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MEETING OF THE SUPREME COURT ADVISORY COMMITTEE

DECEMBER 4, 2020

(FRIDAY SESSION)

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 Taken before *D'Lois L. Jones*, Certified
Shorthand Reporter in and for the State of Texas, reported
by machine shorthand method, on the 4th day of December,
2020, between the hours of 9:01 a.m. and 12:40 p.m., via
Zoom videoconference and YouTube livestream in accordance
with the Supreme Court of Texas' Emergency Orders
regarding the COVID-19 State of Disaster.

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2 CHAIRMAN BABCOCK: Well, it's 9:00 o'clock,
3 everybody, so let's get started. I know people will
4 continue to be admitted. Pauline, maybe you can take over
5 the duties of admitting people, but welcome to another
6 Zoom session of the Supreme Court Advisory Committee. We
7 have a number of terrific distinguished speakers to talk
8 to us today in our every-other-year meeting on deep
9 thoughts and ways to improve the justice system in Texas,
10 which we have typically done in the December, both before
11 the start of the legislative session.

12 A note, a sad note for our committee, and
13 that is that the person who has been our administrative
14 assistant for the last seven years, Marti Walker, is
15 retiring. Now, how many people who think she looks old
16 enough to retire, raise your hand.

17 Dee Dee, you should record that nobody has
18 got their hand raised. So, Marti, you're retiring at too
19 young an age. But I don't know if her replacement is
20 right above her on everybody's screen, but it is on mine,
21 Shiva Zamen is going to take over, and Shiva has worked
22 with me and is Marti's backup for a number of years, and
23 she's terrific. You'll all get to know her, and so wave
24 your hand, Shiva, so everybody can see who you are. And
25 so that will -- we will persevere, but we will miss Marti

1 big time, and when we're all together again, maybe we'll
2 coax her back and have a little ceremony so she can blush
3 and cry and do all of those things. And I will, too, of
4 course.

5 So with that -- with that said, we will turn
6 to the next item, which is our usual status report from
7 Chief Justice Hecht.

8 HONORABLE NATHAN HECHT: Thanks, Chip. I'll
9 start on a sad note. We are saddened by Judge Tom
10 Reavley's passing this week. Tom was 99. He served nine
11 years on the Supreme Court of Texas and 41 years on the
12 United States Court of Appeals for the Fifth Circuit and
13 served briefly as a special judge on the Texas Court of
14 Criminal Appeals. He may have been the only judge in
15 history to have done that, but Tom was a great guy; and if
16 you knew him well, he was always wonderful. He would tell
17 me that his time spent on our Court was some of the
18 favorite time of his life, and he would tell me that until
19 we got behind in the early 2000's, and then whenever I
20 would see him he would just shake his head and frown at
21 me. But then when we caught up he started telling me how
22 great his experience on the Court was; and I said, "Well,
23 Tom, there for a little while you didn't tell me that,"
24 and he said, "Well, that got you caught up, didn't it?"
25 And Tom was just a great -- a great friend and a great

1 role model and a great judge for Texas and the circuit and
2 the country, and we will miss him and extend our
3 condolences to Carolyn and his other family.

4 Then on a joyful note, I'm happy to report
5 that Judge Emily Miskel up in Collin County was awarded
6 the William H. Rehnquist award by the National Center of
7 State Courts a few weeks ago. Chief Justice Roberts
8 presented the award to Emily, as he does to each year's
9 award winner, and the Chief was very gracious in the midst
10 of an election and the pandemic and all of the things
11 going on to take time and record a greeting for Judge
12 Miskel. She is a graduate of Stanford and Harvard Law
13 School and has a science -- or undergraduate degree is in
14 a science background, and so when the pandemic hit, she
15 turned to -- in trying to help judges use technology to
16 conduct hearings remotely and keep going with the pandemic
17 surrounding us. So -- and she was the first judge we
18 think in the country and maybe in the world to try a jury
19 trial -- it was a summary jury trial -- remotely. And
20 that was back in May, and so she was honored for that and
21 her other contributions to the Texas judiciary.

22 She falls in a line of distinguished William
23 H. Rehnquist award winners, starting with Justice Jane
24 Bland, who won it about 10 years ago or so, and then Mark
25 Carter, former district judge in Houston, who won the

1 award four or five years ago for his work with veterans
2 courts. So we are excited about that. I don't think any
3 other state has three winners, but certainly have not had
4 them in recent years, and that's just because of the
5 distinguished quality of the Texas bench.

6 We also congratulate Justice Bland on
7 winning her election and with more votes than anybody's
8 ever won by before cast in her race, and then we
9 congratulate Chief Justice Christopher as well for, as she
10 says, the squeaker award, kind of the opposite of Justice
11 Bland's number, and very excited to have her continue on
12 the Court and to be -- to be leading it.

13 Our Court has continued to work remotely.
14 Judges and staff go in occasionally to the courthouse, but
15 most of the work is being done at home, and I'm glad to
16 report that we are more caught up this morning than we've
17 ever been at this point in the Court since I've been there
18 I think. And so it's working, and it's not nearly as much
19 fun, but we're going to have our holiday party next week
20 virtually, and Justice Bland is organizing all of that.
21 And we're doing our best to keep a tight, close family
22 working relationship with the legal staff and the other
23 staff as we continue to go through this year.

24 Our oral arguments have been remote as well
25 and so will the ones be in January, and we're just going

1 from month to month to see what happens, and we haven't
2 decided yet about the arguments after the first week of
3 January, and we'll just be looking at that as time passes.

4 We put out two emergency orders since we
5 last met. One, continuing the eviction diversion program
6 that Governor Abbott helped us set up with federal funds,
7 about \$160 million, and it's being organized. The pilot
8 programs are being set up, and we hope that it will be in
9 full swing by the time the federal moratorium on eviction
10 cases lifts at the end of this month, for the most part.

11 So that's money that can be used with the
12 agreement of the tenant and the landlord to pay the rent,
13 so it helps the landlord, helps the tenant, helps society,
14 helps everything, so we're very grateful to Governor
15 Abbott and we're looking forward to making a difference
16 through that.

17 Then the other emergency order was just an
18 extension of our general order that we first issued back
19 in March, and it continues to allow judges to suspend and
20 modify procedures to accommodate current circumstances.
21 It requires remote proceedings when possible. We've had
22 780,000 remote proceedings from March 24th, since March
23 24th, and almost 2.4 million participants, so the judicial
24 world has changed remarkably through the pandemic, and now
25 remote proceedings are becoming something of the ordinary

1 as opposed to the exceptional, and we'll be looking to see
2 how that should continue once we get on the other side of
3 the pandemic, what we learned from it and how things
4 should change.

5 On jury trials, we started from none and
6 then we let judges try jury cases with OCA's approval, and
7 then we backed OCA out of it a little bit and said you
8 just have to do it with an OCA-approved plan. Eighty-five
9 counties have submitted plans, and I think we've had
10 something like maybe 80 trials or maybe a few more than
11 that, maybe closer to a hundred, since the pandemic hit.
12 They're going slowly. If you saw in the morning news this
13 morning, Dallas is trying to roll out a plan to make them
14 more regular. It's a criminal jury trial plan that would
15 have jurors be in person in the courtroom, and they would
16 rearrange courtrooms, and there's structure in the process
17 to where they hope it will be possible to have criminal
18 jury trials in person in Dallas.

19 We're having some virtual jury trials around
20 the state, mostly in lower courts, and that seems to be
21 working pretty well, and more scheduled ahead, and this
22 may become something of a routine also in cases that those
23 virtual trials work in and satisfy people's concerns about
24 how the trial is conducted.

25 Then looking across the street, we're

1 anxious for the legislative session. I ran into some
2 legislators near the capitol last week, week and a half
3 ago, and they themselves were not sure how gatherings are
4 going to occur during the session. It may -- they think
5 it will start on time and then may recess for a while for
6 people to kind of begin to organize and not meet regularly
7 like they would in an ordinary session, but we'll see how
8 they -- how they decide to do that.

9 We do have some priorities. We want to make
10 sure that if there is legislation needed to allow
11 proceedings to be conducted remotely after the pandemic,
12 that we -- we try to get that passed. OCA is researching
13 what that -- what steps might be necessary; and short of
14 that, the Judicial Council will be looking at ways to make
15 sure that remote proceedings occur as well. And we will
16 probably set up a task force to work with this committee
17 to look at procedural rules to facilitate remote
18 proceedings going forward.

19 Bail reform will be on the table again, and
20 a new item is civics education. We want to see
21 legislation promoting civics education in the public
22 schools, and we've visited with the education agency about
23 that, and the Judicial Council is working on that as well.

24 Also diverting children with -- charged with
25 Class C misdemeanors from the criminal system, at least --

1 at least at the outset, and then we have a number of
2 mental health issues to address as well. We just had a
3 very successful judicial summit on mental health a few
4 weeks ago, and there were well over a thousand attendees.
5 Even at the end of day there were still hundreds, maybe
6 over a thousand attendees on the meeting call; and Justice
7 Bland is largely responsible, along with our excellent
8 staff over there, and -- in bringing all of that about.
9 Judge Hervey is the liaison from the Court of Criminal
10 Appeals, and we're just very excited about all of the
11 difference that our Mental Health Commission is making.

12 And then lastly, we have some amendments to
13 the citation rules and the expedited action and discovery
14 rules and the panel rehearing rules that we are in the
15 process of reviewing comments on, and we should be
16 finalizing those rules before very long. I'll just say
17 this now, although I may get a chance to say it again at
18 the close, but we're grateful, as always, to you and your
19 participation on this committee as we come to the end of
20 another three-year term for you. We just are so indebted
21 to you for your excellent work and your advice to the
22 Court, and we rely on it heavily. And we're grateful to
23 Chip for leading us and just all of the good work that you
24 have produced. And, Chip, that's my report.

25 CHAIRMAN BABCOCK: Thank you, Chief. I

1 would certainly second your comments about the amazing
2 people on this committee. Absolutely hundreds of hours of
3 work go into this, and it's all very, very high quality,
4 and it makes -- it makes my life very easy to lead a group
5 like this. We were hoping to hear from Dade Phelan, the
6 Representative from Beaumont. Buddy Low had secured his
7 attendance and comments today. As many of you know, he is
8 referred to as the presumptive Speaker of the House; and
9 many of you may not know that yesterday afternoon in a
10 rainstorm, he was in an airplane that had a accident and
11 landed and went off the runway. Fortunately, everybody
12 was fine and walked away from it without -- without
13 injury, but Representative Phelan will not be able to
14 speak to us today.

15 And we had also hoped to hear from and still
16 hope to hear from Representative Jeff Leach from Plano.
17 He was the chair of the House Representative's Judiciary
18 Committee last year and was widely hailed as being a very
19 effective chair. Pauline, he is maybe diving into our
20 meeting at some point, and if he is, if you could find
21 some way to let either me or Marti or Shiva know so that
22 we can recognize him and get his remarks and then release
23 him to other matters that he's handling on sort of an
24 emergency basis right now.

25 So, having said that, we will go to our next

1 speaker, who needs no introduction to anybody, other than
2 possibly John Day -- and actually not even John. John is
3 a member of the American College, so he knows David Beck
4 well, as David is a past president of the American College
5 of Trial Lawyers, and I think you can sum up David's
6 credentials in one sentence. "David J. Beck is
7 consistently recognized as one of our country's best trial
8 lawyers." I took that quote directly from David's
9 website, Beck Redden, so that is totally accurate. And
10 David and I and others have been serving for this past
11 year on the -- the Commission for -- on Judicial
12 Selection. David was appointed by the Governor to chair
13 that commission. We've had a number of meetings. We will
14 have our final meeting in December, and following that
15 meeting, we will make our recommendations to the Governor
16 and the Legislature as to whether there are reforms, if
17 any needed, in the way Texas selects its judges.

18 So David is here to make a presentation to
19 us, but also to solicit any comments we might have on this
20 topic, which, of course, is extremely important for the
21 citizens of our state. So with that, David, unmute
22 yourself, and let's get after it.

23 MR. BECK: Okay. Thank you very much, Chip.
24 First of all, let me begin by apologizing to the committee
25 and particularly the judges on the committee. This

1 backdrop here was actually created by OCA. I do not walk
2 around with flags on either side of me in these Zoom
3 meetings, so I just wanted to apologize to everybody for
4 the backdrop. I frankly don't know how to get it off my
5 computer.

6 I think, as most of you know, the last
7 session of the Legislature created the Texas Commission on
8 Judicial Selection. There are 15 members of the
9 commission. We have four state Senators, four members of
10 the House of Representatives. We have four that were
11 appointed by Governor Abbott, and we also have former
12 Chief Justice Tom Phillips and former Chief Justice
13 Wallace Jefferson. So we have a very good -- we have a
14 very good representative committee. And Tom Phillips, I
15 might add in particular, is kind of the historian on our
16 commission, because he has studied in the history of the
17 Texas judiciary and is a wonderful resource on the
18 commission. And I also want to thank Chip, who is my
19 vice-chair, and he's been of immeasurable help in moving
20 this process along.

21 Our assignment was a very simple one, but on
22 the other hand a very complicated one, because we were
23 told that we should study and review the method by which
24 judges are selected in Texas and to report on our findings
25 and recommendations to the Legislature by no later than

1 December 31 of this year. We were also requested to
2 report on the relative merits on the various alternative
3 methods of selecting judges, and we took that task very
4 seriously, and as a consequence we have met every month
5 during this year, even during the pandemic. Obviously we
6 had to resort to Zoom meetings at some point.

7 We have requested and heard from numerous
8 interested groups. League of Women Voters, Texas Fair
9 Courts Network, Texas Association of Business, TTLA, TADC,
10 Texas ABOTA, the appellate selection of the State Bar.
11 We've heard from a former chair of the Texas Ethics
12 Commission, who talked to us a little bit about the role
13 of money in our judicial elections. We've heard from
14 Dr. Mark Jones at Rice University Baker Institute, who
15 talked to us about trends in judicial elections, and
16 particularly of, I think, a material interest to the
17 commission was his report to us after the most recent
18 election.

19 We've heard from the Texans for Lawsuit
20 Reform, the Texas Civil Justice League. We've had surveys
21 that were conducted by the San Antonio Bar Association,
22 the Austin bar Association, the Appellate Section of the
23 State Bar of Texas. We've had such other speakers that we
24 requested, such as the Vice-Chief Justice of the Arizona
25 Supreme Court, who talked to us a little bit about their

1 system in Arizona. We've had public hearings. We've
2 actually wanted to have more public hearings than we
3 actually held, but the pandemic really prevented us from
4 doing that, but we did have public hearings in Dallas, San
5 Antonio, Corpus Christi, and Odessa.

6 We've also heard from a number of judges in
7 Harris County, so that we kind of got a -- a myriad of
8 views from judges and those who have previously served on
9 the bench.

10 As -- in addition to that, we have secured a
11 lot of data, a lot of statistical data to try to guide us
12 in the work that we're doing here, and I particularly want
13 to thank Megan LaVoie, who has been assigned to us, and
14 she's just been a tremendous help in securing the
15 informatioin that we need here. Our next meeting, as Chip
16 said, is December 18th. We've already begun discussions
17 on our recommendations. We've not voted on anything yet.
18 That will in all likely -- in all probability will take
19 place on December 18th. If for some reason we don't
20 finish on the 18th, we will have a special meeting,
21 because we will definitely meet our deadline of December
22 31.

23 The one thing I want to make clear is that
24 whatever recommendation we come up with -- and, Chip, you
25 can correct me if I'm wrong -- but I think that we are

1 unanimous that judges that have been elected will be
2 grandfathered into whatever system we come up with. So
3 there's going to be no effort to change the system for
4 those judges who have been elected. They will all be
5 grandfathered. That's one thing that I think there's
6 almost unanimity on the commission.

7 As you might expect when you start talking
8 about the current system, the possibility of nonpartisan
9 elections, the possibility of an appointment with a
10 retention system, you're going to have a myriad of
11 different views, and we did. We heard from a lot of
12 incumbent judges that they like the system as it is.
13 We've heard from judges that were defeated that they did
14 not like the system and that they thought, for example,
15 that an appointed system would be much better. So there's
16 certainly no unanimity on which method is the preferred
17 method. But there are a couple of points that I think
18 there is widespread support for.

19 One is improving the minimum qualifications
20 of judges, and I give you this one example. The San
21 Antonio Bar Association did a survey, and they had 401
22 respondents, and 88.58 percent of the respondents
23 absolutely supported increasing the minimum qualifications
24 for judges. And I don't need to tell the members of this
25 commission what those are. I mean, it's basically four

1 years if you're running for a trial judge and 25 years of
2 age, and then 10 years and 35 years of age for an
3 appellate court. And the concern that has been expressed
4 is that we just really need to improve the qualifications.
5 Now, how we do that, that's going to be the subject of a
6 lot of discussion at our meeting.

7 The second point I think that there was a
8 lot of widespread support for, and that's getting money
9 out of our judicial elections. Now, as Chip well knows,
10 it's one thing to say that, it's another thing to come up
11 with a way to do that, because of the constitutional
12 implications of the issue. But that's something we're
13 going to be struggling with, and as I said, on December
14 18th we're going to start voting, and the commission, I
15 think, has been very open-minded. They've asked a lot of
16 good questions of the numerous people that have appeared
17 before us, and I'm looking forward on the 18th to rolling
18 up our sleeves and coming up with some good
19 recommendations that hopefully will improve our system of
20 justice. So, Chip, with that, I'm certainly open to any
21 questions.

22 CHAIRMAN BABCOCK: Thank you, David.
23 Questions? And if there are no questions, that will be
24 the first time in the history of this committee that there
25 are no questions.

1 MR. BECK: I think they're concerned about
2 our recommendations.

3 CHAIRMAN BABCOCK: They probably are. But
4 they know how to ask a question, because they can raise
5 their hand, and I'm sure somebody is going to raise their
6 hand. And if you don't, I'm going to call on you, so go
7 ahead. Kimberly Phillips. Unmute yourself.

8 MS. PHILLIPS: Yes. Thank you. Thank you.
9 Thank you for that really great summary and context
10 setting there, David. I guess one of the questions I have
11 is, having received all of this data and listened to all
12 of these witnesses, what would you say are the, you know,
13 top three problems or challenges that we really need to --
14 to remedy?

15 MR. BECK: Well, I think the two -- two of
16 them I've already mentioned, which is improving the
17 qualifications, the minimum qualifications of our judges,
18 and secondly, try to figure out a way to get money -- as
19 much money out of the system as we can. And I think that
20 one of our speakers, former Chair of the Texas Ethics
21 Commission, said that 40 percent of the money for judicial
22 races come from lawyers. And I think that one of the
23 issues has to do with how does that look to the public
24 when you've got lawyers that are appearing in front of
25 judges who have made substantial contributions to the

1 election of that judge.

2 One of the questions I get all of the time
3 from clients, particularly from out of state, is "Do you
4 know this judge, and have you contributed to this judge's
5 election campaign?" And so it's really trying to come up
6 with a way to get as much money out of the -- out of the
7 system as we can so that people don't question the
8 integrity of our judicial system. If we lose the rule of
9 law and if we lose the independence of the judiciary, then
10 I think that we're -- we have very serious problems, and
11 so I think those are the primary issues.

12 I think a related issue is under our current
13 system, the problem is you have a lot of voters that don't
14 know anything about the candidates, and I've told the
15 commission this. I said in Houston where we have in
16 excess of 50 judges running at one time, I don't know all
17 of the judges, so how can somebody who is not even part of
18 the -- a direct part of the system know judges. So I
19 think those are the primary issues as far as I'm
20 concerned. But that's a great question.

21 CHAIRMAN BABCOCK: Thanks. Kimberly, you're
22 the general counsel of a very large company. You and I
23 have never had this conversation, but I have with others
24 in your role. What is -- what are your thoughts about the
25 fact that we have lots of money going to -- from lawyers,

1 primarily, mostly, but also big companies, interest
2 groups, that type of thing? Does that -- do you have any
3 thoughts about that?

4 MS. PHILLIPS: Yeah, a few. I think David
5 touched on it. It's really the integrity of the process
6 and the parties involved in the process I think is the
7 question I ask most often, is, you know, what are the
8 relationships that are at play in the courtroom between
9 the lawyers and the judges, and then how do I devise a
10 strategy to manage that and to ensure that we are
11 receiving a fair trial?

12 And the other question I ask most often or
13 the thing that I look at David touched on as well, are the
14 qualifications. You know, is this a judge who's had, you
15 know, complex commercial trials before, and how is the
16 judge going to manage the jury, and you know, really
17 looking at those qualifications. Like for me, it's beyond
18 age and years of experience, right. I think it's, you
19 know, looking more deeply at what really is the background
20 of the lawyer who is proposing to become a judge and how
21 does that work for the majority of the disputes that as a
22 judge that person will hear. Does that kind of --

23 MR. BECK: Chip, let me add one point. I
24 think the other thing that came through loud and clear
25 from the judges, former judges that testified, judges hate

1 asking for money. So it's not only that the lawyers don't
2 like being asked for money. The judges hate asking for
3 money, so you've got -- you've got those that are direct
4 participants in the system really don't like this whole
5 concept of having to be asked or ask for money.

6 CHAIRMAN BABCOCK: Yeah. Yeah. Absolutely.
7 In fact, we have a -- somebody with kind of a unique
8 experience in this regard on our -- on our committee.
9 Kent Sullivan was a district judge. He was on the court
10 of appeals. He recently was appointed as the Commissioner
11 of Insurance by Governor Abbott. He has left that job. I
12 should say recently left the job. He's been on it for
13 three years. Kent, I hope you're still on, and if you
14 are, if you would unmute and unmask yourself and give us
15 your thoughts about this.

16 Well, it shows on, but either he doesn't
17 know how to unmute himself, or he's stepped out. He told
18 me he might have to step out for a minute to deal with
19 things, so we'll hear from Commissioner Sullivan later.

20 Does anybody else have any comments or
21 questions for David Beck about the work or the commission?

22 MS. PHILLIPS: I just -- I have one more
23 reflection, Chip, if I may.

24 CHAIRMAN BABCOCK: Yeah, Kim, absolutely.

25 MS. PHILLIPS: And that is around the

1 knowledge of the public around the judges who are on the
2 ballot. You know, I get a lot of questions all the time
3 from family and friends, "Who are the judges and who
4 should I vote for, or who should I not vote for and why,"
5 so I think that is a real issue. But I think we also have
6 to be careful not to be too paternalistic about the
7 electorate, right. It's part of their job to understand
8 all of the issues and the candidates on ballots, and so I
9 would -- I don't want to undermine the rights that the
10 electorate has to make choices in our system, but just
11 another reflection.

12 CHAIRMAN BABCOCK: Yeah. Thanks, Kim.
13 Robert Levy.

14 MR. LEVY: My question for David is kind of
15 a deeper dive into the recent election and the impact of
16 no straight ticket voting. Have you had a sense of what
17 impact that might have made on judicial elections?

18 MR. BECK: Yeah. That's a great question.
19 We heard from Dr. Mark Jones with the Baker Institute in
20 Houston, who we had asked earlier when he appeared before
21 the commission to take a good, hard look at the results
22 and then report back to us, which he did. And the bottom
23 line is that there really wasn't a whole lot of change. I
24 mean, he quantified it in saying, you know, there was a
25 small change, but the results were essentially the way

1 they were before when straight ticket voting was
2 permitted. And I asked him specifically what did he
3 attribute that to, and he really came up with two answers.

4 He said, well, first of all, he thought that
5 there was a lot of effort to educate people to actually
6 vote down-ballot, and then secondly, which I think is,
7 frankly, an excellent explanation, he said that because of
8 the pandemic and because you had a lot of earlier voting
9 and, you know, voting absentee and so on, people had more
10 time to reflect on the candidates, and so they took more
11 time to vote.

12 And so when they took more time to vote,
13 they would actually go down-ballot, whereas if you're at a
14 polling station and you're standing in line and you want
15 to get out of there and it takes you an hour to get up to
16 the machine, you want to vote and get out real quick.
17 Well, you can't do that if there's no straight ticket
18 voting. But he said that because of mail-in and so on and
19 so forth, people just had more time. They're sitting
20 around their kitchen table, you know, going down it. So I
21 think that's the better of the two explanations, but those
22 are the two reasons he gave us.

23 HONORABLE JANE BLAND: Was there more
24 down-ballot voting in the early voting as opposed to the
25 election day voting?

1 MR. BECK: I don't know the answer to that,
2 Judge Bland. I just don't know the answer to that. I'm
3 not sure he analyzed that.

4 HONORABLE JANE BLAND: Because that would
5 seem to talk about whether that's a fruitful explanation.

6 MR. BECK: Right. Right.

7 CHAIRMAN BABCOCK: Lamont Jefferson.

8 MR. JEFFERSON: I was going to ask the
9 question Robert asked, but along those same lines, David,
10 what -- what did you hear -- what did the commission hear
11 about the -- I guess, the worthiness of using party
12 affiliation as a factor in voting and, you know, what -- I
13 guess really the question is what's the argument in favor
14 of we should retain -- you know, use parties -- judges run
15 under a party ticket?

16 MR. BECK: The argument that I heard most,
17 Lamont, was that if you assume that the electorate really
18 is uninformed about who they're voting for when they're
19 starting to go down-ballot and vote for judges, if you
20 have a partisan election with a D or an R in front of
21 somebody's name, that's at least a signal for some
22 information. What that tells you, I'm not really sure,
23 but at least it's some information that a voter has, and
24 whether that's -- they assume that the candidate with the
25 D in front of their name has a certain philosophy, or an R

1 in front of their name has a certain philosophy, but I
2 think that's the argument that I heard most of all.

3 CHAIRMAN BABCOCK: Professor Carlson. And,
4 by the way, you don't have flags, but that does look like
5 a Michigan lake behind you, Elaine.

6 PROFESSOR CARLSON: It is. It is, Chip.
7 David, I had a question and ask you to expand a little bit
8 on the qualifications. With Texas transitioning to the
9 Uniform Bar Exam, we're going to have more and more people
10 coming into Texas being licensed to practice law that have
11 no background or little background in Texas -- or
12 certainly didn't go to a Texas school or little background
13 in Texas procedure and evidence and things that you would
14 expect a trial lawyer to know. Did you factor that into
15 your qualifications at all and your requirements?

16 MR. BECK: We had several -- thanks, Elaine,
17 good question. They've had -- we've had several requests
18 about how to beef up the qualifications of our judges.
19 And remember, we're going to -- there may be a -- there
20 may need to be a legislative change and even a
21 constitutional change when you start changing the
22 qualifications of our judges, but one suggestion we've
23 had, that if somebody wants to be a trial judge, they must
24 have at least tried X number of cases. And, you know,
25 there's a real problem with defining a trial these days.

1 I know the American College of Trial
2 Lawyers, requires that you have a certain number of
3 trials. Well, what is a trial? Is an arbitration a trial
4 today, where you put witnesses on and you direct exam and
5 cross-examine them? Supposing you have a preliminary
6 injunction or a temporary injunction hearing of three
7 days, is that a trial or is it not a trial? So those are
8 the kind of questions that I think everybody is struggling
9 with today with the vanishing trial, but at least the
10 suggestion was if you want to be a trial judge, you have
11 at least must have been a first chair trial lawyer in X
12 number of cases. On the appellate level, similarly,
13 there's been a suggestion that you must have at least
14 argued X number of appeals before you are qualified, if
15 you will, to serve as an appellate judge.

16 Because otherwise, we run the risk of people
17 being put on the bench that -- that the first time are
18 presiding over a trial, which they've never even seen
19 before, much less participated in; and the real harm there
20 is -- is, you know, forget the lawyers. It's the clients.
21 It's the litigants that really suffer the consequences
22 when you have a judge that is very inexperienced, has no
23 knowledge about what actually goes on in the courtroom.
24 Now, there will be a learning curve, and those judges will
25 catch up, but what do you do during the interim? It's the

1 litigants that I would argue really suffer the
2 consequences.

3 CHAIRMAN BABCOCK: Thank you, David. Judge
4 Peeples.

5 HONORABLE DAVID PEEPLES: David, I have two
6 questions. One is how strong is the support for the
7 present system? And I understand people who would say the
8 present system is imperfect, but all of those alternatives
9 are worse. My question, my first question, is are there
10 very many people who say we've got a good system right
11 now? Forget about alternatives, it is good right now the
12 way it works. And my second question is a political one.
13 Would it lessen the opposition ultimately in the
14 Legislature and in the people, if there has to be a
15 referendum of some kind or a constitutional amendment, if
16 there were a local option? In other words, each county
17 would have to choose the system for that county. Would
18 that be something that -- is that something y'all have
19 talked about, and would that maybe make it more palatable
20 if people knew at least we'll get to choose locally what
21 we want if there's change?

22 MR. BECK: Yeah, I think, first of all, in
23 answer to your first question, yes, there was a lot of
24 support for leaving the system as it is. And a lot of
25 that support came from judges that are currently on the

1 bench, who have been elected. On the other hand, you had
2 judges that were defeated, felt just the opposite, that
3 they thought it was a bad system because they were being
4 removed from office, even though it had nothing to do with
5 their performance. I mean, we have a judge here in
6 Houston that probably tried more cases than any judge in
7 the courthouse, and he was just defeated. He was a
8 Democrat, defeated in the primary. So we lose a lot of
9 judicial experience. We had another judge, a Democrat got
10 beat in his primary. I tried an antitrust case in front
11 of him, terrific judge.

12 So you had judges who had good performance
13 that were voted out of office, but the short answer is,
14 yes, there is certainly support for leaving things the way
15 they are. And the big argument in support of that is the
16 people's right to vote, the people's right to choose their
17 judges. That's the big argument in favor of leaving the
18 system the way it is. There has certainly been evidence
19 before the commission that, well, if you look at the rural
20 areas, they pretty well know who their judges are. So
21 there's not a -- there's not the problem of somebody being
22 elected that nobody knows.

23 That's true to a large extent, except that
24 I -- I know at one of the public hearings we had, which
25 was in Odessa, there was certainly the point made that the

1 people in the rural areas know their trial judges, because
2 they go to church with them, they go to the supermarket
3 with them, but they don't really know their appellate
4 judges because their appellate judge may be somewhere
5 else. So I think that's certainly a problem, but in terms
6 of local -- one of the things we've thought about, and
7 again, there's certainly been no decisions made, is do we
8 distinguish between the large metropolitan areas, like San
9 Antonio, Houston, Dallas, Austin, where you're having
10 these so-called sweeps, where people are being swept out
11 of office, has nothing to do with their performance or how
12 they've actually performed or done on the bench, and
13 making a distinction between that and the rural areas.
14 And that's something we're going to be considering.

15 One of the other things we're going to be
16 considering is what you've just hit upon, is do you want
17 to set up a mechanism where the local people actually have
18 input into whoever the judge may be? For example, if you
19 go to an appointed system with a retention, do you set up
20 some type of local commissions, if you will, to vet
21 people, to suggest people and so on. So that's another
22 alternative that we've certainly been talking about.

23 CHAIRMAN BABCOCK: Rusty Hardin on the
24 phone, not visually. Rusty, you have to unmute yourself.
25 All right.

1 Rusty, we can't hear you, hang in there, and
2 we'll come -- we'll pick up with you in a minute, but in
3 the meantime, Justice Christopher.

4 HONORABLE TRACY CHRISTOPHER: Well, two
5 thoughts. One, you can't take the money out of judicial
6 elections and still have elections. I mean, it's just not
7 possible, and because you can't leave people without the
8 ability to raise money to try and get some information out
9 about themselves. And then, secondly, it absolutely made
10 a difference in our four appellate races, the end of
11 straight party voting. So, I mean, if you look at it, you
12 will see that it absolutely did make a difference. So in
13 a close race, it's making a difference. In the trial
14 court races, it didn't make a difference, because they
15 weren't close enough, but the numbers were different from
16 the trial judges versus the Supreme Court judges, for
17 example, in our counties. So more Republicans voted down
18 ballot than Democrats did.

19 MR. BECK: Judge, do you think the fact that
20 an appellate judge deals with multiple counties as opposed
21 to, say, one county, Harris County?

22 HONORABLE TRACY CHRISTOPHER: Well, no, I
23 mean, that's why it made a difference, because we were
24 close enough.

25 MR. BECK: Right. Right.

1 HONORABLE TRACY CHRISTOPHER: It didn't make
2 a difference in Harris County, because they weren't close
3 enough.

4 MR. BECK: Correct.

5 HONORABLE TRACY CHRISTOPHER: Yeah.

6 MR. BECK: Yeah. Well, you know, we have
7 struggled with how to get information to voters about
8 judges. You know, one suggestion was we come up with a
9 pamphlet. Well, the trouble is in Harris County, as you
10 well know, there are so many judges, the pamphlet would
11 look like Black's Law Dictionary. I mean, there are so
12 many judges, and you would need to put so much
13 information. Another suggestion was to have some kind of
14 a website where judges could put so much information about
15 themselves so people could go to it. Well, you know,
16 query, would people actually do that?

17 HONORABLE TRACY CHRISTOPHER: No, because
18 those websites exist.

19 MR. BECK: Yeah. I know, but it would
20 be --

21 HONORABLE TRACY CHRISTOPHER: And almost
22 every judge has a website. It's like one of the cheapest
23 things you can do --

24 MR. BECK: Right. Right.

25 HONORABLE TRACY CHRISTOPHER: -- to

1 advertise your qualifications or, you know, for people to
2 find out something about you, and people don't go look.

3 MR. BECK: Yeah. And I think another
4 suggestion was that somehow to try to get the money out,
5 you -- the state set up some kind of an apparatus where it
6 would fund the elections. That's never going to happen.
7 I mean, the cost would be so high it would never -- it
8 would never succeed, I guess basically is the best way to
9 put it.

10 HONORABLE TRACY CHRISTOPHER: Well, and
11 then, I mean, you can look at -- you can look at some
12 other states where they have retention elections, and
13 judges aren't allowed to raise money. Well, then all you
14 have are the PACs that raise money --

15 MR. BECK: Right.

16 HONORABLE TRACY CHRISTOPHER: -- and
17 advertise for or against --

18 MR. BECK: Right.

19 HONORABLE TRACY CHRISTOPHER: -- certain
20 judges. And then the judge is left totally unable to
21 present their side of the case.

22 MR. BECK: No, I absolutely agree, and one
23 of the arguments we heard in favor of retention elections,
24 as far as the money concerned, is that, yes, money would
25 still be involved in a retention election, but it would be

1 far less than there would be if you had, you know, just
2 the current system, for example. The counterargument has
3 been, well, what if you have a hot button issue where
4 you've got special interest groups that are really being
5 very active in a retention election because the judge has
6 ruled one way or another on some kind of a hot button
7 issue. The amount of money being spent on that election
8 is going to, in my view at least, sore. So it's a thorny
9 issue.

10 CHAIRMAN BABCOCK: Okay. We've got a lot of
11 scheduling issues here. Commissioner Sullivan, if you're
12 on, you've got the floor. And then, Pauline, apparently
13 you've got Representative Leach on the line waiting or
14 not?

15 MS. EASLEY: They've dropped off.

16 CHAIRMAN BABCOCK: They dropped, okay. Then
17 we will go to Commissioner Sullivan, if he can hear us.
18 And, Pauline, when we get to Rusty, you're going to have
19 to unmute him. But we'll go to Commissioner Sullivan
20 next, if he can hear us.

21 HONORABLE KENT SULLIVAN: I can hear you.
22 Can you hear me?

23 CHAIRMAN BABCOCK: Yes, we can. Thank you.

24 HONORABLE KENT SULLIVAN: So thank you, and
25 I'll be very brief because it sounds like I'm holding up

1 other people, but I appreciate the chance to say just a
2 couple of words, very briefly. I strongly endorse
3 judicial selection reform. I will say from a personal
4 point of view it's been something I've been very
5 interested in and supportive of since 1992. That was an
6 election cycle in which I first helped in a really
7 meaningful way a close friend who was running for district
8 judge in Harris County.

9 Candidly, I saw in a very up close and
10 personal way what I thought was the ugly underbelly of
11 judicial politics. I was a firsthand witness to things
12 that I thought should never happen with respect to the
13 judiciary or the legal system. Fortunately he won, and I
14 thought it turned out fine, but the process was simply not
15 one that should have ever occurred. As you can tell, it
16 is something that has sort of seared in my memory, and
17 I've felt strongly about this ever since.

18 I have participated in the system, been
19 appointed twice. I have been on the ballot, and I have
20 never changed my mind that this is a system that
21 desperately needs to be changed. I will say that there
22 are, you know, perhaps many approaches that would be good,
23 but I will close with just a couple of very broad points.
24 I had given a little bit of thought to this, and, you
25 know, from my perspective, there needed to be three sort

1 of overriding principles we look at.

2 We've got to have a high quality judiciary.
3 That's a system that will produce judges of the highest
4 integrity, with excellent professional reputation, legal
5 experience, and training. Our current minimum
6 qualifications for someone serving, they simply don't do
7 that. They don't come even close to that, so I think
8 we've got to take a look at that. That's obviously
9 already been referenced.

10 We need an independent judiciary, one that
11 really will facilitate fair and impartial judicial
12 decisions based solely on the merits and unaffected by
13 partisan or other inappropriate considerations. Our
14 current system does not do that.

15 And we need an inclusive and nonpartisan
16 judiciary, a balanced system that facilitates selection
17 and retention of a judiciary of the highest caliber and is
18 one that is appropriately representative of a large state
19 like Texas. Those are ones that -- those are principles
20 that I strongly endorse. I am excited at the prospect of
21 work product from the commission and would welcome, you
22 know, movement forward and will try and support it any way
23 that I can.

24 Thank you, Mr. Chairman.

25 CHAIRMAN BABCOCK: You're quite welcome,

1 and, David, any reaction to what Commissioner Sullivan had
2 to say or -- and if not, we'll move on to Judge Estevez,
3 but you can react to that if you wish.

4 MR. BECK: I have nothing to add to Kent's.

5 CHAIRMAN BABCOCK: Great. All right then.
6 Judge Estevez.

7 HONORABLE ANA ESTEVEZ: So I have more of a
8 question, and just to give you a little background about
9 me, I am -- I'm from Amarillo. I'm a sitting judge, and I
10 was elected, but I also have been appointed by the
11 Governor for another position, so I guess I have part
12 appointment and part election, but my question has to do
13 with the smaller counties. To become a judge you have to
14 actually live in those counties, and my question becomes
15 when you reach -- I heard some of the qualifications. I
16 don't know if those are the final ones, but you had
17 indicated that they would maybe have experience in quite
18 complex litigation.

19 Well, some of these smaller counties may not
20 even try more than one or two trials a year. They --
21 those people that live in those counties certainly may
22 never have had a complex trial, more than a car wreck or
23 probably an explosion in some sort of factory or something
24 like that, because that's a lot of the things that happen
25 there. So my overall question is just are you planning --

1 have you guys discussed that; and if you have, are you
2 planning to change the Constitution and basically place
3 judges from out of the bigger cities into these smaller
4 counties when they don't meet what your minimum
5 qualifications are?

6 Because that could actually happen, not that
7 they're not great attorneys that can do it all. It's just
8 they wouldn't have had that opportunity because of where
9 they live.

10 MR. BECK: Yeah, a great question, Judge.
11 That is one of the issues we're struggling with. There's
12 even been a suggestion that before you can serve on the
13 trial bench or the appellate bench you must be special --
14 you know, board specialized in one form or another, and
15 you know, there's some opposition to that. So I think the
16 statistics show that only 7 percent of lawyers in Texas
17 are specialized in any particular category.

18 But the challenge for us, Judge, is to try
19 to come up with some improved qualifications for judges
20 that are achievable; and what those are, are going to be
21 the subject of discussion, but I think you make an
22 excellent point. In fact, I just made a note of that.
23 What do we do about counties where you don't have many
24 trials? Because if you say that somebody has to have X
25 number of trials and there haven't been that number of

1 trials in Amarillo for four years, you're basically
2 disenfranchising somebody from serving as a judge, and we
3 don't want to do that.

4 So but that's a great point. I made a note
5 of it, and I'm going to raise that at our commission
6 meeting on the 18th to make sure that we consider that
7 point.

8 CHAIRMAN BABCOCK: Great. Thanks, Judge.
9 Thanks, David. And we'll go now to Harvey Brown, who
10 everybody knows was on the -- a justice on the court of
11 appeals in Houston. Harvey, take it away.

12 HONORABLE HARVEY BROWN: Thank you, David,
13 for all of your hard work and for your group's hard work.
14 Just two comments. One, I just want to make it clear for
15 the record that while you've had a number of defeated
16 judges testify, and I was not one of those that's
17 testified, those judges, my guess, have been advocating
18 for change long before they were defeated. I mean, I
19 remember that I was advocating for change and was on a
20 committee that looked at this back in the Nineties when
21 Katie Kennedy, who was then the top-rated Democrat judge,
22 lost. And I said, you know, it's a shame. It shouldn't
23 be this way. Whether Republican or Democrat, we need to
24 do something different. So I just don't want it to look
25 like all of the new judges who won favor the status quo,

1 and all of the old judges who lost are doing this only
2 because they lost. They've been advocating this for a
3 long, long time.

4 Second point is I hope when you're
5 considering experience you'll consider not just the number
6 of trials, but the types of trials. I think a six-week
7 trial is worth, quote, more points, if you will, than a
8 one-day car wreck or maybe even 10 one-day car wrecks.
9 And so I do think it's tricky on deciding how that works
10 out, but I think there are a number of lawyers who are
11 well-qualified that haven't tried necessarily a whole lot
12 of trials, but have tried some very complex trials.

13 MR. BECK: Yeah, thank you. Great points,
14 and I absolutely agree with them. You know, one of the
15 arguments that we heard from judges that were defeated --
16 and I absolutely agree with your point that many of them
17 were already in favor of change, even before they were
18 defeated. But one of the arguments that we heard that,
19 frankly, I hadn't really focused on is that when you have
20 somebody that decides to leave their law practice and go
21 into public service and become a judge, they're basically
22 changing their life, and they're changing the life of
23 their family, and they want some predictability with the
24 new career that -- that they're embracing, and, you know,
25 it's one thing to say, "Okay, I do a good job, I work

1 hard, I move my docket, I'll be rewarded. I'll continue
2 as long as I want to do it," and then have something
3 that's totally unforeseen happen and they're suddenly
4 gone.

5 And so their effort to do public service has
6 suddenly changed, and now they're back to square one, and
7 I guess I hadn't focused entirely on that point and the
8 effect it has on judges, people who want to be judges, and
9 the effect on their families.

10 HONORABLE HARVEY BROWN: And if I can just
11 respond briefly. That is true completely, but one unique
12 thing is you lose your clients, too. So you not only are
13 going back and starting from scratch, but most of those
14 clients have been picked up by lawyers who have been now
15 representing them for two or three years, and it's a
16 little bit more difficult sometimes to go back and at
17 least get the same quantity of work, so that's another
18 burden on the defeated judge. Thank you.

19 CHAIRMAN BABCOCK: Frank Gilstrap.

20 MR. GILSTRAP: I have a question. First of
21 all, we got rid of straight ticket voting, but we didn't
22 get rid of partisan ID. I went back and looked back at
23 the Tarrant County vote. All of the judges are D's or
24 R's, all of the candidates. As David points out, people
25 had time, it was a big partisan election, and they had the

1 one marker they could pick, which was were they a D or an
2 R, and that maybe drove the voting. We've gotten rid of
3 the straight ticket voting. Why don't we get rid of the
4 partisan ID?

5 MR. BECK: Well, good question and
6 nonpartisan elections is going to be one of the methods
7 that we will be passing on and making a recommendation one
8 way or the other as to the Legislature, but nonpartisan
9 elections is certainly one of the methods that we've
10 studied and we'll make a recommendation on.

11 MR. GILSTRAP: Well, it's -- let me just
12 make one comment.

13 CHAIRMAN BABCOCK: Sure, Frank.

14 MR. GILSTRAP: You know, rather than making
15 some type of sea change, you know, we've gotten rid of the
16 straight ticket. Why don't we take the next step and get
17 rid of partisan voting and see how that works out, rather
18 than just trying to come up with some new system? Because
19 at the end of the day, we're dealing with two things. One
20 is this long struggle between independent judiciary and a
21 judiciary that's responsible to the people. The second
22 thing is we've got these sweeps. I remember when we were
23 all Democrats, then we all became Republicans. Now, who
24 knows. If -- you know, we've got to fix one problem at a
25 time. It seems, at least with regard to the latter, you

1 could take that one step and go on down the road.

2 I know where the resistance is coming from,
3 because judges in counties where their seats are generally
4 secure like to be identified with the dominant party.
5 They all wanted to be Republicans for a while because that
6 assured that they would get all the Republican votes. I
7 say those days are passing. It's time to try something
8 else. Thanks.

9 MR. BECK: Good point. Thank you.

10 CHAIRMAN BABCOCK: Thanks, Frank. Let me
11 just ask on the record here, Marti, has Representative
12 Leach called back in, or is that an old text you sent me?
13 You have to unmute yourself.

14 MS. WALKER: Hi, Chip. I was following up
15 on Pauline's chat just trying to -- but that is following
16 up on her chat earlier, so they have not reconnected, no.

17 CHAIRMAN BABCOCK: Okay. They haven't
18 reconnected. Okay. That's great. All right. Then
19 Richard Orsinger is next. Richard.

20 MR. ORSINGER: Thank you, Chip. David, I
21 got to watch one of your sessions. I thought it was very
22 interesting. It's on YouTube if anyone wants to see them.
23 I'm very familiar with the advantages and disadvantages of
24 partisan election, but the -- the old style Missouri Plan,
25 as they used to call it. I'm not too sure about the

1 disadvantages. I've talked to a few lawyers over the
2 decades that are not happy with the Missouri Plan, but
3 have you heard anything from people that live in states
4 that use the Missouri Plan as to what the disadvantages
5 are to qualified selection and retention?

6 MR. BECK: Yes. The biggest -- and the
7 Missouri Plan is something we've taken a look at. The
8 biggest argument or complaint we've heard, Richard, about
9 the Missouri Plan is the so-called commission. As you
10 know, under the Missouri Plan you have a commission that
11 will come up with nominees for the bench, and they'll
12 recommend -- and the Governor has got to pick one of
13 those, and the -- the big argument we've heard against
14 that is the potential for that group to be controlled by,
15 you know, one side or the other, if you will. And once
16 that happens, then you're right back where you started, as
17 you've got people that, you know, are all Democrats, all
18 Republicans, et cetera, et cetera.

19 So that's the biggest argument we've heard,
20 and frankly, if -- and let me just tell you that one of
21 the methods that has been suggested for us to take a look
22 at is an appointed system for our judges with a commission
23 that will be -- and we will be debating how you name that
24 commission, whether it might have the Senate appoint some,
25 House of Representatives appointment some, the State Bar

1 appoint some, the Chief Justice appoint some, and so on.
2 And then the big issue, though, is what is the role of the
3 commission? Does the commission simply vet the Governor's
4 nominees, qualified, highly qualified, not qualified. Or,
5 on the other hand, does the commission say, "Governor,
6 here are four nominees for the Supreme Court, the one
7 Supreme Court vacancy. You've got to pick one of them."

8 And that's the big issue, and that's
9 something we'll be debating on the 18th, but, yes, we have
10 had some criticism about the Missouri Plan, but
11 principally the way they select that commission.

12 MR. ORSINGER: Thank you.

13 CHAIRMAN BABCOCK: Thank you.

14 Judge Estevez. You've got to unmute yourself, Judge.

15 HONORABLE ANA ESTEVEZ: I was trying to find
16 it. My other question also went back to qualification. I
17 ran for judge at a very young age. I think Justice Hecht
18 was on there pretty young, too, and maybe some of the
19 other ones, but I really -- my concern is that some of the
20 people that really have a passion for service and a
21 passion for justice and a passion to be a judge may -- and
22 I don't know what all your qualifications are going to be,
23 but I would like you to -- when you go back to think about
24 that younger person that really feels that's their
25 calling, and are you going to be making them wait 20 or 30

1 years before they'll be able to do what they really feel
2 would be the strongest way to serve people, for them.

3 And I -- obviously I don't know if you're
4 going to say, you know, you have to do 200 hours of trial
5 work. I mean, are you going to have to -- if somebody
6 really wanted to do that, are they going to have to move
7 from where they live, go to Houston or some larger place
8 where litigation -- and I don't know that they necessarily
9 litigate everything. I guess you would have to do
10 criminal law to get that type of experience quickly.
11 That's the only way you can really do it, because the
12 civil cases don't always settle and when they do -- I
13 mean, they usually settle, I'm sorry. But anyway, I just
14 -- I wanted you to think about people in those situations,
15 that the people give them a chance.

16 You know, elections in our smaller areas,
17 the people do know the candidates. The candidates are
18 going door-to-door. The candidates are on commercials
19 everyday. They are on the radio everyday. They know
20 them, and they decide do they want someone that they've
21 known forever that's -- or, you know, that they've known
22 for 20 years, and they think there is a lazy person who
23 might have experience, but they don't want him to be their
24 judge, or do they want someone that they feel are really
25 going to be a better fit for what they need in the

1 community. So that's all.

2 MR. BECK: Thank you, Judge. Good point,
3 another one I wrote down.

4 CHAIRMAN BABCOCK: Great. Well, we have had
5 a -- we've made history over the years in this committee,
6 but we made history today because Rusty Hardin was muted,
7 and he couldn't get unmuted, but I'm told that now he is
8 unmuted and has a comment for us all. Rusty, if that's
9 true, jump in with your comment.

10 MR. HARDIN: Can you hear me now?

11 CHAIRMAN BABCOCK: Yeah, we can hear you
12 now.

13 MR. HARDIN: So I actually -- the comment
14 right after -- right after you unsuccessfully tried to get
15 me in before, was that -- and it did have to do with the
16 nonpartisan nature of it. You know, David, I'm curious as
17 to what your sense is as to how serious people go to
18 consider it. That's been, you know, the elephant in the
19 room through all of these conversations because -- as I
20 sent a text to Chip a minute ago to say privately that,
21 and if you look at any of the large cities -- I think it
22 was mentioned Fort Worth or so, but if you look at any of
23 them, basically down-ballot people picked their party just
24 like they did when it was straight ticket, but the
25 straight ticket just did away with volume. I don't think

1 it did away with the change in people's selections, and
2 until people are not identified by party, I'm just afraid
3 in the large cities -- in the smaller cities, as we all
4 know in this conversation, they get to know who their
5 judges are, and it's not as critical.

6 But in these large cities, as others have
7 talked about during this conversation and as, David, you
8 said yourself, you don't know who all of the judges are in
9 Harris County. None of us do. Right now, because the
10 Democratic Party is hot in the major cities, it is like it
11 was, you know, 30 years ago, 40 years ago, when some of us
12 started. I think in this case now, in Harris County, the
13 judges are decided by the primary, and the two Democratic
14 judges that David bemoaned losing, both of whom were
15 excellent, and I agree with him, and they're pretty
16 well-known to everybody in the county in the legal
17 profession, they lost in their primaries, not in the
18 general election. And so as long as we are designating
19 them by party, I'm afraid the judicial selections are
20 still going to be hostage to whichever party is hot.

21 And, you know, when I first started
22 practicing, Republicans wanted appointed judges because
23 there were no elected Republicans statewide. I see
24 Justice Hecht nodding. We unfortunately or fortunately
25 started around the same time, maybe one year apart. And

1 then when the -- and so the Democrats were in power, they
2 didn't want it. Then when the Democrats came out of power
3 and Republicans came in, the Democrats for a long time
4 wanted appointed judges, and now we've flipped back where
5 predominantly Republican statewide government is talking
6 about appointed judges. And I just think as long as we
7 don't face head on this issue of partisanship we're not
8 going to make real progress. People will be picked by if
9 it's a one party county, like Harris County is right now,
10 it's going to be picked in the Democratic primary; and if
11 it's a one party, you know, statewide, it's going to be
12 different in the smaller counties.

13 So I'm curious as to, David, as this thing
14 moves along are people really willing to tackle that
15 issue, or is it still going to be a party designation?

16 MR. BECK: Rusty, great comment. You're
17 right. The elephant in the room is that on -- that the
18 party that's in power wants to do it a certain way because
19 they have the power to do it; and suddenly if things start
20 to change, then the argument is, well, now, you want a
21 change because you see that you're losing power. I mean,
22 that's kind of the elephant in the room. If you look at
23 our history, there have been multiple efforts to change
24 the system along the lines that you've indicated, and
25 they've always been defeated, and primarily because of

1 what I said earlier. The argument is people should have
2 the right to vote for their judges, and it goes back into
3 the reconstruction area.

4 The one thing that I think is different
5 today that -- from times when you had Republican sweeps as
6 opposed to Democratic sweep, is today, at least in my
7 view, we have a Governor that is willing to endorse
8 change, and we haven't had that in our -- in the past
9 history. You know, you might have had a Chief Justice of
10 the Supreme Court like John Hill that advocated change.
11 Well, he didn't really have the support of others. He had
12 a lot of support, but not the support of, at least as I
13 recall, the Governor. Here we do have a Governor, in my
14 view, that is willing to embrace change. So the challenge
15 for us is to come up with a way to embrace that change, do
16 what's right for the whole system, and try to get money to
17 the extent we can out of politics, and hopefully get the
18 Governor and the Legislature to support this. We're going
19 to give it a go. We're going to give it a go. Now --

20 MR. HARDIN: I know Chip is on the
21 committee, and I can't remember all of the details, but
22 partly because that's because we discussed it over wine,
23 but I know that he came up with a thought that he had sort
24 of a modified version of all this that he thought made
25 sense and was arguing very passionately over dinner one

1 night. I don't know whether that's been discussed before
2 the committee, because I missed the first 15 minutes this
3 morning, but -- and so maybe y'all have, but, Chip, was
4 there a suggestion that's been thrown before this
5 committee that you were championing a few months ago?

6 MR. BECK: Well, one of the suggestions that
7 has come up and we will be taking a look at, Rusty, is
8 whether to go to a commission. In other words, you start
9 out with an appointed system. The Governor will appoint
10 judges, but they either have to be vetted through this
11 commission, either qualified, well-qualified, not
12 qualified. Or as some are arguing, you have this
13 commission, which is appointed and hopefully, you know, as
14 nonpartisan as you can be, recommend to the Governor who
15 ought to be appointed. And then whoever that person is,
16 after a certain period of time, whether it's four years,
17 six years, or whatever, they've got to run in a retention
18 election, so the people get to vote and determine whether
19 they want them or not. And they wouldn't be running as a
20 Democrat or Republican. They will be running as a judge,
21 and then people can either vote them in or vote them out,
22 depending upon their performance. That's one of the
23 methods that's being seriously discussed.

24 MR. HARDIN: Isn't that similar to the
25 California system, at least of a number of years? I

1 remember with that kind of a system the only time any
2 judge was actually usually defeated, if there was, as
3 y'all have mentioned earlier, a hot button issue. Rose
4 Bird, I recall, was identified as being against a death
5 penalty during a conservative pro-death penalty period in
6 California, and she was voted out. But only after a very,
7 very expensive campaign against her. I mean, what you're
8 discussing, it's been -- it's tried with a fair degree of
9 success in other states, isn't it?

10 MR. BECK: Well, and every state is
11 different. Every state is a product of their history.
12 California now has what they call the jungle primary where
13 everybody just votes, and then the two top go into the
14 general election. You know, Arizona we've taken a look
15 at. I mean, when you look at Arizona's system, I mean, it
16 is a really hybrid system, and we talked about the
17 Missouri Plan. It's different than what we're talking
18 about, but every -- every state is a product of their
19 history, and I think what we will come up with is probably
20 going to be unique, if we make any major changes.

21 CHAIRMAN BABCOCK: And, Rusty, that's
22 because Texas is unique, and we don't have to follow
23 anybody. And let me just say on the record here that I
24 disavow any comments that I made to you under the
25 influence of three or four bottles of wine that you were

1 pouring down my throat, but I will say that it's no
2 surprise to David, any member of the commission or anybody
3 that's been watching our meetings, is that I think that
4 the money, both the amount of it and who it comes from and
5 the frequency it's solicited, is corrosive of our system
6 and erodes public support for our justice system, and I
7 think we have to deal with that. And how we deal with
8 that, as David says, is still on the table and open for
9 discussion. So I hope I said that when we were meeting,
10 but if I didn't, that's my sober thought about the whole
11 thing.

12 So, Richard Munzinger, you are next. You
13 will have to unmute yourself, and then -- and then there
14 are three other people, and maybe more, that want to talk.

15 MR. BECK: Mr. Chairman, do I get a chance
16 to cross-examine Rusty Hardin at any point?

17 CHAIRMAN BABCOCK: Yes, that will be right
18 before lunch.

19 MR. MUNZINGER: Are you ready for me, Chip?

20 CHAIRMAN BABCOCK: Well, yeah, as hopefully
21 you'll save us this from this Beck-Hardin kind of
22 confrontation.

23 MR. MUNZINGER: I won't repeat many of the
24 observations that have been made, all of which have merit.
25 The principal one, in my opinion, is that if you're going

1 to have people run, they need to do so without a party
2 label, but I want to go back to something that David said
3 about requiring some kind of experience or credentials.

4 I want to caution against that. I suspect
5 Joe Jamail was not board certified. I suspect there are
6 several people on this committee who have tried a lot of
7 lawsuits and are not board certified. I am one of them.
8 Civil and criminal, and it's not that I am necessarily
9 qualified to be a judge, but I look at the Supreme Court
10 Advisory Committee. There are a number of people that --
11 I've been on the committee for a few years. I don't know
12 how many. But I can look back, and I remember some of the
13 people who are now on the appellate bench were on the
14 trial bench, especially from Harris County, and I don't
15 know how many of them had tried six or eight serious cases
16 before they took the trial bench, but I do know those
17 members of this committee had the credentials that were
18 necessary to be a good trial judge, which are largely
19 intellect and integrity.

20 And that's the real problem, is finding
21 people of intellect and integrity, who will take their
22 oath seriously, that they will apply the law and the
23 Constitution. But in any event, I do caution against
24 putting some kind of arbitrary experience or certification
25 level. One of the best judges that ever tried cases in

1 El Paso was a real estate lawyer, and he took the bench
2 many, many years ago, and we all laughed -- because he was
3 a real estate lawyer, and we all laughed at him because we
4 all thought he wouldn't know his left arm from his right.
5 And he turned out to be one of the greatest trial judges
6 we've ever had in this county, civil and criminal, turned
7 out to be a hell of a judge, a hell of a judge.

8 And so you need to be careful about setting
9 some of these credentials. I'm not so sure that board
10 certification means all that much. It means that you took
11 a test and passed it, and that's really what it means.

12 I'm finished. Thank you.

13 CHAIRMAN BABCOCK: Thank you, Richard.
14 Chief Justice Christopher.

15 HONORABLE TRACY CHRISTOPHER: Sorry. I
16 agree with Judge Estevez and Richard that changing the
17 qualifications is going to be something that is going to
18 be very difficult. Perhaps, I don't know whether the
19 committee has thought about the idea of instead of
20 changing the qualifications in the Constitution -- or you
21 might still have to do this, whether there would be sort
22 of the commission to determine the qualifications of
23 people on, you know, a local level before they could
24 actually run; and that way people could, you know, take
25 into account individual circumstances of a county versus

1 an arbitrary you have to try this many, you know, number
2 of cases. So that would be one way to give people a
3 little bit more local control.

4 With respect to the nonpartisan nature of
5 elections, it always sounds like a good idea, but how do
6 you do it in practice? You know, if we don't have
7 partisan labels, so it would be like Houston city council
8 elections, where you'll have 10 or 15 people running for
9 one spot, and then obviously you have to go to runoff
10 after that. I mean, there -- it's not like only two
11 people are going to show up and get into a race, and to
12 me, that would be an extremely difficult election to take
13 care of, so, you know, nonpartisan sounds good until you
14 think of what would really happen.

15 MR. BECK: Let me ask a question and get
16 your views on this. Under an appointed system, the person
17 appointing will obviously look at the qualifications of
18 the potential nominees or candidates, so that in a sense,
19 they will look at determining what the background and
20 experience is of somebody who is maybe appointed to the
21 trial bench or alternatively to the appellate bench. So
22 at least under an appointed system you've got somebody
23 looking closely at the qualifications, as opposed to
24 having, you know, constitutional minimums and so on and so
25 forth. I mean, is that something that you think is

1 workable?

2 HONORABLE TRACY CHRISTOPHER: Well, I'm an
3 outlier, I think, on elected judges. I've always thought
4 that elected judges was the better system than the
5 appointed system, and I've -- I've been lucky, I know I've
6 been lucky, that I have survived a number of sweeps in,
7 you know, the various races that I have been in. You
8 know, to me, there's definite advantages to having an
9 elected system versus an appointed system, so I think I'm
10 an outlier probably on this committee.

11 MR. BECK: Okay. Thank you.

12 CHAIRMAN BABCOCK: Pete Schenkkan.

13 MR. SCHENKKAN: Hi. I want to thank David
14 and all of the people on this call that have been working
15 on these issues, many of them for decades; and two people
16 have already stolen the way I wanted to start, but they
17 only did it halfway. They talked about the elephant in
18 the room. There actually isn't an elephant in the room.
19 There's an elephant and a donkey, and we've just had a
20 dramatic intensification of partisan alignment in this
21 country in this last election. There is some hope, I
22 think, of ameliorating that. I see very little chance of
23 our -- at least in the short run -- even getting back to
24 the wonderful idyllic level of bipartisan cooperation we
25 had in the last 10 or 15 years.

1 So I am deeply skeptical of our ability to
2 pass, in whatever technique it takes, whatever the steps
3 are, and whatever the vote required is to make these
4 changes. I had separately used the chat feature to ask
5 Chip if he could relieve me of the burden of my ignorance
6 here. I don't really know quite how this process works,
7 but I gather we've got to pass a constitutional amendment
8 to do anything real. And I just want to suggest that as
9 long as all we're doing is saying in this constitutional
10 election we're going to fix the problem of partisan judges
11 by creating a system in which a Governor, elected by one
12 party and everybody voting who that Governor is at the
13 time, which party, and will have whatever views they have
14 about how likely that is to remain the same, is going to
15 make all of the choices. With what Rusty is rightly
16 saying about the politics of the big cities where an
17 enormous number of the voters are, do we have a snowball's
18 chance in hell of actually getting this done on a big
19 scale?

20 I think not unless we're prepared to go a
21 whole lot bigger. As part of a package of nonpartisan or
22 reduced partisan fairness measures that address the ones
23 that are of greater urgency to the party that doesn't have
24 power now, but is quite hopeful that in the next two, four
25 -- I don't know what the actual realistic ambitions are --

1 they will. And that would be measures to greatly restrict
2 the scope and effectiveness of gerrymandering in
3 legislative elections, state Senate, state House,
4 congressional, state board of education, and greatly cabin
5 the restrictions on registration in voting that can be
6 adopted or maintained on a basis of prevention of voter
7 fraud.

8 If you had a package deal that was
9 nonpartisan/bipartisan on all of those elements and you
10 were able to go to an election on that, I think you might
11 find a substantial majority of voters aligned with both
12 parties who thought that would be a big improvement over
13 what we have now and might vote for it. Without that, I
14 don't see how we get there. And I'm -- I know that's more
15 like a speech than a question, and if -- and I guess what
16 I would like to do to turn it into a question is, David,
17 can you talk me out of that pessimism?

18 MR. BECK: Good speech, Pete. Good speech.
19 You know, whatever we recommend, as you well know, goes to
20 the Legislature, and then what they do with it, who knows;
21 and assuming that they adopt in one form or another
22 whatever we recommend, it's in all likelihood going to
23 have to require a constitutional amendment where the
24 people will vote on it. Whether that's going to pass or
25 not, I have absolutely no idea. The only thing I can do

1 and the commission can do is do what we were asked to do,
2 and that is to analyze the advantages and disadvantages of
3 various methods and make our recommendations, and that's
4 what we're going to do.

5 Whatever happens after that, I have no idea.
6 I don't think we can make our decision based on what we
7 think will get through the Legislature and then in
8 addition what we think might be acceptable to the people
9 of Texas. Because I don't think anybody really knows at
10 this point.

11 CHAIRMAN BABCOCK: Judge Wallace.

12 HONORABLE R. H. WALLACE: I just -- first of
13 all, I want to thank David for all of the work he's done.
14 If they get this solved, I hope he will go to the Middle
15 East and figure out a plan to bring peace to the Middle
16 East. But as someone who drew a primary opponent over a
17 hot button issue and won an opponent who was very
18 well-financed, I've given hours of thought to this, and I
19 don't know what the answer is, really. I do think this,
20 though. I agree with Justice Christopher. If we're going
21 to elect judges, either nonpartisan or partisan, you are
22 not going to be able to take the money out of running for
23 an election, because the only hope you have is some kind
24 of name recognition. The general public doesn't know how
25 good or bad a judge you are, and it's all about trying to

1 get your name, and that's why you see all of these tacky
2 yard signs, and hand out -- and that costs money.

3 And so I just think that those are mutually
4 exclusive proposals to continue elections but get the
5 money out of the elections. That's for what it's worth.
6 Thank you.

7 MR. BECK: Thank you, Judge.

8 CHAIRMAN BABCOCK: Thank you, Judge.
9 Stephen Yelenosky, who all of us know and, David, you
10 probably do, too, was a long-time district judge in Travis
11 County. And, Stephen, are you still sitting as a visiting
12 judge, or I forget, but --

13 HONORABLE STEPHEN YELENOSKY: Yes, I am.
14 Yes, I am. Next week, in fact.

15 CHAIRMAN BABCOCK: All right. So Judge
16 Yelenosky.

17 HONORABLE STEPHEN YELENOSKY: Well, I have
18 every reason to be a champion of the current system. I
19 ran unknown, unqualified by any objective standard, yet I
20 won the contested primary, and I won the general election
21 by defeating an excellent judge appointed by a Republican
22 Governor, but I was in Travis County, and it was a sweep
23 year for Democrats. The only reason that I won the
24 general election was because about 56 -- 56 percent of the
25 winning candidates were Democrat -- or the Democrats won

1 by about 56 to 44, which is what I won by, and I won by
2 that simply because of the Democratic sweep.

3 So I am not a supporter of elections, unlike
4 Justice Christopher. I think voting for judges is like
5 having the county community vote for the pharmacists who
6 serve us in the community. That's just the same thing. I
7 think we're about as educated generally about judges as we
8 are about pharmacy, and even the voters who happen to hit
9 upon something that's a judicial issue, it's the wrong
10 judicial issue. I remember running where the hot button
11 issue, quote-unquote, was abortion. Well, I mean, *Roe V.*
12 *Wade* is a U.S. Supreme Court decision. A lowly trial
13 judge in Travis County has nothing to do about that, yet
14 that was on people's minds.

15 So I am in favor of something that involves
16 appointment, but more importantly, some kind of
17 nonpartisan commission. And I think we need to get over
18 the value, which I think once had but no longer has, of a
19 popular vote for judges for the reasons that I just said.
20 We have plenty of people in power who are not elected by
21 the populous. The Legislature votes for certain people or
22 approves them or confirms them, but there's no popular
23 vote for the cabinet for the President, for instance, very
24 powerful people. So I think that we've got to come up
25 with something other than election.

1 I think in the past, you know, given that we
2 had nothing to go on other than party, that's why we
3 needed a party; but what's happened in the primaries, as I
4 think Rusty said, it becomes a fight in the primaries.
5 And what's happened, at least in my experience, with the
6 primaries, all along in Travis County, because it's a
7 liberal county, what people vote on before they get to the
8 general election, in the primary they vote on apparent
9 race and apparent gender, if they know nothing else.

10 Now, Travis County being liberal, you can
11 imagine what they're looking for, and, in fact, you can
12 correlate the winning -- people who won in the primaries
13 with those things. For example, women do better in Travis
14 County, and thank God for that. I'm all for more women,
15 but the comparison between a man and a woman needs to be
16 considered, a particular man and a particular woman. One
17 example is all of the woman -- women won in the primary
18 except one person, one woman, whose first name was
19 ambiguous as to whether she was male or female. That was
20 the only difference that I can see.

21 In another primary, the most respected,
22 highly rated judge of another -- I guess who was 10 years
23 by then, was defeated by a woman who was qualified by
24 trial experience, but had been determined by both a state
25 court and the federal -- and in federal court to be a

1 vexatious litigant, and that information obviously was
2 very important, could not get that information out to
3 anyone.

4 So in the past, the primaries have some
5 value to them, because at least in Travis County, probably
6 elsewhere, the party clubs or at least the party
7 mechanisms help people understand the true qualifications
8 of somebody running for judge, because the party activists
9 understood that and they would recommend who to vote for
10 in the primary, but that doesn't work anymore. There's
11 too much information that clouds up the information like
12 that that is useful. People no longer do as they often
13 did in past, look at one source, their preferred paper in
14 Travis County. Not the -- well, not the top media, but
15 kind of Democratic leaning paper, everybody looked at that
16 for who to vote for for judge. That doesn't work anymore.
17 There's too much -- too much information, so people are
18 going off what I just said, apparent race and apparent
19 gender.

20 So I -- I really think we need to get away
21 from election altogether, and I said that even before I
22 was elected and when, as now, there was a Republican
23 Governor. So I would campaign, to the extent I can as a
24 visiting judge, for some kind of commission appointment,
25 even though, as I said, there's every reason why I

1 would -- I would, given my experience, support the
2 opposite.

3 CHAIRMAN BABCOCK: Thanks, Judge. Great
4 comments. Thank you. Rusty.

5 MR. HARDIN: Yeah, I -- let me ask if
6 there's a way sort of around this. In all due deference
7 to Justice Christopher, if she had been running in only
8 one county, she would not have been as fortunate as we
9 would hope for her to have been, if she was running in one
10 of the big counties. I think, again, we come back to the
11 big counties. I don't know what the smaller -- what we
12 call a smaller county. Let's say 150,000 total. I don't
13 know what the number is, but if there was a way -- and I
14 don't know that this could be done, but, David, I wonder
15 if it's been discussed or is there a -- is there a
16 legislative way to perhaps with each party be required to
17 have a screening commission in their county or so. I
18 don't know -- I've only thought about it as we're talking
19 here, because I am very pessimistic that we're going to be
20 able to get the two parties out of it.

21 You know, I talked about nonpartisan, but I
22 don't see people agreeing when you start having to have
23 two-thirds here and there. Having said that, I think that
24 part of the concern is if one party is the dominant party,
25 whether it's Republican or Democrats, and as we've already

1 said, we've seen it both ways here. If there is a
2 mechanism for each party to be required in some way to
3 screen who their candidates are to have that endorsement,
4 people may give lip service to it now, but they don't
5 really do it, and maybe that's at least entered between
6 however -- whatever system we come up with, that that can
7 at least improve the quality potentially of the
8 candidates. Has there been any discussion ever about
9 that, that type of idea?

10 MR. BECK: There has been discussion about
11 setting up local committees or local commissions, if you
12 will.

13 MR. HARDIN: Okay.

14 MR. BECK: In other words, it would be a
15 trickle up, where you have the local people, say from
16 Houston and -- the challenge Rusty is always, well, all
17 right, how do you select the members of that local
18 commission or committee.

19 MR. HARDIN: Yeah.

20 MR. BECK: And you're going to have to come
21 up with a way to recognize which party is in power and
22 which party is not. For example, just off the top of my
23 head, if you had a 15-member commission in Houston, for
24 example, you could have the Democrats having the majority
25 on the commission, because they are in the position now

1 where they seem to be in majority with respect to
2 elections, but in the same time, you would set the
3 criteria by saying, you know, somebody must have certain
4 type of experience, qualifications, diversity. I mean,
5 you have to weigh all of those factors.

6 But, yes, it has been discussed. Nothing
7 has been decided yet, and that's why I've been kind of
8 making some notes from a lot of the suggestions that you
9 and others have made this morning, which are very helpful,
10 but, yes, it has been discussed. The challenge is how do
11 you select that local group.

12 MR. HARDIN: Right. Thank you.

13 CHAIRMAN BABCOCK: Judge Estevez.

14 HONORABLE ANA ESTEVEZ: Well, I want to
15 piggyback on something that Judge Peeples had asked about
16 right at the beginning, and it just -- when Judge
17 Yelenosky was talking, he made the comments that, yes,
18 these things used to work, but they don't work anymore,
19 and I want to suggest that it does work in some parts of
20 the state. So as Judge Peeples had asked the question
21 about, you know, had you looked at a different -- or
22 allowing these counties or districts to decide which way
23 they wanted to go, and I would just make a suggestion that
24 you could give perhaps the bigger counties -- and I know
25 that Rusty had asked, well, what's a bigger county? When

1 I was running the number was 250,000, so I was under the
2 less than -- if your district was less than 250,000
3 people, then I was under different rules under the Texas
4 Ethics Commission. I couldn't raise more than \$1,000 per
5 person or household or law firm, and so we had different
6 rules.

7 And so I think that it would be prudent to
8 look at maybe raising that district number to 300,000 and
9 then allowing those that have 300,000 or less to decide
10 whether they want to have elected or vote, because those
11 people still do have a meaningful election when it comes
12 to judges. And I think that if these races were
13 meaningful, it would be the preferred way to go. I don't
14 think there's a question about that, and I think that's
15 why Justice Christopher is saying, well, it's still
16 meaningful for me. It was meaningful for me, and then but
17 it wasn't meaningful at all for Judge Yelenosky and some
18 of those in Houston, because it didn't matter. It didn't
19 matter that they were more educated, that they had more
20 experience, that they had, you know, a great desire to
21 serve, because nobody really knew. They couldn't get that
22 message out.

23 But when you're talking about districts that
24 are less than 300,000 -- maybe it's 500,000 or maybe you
25 stick to 250,000. Those are meaningful elections, and you

1 really are taking something away from the people that you
2 may not be taking away from Harris County or Dallas
3 County, but you are taking away from these districts.

4 And I want to say "districts" because it's
5 not really a county. You know, some of my judges under --
6 in our region -- I'm in Region 9 -- they serve five
7 counties. I think that's the most. I might have one that
8 has six counties. I mean, that's a huge area, you know,
9 and if somebody, you know -- they should be able to elect
10 them, because that might be -- there's still less than a
11 hundred thousand people, and those people go out, and it's
12 important to them on who they're going to vote for.

13 MR. BECK: Yeah, thanks, Judge. There was a
14 bill introduced in the last session of the Legislature by
15 Representative Brooks Landgraf, who happens to be on our
16 commission, and his bill would have set up an appointed
17 retention system, and he made the distinction between the
18 big metropolitan areas and the rural areas, and I don't
19 recall whether the number was 300,000 or 500,000, but it
20 was one of those numbers, so that your area would not be
21 affected by his particular bill. In other words, it would
22 only apply to these so-called large metropolitan areas as
23 I recall.

24 HONORABLE ANA ESTEVEZ: Well, I would
25 suggest that, you know, in our region we have two counties

1 that would be larger and that would be -- or districts.
2 Potter and Randall County, so some of those courts, and
3 Lubbock County. They may want to go to an appointment
4 system. I don't know. I know what -- what I feel, you
5 know. Just because I feel they're meaningful they may
6 feel different, so I don't think it hurts to give them a
7 choice. You know, they may want to do that. Some of the
8 larger counties may have enough people that think that's
9 the best way to go. So I would give them a choice on all
10 of them.

11 MR. BECK: Thank you. Good suggestion.

12 CHAIRMAN BABCOCK: Levi Benton.

13 HONORABLE LEVI BENTON: Thanks, Chip.

14 CHAIRMAN BABCOCK: Whom everybody knows was
15 a long-time district judge in Harris County, and I don't
16 believe you lost your election, or maybe you did, but
17 anyway, now in private practice.

18 HONORABLE LEVI BENTON: Yeah, I lost in a
19 sweep; and candidly, I don't know -- I guess it's all in
20 the details in what's proposed on how I feel. I have
21 mixed emotions, but I want to make some -- just some
22 random comments. You know, what I haven't heard, I don't
23 think even from David Beck, who I regard as a friend, I
24 haven't heard this morning that anyone has done any study
25 of any number of cases of judges -- of tried by judges

1 deemed to be unqualified and compared those with cases
2 tried by judges deemed to be qualified and tested the
3 perception of the correctness of rulings or the fairness
4 of the outcome. You know, because if we're -- this is all
5 being driven by -- driven by -- we are concerned about
6 judges who aren't qualified. Well, why are we concerned
7 about that? Who has this concern about the correctness of
8 the outcome or the fairness -- correctness or fairness of
9 the outcomes? We haven't even talked about that this
10 morning.

11 David and others have talked about, you
12 know, the person appointing presumably looks at
13 qualifications, but we see both on the state level and on
14 the federal level often where that just isn't true. We
15 have in our working lifetime people appointed to highest
16 court of this state who have never tried a case as a
17 lawyer or as a judge, never argued a case to a court of
18 appeals. And that's certainly true in the federal system.

19 So, you know, I -- the only thing that's
20 really been said today that I can cosign that is something
21 said by Commissioner, Judge, my buddy, Kent Sullivan. We
22 all want judges with integrity, independence, and
23 inclusiveness, but I don't think any of the comments or
24 proposals that we've heard today necessarily guarantee
25 that we get to a higher level in any of those areas. So

1 that's all I've got to say. Thanks.

2 CHAIRMAN BABCOCK: Thank you. Thank you,
3 Levi. That -- comments are thoughtful and well-taken, as
4 always. David, you have -- you have been very gracious in
5 giving us your time this morning, and I think this is a --
6 has been a terrific discussion.

7 We will have a transcript of this prepared
8 by Dee Dee shortly, and I think I might suggest that we
9 send it to the other commissioners on the -- our fellow
10 commissioners, so that they can get the benefit of it, if
11 they choose to add to their pile of reading. But in any
12 event, thank you again.

13 We're going to take our morning recess, but
14 if -- if John Day could stay on the line with Jerry
15 Bullard with me for a minute so we can figure out how
16 we're going to deal with their presentations.

17 MR. BECK: May I be excused, Mr. Chairman?

18 CHAIRMAN BABCOCK: You may be excused,
19 Mr. Chairman.

20 MR. BECK: Okay. Thank you. Very, very
21 excellent discussion. I appreciate the comments of all of
22 you. Thank you so much.

23 CHAIRMAN BABCOCK: Well, the thing that
24 enriches my life probably more than anything else is
25 getting to meet with these people at least every other

1 month and have discussions like this. This is not unusual
2 for the Supreme Court Advisory Committee, so thanks.

3 So we'll be in recess. We can go off the
4 record, Dee Dee.

5 (Recess from 10:49 a.m. to 11:02 a.m.)

6 CHAIRMAN BABCOCK: For the millions of
7 viewers on YouTube who are watching us, we are waiting for
8 everybody to come back to our meeting.

9 Okay. Looks like we have just about
10 everybody, so we'll be back in session. And while we were
11 on the break, we decided that we would swap John Day, who
12 has been very, very gracious to give us his time. Even
13 though he is not a Texan, he, after hearing this morning's
14 conversation, he says he'd like to be, so maybe some day
15 we'll admit you into the fraternity, John.

16 John is with the Law Offices of John Day.
17 He is a native of Wisconsin, went to law school in North
18 Carolina, University of North Carolina, where he was a
19 member of the *Law Review*, graduated Order of the Coif, and
20 has been involved with the American College's project to
21 try to determine how we're going to deal with the
22 post-COVID world in terms of litigation and whether or not
23 the way we're doing it now is the wave of the future or
24 whether we're going to go back to the way we used to be.

25 The College has put out some national

1 guidelines, which the Chief is well familiar with, but,
2 John, we're so thankful that you took the time to be with
3 us today; and that went on a little longer this morning
4 than I had anticipated, but it was a great conversation
5 and useful for us, so we appreciate your waiting us out,
6 and now the floor is yours. Thank you.

7 MR. DAY: Thank you, Chip. I appreciate the
8 opportunity to be here to talk about this important topic.

9 The College realized in March that it would
10 be appropriate and necessary, in fact, for it to act to
11 help give guidance to judges and lawyers across the
12 country on how to deal with the issues and the impact on
13 the justice system of the -- of COVID-19. So the current
14 president, Doug Young, and Rodney Acker, who is now the
15 president -- he became president in September. Rodney is
16 from Dallas. I'm sure most of you know him. It elected a
17 group of people to serve in a task force to develop some
18 guidance to judges and lawyers on these issues, so they
19 asked me to chair it.

20 There were 14 other people who served.
21 Three of them were judges. Judge Barbara Lynn, Chief
22 Judge of the Northern District of Texas, served, as did
23 two appellate judges from Canada, but lawyers and judges
24 from around the country got together and in the course of
25 two months put together five different papers to give

1 guidance to judges and lawyers. We did not call those
2 papers "best practices," because, quite frankly, we didn't
3 think we had enough empirical evidence to say that
4 anything was a best practice. Instead, we used the
5 collective experience of the group, which I'm sure
6 approached 500 years, of what would work. We did a lot of
7 interviews. We read a lot of articles, and we put
8 together the papers. You've got a link to those papers.
9 The first five concerned remote video depositions, remote
10 hearings, appellate arguments using remote video, nonjury
11 trials, and effective use of Zoom technology.

12 We then struggled with the hard work,
13 because civil trials is a much more complicated problem,
14 and mainly because we not only have the issues that we
15 have with nonjury trials, but we have the problem with the
16 physical plant, that is, the courtrooms, and how do we
17 manage social distancing in those environments,
18 particularly when many jurisdictions don't have the money
19 to build into the courtrooms the social distancing type
20 devices.

21 For instance, there's a judge -- a
22 courtroom, rather, in Columbus, Ohio, that put plexiglass
23 all throughout the courtroom, between all of the jurors.
24 They spent over \$300,000 on four courtrooms. We have
25 courtrooms in Tennessee that are not handicap accessible.

1 There is no way that our judicial system could afford to
2 spend the money to make our courtrooms operate in a
3 socially distanced environment. So we instead put out
4 guidelines on how to conduct jury trials, basically by
5 raising all of the issues that would need to be addressed
6 to have a plan that was reasonably safe for everybody who
7 was participating.

8 Criminal trials are, of course, another
9 matter, because of the constitutional issues raised, and
10 we didn't even attempt to go down that road. Instead, we
11 had an -- issued a paper that discussed in great detail
12 the constitutional issues that were raised by having
13 criminal trials and throughout the whole criminal
14 procedure generally, in fact. So that paper is also
15 available on our website.

16 We then struggled with what does the
17 American College believe in when it comes to conducting
18 jury trials? We support it, obviously, but what do we
19 really believe in? And we came down with a group of
20 overriding principles, we call them, adopted by the board
21 in September of 2020, that basically says that we believe
22 that the best trial, the way trials should be conducted,
23 civil and criminal, are everybody being in the same room
24 at the same time and conducted them in the historic
25 fashion. That is the goal of the American College of

1 Trial Lawyers.

2 That being said, we recognize that during
3 periods of health crisis, we may have to do things
4 differently, and then we set forth some additional
5 principles that address those issues. Those papers are in
6 the process of being updated right now to reflect what has
7 happened since the dates they were issued in early June,
8 August, September of 2020, with what we've learned in the
9 meantime, because we've got the benefit now of having lots
10 of activity across the country by the various states,
11 experimenting with different ways to administer justice
12 during this time.

13 So Texas has been a leader in that. So has
14 Michigan, so has Washington, so has Maricopa County,
15 Arizona. I mean, it's amazing what has been done across
16 the country to try to allow justice to be served, despite
17 limitations that none of us anticipated before February
18 15th. It just -- it's incredible. Texas, as I said, has
19 been just an outstanding leader in this area. You've had,
20 as the Chief Justice indicated a little while ago, close
21 to a hundred jury trials, some of them totally virtual.

22 In comparison, in Tennessee, we have not had
23 10. My office had a jury trial five weeks ago that lasted
24 three days. That was the first jury trial in the
25 particular county. There have been no criminal jury

1 trials in this state, to my knowledge. So we -- we have a
2 mess. We have done a good job here and so has Texas with
3 remote hearings. Y'all are running about a hundred
4 thousand per month. That's outstanding. We, too, in
5 Tennessee have adopted that. Most places around the
6 country are doing a pretty good job with hearings in
7 nonjury matters. But the challenge, of course, for all of
8 us is jury trials.

9 So we know in Texas that there are 9,700
10 jury trials in the average year. So far since the middle
11 of March or so, there has been a hundred. That means that
12 by the end of this year you'll be over 7,000 jury trials
13 behind. And I say that not in a way to be critical. As I
14 said, I've spent a whole lot of time in the last eight
15 months looking at what court -- what the judicial branch
16 has done across the country and in Canada to try to
17 address this problem. You've done far better than most
18 places.

19 But here's the problem: You've still got
20 7,000 cases in the pipeline that -- that are going to need
21 to be addressed, and I fear, just like you do, that the
22 problem isn't going to be solved by the end of the year.
23 That is, if this vaccine or these vaccines happen to work,
24 and if they can be administered to people in a timely
25 fashion, we are still going to have a severe backlog as of

1 April 1. My guess is by April 1, Texas will be 10,000
2 trials behind, if not more. I don't see any way around
3 that, and I think that's going to continue to increase,
4 depending on the acceptance level of the vaccine and how
5 effectively it works. I don't see, quite frankly, a
6 return to normal until the late summer, maybe September 1
7 of 2021, and then we will have 12, 14, 15,000 cases in the
8 pipeline in Texas, jury trials that we're behind on.

9 It's going to put tremendous pressure on the
10 system, and if -- I don't pretend to know anything about
11 Texas politics, but I know a little bit about politics in
12 Tennessee, and I can tell you that the Legislature isn't
13 going to be allocating a whole lot more money to the
14 Tennessee judiciary, and hopefully y'all are more
15 persuasive than -- than we are here, but we're going to
16 have to figure out a way to deal with that. It's going to
17 be a particular problem in the criminal area, because
18 probably 50 or 60 percent of those trials, maybe a few
19 more in Texas, are going to be criminal cases.

20 And even if we had the capacity to put that
21 many people in courtrooms, we have the same problem that
22 the healthcare delivery system has; that is, even if we've
23 got the courtrooms, even if we've got the hospital beds,
24 we've got to have people work on the patients. We've got
25 to have DA's who can try cases, and there are only so many

1 DA's, and they only have so much capacity to try this
2 backlog of 5-, 6-, 7-, 8,000 criminal cases. They can
3 only be expected to do so much. So I fear -- I fear that
4 there's going to be a heck of an impact, not just in the
5 last eight months we've experienced and not just in the
6 next eight months, before several years as we try to
7 figure out how to manage this.

8 On the civil side, too, the number of jury
9 trials are less, of course, but the way many courts assign
10 cases, you're going to see a backlog there that's going to
11 impact even the discovery of other cases. Let me give you
12 an example. I've got cases set for trial now in October,
13 November of 2021. In a couple of weeks I'll be with a
14 judge who is going to ask me to set a case for trial in
15 March of 2022, but when you start having to fill up your
16 calendar that far in advance, it impacts your availability
17 for depositions, which impacts the discovery process, et
18 cetera, et cetera, et cetera. So I don't mean to be a
19 bearer of bad news. I'm sure the Chief Justice has spent
20 a whole lot of time worried about this very thing, but we
21 are going to be struggling with this issue for several
22 years in the -- to come.

23 Chip asked me to speak a little bit about
24 what I foresee the future to be -- and once again, I don't
25 pretend to have any particular expertise on this, except

1 I've spent a lot of time in the last eight months studying
2 it and looking at the experience of people all over the
3 country. I see the following issues -- and let me make it
4 clear. This is John Day, individual trial lawyer from
5 Nashville, Tennessee, speaking. I'm not speaking on
6 behalf of the College when I make these next remarks.

7 I think remote video hearings are here to
8 stay. I was talking with a trial judge recently who told
9 me he's never going back. He likes the convenience. He
10 likes the fact that clients are saving money on motion
11 days rather than having lawyers sitting around waiting for
12 their case to be heard to go ahead and schedule those
13 hearings to start at a date and time certain. And I know
14 the only frustration I hear from trial judges concerning
15 video hearings are the occasional technology glitches,
16 number one; and number two, they say they miss seeing the
17 lawyers. And, of course, the lawyers miss seeing judges
18 personally, too, but I think efficiency is going to sort
19 of rule the day there many, many places. Now that we've
20 spent the money on the technology, my guess is the
21 technology is going to continue to be used.

22 I expect continued remote video oral
23 arguments in the appellate courts, particularly in the
24 intermediate courts. I think the Supreme Courts, many of
25 them will go back to in-person hearings when it's safe to

1 do so, but in Tennessee our intermediate judges love it.
2 They don't have to travel. Tennessee, like Texas, is a
3 big state. It's nine hours by car from one end of our
4 state to the other. Our trial -- our appellate judges,
5 excuse me, spend a lot of time on the road to go to oral
6 arguments. They don't like it. My guess is that's going
7 to continue in the future. And there's some public
8 benefit to that, quite frankly.

9 The Supreme Court of Texas recently had oral
10 arguments in *Berkel & Company vs. Lee*. There were 536
11 people who had watched at least part of that oral
12 argument. The Texas Supreme Court room doesn't hold that
13 many people. We are providing for some more transparency
14 to the judicial system, and I think we're going to see
15 that people like that, and that practice will continue.

16 I think we're going to continue to see even
17 when this is over an increased use of video depositions
18 from an efficiency standpoint and money. There's going to
19 be some rule changes that I think to -- to make those move
20 more smoothly, to reduce squabbling about the terms about
21 how those depositions should be conducted. Your Rules
22 191 -- or 199, I mean, .1, appear to permit depositions by
23 nonstenographic means, including video, and I assume that
24 means video as well, but to the extent that anybody is
25 arguing about that, my guess is that y'all will find a way

1 to fix that, because lawyers are going to want it.

2 I think nonjury trials, we're going to see
3 continued use of non -- of remote video. Maybe not full
4 trials, but more and more witness, particularly expert
5 witnesses, appearing by remote video. It will reduce the
6 cost to the litigants. Same thing with out-of-state
7 witnesses. Now that we've got the technology in place in
8 many of the courtrooms in the country, I think it will be
9 used.

10 I see with civil jury trials, there's going
11 to be tremendous pressure to modify the way we're doing
12 jury trials. For instance, more use of jury
13 questionnaires, to reduce the time of the jury selection
14 process. I can see many states are doing this now, remote
15 jury selection. That is they have the trial in person,
16 but they do jury selection or at least a portion of it via
17 remote video. They're doing this in King County, which is
18 Seattle, in Washington right now. They've also done it in
19 southern California.

20 To solve the problem, by the way, of people
21 not having access to technology, they're supplying
22 computers to people and hot spots, so they can participate
23 in the jury selection process from their home. A
24 fascinating way to give people access. I can see a
25 situation where you have trial judges specialized, you

1 know, and take a month turn where they're doing jury
2 selection and letting a different judge try the case.
3 That is, having one judge work for a month, getting him or
4 her more used to the technology, facilitating the
5 selection of jurors for a case that will start in a live
6 courtroom several days later.

7 I think there's going to be increased
8 cooperation with libraries and other public places where
9 people can come to participate in the judicial process,
10 get access to the internet and their space free from
11 distractions, and we're seeing some of that now. My guess
12 is that will increase.

13 My guess is, too, that you're going to see
14 increased case management in civil and criminal cases.
15 The criminal backlog is going to be significant, as I
16 mentioned before, and you're going to see, I believe, an
17 effort to reduce the number of continuances. The fact of
18 the matter is that on judgment day, whether it's with a
19 small J or a big J, causes people to think deeply; and the
20 judgment day, with a small J, small J version of it is a
21 trial date; and having a solid trial date increases the
22 likelihood of plea bargains. It increases the likelihood
23 of settlements, and I think judges are going to work even
24 harder to try to figure out a way to give people sure
25 trial dates to help clear the docket, and that's going to

1 require increased case management techniques.

2 I think on the criminal side there's going
3 to be a continued reliance on remote video for pretrial
4 matters. There's going to be still a lot of caution about
5 conducting any sort of criminal trial, concerning -- with
6 concerns about the confrontation clause and the -- the
7 effective assistance of counsel issues, but there's going
8 to be test cases going up on that, both to the state
9 Supreme Courts under the state Constitution and the
10 federal courts under the United States Constitution, but
11 there are going to be people pushing the envelope on that.

12 There's also going to be people who waive
13 their rights to personally confront witnesses, for
14 example, and participate in a video trial, and then there
15 will be questions about the authenticity and
16 enforceability of that waiver. So it's going to take
17 several years for those kind of issues to make their way
18 to the United States Supreme Court.

19 I think court reporting is going to change.
20 I think as people get more and more used to video and all
21 proceedings being videoed, you're going to see increased
22 reluctance of people to order transcripts, instead getting
23 transcripts only in the event of appeal or if it's
24 necessary for a particular legal issue in the case. Same
25 thing is true with depositions. As technology improves, I

1 think there's going to be more and more pressure on court
2 reporters and not as much need for their services, if
3 people can download the audio file from a video and have
4 it automatically transcribed with a high degree of
5 accuracy.

6 And then -- and this is I think a major
7 change, and it's just getting started in some places, but
8 there will be a lot of pressure for -- and there's going
9 to be a whole movement to change court from a place to a
10 service. And by that, I mean, traditionally people go to
11 court to get justice administered. I think justice will
12 be administered in an online way with increasing
13 frequency. Michigan has aggressively gone into this area.
14 Washington is doing the same. Other places are
15 experimenting with it, where people will basically have
16 online access to either judges -- that is trials or
17 mediators to help resolve disputes between themselves and
18 don't have to physically go to the courthouse for justice.

19 That is very controversial, but I think the
20 increased use of video will increase its acceptance, and
21 budgetary pressures will cause all of us to think long and
22 hard about whether we need people to come to court on --
23 particularly on minor matters for justice to be truly
24 administered or if we can do it in some other way that
25 will achieve the same purpose.

1 So my thoughts on where we're going, as I
2 said, I'm not speaking for the college when I say that,
3 but I think the justice system is going to look a whole
4 lot different in five years than it does -- it did eight
5 months ago. I'd be happy to answer any questions, if
6 there are any.

7 CHAIRMAN BABCOCK: Thank you, John. Chief
8 Justice Hecht is the president of the Conference of Chief
9 Justices, and, Chief, I wonder if you have any thoughts or
10 reactions to what John has had to say to us in his very
11 thoughtful presentation.

12 HONORABLE NATHAN HECHT: Yeah, well, I
13 think, for one thing, he's spot on about challenges that
14 we face, and it's true across the country. The National
15 Center for State Courts, which helps support state courts
16 generally and has been very active during the pandemic,
17 has one of its groups to deal with jury trials and
18 studying how to do it and all of the -- the pointers that
19 we can give. In Texas, I think people remember this, but
20 just a brief overview, the Supreme Court said back in
21 March, "No jury trials, period." And then after a couple
22 of months, in consultation with the Office of Court
23 Administration and the state health officials, we said,
24 "Okay, you can have them, but you've got to get OCA's
25 approval," and OCA came up with a bunch of guidelines,

1 very detailed guidelines.

2 And the reason that you need all of these
3 guidelines is because we've got 3,000 judges, and they're
4 not used to worrying about who the local health officials
5 are or how you're going to get in the door and not infect
6 everybody and just, you know, what are you going to do
7 about cleaning the bathrooms and all of the issues that
8 you have when you start congregating people in buildings.
9 So they put together all of those, and they approved every
10 trial request that they got, and there were 79 of them
11 through the end of August. And then there were a few more
12 in September, several in Harris County, and a few in
13 October.

14 And then we -- the Supreme Court just said
15 to the judges, "Okay, now you have the guidelines. You
16 don't need OCA's approval anymore. You need the approval
17 of your local administrative judge," which you may know is
18 in a particular county that's the judge who just
19 administrates among the several judges that are there, and
20 the regional presiding judge, like Judge Estevez, who is
21 administrative judge for a whole region. She's in the
22 Panhandle. And that's worked pretty well, but then with
23 the spikes in November and the unfortunate trial in the
24 Eastern District of Texas in Sherman a couple of weeks ago
25 where 15 people got sick in the middle of the -- in the

1 sixth day of a two-week patent trial, I think everybody
2 has just decided to shut down for the holidays and try it
3 again after the first of the year.

4 But it is a -- and John is exactly right
5 about the numbers. You know, they're just growing. And
6 judges -- the one additional wrinkle is judges are trying
7 to find some other way to recreate judgment day, and it's
8 not easy, and everybody who's been on -- in litigation
9 knows that you really need that -- that threat to get
10 everybody to think hard about what they want to do.

11 So that's kind of where we are, and it's --
12 some states where the pandemic has not hit so hard were
13 trying cases more regularly. I know Idaho was for a while
14 but then Idaho spiked out again, and some states have just
15 not -- I mean, they're just hoping that the vaccine or a
16 rapid, reliable test will make it possible to get back in
17 the courthouse.

18 We have tried a few criminal cases in Texas.
19 How many, I'm guessing maybe 20 out of the hundred that
20 we've tried, maybe a few more than that. Misdemeanors are
21 not hard to try. Felonies are much -- you know, they're
22 much more difficult. And we've tried a number of
23 different kinds of civil cases, but the -- the input --
24 the resources and the planning that have to go into
25 scheduling a two-day motor vehicle accident case are just

1 so overwhelming that it's very difficult for judges or
2 their staff to do it, even -- even though they're trying
3 very hard to do it.

4 And then on virtual trials, I think one big
5 change going forward is you're entitled to a jury trial in
6 a misdemeanor case, like a traffic case in Texas, but
7 we've had several virtual trials in those cases, and they
8 seem to work pretty well. And the -- the confrontation
9 issues that -- they are there, but they're just not as
10 heavy as they would be in a bigger case. And so I think
11 I've said before that that may be a big change going
12 forward, because last year 30 percent of our jury trials
13 were in those cases. So we're talking about close to
14 3,000 jury trials that we might be able to do virtually,
15 and while those obviously are not big cases, it may take
16 some pressure off the jury system going forward.

17 But other than that, I think John has given
18 us a great lay of the land.

19 CHAIRMAN BABCOCK: Great, thanks. Thanks,
20 Chief. Does anybody have any questions of John before we
21 let him go and get back to business? I will note that it
22 takes longer, I think, to go from one end of Texas to the
23 other than nine hours, but like Tennessee, we both have
24 two time zones, and that -- that to me is the definition
25 of a big state, so -- any other -- any questions?

1 I see no electronic hands raised, so, John,
2 thank you so much. You're welcome to stay and listen for
3 the rest of our -- of our session, but we can't -- we
4 can't thank you enough for taking the time out to join us
5 today. Thank you.

6 MR. DAY: Glad to do it, Chip. Thanks for
7 having me. Merry Christmas, everyone.

8 CHAIRMAN BABCOCK: You bet, thanks. All
9 right. Now, we're going to -- we're going to have --

10 HONORABLE ANA ESTEVEZ: Can I say something?
11 It wasn't a question for him, so I didn't raise my hand,
12 but I want to -- I don't think that Chief Justice Hecht is
13 getting enough credit for what he's done in the State of
14 Texas. I actually tried three jury trials under the
15 remote -- not the remote, but with the COVID restrictions,
16 and we're going to full -- we're going to do our full
17 civil remote jury trial from beginning to end in January,
18 because of where we really believe the vaccine is going to
19 take us, and I mean, I don't want to be the naysayer, but
20 I think we're going to be closer to 2022 before we can go
21 back to in person, especially in Amarillo. You know, we
22 have one of the highest spikes. I think we're only second
23 as to El Paso right now, so it will be a long time before
24 we can do any type of jury proceeding in person, even with
25 the COVID precautions.

1 So I just -- you guys, you don't
2 understand -- I don't think you can comprehend the
3 leadership we've had in the State of Texas. Those trials
4 that have gone, we had maybe 20 that were supposed to go
5 between November and December, but we only had to cancel
6 because our COVID numbers are -- are so high. But if ours
7 could have stayed stable, we would have some huge numbers,
8 at least in our area and in the whole Panhandle. I had
9 had a lot of requests to go forward. They just had to
10 cancel because of our COVID numbers.

11 So I just want to say thank you, and I want
12 to make sure that whoever is watching on YouTube
13 recognizes what an amazing job you've done, and OCA, David
14 Slayton and their whole team. It's an honor to be a part
15 of the judiciary in the State of Texas.

16 HONORABLE NATHAN HECHT: Thanks, Judge, and
17 let me add, Chip, that the regional presiding judges, who
18 are pretty much a quiet little bunch up until now, have
19 really stepped up, and they have really become leaders in
20 letting the -- in helping the local courts get through
21 this, and I just got an e-mail from Judge Olen Underwood a
22 few minutes ago. Olen's had the virus the last several
23 weeks, and he's well, so that's good news.

24 CHAIRMAN BABCOCK: That's great. Well,
25 you've deflected the well-deserved praise nicely, but I

1 certainly know and I'm sure everybody on this committee,
2 if we took a vote, it would be one of our few unanimous
3 votes that you are to be honored and commended for all of
4 the hard work you've done. We all know it, and some of us
5 know it better than others, but the State is darn lucky to
6 have you. So you can quit blushing now and, you know, go
7 off camera if you have to.

8 All right. Next on our agenda, we're going
9 to hear from Jerry Bullard. We heard from Jerry two years
10 ago, as you may recall. He is with Adams, Lynch & Loftin.
11 He is the chair of the State Bar of Texas appellate
12 section. He is board certified, is co-chair of the
13 legislative liaison committee for the State Bar appellate
14 section. He's got a paper that he's prepared called
15 "Hurling Toward the Lege, a Preview of the 87th
16 Legislature." He is a University of Texas Law School
17 graduate, Baylor University undergraduate, cum laude.
18 Jerry prepares a detailed report, ongoing report,
19 regarding the progress of bills in the Legislature that
20 affect the justice system.

21 The way I got onto his very informative work
22 was through ABOTA, which he contributes to, but you'll see
23 in your materials that if you want to sign up for his --
24 his ongoing reports, you can do so. I think at no charge,
25 but even if he did charge, it would be worth the price of

1 admission. So, Jerry, the floor is yours.

2 MR. BULLARD: Mr. Chair and members of the
3 committee, thank you for inviting me once again to provide
4 a little bit of a sneak preview of bills heading our way
5 next session. As we try to still get our bearings from
6 the pandemic and election issues and things along those
7 lines, it's hard to believe, really, that the regular
8 session is just under 40 days away from getting started.
9 And as Chief Justice Hecht referred to earlier and
10 mentioned, we really don't know what the session is going
11 to look like; and of course, they only have 140 days to do
12 their work during a regular session, so it's going to be
13 quite interesting to see what happens obviously; and we're
14 all -- we're all wondering what that's going to look like.

15 But I will say -- and this is in the
16 materials that I provided, and like a good appellate
17 lawyer these days, I bookmarked my materials, so you can
18 kind of click on your bookmarks and follow along. It's
19 only eleven pages, so the bookmarks may not be all that
20 helpful, but in any event, you know, you can click through
21 as I talk about some of these bills. But the first thing
22 I wanted to really bring up was on page one where it talks
23 about what the prefiling stats are looking like. November
24 9th through the 30th, there were over 887 bills. Well,
25 there were 887 bills and resolutions filed, which is ahead

1 of the pace of the past few sessions. I've kind of given
2 y'all a time line going back to 2011 to let you know kind
3 of what the prefiling session period looked like in
4 November, so we're way ahead of that pace.

5 There's typically anywhere between 5-, 6-,
6 7,000 bills filed each session, so there's a whole lot
7 more that's going to be coming down the pike that we'll be
8 taking a look at and I'll be -- I'll be monitoring the
9 best I can. Through yesterday there were -- that bill and
10 resolution total was up to 950. There is, as you might
11 expect, there are several common threads in a lot of the
12 bills that are filed. For example, there's over 80 bills
13 filed dealing with election issues, whether it be
14 registration, voting processes, things along those line.
15 There are lots of those bills that have already been
16 filed.

17 There's over six, I think, that really
18 seemed to me to be pandemic specific. I'll talk a little
19 bit about those later on, and then there's a couple --
20 there's several -- what I'm calling the separation of
21 powers type of legislation, obviously with some of the
22 controversy that's going on about what the Governor can
23 and can't do and what the courts can and can't do and
24 under an emergency declaration situation. There's about
25 eight to ten of those that are out there right now, but

1 there are going to be more, and so, you know, we're
2 curious to know if those sorts of issues in addition to
3 budget issues are going to take up what we like to talk
4 about as being all of the oxygen in the room to where some
5 of these other issues dealing with civil justice, things
6 that are important to us, we're not exactly sure where
7 those are going to fall in terms of the priority list that
8 the Legislature may have.

9 You know, one thing I typically like to do
10 is kind of look at the legislative demographics. This is
11 not in your materials. I kind of started taking a look at
12 this over the last couple of days, so it's the statistical
13 analysis that I'm going to throw out to you. It's just
14 totally my own, so it's unscientific, but I think it's
15 pretty close to what it's going to look like. You know,
16 the breakdown in the House from a political standpoint
17 really is going to be unchanged this session, 83
18 Republicans, 67 Democrats with the changes that did occur.
19 You know, those numbers didn't shift at all. On the
20 Senate side there was only one political shift. We lost
21 one Republican member that moved over to the Democratic
22 side, which is significant in this regard.

23 Currently under Senate rules, there has got
24 to be a -- it only takes 19 -- you have to have 19
25 Senators to bring a bill up for debate. That's the 60

1 percent rule, and so right now if there's only 18
2 Republican, Republican-type of bills, that may be a little
3 harder to get to the Senate floor for a debate unless
4 there's a rule change. So there's a question whether or
5 not those rules are going to change once the -- once the
6 Legislature convenes. Of course, there's still an
7 outstanding Senate race, will be a runoff later this month
8 up in my neck of the woods, but those are two Republican
9 candidates, so that's not going to change the 18/13 split.
10 It may affect the numbers in the House just slightly,
11 because Representative Springer is in that runoff for that
12 Senate seat, and if he moves over to the Senate then that
13 will create a vacancy in the House.

14 But on the House side, you know, if I'm
15 doing these numbers right, I'm checking the Secretary of
16 State numbers. There are 17 new House members, and that
17 breakdown is 6 Democrat, 11 Republicans. On the Senate
18 side there's three new -- three new members, two Democrats
19 and one Republican, so, you know, it's nice to know those
20 dynamics so you kind of know what the lay of the land
21 looks like there.

22 Another demographic I like to look at is how
23 many licensed attorneys do we have in the Legislature. If
24 I'm reading the numbers right and I'm checking the
25 backgrounds correctly, there are 53 in the house and 10 in

1 the Senate, and so those are not necessarily practicing
2 lawyers. They have law degrees, according to State Bar,
3 but they may not have active practices, so, which usually,
4 you know, is interesting to me, because that way if I have
5 to bring up an issue to a legislator or anybody who
6 receives my updates and they want to get involved, that
7 gives them a good idea of who they can talk to. So, you
8 know, that's the demographic lay of the land that we're
9 dealing with when we start talking about some of these
10 bills.

11 My paper, really, like I said, highlights
12 some of those I think that are of interest to most civil
13 law -- civil trial and appellate practitioners. I won't
14 go into too much detail because they're in the materials,
15 but here are a few of the notable ones, at least that
16 jumped out at me. On page two under "Damages," there was
17 a bill introduced by a Senator or Charles Schwertner, Dawn
18 Buckingham, and Donna Campbell, Senate Bill 207, dealing
19 with the recovery of medical or health care expenses in
20 civil actions. One friend of mine referred to that bill
21 as "paid and incurred on steroids."

22 There's five different options there
23 essentially for determining what sort of evidence will be
24 allowed when you're talking about recovery of health care
25 expenses. So Senator Schwertner had filed a slimmed down

1 version of that bill last session, didn't have quite as
2 many options, but it didn't get very far. Now we have
3 Senators buckingham and Campbell joining him, all
4 physicians, who are going to be carrying the water on this
5 particular bill, so it will be interesting to see how that
6 one moves through the process.

7 On page three under the "Insurance," we're
8 calling it the brainard bill. Representative Geren from
9 Fort Worth filed HB 359 to deal with basically codified
10 the brainard situation under when you're entitled to seek,
11 you know, recovery under a UM, UIM or UM coverage type of
12 situation. Representative Geren's bill made it a little
13 bit further down the pike last session than others did.
14 It didn't pass, so it's coming back again.

15 One that was of particular interest to me is
16 under the "Judiciary" category, and it's HB 339,
17 composition of the court of appeals districts. I've been
18 told from a couple of sources that that's a placeholder
19 bill, with the idea being that it's -- there are going to
20 be a larger redistricting of the court of appeals proposal
21 that will be coming down the pike later on in the process.
22 This particular bill really only focuses on overlapping
23 jurisdictions in the -- in the Fifth and the Sixth and
24 12th Courts of Appeals, but there are bigger plans for
25 that particular bill. So that's something I think we're

1 all going to be -- at least from an appellate standpoint,
2 and I think all of our trial lawyers are going to be
3 wanting to see what that looks like, too, but there's
4 going to be a move or an attempt to redistrict the courts
5 of appeals this session.

6 What that plan looks like, I've not talked
7 to anybody who really knows what that ultimately might
8 look like. I've got some theories, just from following
9 this stuff for a while, but I really have nothing to hang
10 my hat on, but that will be something we're going to want
11 to pay attention to, from a practitioner standpoint.

12 I added the "Separation of Powers" bill on
13 pages five and six, dealing with the executive power
14 following disaster or emergency declaration, HJR 15.
15 There's a House Bill 173 that goes along with that bill.
16 Representative Springer filed those bills, so we're going
17 to see lots of bills like that, I think, to deal with the
18 separation of powers issues.

19 Now, those are bills that are currently
20 --have been filed, so, you know, we know those are going
21 to be addressed at some level and to some degree as we
22 move along.

23 Possible bills or anticipated bills on page
24 six, that's where I start listing some of those that I
25 think we're going to be seeing again, primarily because

1 we've seen them in the past. One of the most popular
2 questions asked to me is are we going to fix -- you know,
3 CPRC 38.001 about recovering attorney's fees in civil
4 cases. There have been numerous attempts to file bills to
5 deal with that issue to make attorney's fees recoverable
6 from all sorts of business organizations, not just
7 corporations or individuals. All of those attempts have
8 failed for various reasons since 2014, I think, about
9 that's when the case law started coming down interpreting
10 38.001 in the way that it has been to cause this bill to
11 be filed, but all of those efforts thus far to amend that
12 statute have failed.

13 Access -- attorney access to courthouses,
14 that bill didn't get very far last session, but it's my
15 understanding there may be another attempt at that. I
16 don't know what that's going to look like, but we may see
17 a bill along those lines, too.

18 Pages seven through eight, the judiciary
19 related bills. David Beck has already talked about the
20 judicial selection effort, so I put in this paper a
21 description of what the last bill looked like, which was
22 the one that he was referring to that Representative
23 Landgraf had filed, just so you can get an idea of what
24 that bill looked like before. I also have in there the
25 creation of the business court and court of business

1 appeals bill. We've had a couple of attempts to create
2 chancery courts or business courts in the past. I'm not
3 exactly sure if this is one of those bills that might fall
4 by the wayside this time just because of the other issues.
5 I know there are several groups that are still interested
6 in creating a business court system, so we'll see if
7 something gets filed along those license. If it does, it
8 may not get very far, but we shall see.

9 On page 10, just some generic topics,
10 primarily dealing with COVID. There have been four bills
11 filed already dealing with workers comp coverage and
12 creating presumptions of coverage for certain
13 classifications of employees, like public employees, first
14 responders, nurses, et cetera. I've been told by several
15 folks that we're probably going to see some sort of
16 limitation of liability type of legislation filed for
17 COVID-related situations. There are already 14 states and
18 the District of Columbia that have filed bills to limit
19 liability of businesses and manufacturers and folks who
20 manufacture PPE and things along those lines, and so we're
21 probably going to see some bills dealing with the
22 pandemic. So those will be ones we will be keeping an eye
23 on.

24 I have a section in pages 10 through 11
25 dealing with Judicial Council resolutions. Justice Hecht

1 already talked about that earlier about some of those,
2 those initiatives, so I won't cover that ground again, but
3 primarily that's all that I have in terms of what's in my
4 written materials.

5 And, Mr. Chairman, like you referred to
6 earlier, you know, I've been doing these updates for --
7 since 2004, I think. Some may question my sanity, but I
8 really do enjoy doing that, keeping track of the
9 legislation as it goes through the process. It is a
10 public service for me, so there's no charge, but it's also
11 a way to keep my colleagues informed, judges informed.
12 There are legislative staffers who receive these e-mails
13 because they can't keep track of everything either, so it
14 is a public service. I enjoy doing it, but I'm happy to
15 add anyone else to that list if they want to be added, and
16 that's really all that I have. So I'm proud that I can
17 keep it short and sweet, to the point, but if anyone has
18 any questions, I'm sure happy to try and field them.

19 CHAIRMAN BABCOCK: Great. Jerry, thank you
20 so much, and if anybody has questions, you can -- we've
21 become pretty adept at getting through our electronic
22 hands on this. It took a little while, and on the
23 Commission on Judicial Selection I'm not sure we have
24 mastered that task yet. So any questions for Jerry?

25 All right. I see no hands raised, so you

1 got off easy on this one, Jerry, but thank you, again, you
2 know, for wading through all that came before and for
3 giving us a very informative presentation. Thank you.

4 MR. BULLARD: Well, you're welcome. I'm
5 happy to do it.

6 CHAIRMAN BABCOCK: Great. All right. We
7 will turn to our next agenda item, which is Nina Cortell
8 and Evan Young on whether the Supreme Court ought to adopt
9 a procedure for granting or denying review based on the
10 petition for review. So, Nina, I don't know if you are
11 starting or Evan is or whether you're both in the same
12 room and you're going to do a duet.

13 MS. CORTELL: Thank you, Chip. I'll go
14 ahead and get us started. When Chip invited us to suggest
15 topics for discussion, this is just a topic, frankly, that
16 I've been thinking about for quite a while. It's been my
17 great privilege to appear many times in the Texas Supreme
18 Court, and while I appreciate the reasons underpinning the
19 current procedure, I thought perhaps after almost 25 years
20 of using it, it might be time to revisit and see whether
21 we might not adopt a procedure a little bit more along the
22 lines of the United States Supreme Court.

23 So by way of background, for those that may
24 not do this quite as often, the current -- I'm going to
25 just generalize, the current procedure in the Texas

1 Supreme Court to get reviewed is essentially a three-stage
2 procedure. There's the first stage, which is the petition
3 for review, and at the conclusion of a petition, and if
4 requested, a response and then a reply, the Court decides
5 whether to ask for full briefing. It takes three votes to
6 get to full briefing, so if you're lucky enough to get
7 that request, then you go into a briefing schedule. You
8 provide much longer briefing than you did at the petition
9 stage, and at the conclusion of the briefing stage decides
10 whether or not to grant review. It can be -- the decision
11 can be decided per curiam, or you can be allowed the
12 opportunity for oral argument.

13 So it's really a three-stage procedure, and
14 what that means is that you can go through the first two
15 stages and not get reviewed, which means you've not only
16 filed a petition and then gone through that, but also full
17 briefing. That is different from you have in the United
18 States Supreme Court where the decision to grant review is
19 based on the initial petition and related filings, and you
20 only file your brief on the merits if review is actually
21 granted. Currently, I think the statistics -- and I defer
22 to Pam Baron and other experts who monitor that, but I
23 think the current statistics on cases that go to full
24 briefing now in the Texas Supreme Court as to whether you
25 really get a grant or not is approximately 40 to 50

1 percent of the time. So at least half of the time that
2 you filed complete briefing, you've gone through the
3 expense and delay related to that, you will not get
4 review.

5 That has several implications in terms of
6 cost and delay, but also it goes to the type of briefing
7 that gets filed, because in the current proceedings, the
8 way the procedure works now, your brief on the merits,
9 since you haven't gotten the agreement for review yet,
10 you're still arguing for review or against review,
11 depending which side you're on, and you're not really at
12 liberty to devote 100 percent of your energy to the actual
13 substantive issues. And sometimes that can carry with it
14 consequences, where the merits, perhaps, are not dealt
15 with as fully as they otherwise would be.

16 Now, to put this into context, the original
17 procedure before 1997 was we just had full briefs on the
18 merits and then the decision was made whether to grant or
19 not, and it was a very good change in 1997 to go to the
20 current proceeding, because it allowed you this earlier
21 opportunity just to file a petition, explain why review is
22 necessary. And I even remember -- I'm sure Justice Hecht
23 does as well -- sort of the road show, I'll call it, that
24 the judges went on to sell the new procedure and promised
25 us -- and I think upheld that promise -- that they would

1 read this shorter filing, that we would get actual review
2 by the Court. And I think the Court has held good to that
3 promise, and I think that has worked well, and I in no way
4 have any concerns about that.

5 That said, having looked at it now again for
6 almost 25 years, having had the, again, honor to be going
7 through this procedure quite a lot in the last few years,
8 I thought it might be worth a conversation at least as to
9 whether to revisit our protocol. In getting ready for
10 today I did talk with Evan Young, who has studied this
11 with others a few years ago and prepared a memo at the
12 Court's request; Martha Newton and Jackie, and I'll let
13 each of them add their thoughts, if that's okay, Chip,
14 before we go to open discussion. But I will want to note
15 that several years ago Martha and others undertook a
16 survey, and at least it appears that we are likely the
17 only state in the country with this sort of three-part
18 procedure. Now, a lot of states are very distinguishable
19 from ours, but even if you took 25 of those, none of them
20 are doing it the way we do it, so maybe it's time to give
21 it a thought.

22 So I'd like to turn it over to Evan, if
23 that's okay, as well as Martha and Jackie.

24 CHAIRMAN BABCOCK: Yeah, of course. Evan.

25 MR. YOUNG: Thank you. I will keep mine

1 brief and want to maybe ask some of the same questions
2 that Nina has asked in a slightly different way, and that
3 is, if we're having our big thoughts meeting, the big
4 question might be what is a petition for review? And what
5 is a brief on the merits for? And right now, under our
6 current system, I don't think that we can really say that
7 a petition for review is a petition for review. It's a
8 petition for a petition for review, which means that a
9 brief on the merits isn't a brief on the merits, because
10 it is functionally the petition for review. And Nina got
11 at that point a little bit, but when you file the very
12 short petition for review, the way that it actually works
13 is that you're just trying to get enough votes so that you
14 will file that longer brief on the merit.

15 But precisely because you have no promise at
16 that point as the petitioner that your case will be heard
17 on the merits and no certainty as a respondent that your
18 win will be even considered by the Court on the merits,
19 both sides, when drafting what has that label on it as a
20 merits brief, end up, I think, whether subconsciously or
21 sometimes consciously focusing largely on still persuading
22 the Court either to take the case and perhaps setting
23 aside complications that might make the case less
24 desirable even if they really get to the merits or to not
25 take the case and perhaps subconsciously or consciously

1 set aside some things that might be helpful to you on the
2 merits, but might make the case seem spicy if you're a
3 respondent and you don't want the Court to take it.

4 And so that, I think, leads to a series of
5 problems that really have effects for all of the
6 participants in the system, ranging from the clients all
7 the way up to the justices and their staffs, and some of
8 those, we can discuss that with this whole group. There
9 are a large number of people on this call that I think are
10 participants in this process and have great insight in it,
11 but some of them that I think are serious relate to the
12 incentive structure, ranging from the willingness to file
13 a petition in the first place to whether a client or a
14 lawyer is inclined or able to spend the energy to prepare
15 a proper brief on the merits, given the incentives that
16 currently exist for trying to persuade the Court to take
17 review or to deny it, rather than to actually argue the
18 merits and then the concomitant result such that when a
19 merits argument is allowed and the Court has taken the
20 case and put it on its plenary docket, occasionally one
21 might perceive that counsel discover now that suddenly
22 their case has been plucked from that potential pile of
23 one-line denials after having gone through all of that,
24 that, well, maybe there's more to this than we thought.

25 Maybe respondent's counsel realizes there

1 are certain things we really would like the Court to know
2 now that we actually have to defend our win below that we
3 didn't really want to say at that point. Or frankly, the
4 client said, "Well, I'll be willing to finance some of
5 this, but I'm not going to really pay what you think is
6 necessary for complete thorough briefs on the merits when
7 you tell me I have maybe a 60 percent chance of this
8 ending in nothing," and now we're going to be arguing
9 before the Supreme Court, so, client, you know, you really
10 need me to do this. Or the lawyer saying, "Well, I'm
11 going to have to do it for my own reputation, whether the
12 client really wants me to or not."

13 And all of those are collateral to some
14 extent, but the central problem is that I think they exist
15 in some number of cases such that the cases evolve in ways
16 that would be less problematic if before a brief on the
17 merits were presented to the Supreme Court of our State,
18 people knew, as with I think every other state Supreme
19 Court and the Supreme Court of the United States, that it
20 really is a brief on the merits and this is our chance to
21 make the statement that we want the Court to understand
22 will be a merits argument and not a plaintiff cry for
23 review or an attempt to continue to diminish the
24 reviewability or the worthiness of review of the case.

25 And so, you know, whether we agree or

1 disagree that the current process has opportunities for
2 change, one question that should be considered is, well,
3 what can -- what can supply something that's better. You
4 know, you can't really beat something with nothing, and I
5 don't think anybody would try to do that. I guess I would
6 start by suggesting, well, we wouldn't really be in that
7 position because every other state and the Supreme Court
8 of the United States seems to be able to do the job
9 without being, you know, entirely unsatisfied with the
10 results without having a petition for review that isn't
11 really a petition for review and a brief on the merits
12 that isn't really a brief on the merits. And so we do
13 have (Zoom audio glitch), but what we might also recognize
14 is there is -- it's not as though this came for no reason,
15 that there's nothing that's being served by it or that
16 there aren't institutional interests that would be
17 undermined at least temporarily by making a change. And I
18 think some sensitivity to that is also sensible and sound.

19 So -- so, you know, the question is what is
20 it that would be lost by doing this. Well, one is we have
21 these shorter petitions that the justices can actually
22 read. If we have a petition that leads immediately to a
23 grant and it's as short as it is right now, then the
24 likelihood is that at least in a number of cases the Court
25 is going to be very concerned that it is not empowered to

1 know for sure that it has selected wisely and that the
2 case actually implicates the kinds of questions and
3 doesn't have the sorts of defects that might be fleshed
4 out in full briefing.

5 And a solution is to say, I think, I would
6 suggest for the Court's consideration, this group's
7 discussion, that a longer petition that begins with a much
8 shorter summary would achieve the goal, because a lot of
9 petitions end up being things that can be eliminated very
10 quickly. They're just not going to work. But if we have
11 a longer petition, then the justices and their staff can
12 look at the short summary, the introduction, say "If I'm
13 not persuaded in a thousand words when you're just giving
14 me your best pitch as to why this warrants one of 70 or 80
15 spots on a plenary docket of a large state's highest court
16 of review, well, then I don't really need to know much
17 more; I can just deny that petition right now."

18 On the other hand, if they're interested, if
19 they think this really is a case that might be warranted,
20 rather than now having a whole nother round call for
21 merits brief, just turn the page and it's there. And if
22 the Court is interested enough to call for response, it
23 calls for response, and that response can be longer, maybe
24 9,000 words instead of 4,500 words, in order to make sure
25 that every aspect of the case and not the merits

1 necessarily -- that's, I think, not irrelevant to the
2 grant, but not the primary goal of a petition for review,
3 but that every aspect of it, jurisdiction or defects in
4 the record, whatever else can be fleshed out, no more
5 unbriefed issues, no more, oh, wait for briefs on the
6 merits and then you'll see how good it is. Just give us
7 another shot. Just here it is, make your decision, and if
8 it's no good, we have finality. We don't have to delay
9 for briefs on the merits and all of that in order to
10 determine whether the judgment below becomes final and the
11 mandate issues.

12 I guess the last thing I would say is that
13 it seems to me that if we can persuade the Court to
14 consider something that would be a modified version of
15 what the U.S. Supreme Court does, it would align all of
16 the incentives for everyone. Clients would not be able to
17 file a rather short petition for review, just saying, hey,
18 let's see if it sticks and see if we get to the next
19 stage. They would have to file a real petition for
20 review.

21 On the other hand, clients who do that
22 multiple stage would be willing to do it properly and so
23 would lawyers, because they know that if the petition for
24 review is granted, that means they're in the game for the
25 long haul and everything they say is the main event. I

1 think that the Court then would be served well by having
2 documents that are filed that actually answer the specific
3 questions in the petition for review is this a case that's
4 worthy of being on your docket, in briefs on the merits
5 what is the right outcome now that you've agreed that it
6 is on the merits. And we would have less need for big
7 twists and changes and post-submission briefs and
8 pre-submission briefs and late amici and all of the rest
9 of it, because all of the work that would be on that time
10 line would be aligned with the reasons that we want to
11 have those filings in the Court in the first place.

12 So maybe that was a little longer than I
13 promised, but, you know, I get carried away sometimes, and
14 I try to restrain myself when I can, but I'll stop.

15 CHAIRMAN BABCOCK: Okay, Evan. Thank you,
16 and I'm guessing you're in favor of this change.

17 MR. YOUNG: Cautiously, you know,
18 tentatively in favor.

19 CHAIRMAN BABCOCK: All right. Martha or
20 Jackie, you got anything to say about this? And I don't
21 expect some, you know, kind of brief like -- like outline.
22 We want to really go into the depth of this. You know,
23 Evan is -- you know, he just never thinks it's enough
24 substance to it. Martha or Jackie, you got anything?

25 MS. NEWTON: Well, as an employee of the

1 Court, I'm going to stay out of the merits of the debate,
2 but I'll just confirm that I did look in about five years
3 ago, did some research on just trying to figure out if the
4 way that we do things was the norm among other State
5 Supreme Courts or whether we were in the minority, and so
6 I looked at the briefing rules, with the help of a
7 paralegal, of all of the State Supreme Courts or state
8 courts of last resort with discretionary jurisdiction, and
9 it appeared that we are the only state court of last
10 resort with discretionary jurisdiction that routinely
11 solicits merits briefs before making a decision to grant
12 review.

13 And I'll just give some caveat that I really
14 at the time was just trying to get the -- the sort of
15 overall trend more than a hundred percent accuracy, so
16 that may not be completely accurate, but we're definitely
17 in the minority, and then I haven't updated that research,
18 so it may be somewhat out of dated, but I -- so that was
19 my involvement, and so I gave that background to Nina and
20 Evan before the meeting today.

21 CHAIRMAN BABCOCK: Okay. But you're not
22 arguing against our uniqueness, are you?

23 MS. NEWTON: I would never argue against
24 Texas' uniqueness, no.

25 CHAIRMAN BABCOCK: All right. Jackie, even

1 though you're an employee of the Court, did you want to
2 weigh in on this, where scaredy cat Martha doesn't want
3 to?

4 MS. DAUMERIE: No, I don't think I'll weigh
5 in either, but I will say that I do think there is an
6 appetite for this outside of Nina and Evan. Basically
7 every meeting I go to I get asked about this. I'm
8 guessing Evan's been talking behind the scenes, so I think
9 there is appetite for a change here.

10 CHAIRMAN BABCOCK: Okay, great. Thank you,
11 Jackie. Scott Stolley. Got to unmute, Scott.

12 MR. STOLLEY: Thank you, Chip. I want to
13 add to the history lesson that Nina so ably gave us. Back
14 in 1997 when this change was made, I liked the change
15 because the old system involved filing full briefs that
16 were then condensed by a first-year law student working
17 for the Court -- or a first-year lawyer, rather, working
18 for the Court, and I felt like it was a better thing that
19 my case would be judged based on a petition for review
20 that I drafted where I did the summarizing rather than a
21 first-year lawyer doing that internally inside the Court,
22 so I liked the change.

23 Since then, I agree with the sentiment to
24 reform the process somewhat, because my experience has
25 been that it's too expensive for clients to go through two

1 rounds of briefing and then have their case denied. I --
2 I've had some cases that I've thought would be granted.
3 They weren't, and the clients were understandably puzzled
4 by why did I spend all of this money only to have my case
5 denied. So I think it's too expensive right now.

6 Also, I think it injects too much delay into
7 the process. Busy appellate lawyers tend to ask for a lot
8 of extensions, and I'm as guilty of that as anybody, and
9 so when you have two rounds of briefing and two or three
10 extensions each time a case -- each time a brief is due,
11 it builds in a lot of delay into the Supreme Court
12 process, and again, clients are very puzzled and
13 disappointed by that. So I'm in favor of some kind of
14 reform that would make it less expensive and not take so
15 much time.

16 The final comment I will add is Evan
17 mentioned that maybe we would no longer have the idea of
18 unbriefed issues so that they would all -- all have to be
19 briefed in the petition stage. My initial reaction is I
20 still like having the idea of issues that are not briefed
21 at the petition stage. I think that it makes more sense
22 to let the lawyers choose which issues they think will
23 sell and then if the Court does grant review, go ahead and
24 let them brief the issues that they initially didn't
25 brief. So those are my comments. Thanks.

1 CHAIRMAN BABCOCK: You bet. Lisa Hobbs.

2 MS. HOBBS: So I agree with a lot of what's
3 said. I mean, definitely we've identified problems with
4 the current procedure. I will say that most of the
5 comments seem to be geared towards the petitioner's side
6 and not the respondent's side, and as somebody who does
7 both, you know, sort of the really high end money deals
8 that are likely to get the Court's attention, but also a
9 lot of cases that -- you know, as a solo I get to take a
10 lot of cases that aren't just like the high end money
11 stuff.

12 I will say that -- and, again, Pam probably
13 can correct me on the statistics, but we're talking about
14 25 or 50 percent of the cases go away with just a -- like
15 a response to petition for review, and so from the
16 respondent's side, it actually can be a money saver. So
17 like we're talking about it from the petitioner's side,
18 but sometimes like when the court of appeals got it right,
19 which to all of the court of appeals judges on this call,
20 I think you mostly get it right, but I think there are
21 some money saving aspects to it when I can just file a
22 15-page response, that's like, no, no, no, no, no, really,
23 the court of appeals got this right, we're good. And that
24 takes care of a lot of cases.

25 So, again, I'm not opposed to re-envisioning

1 some aspect of this. I agree with a lot of what has been
2 said about the problems with briefs on the merits when you
3 don't know if a case is actually going to be granted and
4 the money that goes into that and the strategy that would
5 be different than if you were just briefing it completely.
6 But I think if the Court was going to study this issue,
7 make sure you are studying it from both the winner and the
8 loser side on the court of appeals.

9 And then the other thing I would say is, as
10 an officer of the appellate section, I would hope that the
11 appellate section would be super involved in determining
12 like how to best -- like if we're going to change the
13 process, that they would be involved in that, and we have
14 lots of ways to get input for the Court, but we would be
15 happy to do that for the Court, to get more input from a
16 lot of different type of practitioners and not just, you
17 know, big case type practitioners.

18 CHAIRMAN BABCOCK: Thanks, Lisa. Justice
19 Christopher.

20 HONORABLE TRACY CHRISTOPHER: Well, a simple
21 solution might be for the Supreme Court to require five
22 votes before they ask for full briefing; and that's just
23 something for them to think about, because then you'd have
24 five people that were, you know, thinking that there was
25 an important issue here, instead of three; and I think if

1 five people agreed to it, the grant after full briefing
2 would be a lot larger, and that would save a lot of money
3 in the system, so just my thought.

4 CHAIRMAN BABCOCK: Great. Thanks, Judge.
5 Frank Gilstrap. Got to go off mute, Frank.

6 MR. GILSTRAP: I want to just add to the
7 comments that Lisa made. There are not only cases that go
8 away after the response is filed. There are cases that go
9 away when the petition is filed. Under Rule 53.3, you can
10 file a waiver, and the Court will not grant the petition
11 without hearing your response, and so in that -- in those
12 cases, and I think there are a significant number of
13 cases, the respondent is out no money for preparing a
14 response and the petitioner is not out any money for
15 preparing a reply brief. It's just there are just some
16 cases that the Supreme Court -- and this includes big,
17 important cases -- that the Supreme Court is just not
18 going to touch. And that feature seems to me to be really
19 helpful; and if we change the feature, we don't need to
20 get rid of that, to get rid of that provision where the
21 respondent can say, "I'm not filing a response unless
22 asked." Otherwise, we'll be throwing the baby out with
23 the bath.

24 CHAIRMAN BABCOCK: Thank you, Frank. Any
25 other -- any other comments from -- comments or questions

1 from anybody? Yeah, Scott.

2 MR. STOLLEY: Yeah, one additional thought,
3 Chip, is Evan made the comment that maybe the word count
4 for the petition would be increased. I would just say as
5 someone who's been practicing a long time, I would still
6 try to keep my petitions around the 4,500 word limit, and
7 I think a lot of good appellate lawyers would do the same,
8 even if the word count was increased. I think you hurt
9 yourself if you spend too much -- too many words in the
10 petition when you're trying to get the Court's attention.
11 You're trying to get them to read it and understand it and
12 decide it's worthy of review, and so even if the word
13 count is increased, I think you will see that good
14 appellate lawyers will do their very best not to use the
15 extra words.

16 CHAIRMAN BABCOCK: All right. Thanks,
17 Scott. Richard -- Richard Munzinger.

18 MR. MUNZINGER: Scott Stolley opened his
19 remarks by saying he was in favor of the system originally
20 because it made more probable that a judge would review
21 the application rather than a clerk. There's a lot to be
22 said for that. A lot to be said for that. I don't want
23 to trust a first-year law student with my client's rights
24 unless I have to. To get behind Massachusetts and
25 California is certainly not prudent for us to copy the

1 processes of other states. Our system is pretty dadgum
2 good. It works pretty good from the Supreme Court's
3 level. It seems to me that the Supreme Court can limit
4 its actions to cases that are important to the
5 jurisprudence of the State. That's the purpose of it.
6 And it is the judges themselves who are making the
7 decision, if our system is being followed as it is.

8 If the Court were to say we need five judges
9 to get into -- to have your petition granted, I think
10 that's -- they could go home after a month's work in
11 January probably. But I -- the system we have, you know,
12 what's wrong with what we've got? Why do I want to copy
13 Massachusetts, for God's sakes? Why do I want to copy
14 California, for God's sakes? We've got a system that is
15 working and working well. We ought to keep it and go
16 about our business. Thank you.

17 CHAIRMAN BABCOCK: Thank you. Marcy Greer.

18 MS. GREER: Hi, can you hear me okay?

19 CHAIRMAN BABCOCK: We can. But if you want
20 us to follow Massachusetts or California, you're out of
21 order.

22 MS. GREER: No. I wasn't going to advocate
23 for that. I will advocate for a little bit of an increase
24 in the word limit, because as this committee probably
25 recalls, I did a very important peer-reviewed study on how

1 many words actually get into petitions and short briefs
2 and proved that good lawyers can get in more than 300 a
3 page, so I'll renew that motion on rehearing for a little
4 bit more. But I also think Scott raises a good point
5 about keeping them short.

6 I think Justice Christopher's idea is a
7 really good one, because I am torn on -- between these --
8 you know, the two processes. I completely agree with
9 everything that Nina and Evan said about how the brief on
10 the merits spend a lot of time trying to convince the
11 Court to take the case, and I do think that's extremely
12 problematic. And maybe a compromise position would be to
13 have four justices vote for briefs on the merit because it
14 takes four to grant, so there's a symmetry there that
15 could be helpful to limit the number of times that there
16 are briefs on the merits and hopes get up and delays in
17 the case, et cetera, only to find out that the case is not
18 worthy, and that's a hard message to give to a client.
19 And I -- you know, I don't know what the statistics are on
20 that, but it seems like it could be fewer that would get
21 to that level.

22 CHAIRMAN BABCOCK: Great, thanks, Marcy.
23 Skip Watson.

24 MR. WATSON: Thanks, Chip. I -- Marti just
25 said everything I wanted to say, I -- I agree with the

1 proposal. I remember asking then Justice Jefferson when I
2 got my first grant under the new system or my first
3 request for briefs on the merits, why do I need to write
4 more? I mean, I spent a lot of time condensing this down
5 to what I had to say. I can throw in some more cites and
6 stuff. Well, you know, I did, but it was all in the first
7 one. I think if we had another 500 or thousand words,
8 that would be fine, but I think the better lawyers in the
9 group will still try to make it as short as possible, get
10 to the point, nail it, and then get out. And hopefully
11 that that's going to be read cover to cover as opposed to
12 the first three pages.

13 And I just -- I think it's an idea that's
14 time has come, and I also agree wholeheartedly and was
15 going to say that we ought to go to four judges for a
16 grant, four judges for a briefs on the merits. That would
17 be a huge, huge improvement. That's it. Thanks, Chip.

18 CHAIRMAN BABCOCK: You bet. Lisa Hobbs.

19 MS. HOBBS: Just one more comment, and I
20 like the proposal from Justice Christopher, and as
21 endorsed by several other people after her, of increasing
22 the amount of votes it would take to get briefs on the
23 merits. That actually would make sure that when you spend
24 that kind of money that you spend, because it's very
25 expensive, as Nina started off this conversation with, how

1 much money clients spend on the briefs on the merits. It
2 is astronomically expensive, but then I also -- there was
3 something that Skip just said that might be sort of an
4 in-between approach without changing the system too much,
5 is to just -- when the law clerk is doing her study memo
6 on whether the Court should grant, that the rule
7 specifically state that you don't need to state why it
8 should be granted, but that you'll guarantee that the law
9 clerk will go back to the petition stage and actually
10 think about, like, what was the initial pitch to the Court
11 that got the Court's attention about why this might be
12 important to the jurisprudence of the state.

13 I probably as an advocate might not rely
14 fully on the law clerk going back to read it, but if it
15 were in the rules, it might give you some way to get
16 briefs on the merits that were true briefs on the merits
17 and sort of let the petition or the response brief like
18 speak for itself if you -- if the rules really showed or
19 y'all convinced advocates that the law clerk was going
20 back to read that, and then this brief was going to be
21 something different. Just an idea, as Skip was talking.

22 CHAIRMAN BABCOCK: Okay. Thanks, Lisa.
23 Pam, do you want to talk about your paper, *What Are The*
24 *Odds*, which you just circulated to everybody?

25 MS. BARON: Well, there's a lot of numbers

1 in there. I don't have them memorized, but basically half
2 the petitions that come into the Court are DOA. They're
3 denied at the first cut. Then, you know, a certain
4 percentage go to briefs on the merits. The effective
5 grant rate I think at the brief on the merit stage overall
6 is about 40 percent. So, yeah, it is expensive at the
7 second portion for the people who get into that box. But
8 as Lisa said, it's cost-efficient for those in the
9 up-front who are trying their case for no good reason
10 usually to bring it forward to the Court and they're
11 denied pretty expeditiously.

12 In terms of delay, the Court is moving on
13 these things faster than it's ever moved, so I don't know
14 that that's a significant issue. You know, briefing,
15 people do get extensions. It does take a little bit
16 longer, but that's just part of the process.

17 Just in terms of what Evan said, though, I
18 definitely agree. I've never liked the petition for
19 review process. Justice Hecht may remember that I did
20 lead an effort in 1997 that opposed it as being way too
21 short, and the problem with having such a short document
22 is that it becomes a sales pitch and no substance.

23 And I think that when you are doing that,
24 the Court is sometimes snookered into going into full
25 briefing on cases that really don't merit it because the

1 parties don't have the ability to provide a merits
2 briefing of some sort at that stage, but all they're doing
3 is making the issues look big, making the issues look
4 important, ignoring the facts, ignoring preservation and
5 just trying to sell. You're making a sale. You're a
6 vacuum cleaner salesman bringing the dirt in the door with
7 your petition for review.

8 So it's not a great process. It is very
9 expensive, but there are a lot of trade-offs. You know,
10 it's very good at culling out the ones that have no
11 business being there, but for the other people, it's very
12 expensive.

13 CHAIRMAN BABCOCK: Thank you, Pam.

14 MS. BARON: And read the paper. There are
15 great numbers in there. It's very useful to take to your
16 clients.

17 CHAIRMAN BABCOCK: Good stuff. Thanks. So,
18 Nina or Evan, any final words on this before we close it
19 out?

20 MS. CORTELL: Well, I'll let Evan follow.
21 I know -- I predict he'll have something to say.

22 CHAIRMAN BABCOCK: One small, little, quick
23 point.

24 MS. CORTELL: Just one small, little
25 addition, but mainly we wanted to plant the seed for all

1 the reasons that have come out, I think, in this very
2 helpful discussion, so I appreciate everybody pitching in.
3 I will say I'm not sure I understand that this is not also
4 advantageous to the respondents because they would still
5 hopefully be able to get their case resolved before
6 briefing, so I think in the wash, this is -- I never
7 intended this as that. I'm also on both sides of the
8 docket, and I think it would be an equal opportunity
9 benefit for both sides.

10 I think there have been some other
11 interesting statements about what would the petition look
12 like or not, and I think that could be worked out. And
13 finally, I want to say that I understand -- and this
14 didn't quite come out in the discussion, but obviously the
15 benefit of the 1997 change was the commitment by the
16 judiciary, our justices on the Texas Supreme Court, to be
17 involved at the petition stage, and I would not want to
18 compromise that.

19 Now, if a change would mean that the judges
20 aren't involved, then I think we would have to look at
21 that. But I'm assuming that we can have petitions written
22 in such a way that they are still -- that that's still a
23 very feasible task for judges directly to review at the
24 petition stage before deciding whether a case is worth it,
25 worthwhile or deserving of briefing on the merits. But I

1 appreciate everybody entertaining the topic without a big
2 research paper to present to you on this. Again, we just
3 wanted to put it in the queue for consideration. So now
4 I'll turn it over.

5 CHAIRMAN BABCOCK: No, that's fine. That's
6 what deep thoughts are all about, just throw it out there
7 and let's see what we think.

8 MS. CORTELL: Well, we appreciate the
9 opportunity. Thank you.

10 CHAIRMAN BABCOCK: You bet. Evan, you've
11 got a whole bunch of time left, so --

12 MR. YOUNG: Yes, well, let's see how much of
13 that I can manage to use, yes. I think that a lot of the
14 concerns that have been articulated are valid but would
15 not be undermined by having a two-step rather than a
16 three-step process. Ranging from having a petition that
17 requires the petitioner, if you really want to disturb the
18 judgment below, to make your best case that the Court can
19 actually decide upon based upon what you say, followed by
20 the retention of the opportunity, the expectation even,
21 that respondents will waive.

22 You know, first, that will probably
23 discourage some of the current petitioners from filing.
24 It's a very -- it's a comparatively simple thing right
25 now. 4,500 words, you know, maybe just even impose some

1 pressure on respondent. Well, this is your one shot.
2 Some people may say, "I don't think I have enough of a
3 shot to do the longer thing when I know that it's going to
4 happen"; or if they do, it might likely, as with the U.S.
5 Supreme Court, too, generate an equal number of denials
6 without a call for response.

7 So one thought that had even been suggested
8 a couple of years ago was to say to respondents, "You
9 know, we're not going to ask you to respond any faster."
10 Maybe take a little longer, given that the potential for
11 your response will be more serious, but let the Court know
12 within a week or so if you plan to waive or if you plan to
13 respond without being asked, and it's pretty -- it's not
14 often a good idea to respond without being asked, but
15 sometimes there are reasons for it and people might do it.
16 But right now we'll wait until we have that long process.
17 We might not know until the end of it whether somebody
18 wants to waive. If somebody wants to waive, let's do it
19 quickly. Just announce that you're going to do it, and
20 then the Court can process it and get rid of all the ones
21 that Pam was talking about that don't belong, and we've
22 saved everyone a lot of trouble.

23 It's for the ones that have more seriousness
24 to it that's, you know, the larger concern that can, you
25 know, either cause undue expense, create the incentive

1 disalignment that we've been talking about and the
2 frustrations that might come from going through a long
3 process only to ultimately have it be taken away as though
4 nothing had ever happened at all, a one line
5 nonprecedential denial. And the idea that had been
6 articulated by some to increase the number of votes to
7 call for briefs on the merits, I think I agree with that,
8 but the point is don't just increase the votes to call for
9 briefs on the merits; increase the votes to call for
10 briefs on the merits because you've taken the case.

11 And what's really the difference between
12 that and calling for briefs on the merits and then having
13 the other step to decide whether to take the case, which
14 continues, retains the same disalignment that we have
15 right now where you're still trying to persuade them,
16 hoping not to lose any of the votes or still hoping you
17 can drop off one of the four that's granted it. I think
18 the only difference is you're worried about an improvident
19 grant, because otherwise you have the four votes to call
20 for briefs on the merits, if those same four at least will
21 grant the case, then to have lost one means that something
22 has happened that has caused you to think this is a bad
23 idea after all.

24 Well, there are solutions to that problem,
25 too, and the U.S. Supreme Court has changed its practice

1 in relatively recent years because it had a couple of what
2 they call "digs," dismissed as improvidently granted
3 cases, and they don't like that any more than any other
4 court does, but they have the full certiorari process
5 where you lay it all out and if there are four votes to
6 grant the case and then call for briefs on the merits
7 because we know we're putting this on the calendar, brief
8 it because it will be argued. Rather than risk a dig,
9 they typically will wait at least a week, and they'll have
10 another review by law clerks, perhaps, who have not yet
11 seen the case, just to make sure there is no
12 jurisdictional defect, kick the tires a little bit, and
13 then they'll announce the grant a week after that.

14 But it's a real grant as opposed to doing
15 all of the briefs on the merits in that case, having the
16 amici spinning up the chambers and then saying "Oh, my
17 goodness, if only we had taken that couple extra days, we
18 would have realized nothing in this case will allow us to
19 answer the question presented." And it works pretty well,
20 and it avoids having any briefs that are filed that end up
21 being stillborn because the case ought not to be granted.

22 So -- so I support the idea. Let's raise it
23 to four votes for briefs on the merits, and that same four
24 votes should be a vote to grant, and only if there is a
25 real problem that develops mootness or otherwise should

1 the case be taken off the calendar, but that would be a
2 very small price to pay by comparison by having some 60
3 percent of the cases that go through all of that briefing
4 -- maybe it would be smaller if we get to the four votes
5 -- that end up not being granted.

6 So for all of those reasons I think that
7 allowing people to have a longer petition for review, not
8 that they should use it if they don't need it, of course.
9 It's always advantageous to say things as precisely and
10 concisely as they can, but to take the extra space if you
11 do need it so that if the justices, who I hope -- to
12 Nina's point -- would agree at least to read this
13 preliminary statement, this introduction that ought to be
14 in the petition before you even get to the table of
15 contents or anything. What's this case about? Is this
16 something that even plausibly interests you, and if they
17 say it does, they can just keep turning the page instead
18 of having a whole new order to call for briefs on the
19 merits.

20 So I hope the Court will take it seriously
21 and experiment a little bit with it. We don't need to be
22 like any other state or the United States Supreme Court,
23 but we don't have to deny that there might be some wisdom
24 in the fact that, you know, some 98 percent of the other
25 high court jurisdictions have been able to work it through

1 and perhaps without abandoning everything to some law
2 clerk to do it either. I think we can have the best of
3 all worlds and our Texas Supreme Court continue to provide
4 the extraordinary service that it provides to the people
5 of our state and the entire country when they're
6 litigating in our state and perhaps will even save them
7 some time because they won't have to do study memos on a
8 bunch of cases that ultimately will be subjected to a
9 denial without any formal work at all.

10 CHAIRMAN BABCOCK: Thanks, Evan. I don't
11 see any other hands raised, so we will conclude our deep
12 thoughts session for today. And as the Chief mentioned at
13 the beginning, it appears that the last three years have
14 gone by very quickly so that the next thing we'll hear is
15 what the Court is deciding to do with re-appointment or
16 not from all of us; and when that occurs, you will be
17 getting a schedule for 2021. Let's hope that sometime in
18 2021 we can do this in person, because even though this is
19 not a terrible substitute, I still miss you guys. Even
20 Evan. So unless anybody has anything else. All right.
21 We're in recess. Thank you.

22 (Adjourned 12:40 p.m.)
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REPORTER'S CERTIFICATION
MEETING OF THE
SUPREME COURT ADVISORY COMMITTEE

* * * * *

I, D'LOIS L. JONES, Certified Shorthand
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P.O. Box 72
Staples, Texas 78670
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