doesn't have the authority to affect the rights of
21 third parties that are not a party to the divorce, so if
22 there's a third party creditor that's not a party to the
23 divorce, nothing in this divorce decree changes that
24 creditor's rights. So if it's a community obligation or a
25 joint obligation, even though the decree may award the

1 debt to the husband or award the debt to the wife, in
2 fact, the debt is owed by whoever is owed under credit
3 law.

4 CHAIRMAN BABCOCK: Right.

5 MR. ORSINGER: And so the form decree in the
6 family practice manual backs up the debt allocation with
7 an indemnification allocation because we realize that even
8 if the debt is awarded to the husband the wife may end up
9 having to pay it, and therefore, we want to give the wife
10 a right to be reimbursed by the husband if a debt assessed
11 against him is actually collected from her, and so I think
12 it's correct that this is -- appears to divide the debt,
13 and it really doesn't divide the debt, and you should
14 probably back it up with an indemnification clause.

15 CHAIRMAN BABCOCK: Yeah. Carl.

16 MR. HAMILTON: This definition of separate
17 property on damages from the lawsuit that are not
18 compensation for lost wages, I think that should be
19 personal injury damages.

20 CHAIRMAN BABCOCK: Yeah, we talked about
21 that earlier, and I think that that needs to be adjusted.

22 MR. ORSINGER: Yeah, and it has to be lost
23 wages during marriage, and it needs to include or
24 recognize that community estate is liable for medical
25 expenses incurred during the marriage, so that needs to be

1 rewritten.

2 CHAIRMAN BABCOCK: All right. Any other
3 comments about the property provisions in pages three
4 through six? Frank.

5 MR. GILSTRAP: Going back to Richard's
6 comment, rather than burden this thing with an
7 indemnification provision that isn't going to be enforced,
8 I mean, with these kind of debts, what we need to do is
9 tell the people that even though the debt is awarded the
10 husband, you may still owe it. That's what we ought to
11 do. Now, insofar as the bottom of page three, the order
12 that "the husband gets the following property," I'm all
13 for simple language, but that probably goes too far.
14 Maybe we ought to spell it g-i-t-s.

15 CHAIRMAN BABCOCK: "Git it to 'em." Okay.
16 Richard.

17 MR. ORSINGER: To revisit the debt question,
18 if you look on page four, husband's debts, paragraph 9, it
19 says, "taxes, bills, liens, and other charges present and
20 future for all personal property that are in the husband's
21 name," but when you look on page six under wife's debts
22 it's the same for all personal and real property that are
23 in wife's name. It wasn't on the task force, but maybe
24 they recognized that that wasn't supposed to say "real"
25 and took it out of one area and not the other. It's

1 inconsistent, but I think the subcommittee's view is to
2 include any reference to real property in this decree is
3 inconsistent with the premise of the forms and should be
4 removed, or it constitutes nothing but an encouragement to
5 use this decree for the purposes it wasn't designed to
6 address.

7 CHAIRMAN BABCOCK: Yeah. Good catch.
8 Justice Christopher.

9 MR. ORSINGER: That was Marisa caught that.

10 CHAIRMAN BABCOCK: Marisa caught that? Wow,
11 she was out late last night.

12 MR. ORSINGER: Yes, I want to give her
13 public recognition for catching that.

14 HONORABLE TRACY CHRISTOPHER: I do think
15 it's very important that they would know that they're
16 still on the hook for the debt even though the debt is put
17 in the other spouse's name, because that would impact how
18 you would decide to split up the money. Like you might
19 think, okay, I'll take less money because he's getting
20 more debt, but if you're ultimately liable for that debt,
21 it's not a good deal.

22 CHAIRMAN BABCOCK: Yeah. Good point. Okay.
23 Any more comments about pages three through six? Marcy,
24 and then Peter.

25 MS. GREER: Well, I was thinking, and I

1 don't know if it belongs in these pages, and I echo what
2 Justice Christopher is saying because I had no idea that
3 that was a problem. I thought if the divorce decree
4 divides it -- and I know a number of people who are smart
5 people who didn't know that, so I think it's important to
6 advise them and also to tell them to send this divorce
7 decree to certain parties, including the creditors,
8 because a lot of times you can get off the debt if it's
9 been awarded to the spouse if you send it and give notice
10 to the creditors, to life insurance policies, and there
11 are a number of things that this decree -- places that
12 this decree ought to go once it's executed.

13 CHAIRMAN BABCOCK: Peter.

14 MR. KELLY: I hate to do this, I was trying
15 to harmonize, but on page one of the original petition it
16 says, "Do not use this form if you or your spouse owns or
17 is buying a house." It doesn't seem to include community
18 purchase of the house or ownership of the house. The way
19 it's phrased it sort of addresses separate ownership of
20 the house or purchasing of the house but not a community
21 ownership or purchase.

22 CHAIRMAN BABCOCK: Okay. Good. Yeah, Gene.

23 MR. STORIE: Two questions. I wonder about
24 "care, custody, and control," and in particular does that
25 prevent -- present some problem with fraud or overreaching

1 if one of the spouses just grabs some stuff and puts it
2 away; and secondly, on No. 5, for accounts listed in
3 husband's or presumably wife's name alone, does that
4 create the same sort of problem with potential fraud?

5 MR. ORSINGER: The answer, of course, is
6 "yes." The question is what do you do about it in the
7 form with no lawyers?

8 MR. STORIE: Well, I would suggest you
9 simply do not make an automatic allocation on that basis.
10 You have them list all of their property regardless and
11 then divide it up instead of having some presumption that
12 it's going to go to one or the other.

13 CHAIRMAN BABCOCK: Richard Munzinger.

14 MR. MUNZINGER: I direct this to Richard
15 Orsinger. Husband and wife, they are married. There is a
16 bank account in the name of the wife only. Is that
17 separate or community property? It's presumed to be
18 separate property of the spouse in whose name that the
19 account is carried, but subject to being proven that it is
20 community.

21 MR. ORSINGER: No, I'm afraid that all of
22 that is wrong.

23 MR. MUNZINGER: That's what I thought.

24 MR. ORSINGER: Yeah.

25 MR. MUNZINGER: That's the point. Here's a

1 form which is telling people if it's in the husband's name
2 or the wife's name you get it, it's yours. That isn't the
3 law.

4 MR. ORSINGER: Well, as a practical matter,
5 if this form is not being misused, most people are just
6 going to say, "He can have his car and his clothes and the
7 stuff that's in his accounts, and I'll take my car, my
8 clothes, and the stuff that's in my accounts." That's
9 usually the way these low asset cases go.

10 MR. MUNZINGER: I understand, but, again,
11 these are people who are acting without legal advice, and
12 they think, "Well, it's in his name, so it's his," but
13 that isn't the fact. In fact, it's arguably community
14 property.

15 MR. ORSINGER: It's presumptively community
16 property.

17 MR. MUNZINGER: I agree, and to these people
18 that may be substantial, just like the pension that you're
19 worried about. It may be all that these people have.
20 This is a -- to me it's a risk here, that, well, it's in
21 his name, he gets it. That is facile, and it's not in the
22 best interest of the people who are being -- having their
23 rights adjudicated --

24 CHAIRMAN BABCOCK: Justice Bland.

25 MR. MUNZINGER: -- if there's no warning to

1 them.

2 CHAIRMAN BABCOCK: Justice Bland, then
3 Professor Carlson.

4 HONORABLE JANE BLAND: I don't know that the
5 provisions about debt covers debt acquired before the
6 marriage, in particular student loan debt, because No. 9
7 is "Debt, Present and Future," but it's for all personal
8 property. I don't think student loans are personal
9 property.

10 MR. ORSINGER: Which page are you on, Jane?

11 HONORABLE JANE BLAND: I'm sorry. I'm on
12 page four. I think the husband's debts and I think the
13 wife's debts look similar, and so the first one deals with
14 debts in the husband's name alone for personal property.
15 The second one deals with debt incurred after separation.
16 The third one deals with debt on vehicles. The last one
17 deals with debt not in the husband's name alone, but what
18 about debt incurred prior to the marriage in the husband's
19 name alone that's not related to a vehicle or personal
20 property and in particular -- and this has come up now
21 more than once for me as a judge -- student loan debt,
22 which is a pretty common thing nowadays.

23 CHAIRMAN BABCOCK: Good point.

24 MR. ORSINGER: In reality it should have a
25 line item here that the debt incurred before marriage

1 should be awarded to the person who incurred the debt.

2 HONORABLE JANE BLAND: Yes.

3 MR. ORSINGER: Because that's separate
4 property debt.

5 HONORABLE JANE BLAND: Yes. But if it is
6 not stated in here --

7 MR. ORSINGER: No, I agree it's not.

8 HONORABLE JANE BLAND: -- the parties will
9 fight about who owns the debt.

10 MR. ORSINGER: Good for you.

11 CHAIRMAN BABCOCK: Get a gold star for that
12 one. Professor Carlson.

13 PROFESSOR CARLSON: I think this should be
14 an agreed judgment, or are we envisioning people can
15 appeal this judgment?

16 MR. ORSINGER: It's designed to use for
17 agreement where it's uncontested or a default judgment
18 where it's uncontested. It's not supposed to be
19 contested, but we provide a form for people to file an
20 answer, which at least for the pleadings level is a
21 contest.

22 CHAIRMAN BABCOCK: Let's say for the sake of
23 argument that it could be appealed, default or, you know,
24 whatever. Any issues raised there?

25 PROFESSOR CARLSON: I think there's going to

1 be lots of issues for appellate lawyers.

2 CHAIRMAN BABCOCK: Is that a good thing?

3 PROFESSOR CARLSON: If you're an appellate
4 lawyer.

5 MR. ORSINGER: No, not if the people don't
6 have any money. It's a whole new round of pro bono.

7 CHAIRMAN BABCOCK: Steve, let us get through
8 this first, if you don't mind.

9 MR. BRESNEN: Sure.

10 CHAIRMAN BABCOCK: Anything else on pages
11 three through six? All right. Let's go to page seven.
12 Here's some plain language for you, Frank, "muniment of
13 title."

14 PROFESSOR CARLSON: Muniment, a muniment.

15 CHAIRMAN BABCOCK: Yeah, well, that's
16 because I'm still in his "git" land.

17 MR. GILSTRAP: It's explained. It's
18 explained. It's okay.

19 MR. ORSINGER: It is?

20 MR. GILSTRAP: Muniment of title creates an
21 official record of ownership, a transfer.

22 CHAIRMAN BABCOCK: Okay. Any other comments
23 about page seven? All right. Going once.

24 MR. KELLY: One question about name changes.

25 CHAIRMAN BABCOCK: What's that?

1 MR. KELLY: Can we say "back to a legal name
2 used before marriage"? I mean, you can't change your name
3 to, you know, Bobcat. I mean, even if you used the name
4 before marriage, it has to be a legal name used before
5 marriage, right?

6 CHAIRMAN BABCOCK: Yeah. We talked about
7 that earlier today. Yeah, you've got to use the name
8 before marriage. Judge Christopher.

9 HONORABLE TRACY CHRISTOPHER: No. 10, "The
10 court has the right to make other orders if needed to
11 clarify or enforce the orders above." I'm not exactly
12 sure what we're anticipating there, and is it within 30
13 days or --

14 MR. ORSINGER: I'll be happy to respond,
15 Justice Christopher. Within 30 days, of course, the court
16 has plenary power to change anything they want, but I
17 believe this is intended to refer to Chapter 9 of the
18 Family Code that says that the court has the power to
19 enforce but not modify the decree, but in connection with
20 enforcement if the obligations are too vague to enforce by
21 contempt, the court has the power to clarify them. So we
22 have in a chapter of the Family Code that permits
23 post-divorce proceedings that occur after the decree goes
24 final. This sentence is in the family practice manual
25 form, and I believe that the family lawyers believe that

1 it refers to after plenary power is lost and you initiate
2 a proceeding under Chapter 9, and all this is doing is
3 unnecessary in saying that "Even though this is a final
4 decree and it's appealable, everybody needs to remember
5 that I have the jurisdiction to enforce it and to clarify
6 it later."

7 CHAIRMAN BABCOCK: Okay.

8 HONORABLE TRACY CHRISTOPHER: Could I ask a
9 follow-up?

10 CHAIRMAN BABCOCK: Yeah, sure.

11 HONORABLE TRACY CHRISTOPHER: If that
12 sentence is not in here, does that make any difference to
13 the court's ability to do that?

14 MR. ORSINGER: No. In my opinion, the
15 Family Code gives them that authority, and this recital is
16 unnecessary, but it's informative unless it confuses.

17 HONORABLE TRACY CHRISTOPHER: Well, I
18 believe that it would confuse.

19 CHAIRMAN BABCOCK: Justice Frost.

20 HONORABLE KEM FROST: I just had a brief
21 comment on the muniment of title. Should that be limited
22 to real property?

23 HONORABLE TOM GRAY: Not supposed to be any
24 real property involved in this.

25 MR. ORSINGER: Does it apply to automobile

1 titles and other titled --

2 HONORABLE KEM FROST: Right.

3 MR. ORSINGER: -- instruments? I think it
4 would.

5 HONORABLE KEM FROST: Yeah.

6 CHAIRMAN BABCOCK: Gene.

7 MR. ORSINGER: So if you have trailers,
8 boats, cars, and airplanes, which you're not supposed to
9 have an airplane.

10 CHAIRMAN BABCOCK: Gene.

11 MR. GILSTRAP: It's an old airplane.

12 CHAIRMAN BABCOCK: Gene first, then Richard.

13 MR. STORIE: Thank you. On 10 I thought it
14 was a little odd to say, "The court has the right to make
15 other orders," as if the court has some independent power
16 here. Maybe just "The court may make orders to clarify or
17 enforce the orders."

18 CHAIRMAN BABCOCK: Okay. Richard Munzinger.

19 MR. MUNZINGER: Regarding a judgment being a
20 muniment of title to some personal property such as a bank
21 account or a car, is it required that the bank account or
22 car be described with any level of specificity for it to
23 constitute a muniment of title that would be recognized in
24 any other proceeding or in any other circumstance? And if
25 so, does this form inform these pro se persons of that

1 fact, and does it call for the entry of the specificity
2 required by something to be a muniment of title? I don't
3 know the answer to the question about where this judgment
4 -- "Okay, you get your car," but it doesn't tell you that
5 it's a blue 1978 Ford or whatever it is, with a vehicle
6 identification number so-and-so. It says you get the car.
7 I question the validity of that.

8 HONORABLE ANA ESTEVEZ: They usually --

9 CHAIRMAN BABCOCK: Go ahead, Judge.

10 HONORABLE ANA ESTEVEZ: They usually do put
11 the car stuff on it. So it's, you know, we can -- the
12 judges that are not vetting but may be looking, I mean,
13 they do -- they do -- we don't just say, "I get the car."
14 It says what the car is, and it gives a good description
15 of it.

16 CHAIRMAN BABCOCK: Roger.

17 MR. HUGHES: I was just going to say I think
18 that kind of level of description may seem kind of picky
19 to the rest of us, but it's absolutely crucial. I mean,
20 these people may know that the blue Ford goes to Bubba and
21 the white Honda goes to Suzy, but that's because they know
22 these cars, have driven and loved them for the past 10
23 years.

24 CHAIRMAN BABCOCK: Sounds like a country
25 song.

1 MR. HUGHES: Yeah. But you take it down to
2 the county tax assessor to have the title changed over to
3 -- you know, to have it changed from Bubba and Suzy to
4 Suzy, and they're going to go, "We've got hundreds of
5 thousands of white Hondas registered. We don't know if
6 this is really yours or not. We need to see a VIN on it."
7 And I might also add that this may seem once again picky,
8 but because the state government and the county tax
9 assessors have gotten very vigilant about car titles,
10 forgery of car titles, changes, they've become real, real
11 hawks about car title changes being done properly to avoid
12 thievery, forgery, all sorts of things; and so what you
13 run into is these poor people who just want to get the car
14 changed are running into all of these rules and
15 regulations designed to prevent forgery and thievery, et
16 cetera, et cetera. Once again, these are all good rules,
17 but if there's nothing there to tell them to do it they
18 may end up having to come back to get it done right.

19 CHAIRMAN BABCOCK: Okay, Richard.

20 MR. ORSINGER: To go back to Richard's
21 earlier comment, I think the muniment of title concept
22 only applies to registered title, government registered
23 title whether it's to personal property title or real
24 property title. To me a bank account is not covered by a
25 muniment. Secondly, on the car situation, if the car is

1 already in your name it's no problem, but if the car is in
2 the other spouse's name, this decree makes it look like
3 you got your car, so you drive off in your car and you're
4 doing just fine until you try to sell that car, and you
5 find out you can't sell it because the title isn't in your
6 name.

7 So at that point you have to go see a lawyer
8 because a lawyer is going to have to file a post-divorce
9 enforcement proceeding, and if the vehicle doesn't have a
10 VIN number in it and you can't find the respondent or get
11 them to cooperate, then they're going to have to have an
12 adjudication, so it seems to me that as a practical matter
13 we ought to go further on automobiles, and we ought to
14 require that the VIN number be in here, and we ought to
15 have a warning or an order that the respondent sign a
16 power of attorney to transfer the title to the other
17 spouse, because that's the way you do it. You get a power
18 of attorney signed by the other spouse and then you go
19 down, and you register it, and you get title in your own
20 name, and I know these people aren't going to own real
21 estate, but they are going to own cars, and they're going
22 to think they got their car, and they didn't, and there's
23 going to have to be a second lawyer. I think we ought to
24 nip it in the bud and require more information at this
25 time.

1 CHAIRMAN BABCOCK: Frank.

2 MR. GILSTRAP: The problem is alleviated
3 somewhat by the provision that says "The wife is ordered
4 to sign any documents needed to transfer any personal
5 property listed below to the husband," and so she can go
6 to the husband and say, "Look, I want you to sign the car
7 title. It says here you've got to do it." That helps
8 some.

9 MR. ORSINGER: Well, usually the car title
10 can't be found, so what we normally do is we prepare a
11 power of attorney to transfer it and then you file the
12 power of attorney with the Department of Transportation --
13 did I say the right word?

14 MR. BRESNEN: Motor Vehicles.

15 MR. ORSINGER: Motor Vehicles. And then
16 they will take the power of attorney in lieu of the
17 original title.

18 CHAIRMAN BABCOCK: Richard Munzinger.

19 MR. MUNZINGER: I'm just -- Tom and I were
20 talking a moment ago. All of this is being done for
21 access to justice. That's the supposed purpose here. Is
22 it justice to somebody to tell them 35 days after their
23 judgment for divorce was entered that you've got to have a
24 power of attorney to get the dadgum car title changed to
25 you? You didn't tell them that in this form. Is that

1 what they get? I mean, for goodness sakes, these people
2 are entitled to -- I mean, justice is what's mine, and
3 they're entitled to it, and these forms don't do that.
4 This is -- it's a real problem here. I want my car, and I
5 want to hurry up and get this form signed and I want this
6 and that and then 35 days later you come back, the
7 judgment is final, and you can't do anything about it.
8 That's justice. Well, that's all right. We were one of
9 the 47 states that didn't do this. Now we do it. That's
10 your problem.

11 CHAIRMAN BABCOCK: Okay. Any other comments
12 about this? Yeah, Justice Frost.

13 HONORABLE KEM FROST: On the muniment of
14 title issue, to the extent we're going to itemize it,
15 instead of saying "all property" maybe change that to "the
16 following property."

17 CHAIRMAN BABCOCK: Okay. Good. All right.
18 Justice Gray.

19 HONORABLE TOM GRAY: I'm not sure what the
20 origin of the appeal is, but we've got an appeal at the
21 Waco court now where it's one of these car title transfer
22 questions, and it didn't get done at the time that the
23 transfer was made, and unknown to the person that
24 supposedly received the vehicle there's a penalty that's
25 been clicking along at \$25 a month for not transferring it

1 within 20 days or 30 days, whatever the time period is,
2 since the transfer was made, so kind of one of the reasons
3 to do something to help tidy this up if you're going to do
4 this type of practice of law.

5 CHAIRMAN BABCOCK: Okay. Let's turn the
6 page to "Certificate of Last Known Mailing Address."

7 MR. BRESNEN: Chip, could I say something
8 about the decree real quick? It won't take but one
9 second.

10 CHAIRMAN BABCOCK: Okay.

11 MR. BRESNEN: Thanks. I represent two
12 companies that deal with car titles, and I work at the DMV
13 a lot.

14 CHAIRMAN BABCOCK: Yeah.

15 MR. BRESNEN: They believe in the separation
16 of powers. You better put a VIN number in there, or
17 you're not going to transfer these vehicles. Secondly,
18 I'm told there's no common law right of indemnification on
19 these things. You don't put indemnification, people are
20 not going to be able to enforce that, but when you put it
21 in there it's like a contract, so a person that had a
22 thousand dollars or a small amount that they needed to get
23 from the other party could go down to the small claims
24 court and enforce the contract in that manner.

25 CHAIRMAN BABCOCK: Yeah. I thought that was

1 a well-taken point in your materials.

2 MR. BRESNEN: Thank you.

3 CHAIRMAN BABCOCK: "Certificate of Last
4 Known Mailing Address." Only this committee could find
5 something wrong with this.

6 MR. ORSINGER: Well, no, the subcommittee of
7 this committee had some recommendations.

8 CHAIRMAN BABCOCK: Well, that's part of this
9 committee.

10 MR. ORSINGER: You want to start with the
11 subcommittee?

12 CHAIRMAN BABCOCK: Yeah, let's start with
13 them.

14 MR. ORSINGER: Okay. The Rule 239a requires
15 a certificate of last known address be filed, quote, "at
16 or immediately prior to the time an interlocutory or final
17 default judgment is rendered," close quote. And the
18 committee voted five to two that the form should say that
19 since the rules require that, but the pro se litigant may
20 not know that and the judge may not realize that it isn't
21 happening. So one member of the subcommittee wanted to
22 hear the -- wanted to hear the full subcommittee debate on
23 that, but since the pro se litigant won't know what the
24 rule requires and the court may not know what happens
25 after they walk out of the courtroom, we think that the

1 certificate of last known address says that it should be
2 filed right away.

3 CHAIRMAN BABCOCK: Okay.

4 MR. ORSINGER: The second -- and this is --
5 this is a little more controversial, is that a certificate
6 of last known address is really only required where the
7 respondent does not participate in trial or does not enter
8 into an agreed judgment, if I'm saying that correctly.

9 MR. HAMILTON: Default.

10 MR. ORSINGER: Yes. It would be a default
11 non -- it's not a default if it's a consent decree, so if
12 there's a consent decree or a trial with the defendant
13 present then a certificate of last known address is not
14 necessary. That distinction becomes a little bit
15 difficult for a pro se to figure out whether it's a
16 situation where a certificate of address should be
17 required or not, and our suggestion at the subcommittee is
18 it's required in every one of these pro se divorces, and
19 that eliminates any confusion, and it's simple just fill
20 it out and file it every time whether the rule triggers it
21 or not. Now, we're changing a rule without changing a
22 rule, so I know that that's objectionable on that ground.

23 CHAIRMAN BABCOCK: Okay. Any other comments
24 about change of address? Justice Frost.

25 HONORABLE KEM FROST: I would just note that

1 the certificate of service, there have been several
2 comments about the protective order excluding in person
3 delivery to the extent that might apply. That's also in
4 the certificate of service, calls for in person.

5 CHAIRMAN BABCOCK: Okay. Any other
6 comments? All right. Let's move on to "Notice of change
7 of address." Now, this I would bet was hotly debated in
8 the subcommittee.

9 MR. ORSINGER: The subcommittee split four
10 to one to say anything, so apparently there's one person
11 that wanted to say something, and I can't remember if
12 they're here or not, but now's their opportunity.

13 CHAIRMAN BABCOCK: Anybody here want to say
14 anything about the notice of change of address form? All
15 right. Moving right along, the military status affidavit.
16 Richard, your subcommittee have anything to say about
17 that?

18 MR. ORSINGER: Five members of the
19 subcommittee felt like that there were no changes to
20 recommend. One wanted discussion of the advisory
21 committee.

22 MR. HAMILTON: Same one as before?

23 MR. ORSINGER: I'm not going to say. I've
24 preserved their anonymity so far, I'm going to go all the
25 way.

1 CHAIRMAN BABCOCK: All right. Is there any
2 comments about the military status affidavit? Okay. We
3 skipped over a form so that we could talk about the
4 decree, and that was the waiver of service. You'll find
5 it a few pages back. It's a two-page document, and let's
6 talk about that now.

7 MR. ORSINGER: Chip, if I might, we had a
8 subcommittee meeting with Trish McAllister's, Steve
9 Bresnen, and Stewart Gagnon, and others on the line, and
10 some changes were made because at the time the original
11 waiver which was originally sent out to the committee said
12 that it was a waiver of service, but it acted as a waiver
13 of all constitutional rights --

14 CHAIRMAN BABCOCK: Uh-huh.

15 MR. ORSINGER: -- and didn't make that
16 clear, so our suggestion was that the waiver form be
17 restructured to either list or have a check box for
18 individual rights that were being given up, and so the
19 subcommittee had several proposals, a warning along the
20 following lines: "By signing this form" -- pardon me, the
21 form waiver already says, "By signing this form you give
22 up all of your legal rights in this case."

23 CHAIRMAN BABCOCK: Right.

24 MR. ORSINGER: That sounds very
25 comprehensive, but we're concerned people may not realize

1 that it's what they're waiving, so by a vote of seven to
2 zero we were requesting that there be -- that you spell
3 out the individual rights that are being waived, like "I
4 waive a right to a jury trial"; "I waive a right to
5 subpoena witnesses"; "I waive a right to call witnesses on
6 behalf"; "I waive the right to testify on my own behalf";
7 "I waive the right to object to inadmissible evidence"; "I
8 waive the right to notice of hearings or trials"; and then
9 further subcommittee recommendation, "I understand that if
10 I do not object the court may award property in my
11 possession or control to my spouse"; "I understand the
12 court may take my separate property and award it to my
13 spouse"; "I understand the court may require me to pay
14 monthly spousal maintenance payments to my spouse for a
15 period of time after the divorce."

16 It was an effort to articulate to these
17 respondents who are waiving their rights of what might
18 happen to them, and proudly or oddly, that was an eight to
19 zero vote, which represents the perception of the
20 committee that there is a slant in the form packet in
21 favor of the petitioner because they're the only ones
22 there and that really the form packet has a duty to inform
23 the respondent of what might happen to them if they sign
24 that waiver and that the waiver should not be all or none,
25 they should be given the right to waive some things and

1 not other things, like waive service of citation but don't
2 waive notice of trial, and so we wanted it to be broken up
3 and spelled out.

4 CHAIRMAN BABCOCK: Okay. Any comments about
5 that? Justice Gaultney.

6 HONORABLE DAVID GAULTNEY: Richard, while
7 the warning says that they're giving up all legal rights,
8 the actual form has specific exceptions to the waiver.
9 So, for example, if you look at page two of two, the first
10 one, "I have been given a copy of the original petition,
11 and I have read the original petition. I do not give up
12 my right to review a different petition of divorce," so --
13 and also the instructions to the petitioner, if you look
14 at on the prior page the last instruction, it says, "If
15 you change anything in the original petition for divorce
16 after you have had your spouse sign this waiver, you must
17 have your spouse complete a different one." So the actual
18 waiver that is being signed doesn't appear to give up all
19 legal rights. In fact, it requires service of an amended
20 petition.

21 Also, there is a provision that says, "I
22 want to be" -- "I want to receive notice of hearings." "I
23 want to receive notice of the judgment." So I'm not sure
24 that the statement that you give up all your legal rights
25 is a correct statement. I also don't think that someone

1 who willing to sign a waiver of service on a petition
2 necessarily doesn't want to show up at the hearing or get
3 notice of an amended petition. So they may agree to the
4 petition as it is, may not want to show up at the hearing
5 if the petition is as it is, but on the other hand, if
6 it's amended to change the obligation as to who owns what
7 property, it may become a contested deal.

8 CHAIRMAN BABCOCK: Good point. Justice
9 Christopher.

10 HONORABLE TRACY CHRISTOPHER: In the little
11 warning box on page one of two, it says, "You can find an
12 answer form in this divorce kit located online at
13 texaslawhelp.org." Is that where this divorce kit is
14 going to be, or I mean, if the one spouse only gives the
15 waiver --

16 CHAIRMAN BABCOCK: Right.

17 HONORABLE TRACY CHRISTOPHER: -- and they
18 don't give the answer to them, too, and say, "You can do
19 either one."

20 PROFESSOR CARLSON: Yeah.

21 MR. ORSINGER: That's where the form is
22 right now, but I don't know if it's been decided yet where
23 the form will be if it's promulgated by the Supreme Court.
24 Can I inquire about the protective order packet and the
25 parental bypass packets? Are they listed only on the

1 Supreme Court site?

2 MS. SECCO: The protective order is on
3 texaslawhelp.org.

4 MR. ORSINGER: Is it not on the Supreme
5 Court site?

6 MS. SECCO: It is on the Supreme Court site
7 in the order that promulgated the packet, which is posted
8 to the Supreme Court's website, but I'm not sure if it's
9 separately listed on the Supreme Court's website.

10 MR. ORSINGER: So if a user were to want to
11 find the official protective order kit --

12 MS. SECCO: Yes.

13 MR. ORSINGER: -- they shouldn't look on the
14 Supreme Court site.

15 MS. SECCO: Well, they can, because the
16 order promulgating the kit is on the website, and that has
17 the kit as an appendix to the order.

18 MR. ORSINGER: Is it identified as a link on
19 a page that the public could find?

20 MS. SECCO: Yes, but not on a separate
21 protective orders page. It's just on the administrative
22 orders page.

23 MR. ORSINGER: And what about the parental
24 bypass forms? Are they on the Supreme Court website?

25 MS. SECCO: They are on the Supreme Court's

1 website, and there is a link to that packet of rules on
2 the Supreme Court rules website.

3 MR. ORSINGER: And if these forms were
4 promulgated is there any decision made yet that can be
5 announced as to where they would be available to the
6 public?

7 MS. SECCO: No.

8 MR. ORSINGER: So it's kind of up in the air
9 where these forms will be posted.

10 CHAIRMAN BABCOCK: Justice Gaultney.

11 HONORABLE DAVID GAULTNEY: Well, I was going
12 to wonder, I mean, I think the time someone would file a
13 waiver -- or agree to a waiver would be if they agreed to
14 the allegations in the petition, right? So it's almost
15 like it's an agreed petition at that point, and I was
16 wondering if perhaps the waiver, whatever language that we
17 come up with, if it's the waiver that's here that requests
18 notice of the amended petition, things like that, notice
19 of hearing, that that actually be on the same instrument
20 as the petition at the bottom so that petitioner would
21 know if they were going to later amend the petition they
22 would see this blank they had to get filled in by the
23 respondent.

24 CHAIRMAN BABCOCK: Justice Bland.

25 HONORABLE JANE BLAND: I think we need an

1 instruction that says, "Giving legal notice to your
2 spouse. If you file something with the court or arrange
3 to have a hearing before the court you must give your
4 spouse legal notice of your filing by giving him or her a
5 copy of it or legal notice of the hearing," and we should
6 have a form that lets a pro se petitioner or respondent do
7 that. One of the biggest problems we have with pro se
8 litigants, whether intentional or unintentional, is that
9 they do not understand the concept of service on the
10 opposing party. They file whatever they file with the
11 court, but they don't serve opposing counsel, and the way
12 that we find out about it is we send something out from
13 the court, and the other side that might be represented by
14 counsel or may be pro se says, "I never got a copy of this
15 pleading or motion or notice of whatever is happening."

16 So I think that I agree with the
17 subcommittee that we shouldn't ask a respondent who is
18 waiving service to also as part and parcel of it waive
19 notice to all other pleadings that might be filed or any
20 hearings that might be held, and so we need to have some
21 sort of instruction and form that would tell the litigant
22 that they are required when they file something with the
23 court or arrange for a hearing to give notice of that to
24 the opposing party.

25 CHAIRMAN BABCOCK: Okay.

1 HONORABLE JANE BLAND: Even in an
2 uncontested case, because it might become contested.

3 CHAIRMAN BABCOCK: Carl.

4 MR. HAMILTON: This is not exactly on the
5 form, but the original instructions in this kit say that
6 if I don't know where my spouse is I can serve him by
7 publication or by posting, and I don't think there is any
8 rule that says you can post. I asked Stewart what he
9 meant about that. He said posted at the courthouse door,
10 and I said, no, I don't think there is any such rule that
11 allows service that way, and what he referred me to was
12 the rule that says you can go to the court for some other
13 kind of service that might be adequate to give notice, but
14 I think that's incorrect to inform them that they can do
15 it by posting.

16 CHAIRMAN BABCOCK: Yeah. Yeah. Kent.

17 HONORABLE KENT SULLIVAN: Justice Bland
18 brings up an interesting point just about what people
19 understand and what their expectations are. The point I
20 think that she made was people don't really understand the
21 concept of service or the average pro se doesn't or they
22 misunderstand it. I'm just curious, has anyone thought
23 about a focus group for this form? I assume that hasn't
24 been done yet.

25 CHAIRMAN BABCOCK: Yeah, we talked about

1 that yesterday, Kent.

2 HONORABLE KENT SULLIVAN: I'm sorry.

3 CHAIRMAN BABCOCK: I don't know if it's a
4 focus group in a jury consultant kind of way or a
5 marketing way, but they have run it by some potential
6 users.

7 HONORABLE KENT SULLIVAN: Okay.

8 CHAIRMAN BABCOCK: All right. Other
9 comments about the waiver of service. Justice
10 Christopher.

11 HONORABLE TRACY CHRISTOPHER: Well, in
12 connection with where the answer might be it might be good
13 to put in this form, you know, "Go look at all of this
14 information we have given the other side about how to file
15 this divorce." I mean, we've talked about being afraid
16 that this could be one-sided, and so it seems to me they
17 need to not just look for an answer, but they need to read
18 all of the instructions about getting a divorce so they
19 understand what's going on.

20 CHAIRMAN BABCOCK: Got it.

21 HONORABLE TRACY CHRISTOPHER: If they're not
22 given to them with the petition.

23 CHAIRMAN BABCOCK: Richard.

24 MR. ORSINGER: The subcommittee was
25 concerned about the title "Waiver of Service" as

1 understating the power of this document, and so we would
2 prefer to use something like "Waiver of Rights" or "Waiver
3 of Constitutional Rights" or something that shows that
4 this document does a lot more than just waiving service,
5 because the title itself makes it sound like it's kind of
6 a harmless thing to do, but the content of the form has
7 the potential to waive significant rights, and we would
8 like the title to be more severe to reflect a more serious
9 decision to sign.

10 CHAIRMAN BABCOCK: Okay.

11 MR. ORSINGER: That was an eight to zero
12 vote, too.

13 CHAIRMAN BABCOCK: Okay. Good. Any other
14 comments about this section? Judge Christopher.

15 HONORABLE TRACY CHRISTOPHER: I'm taking
16 Peter's suggestion over here because he's not raising his
17 hand because I don't think he likes the forms, but it
18 would be a good idea to require the petitioner to attach a
19 copy of the instructions and give the other side a packet.

20 CHAIRMAN BABCOCK: Okay.

21 MR. KELLY: Just like in removal. You
22 remove a case to into Federal court you have to serve the
23 other side with local rules and a full packet of what's
24 going on in the Federal court.

25 CHAIRMAN BABCOCK: Okay. Good point. Any

1 other comments about the waiver of service?

2 All right. Here's the good news. We've
3 gotten through all the forms, and we still have a few
4 minutes left. I know Justice Gray wanted to make a
5 statement about the forms. Others may as well, so since
6 he asked me first, and I was also asked by some people
7 that had to leave if they could make statements by proxy,
8 and I said, no, you've got to be here to play. Justice
9 Gray. So, Justice Gray, you want to --

10 MS. BARON: Chip, can I ask another
11 question? I'm sorry.

12 CHAIRMAN BABCOCK: Yeah.

13 MS. BARON: Just for the information of the
14 committee, what is the process from here? Is that it?

15 CHAIRMAN BABCOCK: I can't hear you, Pam.

16 MS. BARON: Is that it? Are we going to see
17 something back, or is our work done? We didn't take any
18 votes.

19 CHAIRMAN BABCOCK: Our work is almost done.
20 Give me five minutes.

21 MS. BARON: Okay.

22 MR. ORSINGER: Chip, before we go back to
23 policy can I raise one last procedural thing?

24 CHAIRMAN BABCOCK: Yeah.

25 MR. ORSINGER: The subcommittee felt like we

1 should have a follow-up in the packet for a default
2 judgment situation. You know, the purpose of the
3 certificate of last known address is so the clerk can mail
4 a card out that notice -- that a judgment was taken, and
5 typically the card is just a postcard size with a little
6 simple sentence in it, and we felt like since this is
7 likely a pro se-driven process with a pro se respondent we
8 would like for everyone to consider adding to that card
9 that you may file -- rather than just saying that a
10 judgment has been taken against you, add to that every
11 single notice of appeal -- notice of signing of judgment,
12 "You may file a motion for new trial within 30 days of the
13 date the judgment was signed. If you fail to do so, the
14 judgment becomes final and nonmodifiable. If you have
15 questions about this you should consult a lawyer." That's
16 quote-unquote. That was a five to one vote, and the
17 rationale is that if you have a pro se respondent and a
18 default judgment has been taken that we may out of
19 fairness want to inform the respondent that they have a
20 remedy at that point, because we've been focusing only on
21 the petitioner's remedies. Now we have a default, now we
22 have notice to respondent, and tell them, "You have the
23 right to file motion for new trial within 30 days. If you
24 don't, it's all over, go see a lawyer." So that was
25 something we felt like to balance this form packet would

1 be fair and cheap and easy to do.

2 CHAIRMAN BABCOCK: Carl.

3 MR. HAMILTON: I thought we said earlier
4 that the court could modify it even if it was after 30
5 days.

6 MR. ORSINGER: No, they can only clarify it.
7 They can't change it.

8 MR. HAMILTON: What's the difference?
9 Modify, clarify.

10 MR. ORSINGER: Well, if you want to I'll
11 give you about a dozen court of appeals cases and a couple
12 of Supreme Court cases that were attempting to answer that
13 question.

14 CHAIRMAN BABCOCK: Well, not now. Eduardo.

15 MR. RODRIGUEZ: Just two comments, I agree
16 with the later comments that somehow or another the
17 respondent ought to get a copy of the divorce kit. It
18 ought to be given to her because it sets out a lot of
19 information that they may -- that's not given to them.
20 The other question I have is -- and I apologize for not
21 being here all day yesterday, but I couldn't get out of a
22 court hearing. I'm not -- I don't know where we are in
23 terms of if these -- if these forms are adopted will we --
24 will they also be available in Spanish?

25 CHAIRMAN BABCOCK: We talked about that

1 yesterday, but --

2 HONORABLE NATHAN HECHT: I don't know if --

3 MS. HOBBS: Not officially.

4 CHAIRMAN BABCOCK: There's a question.

5 MR. RODRIGUEZ: But I believe very strongly,
6 at least for a large part of the state of Texas that also
7 includes places like Houston and Dallas, but I'm thinking
8 about San Antonio all to the border --

9 CHAIRMAN BABCOCK: Right.

10 MR. RODRIGUEZ: -- it is just absolutely
11 imperative that we have them available in Spanish.

12 CHAIRMAN BABCOCK: Lisa, and then Judge
13 Peeples. I'm pretty sure I read somewhere that they were
14 going to be in Spanish.

15 MS. HOBBS: And Vietnamese.

16 CHAIRMAN BABCOCK: And Vietnamese.

17 MS. HOBBS: Let me just say that like other
18 forms that the Court has promulgated -- and, Justice
19 Hecht, you can correct me if I'm wrong here -- the Court
20 officially promulgates the English version, other people
21 translate it. We've seen it happen with the protective
22 orders where I don't think the Court reissued an order
23 with a Taiwanese translation of the protective orders, but
24 they're out there and they're available and they purport
25 to be official because they are an official translation of

1 the -- but whatever they file they're still going to file
2 the English version. I think we've seen it with the
3 parental notification forms that a third party has made
4 those available in other languages, but I don't think that
5 the court has ever promulgated forms in another language,
6 like done another order, but they are available.

7 CHAIRMAN BABCOCK: Judge Peeples.

8 HONORABLE DAVID PEEPLES: Richard, I thought
9 the subcommittee wanted to recommend to the Court that if
10 a county has already -- has its own set of forms and they
11 have, you know, English with Spanish below it translated
12 and they're using those, that that would be all right
13 instead of these. Did we not do that?

14 MR. ORSINGER: It is one of our important
15 recommendations, is that whatever is promulgated statewide
16 not extinguish successful prevailing practices because in
17 San Antonio we have a set of forms that goes far beyond
18 these that have the assistance of two staff attorneys and
19 a couple of clerks from St. Mary's that help people fill
20 the forms out, and they are in Spanish and English, and
21 every sentence or paragraph is in English and then
22 followed by Spanish, and I think locally it was felt that
23 if you didn't have the Spanish translations in the decree
24 and everywhere that it was going to be meaningless to a
25 pro se that couldn't speak or write English. And so since

1 there's a large Korean and Vietnamese community in
2 Houston, so they have forms in those languages, and large
3 Spanish in San Antonio, we felt like whatever the Supreme
4 Court promulgates statewide shouldn't extinguish local
5 practices, so --

6 HONORABLE DAVID PEEPLES: And I --

7 MR. ORSINGER: I'm sorry, David.

8 HONORABLE DAVID PEEPLES: I'm sorry. I
9 thought you were finished.

10 MR. ORSINGER: Go ahead.

11 HONORABLE DAVID PEEPLES: I would ask
12 Eduardo, how far does that go if they did that? How far
13 would that go?

14 MR. RODRIGUEZ: I think that would be better
15 than not doing anything at all.

16 CHAIRMAN BABCOCK: Okay. Frank.

17 MR. GILSTRAP: That goes to the larger
18 question of whether the Court is going to purport to say
19 these are the official forms and you can't use any other
20 forms. I don't believe it should, and I really can't
21 imagine that it would do that, but if it doesn't do that
22 then the local forms are fine and private forms are fine,
23 if the courts take them. The only way you're going to
24 change the local practice is if you make these the
25 official forms that nobody else can -- and no other

1 court -- no other forms can be used.

2 CHAIRMAN BABCOCK: Yeah. Okay. Any other
3 comments on the forms specifically? Now, Justice Gray,
4 the long-awaited opportunity to say something.

5 HONORABLE TOM GRAY: Well, I'll try to be
6 quick because I know y'all have endured. The -- when I
7 was first asked to be on this committee I responded to
8 Justice Hecht that you know that I have the position that
9 we really shouldn't be in the position of adopting rules,
10 and his response was something to the effect of "I've
11 heard something to that effect and that's why we want you
12 on the committee to present different views and that's
13 what we do," and I didn't know a lot about this committee
14 back in 2003, and I've really enjoyed getting to serve on
15 it. It's really been refreshing to me, but I raised this
16 specific agenda with two bar meetings in my district, the
17 two largest counties in my district, and discussed it
18 afterwards with members of the bar; and one of the bar
19 meetings then led to a forum where this was going to be
20 the topic; and Hayes Fuller and I were asked and
21 represented that we would go to the meeting and explain,
22 but basically gather their information and present it here
23 because there were some people that were very reluctant to
24 put anything in writing to go before the Court that is
25 ultimately going to respond to any of their appeals; and

1 it was just kind of a, you know, yeah, if you ask me I'm
2 going to participate in this process, but at the same time
3 I'm very reluctant because you're going to be the ones who
4 ultimately impact what my clients do in this and other
5 areas of the law. So there was some natural reluctance,
6 and we wanted to give them a buffer.

7 With one exception, every attorney that I
8 talked to and one clerk was represented at the forum by a
9 nonattorney, and they were all universally opposed to this
10 process and these -- this adoption. If it's the Court's
11 form, there was the reluctance of the bench and bar to say
12 "You're wrong in this process" or even in the event of an
13 appeal they expressed that they would feel uncomfortable
14 challenging that the Court's promulgated form as being
15 within the law.

16 The two specific sort of alternatives that
17 were proposed, one was simply an order to the State Bar to
18 basically engage in this process, much like the family law
19 manual; and they can break it down into the different
20 groups of whether it's family law, landlord-tenant law,
21 wherever this process goes, but then it's the bar
22 association that's doing it; and much like their
23 promulgation of the charge in civil cases, we know that
24 they can -- yeah, the jury charge in civil cases, we know
25 that they can be challenged and will be challenged and the

1 Court, rightfully so, will hear those challenges and may
2 disagree with the State Bar on those forms.

3 The other very interesting proposal that
4 came up -- and this one kind of floored me, and I haven't
5 seen anything else about it in any of the comments, is
6 that there's a balance here between the enforcement of the
7 unauthorized practice of law and the concept of pro bono
8 work, and in particular this came up at the forum. It was
9 sort of if we had greater assurance that the unauthorized
10 practice of law was going to be curtailed and the
11 regulations and laws enforced on that, we would be willing
12 to step up and do more required pro bono. I mean, really
13 mandatory pro bono, but it's got to be a mutual thing, you
14 can't just compel us to do pro bono work and then let the
15 unauthorized practice of law go unchecked. And the only
16 caveat in that is -- for mandatory pro bono there would
17 have to be a uniform screening process between the
18 qualified and those who simply just don't want to pay for
19 the services. In other words, an allocation, if you will,
20 process of the pro bono services. What -- and that's my
21 kind of report from the bar that I gathered as the
22 materials were coming out and this agenda was being
23 developed.

24 Now more to my personal comments, any
25 time -- and in this case I think it's well-intended folks

1 in government move in to fill a perceived need, those who
2 are currently providing the need, fulfilling the need,
3 servicing the need, naturally tend to step back and say,
4 "Okay, if the government stepped in, I'm not needed here
5 anymore," and then what you say or what you see is that
6 what appears to be the growing and therefore greater need
7 is actually just the need that was there before but now
8 it's not being filled by the people that were doing it
9 before on a pro bono basis. And I'm very fearful of that,
10 and this fulfillment of this need by the government will
11 have a dollar price tag, and new government employees to
12 monitor this, monitor the legislation, the case law, and
13 keep these forms up to date is going to be real, and I
14 think it's going to be substantial, or these forms will
15 very quickly become stale and useless.

16 We should have the opportunity to make the
17 recommendation to the Supreme Court that they not go down
18 this road. This is unquestionably the growth of
19 government within the legal profession, within a branch of
20 government that it will require a growth in that branch of
21 government, and this is not in my opinion just a judicial
22 problem. It's not just the third branch of government
23 problem. We can't fund this through bar dues; and so the
24 Legislature ultimately will have to get involved and
25 evaluate whether to fund this directly or the Court will

1 have to reallocate existing resources that are being
2 appropriated; and if you follow what has happened at the
3 OCA in the 14 years that I have been on the court, they
4 have taken over a lot of responsibilities beyond their
5 original mission statement, which was basically to provide
6 IT and computer support for the courts of appeals and some
7 uniformity with regard to the trial courts.

8 I can see our computer and IT budgets for
9 the courts of appeals being reduced as a result of the
10 adjusting priorities at OCA or wherever this amorphous
11 group that's going to maintain these forms may ultimately
12 land, and I'm very concerned about that, because that will
13 impact the practice of law for everyone in this room,
14 every lawyer across this state, and every citizen of this
15 state. If this is the level of problem that it is
16 represented to be, this should be front and center at the
17 Legislature to fund a solution, if that's the balancing
18 that they want to do, and I don't think the Supreme Court
19 as a third branch of government that looks to the
20 Legislature for funding is in the position to do this type
21 of service to the public from that one branch, and with
22 those remarks, I rest.

23 CHAIRMAN BABCOCK: Okay. Thanks very much.

24 MR. DAWSON: Chip, can I say something
25 briefly?

1 CHAIRMAN BABCOCK: Everybody who wants to
2 say anything can say something. Justice Patterson beat
3 you to the punch because --

4 MR. DAWSON: I would always defer to Justice
5 Patterson.

6 CHAIRMAN BABCOCK: -- halfway through his
7 remark she had her hand up.

8 HONORABLE JAN PATTERSON: Well, I just
9 wanted to thank the Court and the chair and particularly
10 the subcommittee and the public participants for allowing
11 us to ventilate all of these issues. I think it's been a
12 very useful couple of days, and that's the only thing that
13 I'll add at this point, and I'll defer to my other
14 colleagues.

15 CHAIRMAN BABCOCK: Okay. Alistair.

16 MR. DAWSON: I support these forms, and I
17 come at it from a slightly different angle. I serve on
18 the board of the Houston Volunteer Lawyers program, and I
19 also serve on the board of the Lone Star Legal Aid, so
20 I've got a fair amount of experience in pro bono. Houston
21 Volunteer Lawyers program sees about 10,000 pro se
22 litigants in the family courthouse alone every year. We
23 have a booth there, and we have people come down,
24 sometimes they've handwritten forms or handwritten the
25 petition, sometimes they've taken somebody else's petition

1 and scratched out the names and tried to use it as a form,
2 sometimes they've used forms that they've gotten from this
3 website or that -- and we have a staff attorney who is
4 dedicated to providing assistance to those pro se
5 litigants in the family courthouse alone. We don't do it
6 in any other courthouse, only family courthouse.

7 Now, contrast that with the Houston
8 Volunteer Lawyers program is only able to place 2,000
9 cases a year with our volunteers, so we have 10,000 pro se
10 litigants who need our help, but we are only able to find
11 pro bono assistance for 2,000 cases per year. Of those
12 2,000 cases in 2011 there were only 38 placed with family
13 attorneys, so you've got 38 family law attorneys who
14 volunteered to take a case, and you've got 10,000 pro se
15 litigants. Those numbers just don't add up. We need help
16 in this area, and it's only going to get worse. The
17 funding for Legal Services Corporations was cut by \$56
18 million in November, so as a result of that Lone Star has
19 had a bunch of layoffs, widespread, so that's -- we heard
20 the numbers yesterday there was five million people that
21 can't get access to legal services that qualify for legal
22 services through Legal Aid, but they can't get access to
23 that, and that's only going to get worse.

24 The Houston Volunteer Lawyers program has
25 been told that we should not expect our BCLS funding

1 following the 2013 legislative session. That's a third of
2 our budget we get through BCLS, which is the money that
3 the legislature allocated for pro bono in the last
4 session. They're saying it's unlikely that that funding
5 will be there in 2013. So that's going to be more cuts
6 for us.

7 Although it pains me to say this,
8 particularly on the record, I agree with Lamont that we
9 can -- we can come up with a form -- this group, the task
10 force, this committee, the subcommittee, can come up with
11 a form that is a vast improvement on what is out there
12 already. It won't solve all problems, and for, you know,
13 one in a hundred or one in a thousand people there may be
14 some issues, but it will be a dramatic improvement on what
15 we have now, and to that end I would ask the Court, the
16 Court's indulgence, to let -- there's been a lot of great
17 ideas brought up in the last few days, a lot of issues
18 that I think are important, and I would ask the Court's
19 indulgence to allow the task force and the subcommittee
20 and this committee ultimately to talk further about some
21 of these issues so that at the end of this process we come
22 up with the clearest, most easy to understand, fairest,
23 and accurate form that we can because it will be used a
24 lot.

25 I mean, we're planning on using it in Harris

1 County. We're building out a whole assistant pro se
2 center in the county law library or beneath the county law
3 library where we're going to have staff attorneys there
4 full-time with this form and other forms. So I hope that
5 we'll have the opportunity to further address this issue
6 and further discuss some of the ideas that we've been
7 discussing the last two days.

8 CHAIRMAN BABCOCK: Thanks, Alistair. Judge
9 Estevez, Eduardo, and then Justice Jennings.

10 HONORABLE ANA ESTEVEZ: I would like to
11 propose an alternative, an alternative in which I believe
12 everyone would probably be happy and yet the Texas Supreme
13 Court would not have to -- I would say would be able to
14 exercise judicial restraint and not have to enter into
15 that area of bringing in the forms. What I hear or what
16 I've heard about what started this original form that
17 we're working with today is that there were district
18 judges who refused to accept these forms. I think we
19 should solve that problem first, and so I think that the
20 Texas Supreme Court could look at a rule and amend Rule 7
21 that says that you can be either represented by counsel or
22 you can be a pro se litigant, maybe it should be somewhere
23 else, but something to the effect that "A court shall not
24 refuse to grant relief solely because there is a fill in
25 the blank form if the form has been approved by the Texas

1 Bar family law section." I think you could give them 60
2 days, tell them they can go to Texas Law Help, they can
3 pick a section, a type of form that's no children, no
4 divorce, no whatever, and if they approve the form and
5 make them be in charge of it so if they do something wrong
6 it can come up to the Texas Supreme Court and they can
7 give the instructions. They're the ones that have the
8 specialties. They're the ones that do this law everyday.
9 They're the ones that do the appellate law. Keep it in
10 that branch.

11 Fix the judges if we're the problem, because
12 it could be that we're the problem. It may not be me, but
13 I might be the problem in a different issue, but then you
14 can keep the experts in the expert field, keep them
15 involved, and then we can go onto the next issue, because
16 this isn't our issue. Our issue are the people with kids,
17 and if we're going to go to forms there, we still want
18 them to do those forms, I mean, if that's where we're
19 going at the end, let's start with looking at what is our
20 problem and what is a way to have the solution without
21 having to go into an area that we really don't want to be
22 in.

23 I mean, do we really want every year to look
24 at the law forms and decide how to advise them to change
25 it, or do we want the legal people that are dealing with

1 them everyday to continue to deal with them, and they can
2 change them, and they can do it in their law section every
3 year? They go to annual family advanced, and they already
4 have things that they don't have to change their world to
5 do it, and if they choose not to do it and the Supreme
6 Court says, "Hey, you have 60 days" or "You have 90 days,
7 and we don't care if you use an existing form out there,
8 but you're going to have to pick one, and if you don't
9 then we will," then that's their problem. You did what
10 you could do. You tried to exercise judicial restraint
11 that they were asking you to do, and at that point that's
12 where you are. I just think that can heal some of the
13 feelings because I think that's important.

14 I don't think that this is a healthy
15 relationship right now when you have so many -- a whole
16 section of attorneys that is very resentful of the whole
17 process, and I don't think it hurts to give them some time
18 to see if they can get that solution, and if they don't
19 want to play then you did your part, and I don't think
20 they can really have as hard feelings.

21 CHAIRMAN BABCOCK: Great. Thank you.
22 Eduardo.

23 MR. RODRIGUEZ: Yeah, I have grave concerns
24 about the issue as it affects the bar and what the outcome
25 will be with respect to the lawyers out there thinking

1 that the State Bar of Texas is doing this. On the other
2 hand, I want to commend the Supreme Court for undertaking
3 this responsibility, and the problem -- the problem, I'll
4 start -- Alistair has outlined it very well from what he
5 knows. All I know is I've been going for the last seven
6 years to Washington for three days. Justice Hecht has
7 joined us, Justice O'Neill before him, with several other
8 lawyers, and we walk the halls of Congress for three days
9 talking to them about increasing the Legal Services
10 Corporation budget; and, frankly, I have a real good deal,
11 because I do it with Jim Sales; and, you know, he talks to
12 the very conservative Congressmen that we have; and he
13 gets to have a rapport with them. I get to talk to all
14 the guys that are supporting it, so it's easy for me, but
15 I also have to sit there with him, and, you know, I don't
16 really look forward to expending three days next week
17 walking with Jim because I know what's going to happen,
18 and everybody knows what's going to happen.

19 You know, they've already started. Last
20 year we got an increase of 56 million, which that funding
21 would not be equivalent to the funding the Legal Services
22 started with when Nixon started it in those dollars.
23 We're still -- we've not been able to get to the
24 equivalent dollars there, and the problem is that there's
25 needs out there, and how are we going to serve them, and

1 we're talking about -- we're talking about just having
2 lawyers to help people get a divorce, because legal
3 services, as you all know, has cut back on the type of
4 work that they can do. And so that's the first thing we
5 do. We have a list of all of the cases that people said,
6 you know, "Well, Legal Aid used to do this, and Legal Aid
7 used to do that, and you know, Legal Aid can't do any of
8 those things that irritated people." They can do
9 divorces, but there's not enough Legal Aid attorneys to do
10 them, and so we're sort of in a bad situation, and I don't
11 know what the answer is, but I'm concerned about how it's
12 going to be perceived at the lawyer level about the State
13 Bar, and I have affection for the State Bar. I don't know
14 if I made sense or not.

15 CHAIRMAN BABCOCK: That made total sense,
16 thank you. Justice Jennings.

17 HONORABLE TERRY JENNINGS: I'll try not to
18 be repetitive, but I think it bears repeating that people
19 of good will --

20 CHAIRMAN BABCOCK: That was a great first
21 sentence. Dee Dee, we're going to frame that one. "I'll
22 try not to be repetitive, but it bears repeating."

23 HONORABLE TERRY JENNINGS: It does bear
24 repeating that people of good will on both sides of this
25 have a good faith disagreement and that people of good

1 will can have a good faith disagreement and get real
2 excited about very important issues and have a heated
3 disagreement, may misspeak and may say some things they
4 don't really mean, but I have a kind of a different take
5 than Justice Gray. We do have a real problem here, and it
6 does seem very bleak, and I can appreciate the fact that
7 the Court has brought this to the forefront, but just to
8 make a few points that I don't think really have been
9 made, after hearing all the discussion, this is not just a
10 form. This isn't the drafting of a template or a format
11 for people to use. We're talking about drafting legal
12 documents that have substance in them, and so it's not --
13 we're not just talking about forms. We're actually
14 talking about helping people draft legal documents that
15 have substantive discussions in them with the
16 constructions.

17 I would ask the Court to seriously consider
18 the comments of Tim Belton, who is the public
19 representative with the Solutions 2012. Mr. Belton is a
20 very highly respected businessman in Houston. I think if
21 the Court ever had a chance to talk with him they would
22 find that they were among very like philosophy, and
23 because we're talking about forms that deal with
24 substance, I think Mr. Belton is right, we are talking
25 about policy changes, and he makes some very good points

1 in regard to the policy changes that are being made by
2 even considering drafting such documents, and I refer the
3 Court to him.

4 I think one of the reasons we have very
5 strong disagreements about this or we're seeing such
6 strong disagreements about this, because this involves
7 three very important principles. One is access to courts,
8 but we always have to remember that access to courts and
9 access to processing is really not necessarily access to
10 justice. The second principle that's involved is due
11 process of law, and given our adversary system, it's
12 almost axiomatic that to have real due process of law you
13 have to have a right to counsel. The third principle is,
14 of course, equal justice under law, and my biggest concern
15 here is that by the Court stepping in and drafting the
16 forms -- I think it's perfectly legitimate for the Court
17 to step in and say, "Look, we need to do something about
18 this. Let's have a discussion about this," but for the
19 Court -- somebody asked what's wrong with the Court
20 drafting these forms, and I think it was Lamont, what's
21 wrong with the Court drafting these forms?

22 My concern is that in trying to address this
23 serious, serious problem, by the Court stepping in and
24 drafting the forms and promulgating the forms, my concern
25 is, is that in a very real way it will be

1 institutionalizing the unequal treatment of people based
2 upon their class, because in one circumstance people are
3 going to have their lawyers, and they're going to have a
4 better chance at due process by having that right to
5 counsel fulfilled, and on the other circumstance you're
6 going to be saying, "Here, take a divorce kit, good luck.
7 Hope it works out for you, and hope you understand it."
8 Yes, there are forms out there for people to use, but it's
9 another thing for the Court itself to step in and
10 institutionalize that.

11 I do agree with Justice Gray in one respect.
12 When that happens I think a lot of lawyers are going to
13 feel like why do I need to do pro bono because they have
14 the forms? So I think that's a legitimate concern. I
15 think the bar should be given time to try to come up with
16 alternative solutions. Frankly, I don't think the form is
17 a solution. It might make things a little bit easier on
18 some people. It might ease processing, but it's not going
19 to lead to justice, and it's not going to lead to due
20 process. If the Legislature wants to address this issue,
21 I think they could probably do it in a way that wouldn't
22 require a lot of money or funding.

23 If you really want to speed up the process
24 of agreed-to, uncontested divorces where there's no
25 children, there's no property, there's virtually no

1 assets, the Legislature could come up with a streamlined
2 system where people could apply to get a divorce together
3 or an agreed divorce, and the Legislature could come up
4 with a system where people could apply. People could come
5 in and get some kind of counseling from court staff about
6 how to proceed, and basically you could have petitioners
7 in one room and respondents in another room and make sure
8 that people are made aware of their rights and that they
9 can affirmatively waive those rights and say, "Well, let's
10 go ahead and go forward with this." And they could bring
11 the appropriate -- there's a way to streamline this. You
12 could almost make it -- I think Pete said something about
13 a quasi-administrative process. There are ways to do
14 this. You could do rooms full of divorces if you wanted
15 to do it that way. I don't know that I would be for that.
16 It's a dramatic change in policy, but if that's the
17 problem, that's one way to address it.

18 If the problem is that a woman is sitting in
19 a woman's shelter and she doesn't have access to a lawyer,
20 the Legislature could craft a mechanism for her to get an
21 emergency divorce, if she wants to waive her right to
22 discovery, the right to cross-examine her spouse to find
23 out if he is hiding assets. There are ways the
24 Legislature could craft a much better solution and I think
25 in a cost effective way, and I'm afraid that just using a

1 form like this is -- it may make things a little bit
2 easier, but it's not addressing the real problem. We're
3 going to continue to have that real problem, and the last
4 thing I would do, I would refer the Court to the comments
5 of the folks in Indiana again, the judges and the clerks
6 there talking about the unrealistic expectations that
7 these forms create, people not getting the results that
8 they want, and the frustration that the use of these forms
9 create. I don't think the Supreme Court should be part of
10 that, and again, I would urge the Supreme Court to give
11 the bar more time to come up with a real solution or at
12 least a much better solution to this problem than this
13 form could ever hope to accomplish.

14 CHAIRMAN BABCOCK: Thank you, Judge.
15 Justice Moseley.

16 HONORABLE JAMES MOSELEY: I would echo what
17 Justice Jennings said. I think we have a problem in that
18 at the price point of zero or almost zero, supply is not
19 keeping up with demand to do this kind of work. That has
20 been the case. It's going to continue to be the case.
21 There are some alternatives that have been floated by,
22 Solutions 2012, and may be others to be floated in the
23 future for how we get more people to do pro bono work in
24 this area, but beyond that, the issue we're dealing with
25 today is whether these forms are going to help solve the

1 problem, and I don't think they are. The only problem
2 that has been identified to me that these forms are
3 designed to address is that some judges -- we don't know
4 how many or where -- won't take forms, and some judges --
5 we don't know how many or where -- won't take forms unless
6 they're all in English. If that's the problem then I
7 think the Supreme Court could fix that a lot easier
8 through a rule-making than they could through starting
9 this particular process.

10 There are forms out there. There will
11 continue to be forms out there whether this gets passed or
12 not. This will be better than some forms at least at the
13 beginning. It may or may not be better than other forms.
14 Apparently the Access to Justice Commission committee that
15 is encouraging this already has forms at texaslawhelp.org.
16 The only benefit that I see coming from this is -- or the
17 only desire I see coming from this is a push to have the
18 Supreme Court endorse these forms. And as I was
19 discussing yesterday and mentioned to Richard during a
20 break, I haven't heard anything that we've done or that
21 we're going to be doing now or in the future that can't be
22 done in the private sector, and as we -- if we do these
23 types of forms and we identify problems in them in the
24 future, it's going to take time and administrative inertia
25 to push through in order to fix those problems. That is a

1 problem that the private sector has less of.

2 If there's an issue that people don't know
3 how to shop for these forms, they're looking at forms that
4 are national forms and aren't specific to the state of
5 Texas, there may be some things that we can do to help the
6 private sector improve their ability to differentiate
7 their product and market a Texas specific set of forms or
8 a form that provides better advice or guidance than what
9 somebody else's forms do. All of those would be private
10 sector responses to the problem. I don't see how putting
11 the Texas state seal, Supreme Court seal, on these forms
12 fixes anything other than the problem of some judges won't
13 take forms because they don't like forms and some judges
14 won't take forms because they're in Spanish, and I'm still
15 waiting to hear just how big a problem that is that we're
16 trying to address. That's all I have.

17 CHAIRMAN BABCOCK: Sofia.

18 MS. ANDROGUE: Very quickly. I was
19 rereading the reference to the paper and why it won't
20 work, the Access to Justice seven-point plan, and my
21 thought was if it is correct that Harry Reasoner has said
22 this is the first step in a much larger plan, I would,
23 just as we are all obviously doing and reflective of the
24 process, if this may be the commencement point and that it
25 may be for probate or other things that may be considered,

1 we really want to make sure that at the end this is an
2 inclusive process as possible, so whether it's the time
3 necessary, whatever the decision is as to the forms, but
4 that at the end of the day we don't continue then to have
5 factions of the bar that feel like they weren't included
6 and vented, and if this is really going to be a
7 commencement point, this is done with deliberate speed,
8 not trying to make it into an a lauded statement.

9 CHAIRMAN BABCOCK: Marcy.

10 MS. GREER: And I don't disagree with
11 anything that Sofia said, but I come at it a little bit
12 differently because I've been in the -- like Alistair --

13 MS. ADROGUE: I'm not saying whether I agree
14 or not. I'm saying if we're doing it --

15 MS. GREER: Right, no, and I think we need
16 to give it deliberate time, but I believe it is important
17 for the Supreme Court to take this step. I think that the
18 reason the issue is huge, anybody who has tried to place
19 pro bono work, and I have done a number of programs for
20 State Bar appellate section, it is very difficult. We
21 have so many limited resources, and I would like to see
22 those resources dedicated to the cases that really need
23 additional lawyer help. I think with some pro bono
24 guidance some forms that are the best that can be found
25 will facilitate the process because so many people are

1 doing their own divorces, especially if there are no kids
2 and no property. It is so expensive, even if you are not
3 at the poverty guidelines, which, by the way, you've heard
4 what those numbers are. They're abysmally low. There are
5 a lot of people who are making more than that who can't
6 afford lawyers.

7 The resource issue is huge, and I'd like to
8 see those resources dedicated to the situations where you
9 have kids, where you have pension plans, where you have
10 complicated issues that require a lawyer that can't be
11 done on -- I don't think forms are going to take over the
12 world. I think they are a tool. They are not a solution,
13 but if we could have forms that you could say, "This is a
14 good form to use as a starting point" and a little bit of
15 oversight with the courts, you know, of somebody trying to
16 use it. I've seen abusive situations over and over and
17 over again. I've done a tremendous amount of pro bono
18 work. Abuse happens whether there is a form or not.
19 Having a form helps the dialogue, helps -- just having a
20 checklist to say, "Oh, yeah we ought to go ahead and
21 divide this."

22 What's the worst that can happen? Okay.
23 The worst that can happen is you go in with a handwritten
24 petition, you forget to put things in there that are
25 necessary, they don't get resolved, and you get a divorce,

1 and more than 30 days afterwards -- you don't understand
2 plenary power -- it can't be fixed. You know, I think
3 having guidelines, by having instructions, by telling
4 people. This happened to my sister-in-law. She didn't
5 know that she was still responsible for debts that had
6 been assigned to her ex-husband. You know, 20,000-dollar
7 debt came back due and on her, and she didn't realize, you
8 know, and this is a very smart, educated woman but she
9 wasn't informed. Maybe her lawyer should have told her,
10 but these are things that are happening in the real world,
11 whether lawyers are there or not.

12 People are going down, getting divorces, and
13 I think it is our duty to help them with the process as
14 much as we can. There are simply not enough lawyers to
15 handle this, and I don't think it's going to take over the
16 world and create, you know, all of the sudden lawyers
17 aren't needed anymore because there is so much need.

18 CHAIRMAN BABCOCK: Thank you, Marcy. Pete.

19 MR. SCHENKKAN: I also hope the Supreme
20 Court will take this step here, but I really want to try
21 to use my couple of minutes of personal time to talk about
22 how we go forward together in the future in any other
23 discussions like this we have, because it's clear that
24 this process has been more combative and there have been
25 more hurt feelings in it and I think more confusion.

1 CHAIRMAN BABCOCK: Hey, Pete, could you talk
2 up just a little bit?

3 MR. SCHENKKAN: There's been more confusion
4 and hurt feelings, and at least from the point of a
5 subcommittee member, wasting time and effort in the
6 process due to the confusion and hurt feelings of the
7 process, so I would like to talk a little bit about the
8 process. I think the process for things like this has to
9 be the drafting role is in the hands of the people whose
10 job it is to advise on how to provide equal access to
11 justice for the poor, and so I don't think it is wrong to
12 have an order -- I think it is right and necessary to have
13 an order like the one that put this in the hands of the
14 task force at issue.

15 I think that when the Equal Access to
16 Justice or any other such body that is tasked with coming
17 up with a set of forms for a particular kind of situation
18 that we think we have a need that we then have to bring in
19 the experts from the particular areas that are relevant to
20 that particular problem, and in order to try to pull this
21 thing back a little bit I would say it sounds like that's
22 what was done with the protective order process where we
23 had law enforcement and experts in family violence as well
24 as lawyers with relevant specialties, and obviously family
25 law. And so there has to be a role and has to be

1 contemplated early on for the involvement of these experts
2 in the case of once today and would do if there is a next
3 step to people who are too poor to afford a lawyer but do
4 have kids. You know, we're going to have to deal with
5 that, too, that we've got to have the family law bar's
6 help, and we've got to have it early on, and we've got to
7 try to identify the problems that the experts in the field
8 say, "If you do it this way, you're causing this problem,"
9 so that the Equal Access to Justice people can think back,
10 "Well, can I solve this problem another way or is this one
11 where we really are being forced to choose" --

12 THE REPORTER: I can't hear that, "forced to
13 choose."

14 MR. SCHENKKAN: I beg your pardon. We need
15 to try to avoid the situations where we're being asked to
16 choose between rough justice or no justice by having a
17 dialogue at an earlier stage, item by item between the
18 Equal Access to Justice people, whose job is to make sure
19 that people can get in and it is done in some way, and the
20 experts who can say, "This is the problem you're about to
21 create if you try to do it that way." They've got to talk
22 back and forth to each other for a while.

23 I could have done a much better job as a
24 member of this -- certainly as a member of the
25 subcommittee but as a member of the committee had I had

1 the family law bar's comments on the problems with these
2 particular forms a month ago instead of three days ago,
3 and so I'm hopeful that we can work together to get back
4 there, but then there does have to be a vetting that is
5 like this one, a vetting process that allows lots of other
6 stakeholders either in the sense that they have things
7 asked them, but not limited to those, who have passionate
8 views about it to have an opportunity to weigh in, and
9 this was a very good thing to have done this last day and
10 a half, and I'm grateful to have been a part of the
11 process and to the leadership that people have shown in
12 having this process.

13 We cannot stop here. The family law bar is
14 absolutely right that this will not be the solution. I
15 think they're wrong in saying it's not an improvement. It
16 is an improvement, but it is absolutely clear that no
17 matter how long we wrestled with it and how smart the
18 particular assemblage of people we happen to bring in to
19 wrestle with it, can't solve the problem of filling out a
20 form by somebody with a high school education by the
21 quality of your form or the quality of your instructions.
22 We do need to also furnish the ability for people to get
23 help filling out the forms, and I was -- personally one of
24 the main things I feel like I've learned from this process
25 in the last few weeks is that there are at least in some

1 counties, I gather both Travis and Bexar County, where
2 we're starting to try to deal with that issue by the
3 selective application to that function of some of our very
4 scarce resources that in this case I guess it's county
5 level judicial system dollars, and I think we've got to
6 think about that.

7 We've got very little money to play with,
8 and the amount of money we've got looks like it's more
9 likely to go down than up, and if this is going to work
10 and work well, we're going to have to think real hard
11 about the allocation of some of it, and some of it is
12 going to need to help -- to go to helping people fill out
13 these forms, having lawyers help people fill out these
14 forms, including not just filling out the forms, but
15 flagging the point at which based on what you just told
16 me, sir, ma'am, you actually need a lawyer to advise you
17 on this point, and it isn't me.

18 I'm enough of a lawyer to know based on what
19 you just said that you have a question you need to ask.
20 You didn't think it was retirement because you're not
21 retired now and neither is your husband; but actually he
22 has a stake in a retirement plan that will vest sometime
23 later that you might be entitled to a portion of; and you
24 need to talk to somebody who knows more about how that's
25 done than me to decide if you really are in a position to

1 have an agreed divorce; and at that point it seems to me,
2 at least in the context of these forms, that needs to get
3 into a referral mode. There needs to be a list of family
4 law lawyers who are ready, willing, and able to answer
5 that question, and I recognize that that may be for a fee
6 or it may be for a reduced fee or it may be pro bono, and
7 that's a problem that has to be wrestled with by the
8 family law lawyers individually and to the extent they're
9 doing this as a section, as a group.

10 And then we are going to need people's help
11 to update these forms. They will need to be updated and
12 not just because the law has changed but also because
13 we've got experience with them in practice, and we've
14 discovered there is a problem with the way we did it the
15 first time, and again, that's going to require this
16 interactive process. So I want to say I'm not
17 particularly afraid of the large scale, you know,
18 potential for armageddon of going down this road. I do
19 think it is a very important, difficult road, and we're
20 going to have to work at it really hard together to get it
21 right, and I was pleased to sort of see the movement over
22 the last day and a half toward that way of thinking,
23 talking to each other about it, and look forward to any
24 future opportunity to go participate that we may be
25 afforded on the SCAC.

1 CHAIRMAN BABCOCK: Thanks, Pete. Yeah,
2 Justice Frost.

3 HONORABLE KEM FROST: I just wanted to float
4 one other possible model for the things we've been talking
5 about; and that is that the Supreme Court would promulgate
6 a set of forms but leave the instructions and the form
7 completion to the pro bono bar through a validation type
8 procedure; and that would be that someone would take a
9 form, a self-represented litigant who falls within the
10 qualifying criteria for pro bono service, and would get a
11 lawyer who has volunteered for a limited service, which is
12 not really in the nature of consultation but is more in
13 the nature of form completion; and that lawyer, armed with
14 instructions and warnings and the many items we've been
15 discussing today that are promulgated by the family bar,
16 would then review as the applicant completes the
17 procedure; and then once they have been through the
18 completion -- but much of the concern that was voiced
19 yesterday was dealing with people not knowing how to fill
20 out the forms or not understanding the forms.

21 If you did that, that would have a much
22 better outcome for people understanding and properly
23 completing the forms. It would also have a much higher
24 outcome for getting pro bono participation, because much
25 of the barrier into entry into pro bono service from

1 lawyers is the unknown. "I don't know how long this case
2 is going to be. I don't have unlimited time to commit to
3 it," but a lawyer who is really focusing on form
4 completion and explanation of warnings, it could be a
5 two-hour commitment, and there may be many lawyers who are
6 willing to invest two hours to help complete a form and go
7 through the warning type things we've talked about today,
8 and then after that process the lawyer could validate the
9 completion of the form. The judge seeing that would see
10 this has been through the validation procedure, and that
11 would raise the comfort level of the trial judge who is
12 dealing with the form and knowing that this information
13 there was at least complete, and so I think that's another
14 possibility we could think about.

15 But in any event, when the Court is working
16 on putting these forms in plain language, I would
17 emphasize that plain language is important, but precise
18 language is also important, and in a legal world we deal
19 with words that mean things, and words have meanings in
20 the law, and to the extent we've had discussions talking
21 about contested really means uncontested and residence
22 really means domicile, and, you know, we've had lots of
23 those types of things, I would urge the Court to stick
24 with terms of art. Even if there is some explanation
25 somewhere that purports to put them in plain language, do

1 not use terms that are not recognized in law in Texas like
2 alimony.

3 CHAIRMAN BABCOCK: Okay. Judge Peeples.

4 HONORABLE DAVID PEEPLES: If we have to vote
5 on this today I'm voting in favor because on balance I
6 think Trish McAllister put it in a nutshell when she said
7 these forms will improve the status quo and will not
8 worsen it, and I think she's right. What's the status
9 quo? The status quo is we have a lot of pro ses.
10 Richard, you and I talked with the pro se staff lady in
11 San Antonio, and didn't she tell us they have 200 phone
12 calls a day and 80 drop-in visits a day?

13 MR. ORSINGER: And 700 decrees waited to be
14 vetted by their staff.

15 HONORABLE DAVID PEEPLES: Yeah. Just an
16 enormous problem. Alistair mentioned it. Pro bono is not
17 getting the job done. I commend the bar, but pro bono is
18 not getting the job done. That's a fact. It is a fact
19 that people are using forms already. It's a fact, and a
20 lot of those forms are bad, and a lot of the criticisms
21 leveled today and yesterday at these forms also are
22 criticisms of the status quo. I mean, a lot of the
23 criticisms apply equally to what's happening today, and we
24 need to take that into account.

25 Now, so if we have to vote, that's how I'm

1 going to vote, and I think it will improve the situation
2 and not worsen it. The forms can be changed in a year or
3 two if they need to be. That's fine. Now, I don't think
4 that there is any hurry. With respect to the Supreme
5 Court, I do not understand why this has to be done in one
6 meeting and it has to be done today. I realize there's
7 been an excellent task force, but I would hope that the
8 Court would rely on this committee a little bit more and
9 let us look at it some more, and it might be helpful, and
10 we can maybe come up with some consensus. I just don't
11 know.

12 I am very attracted to several people
13 mentioned that the State Bar has propose this and that. I
14 just would love to see the Court do this, say, "We've got
15 a task force, but the bar is opposed to this. What is
16 your proposal?" Not an 80-page report. What do you want
17 us to do, A, B, C, D? We want it in writing so we can put
18 it out there to the people, to Texans, to the bar. If
19 you're not for this, what are you for, and the bar needs
20 to come up and say, "We don't like this, here's what we do
21 want to do." I don't know what it will be, but it ought
22 to be a few pages, so you go public. The State Bar of
23 Texas ought to be able to tell the people of Texas, "We're
24 against the Supreme Court, what they want, because here's
25 how we would solve the problem," and then that proposal

1 ought to come before this committee, and we ought to give
2 it the same scrutiny that we gave this proposal for the
3 last day and a half.

4 This is my 19th year on this committee, and
5 I don't remember ever seeing anything come through here
6 that there wasn't blood on the floor. We can find the
7 most perfect proposal, we can find all kinds of fault, and
8 frankly, the fault that we've found with these is not all
9 that great when you compare it to other things we've done.
10 Let the bar come forward and say, "Here's what we're for,"
11 and let this committee say, "Let's look at it, and let's
12 ask some questions and let's see." Maybe it will stand
13 up, and if it does, I think the Court would say, "Thank
14 you, we'll go that route." But it's just so easy to
15 nitpick, pick and pick, pick that. It's quite something
16 else to say, "Here's what I'm for, scrutinize it." And I
17 think that would be a wonderful thing for the Court to do,
18 because I am concerned that if we force fodder on this and
19 it's approved or not approved, the Court votes for it, the
20 bar is still going to be mad, and I think that's a bad
21 situation. I would hate for the Court to go forward with
22 this much opposition from credible people without at least
23 trying to solve it a little bit more and, as I said, let
24 them say, "Here's what we're for" and subject it to the
25 scrutiny, and let's see where we go.

1 CHAIRMAN BABCOCK: Thank you, Judge. Skip.

2 MR. WATSON: Well, a couple of things.

3 First, this should go without saying, but there are times
4 when it needs to be said. This last couple of days has
5 made me very proud to have been asked to serve on this
6 committee, and you have no idea how much respect I have
7 for each of the members in this room, the advice of
8 counsel you've attempted to give the Court. I know the
9 Court must feel the same, but this, as messy as this has
10 been and as difficult as it's been, it is an honor to
11 serve with each of you.

12 Second, like has been expressed by many
13 people here, I came in wondering why the Supreme Court was
14 doing this. As someone who practices and tries to earn a
15 living before that Court, I had never considered it to be
16 activist, to be trying to expand into moving government
17 into private areas or doing any of the things that have
18 been talked about either directly or indirectly through
19 parts of this. That is not what the Supreme Court of
20 Texas is about. So my question was why? And I ultimately
21 came to the answer of that yesterday when I realized it
22 has no choice. The problem is enormous. The Legislature
23 is not and cannot address it because of funding. There
24 are not going to be lawyers to help these people, and to
25 my chagrin, I came to the conclusion that the organized

1 bar will not do it unless it has to, and that greatly
2 disappoints me, and it concerns me. I think that the
3 Court stepped in to fill a vacuum that we should have been
4 filling but have not and that I believe the Court, though
5 it won't say it, realized that if it doesn't do it, it's
6 not going to happen. I think that's the bottom line. I
7 don't know how many decades it has to go on before we get
8 that message. It's not going to happen unless the Court
9 does it.

10 My hope, coming off of what David Peeples
11 and Pete said, is that all of us, including the
12 institutional bar, will get the message from what is
13 happening here, that it's time to stop trying to stop the
14 train and to get on board, get with the program, start
15 shaping the process, start doing what we should be doing,
16 and that is getting equal justice under law to the people
17 who need it most, and I am very concerned that what I've
18 learned over the past few days is that I as an individual
19 lawyer and, with the exception of some people who I
20 enormously respect in this room, most lawyers and the bar
21 that represents us has not done that. I hope that the bar
22 will get behind these forms, and the Supreme Court of
23 Texas will not feel the ultimate necessity to promulgate
24 Supreme Court forms, but that the organized bar will get
25 on board with everything it has and get this done right.

1 If it doesn't, my vote is that we go forward and do it,
2 because it's got to be done and it won't happen unless it
3 happens this way. Thanks.

4 CHAIRMAN BABCOCK: Thanks, Skip. Peter.
5 Did you have your hand up? Sorry.

6 MR. KELLY: I did. We were going through
7 the forms and going through the aspects of it, there's a
8 tension between clarity and accuracy. If we want the
9 forms to be as accurate as possible and closely reflect
10 the Family Code, we should give them the family law
11 practice manual, the 175-page form for divorce, but we
12 can't do that. That renders them unuseful. It also
13 renders them completely unscrutable and incomprehensible
14 to our target audience here, people with eighth grade or
15 high school educations trying to wade through. That's
16 going to lead to errors in the forms, improper
17 descriptions, potential waiver of rights, subsequent
18 rights.

19 On the other hand, if we make the forms as
20 clear as possible, that goes to the other problem we were
21 talking about earlier, which is it leads to necessarily an
22 abridgment of the requirements of the Family Code or
23 rewriting of the code or rewriting of the reasons for
24 approving the divorce or the shorthand description of the
25 jurisdiction, and, you know, I stated before I think that

1 shorthand version of it needs to be approved by the
2 Legislature rather than by the Court. I think the Court
3 is overstepping its bounds and rewriting requirements that
4 have been spelled out in the Family Code very specifically
5 by the Legislature over a hundred years to ensure that
6 divorces are done in a proper manner, and if the shorthand
7 form is too shorthand, then it undermines the legislative
8 intent of the Legislature when it enacted portions of the
9 Family Code. So that's why even if we do need forms it
10 needs to be generated by a different branch of the
11 government, the one that initially drafted the Family
12 Code, that can give the practitioners an approved
13 legislative abridgment of the Family Code to work with.

14 CHAIRMAN BABCOCK: Thanks, Peter. Gene.

15 MR. STORIE: Yeah, I want to say I agree
16 with Judge Peeples and with Skip, and one thing I have not
17 heard but I hope we all agree with is the legal system
18 belongs to the people. It does not belong to us. It does
19 not belong to the courts, and our only real legitimacy is
20 in our ability to provide for the people the legal
21 services that they need, and so we've had a lot of great
22 ideas and really on all sides, but I think what we're
23 going to be faced with is an imperfect solution in an
24 imperfect world, it will never be different, and we just
25 have to try to make it a little better.

1 CHAIRMAN BABCOCK: Thank you, Gene. Does
2 any member of the -- any other member of the committee
3 wish to be heard?

4 All right. Well, I know some people have
5 missed their flights in order to hear what was just
6 spoken, and, you know, I, too, am really proud of this
7 group. Very eloquent statements by all the people that
8 chose to speak, and I think we have, I hope, done -- with
9 the help of the public and with the help of Steve Bresnen
10 and Tom Vick and Trish McAllister and Judge Warne, we've
11 done what the Court has asked us to do, which is to create
12 a record for it to consider these forms. The record was
13 created, as many people have said, at the last minute by
14 -- in some areas because that's the way it works when you
15 have volunteer groups trying to meet deadlines. You just
16 get stuff at the last minute. So that's not optimum, but
17 that's the way it goes.

18 The Court's obviously going to consider a
19 lengthy record that Dee Dee's hand is about to fall off
20 from having to type for hour after hour here this morning,
21 and whether or not we are asked to do further work as a
22 committee is at the Court's discretion, because we are
23 here to serve the Court and, of course, ultimately the
24 people of Texas. You know, I know that Marisa and Richard
25 and others on the subcommittee will have work to do.

1 These rules, if the Court decides to go ahead with them,
2 obviously need work. The family law section did a great
3 job of pointing out a number of flaws in the forms as they
4 were written, but what heartens me the most is the
5 absolute good faith that everybody has shown in the
6 discussions that we've had. Tom Vick was terrific in
7 responding to questions, Trish did a masterful job of
8 presenting her side of it, and Steve Bresnen and Judge
9 Warne also gave us terrific insight, as did members of the
10 public, so all I can do is thank all of you. You are
11 terrific, the best that there is, and we're adjourned,
12 with our next meeting on June 22nd and the 23rd at the
13 TAB. Thank you.

14 (Adjourned at 12:57 p.m.)
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2 **REPORTER'S CERTIFICATION**
3 MEETING OF THE
4 SUPREME COURT ADVISORY COMMITTEE

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8 I, D'LOIS L. JONES, Certified Shorthand
9 Reporter, State of Texas, hereby certify that I reported
10 the above meeting of the Supreme Court Advisory Committee
11 on the 14h day of April, 2012, and the same was thereafter
12 reduced to computer transcription by me.

13 I further certify that the costs for my
14 services in the matter are \$1,201.25.

15 Charged to: The State Bar of Texas.

16 Given under my hand and seal of office on
17 this the 28th day of April, 2012.

18

19

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