

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

James Rodney Gilstrap

2. **Position**: State the position for which you have been nominated.

United States District Judge for the Eastern District of Texas

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

100 West Houston Street
Marshall, Texas 75670

4. **Birthplace**: State year and place of birth.

1957; Pensacola, Florida

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1979 – 1981, Baylor University School of Law; J.D., 1981
1978, Southwestern Baptist Theological Seminary; no degree awarded
1975 – 1978, Baylor University; B.A. (*magna cum laude*), 1978
1976, Pensacola Junior College; summer school classes

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1984 – present
Smith and Gilstrap
100 West Houston Street
Marshall, Texas 75670
Attorney/Sole Practitioner

1989 – 2002
Harrison County Courthouse
200 West Houston Street
Marshall, Texas 75670
County Judge

1982 – 1984
East Texas Baptist University
1209 North Grove
Marshall, Texas 75670
Part-time Instructor

1981 – 1984
Abney, Baldwin, and Searcy
107 West Austin Street
Marshall, Texas 75670
Associate/Attorney

1979 – 1980
Naman, Howell, Smith, and Lee
900 Washington Avenue, 7th Floor
Waco, Texas 76701
Law Clerk

1978 – 1979
Central Freight Lines, Inc.
5601 Waco Drive
Waco, Texas 76710
Clerk – Interline Department

Other affiliations (uncompensated unless otherwise indicated):

2008 – present
North East Texas Regional Mobility Authority
108 Market Square Boulevard
Tyler, Texas 75703
Board member

2007 – present
The Tommy B. and Lucille Jackson Slaughter Foundation No. 2
c/o Abney, Simmons, and Company CPAs
215 East Austin Street
Marshall, Texas 75670
Director (receive expense stipend)

2007 – present
Courthouse Preservation Council of Harrison County
c/o Knuckols, Duvall & Hallum CPAs
204 South Wellington Street
Marshall, Texas 75670
Vice-President (2007 – 2008)
President (2008 – present)

2000 – present
Azalea Way Homeowners Association
c/o Knuckols, Duvall & Hallum CPAs
204 South Wellington Street
Marshall, Texas 75670
President

1992 – present
The T. Whitfield Davidson Foundation
c/o Knuckols, Duvall, and Hallum, CPAs
204 South Wellington Street
Marshall, Texas 75670
Director (receive expense stipend)

2008 – 2009
Baylor Law Alumni Association
Sheila & Walter Umphrey Law Center
1114 South University Parks Drive
One Bear Place #97288
Waco, Texas 76798
President

1991 – 1997
Smith Steel Casting Company (no longer in business)
510 Hazelwood Street
Marshall, Texas 75670
Director

1989 – 2002
Marshall/Harrison County Board of Health
805 Lindsey Drive
Marshall, Texas 75670
Director

1989 – 1992
Harrison County United Way
c/o Knuckols, Duvall & Hallum CPAs
204 South Wellington Street
Marshall, Texas 75670
P.O. Box 1322
Marshall, Texas 75671
Director

1985 – 1992
Harrison County Historical Society & Museum
Historic County Courthouse – Peter Whetstone Square
P.O. Box 1987
Marshall, Texas 75671
Director (1985 – 1992)
President (1986 – 1988)

1989 – 1990
Marshall Rotary Club
P.O. Box 8109
Marshall, Texas 75671
President

1985 – 1988
Marshall Council of Campfire, Inc. (no longer in existence)
c/o Camp Wacanta
Buffo Road at FM 1997 Road
Marshall, Texas 75670
Director/Vice-President

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have never served in the military. I did not register for selective service because men born between March 29, 1957 and December 31, 1959 were not required to register.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Texas Supreme Court Recognition for Service as Chair of the Texas Unauthorized Practice of Law Committee, 2008

Texas Road Hand Award, Texas Department of Transportation, 1997

Hope Pierce Tartt Scholarship, Baylor School of Law, 1979 – 1981

ASCAP Nathan Burkan Award for Copyright Law, Baylor School of Law, 1981

Associate Editor, Baylor Law Review, Baylor School of Law, 1979 – 1981

American Jurisprudence Award for Contracts, Baylor School of Law, 1979

Phi Beta Kappa, Zeta of Texas Chapter, Baylor University, 1978

Participant, Baylor Honors Program, Baylor University, 1975 – 1977

Alpha Chi, Baylor University Chapter, 1976

Eagle Scout with bronze palm, Gulf Coast Council, Boy Scouts of America, 1973

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

College of the State Bar of Texas

Eastern District of Texas Bar Association

Harrison County Bar Association
President (2006 – 2007)

Hon. T. John Ward American Inn of Court

Northeast Texas Bar Association

State Bar of Texas

The Texas Unauthorized Practice of Law Committee
Committee Member (1984 – 1989, 2009 – present)
Chair (1998 – 2009)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Texas, 1981. There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2002
United States Court of Appeals for the Fifth Circuit, 1982
United States District Court for the Eastern District of Texas, 1982

There have been no lapses in membership.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Azalea Way Homeowners Association (1992 – present)
President (2000 – present)

Baylor Law Alumni Association (1981– 2009)
President (2008 – 2009)

Caddo District-East Texas Council, Boy Scouts of America
Chairman (2001)

Courthouse Preservation Council of Harrison County
Executive Committee (1996 – present)
Vice-President (2007)
President (2008 – present)

Harrison County Historical Society (1981 – present)
Director (1985 – 1992)
President (1986 – 1988)

Harrison County United Way (1989 – present)
Director (1989 – 1992)

Highland Lake Fishing Club (1989 – present)

Marshall Council of Campfire, Inc. (1985 – 1990)
Director/Vice-President (1985 – 1988)

Marshall/Harrison County Board of Health
Board Member (1989 – 2002)

Marshall Lakeside Country Club (1998 – 2010)

Marshall Masonic Lodge, No. 22 AF and AM; Dallas Scottish Rite Bodies 32^o;
Shriner, Sharon Temple, Tyler, Texas (1983 – present)

Marshall Rotary Club (1983 – present)
President (1989 – 1990)

North East Texas Regional Mobility Authority
Board Member and Finance/Audit Committee (2008 – present)

Smith Steel Casting Company
Director (1991 – 1997)

T. Whitfield Davidson Foundation
Director and Program Chair (1992 – present)

Texas Good Roads & Transportation Association (1990 – present)

Texas Transportation Plan, Institutional and Interjurisdictional Coordination
Committee (1994)

The Tommy B. and Lucille Jackson Slaughter Foundation No. 2
Director (2007 – present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Masonic organizations include those for men only (Masons, Scottish Rite and Shriners), for men and women jointly (Eastern Star), for young men only (DeMolay) and for young women only (Rainbow Girls). Rotary International existed as a businessmen's (only) organization from its founding in the 1920s until the early 1980s when businesswomen were admitted. This change occurred about the time I became a Rotarian. To my knowledge, none of the other listed organizations discriminates (or has discriminated) on the basis of race, sex, religion or national origin, either directly or indirectly.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

A Venerable Profession, THE DOCKET CALL (BAYLOR LAW SCHOOL), Vol. 117, Summer 2009, at 3. Copy supplied.

With Leland de la Garza, *UPL: Unlicensed, Unwanted and Unwelcome*, 67 TEX. B.J. 798 (2004). Copy supplied.

Letter to the Editor, Wall Street Journal, September 25, 1987. It responded to an article advocating the merits of allowing the delivery of some legal services by persons not licensed to practice law. Copy supplied.

Video Recorders: Copyright Infringement, 33 BAYLOR L. REV. 695 (1981). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

North East Texas Regional Mobility Authority, Annual Reports for 2008 and 2009. Copies supplied.

In re Volkswagen AG and Volkswagen of America, Inc., brief for amicus curiae in support of respondents submitted by the Ad Hoc Committee of Trial Lawyers in the Eastern District of Texas (April 25, 2008). Copy supplied.

State Bar of Texas Task Force Recommendations of a New Statutory Definition for the Unauthorized Practice of Law (April 2001). Copy supplied.

Regulations Governing Development of Subdivisions in Harrison County, approved by Harrison County Commissioner's Court (June 27, 1995 and June 27, 2000 Amendment). Copy supplied.

The Texas Transportation Plan, Institutional and Interjurisdictional Coordination Committee, Final Report (1994). Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

April 2010: I made a request on behalf of a client for approval of Emergency Service District elections and for extra early voting days for local voters. I do not recall in what format I made that request, but news coverage is supplied.

June 11, 2009: I spoke on behalf of a client in support of a resolution prohibiting drilling on property my client wanted to purchase. Copy of meeting minutes supplied.

June 1, 2009: I wrote a letter to the Marshall City Manager on behalf of a client about a potential property purchase. Copy supplied.

August 11, 2005: In my capacity as a consultant for Gregg County, I spoke before the County Commissioners about Well Drilling's contract bid. Press coverage supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

February 18, 2010: I read a letter on behalf of John Sharp, candidate for the United States Senate, during an event of the Harrison County Democrats, expressing his regret for being unable to attend the event. I have been unable to obtain a copy of the letter, but press coverage is supplied.

November 18, 2009: I made a presentation representing the Supreme Court of Texas' Unauthorized Practice of Law Committee to the Corpus Christi, Texas Bar Association at their monthly luncheon. This presentation was titled "A Primer on UPL: What every Lawyer Needs to Know about the Unauthorized Practice of Law." Powerpoint supplied.

November 17, 2009: Texas County Judges Judicial Education Conference, Corpus Christi, Texas: "Dealing with the Pro Se Litigant." I have no notes, transcript, or recording. The sponsor of the event was the Texas Association of Counties, which is located at 1210 San Antonio Street, Austin, Texas 78701.

June 30, 2009: Supreme Court of Texas reception in recognition of my service as chair of the Unauthorized Practice of Law Committee. I have no notes, transcript or recording but Texas Bar Association coverage is supplied. The address of the TBA is 1414 Colorado Street, Austin, Texas 78701.

June 20, 2009: Re-dedication ceremony of Harrison County Courthouse. Text of my remarks and press coverage supplied.

January 25, 2008: I gave a report to the State Bar of Texas, Board of Directors on the Unauthorized Practice of Law Committee. Minutes supplied.

February 22, 2006: Texas County Judges Judicial Education Conference, College Station, Texas, "Current Mental Health Considerations." I have no notes, transcript, or recording. The sponsor of the event was the Texas Association of Counties, which is located at 1210 San Antonio Street, Austin, Texas 78701.

November 2005: West Texas County Judges and Commissioners Annual Conference, Midland, Texas: "Dealing with Difficult Litigants." I have no notes, transcript, or recording. The sponsor of the event was the Texas Association of Counties, which is located at 1210 San Antonio Street, Austin, Texas 78701.

June 28, 2005: I participated in the production of a Training DVD for County Judges in Texas as a part of the Texas Judicial Academy, which is administered through the Texas Association of Counties. This training DVD, entitled "Probate Mock Trials," is supplied.

March 23, 2005: Texas County Judges Judicial Education Project, Austin, Texas, Current Probate Practice in Texas. I have no notes, transcript, or recording. The sponsor of the event was the Texas Association of Counties, which is located at 1210 San Antonio Street, Austin, Texas 78701.

December 9-10, 2004: State Bar of Texas Continuing Legal Education Conference, Austin, Texas, "Recognizing the Unauthorized Practice of Law." Video recording supplied.

December 2004: I spoke to Boy Scout Troop 282 in Marshall, Texas about the Bill of Rights. I have no notes, transcript or recording. Troop 282 is sponsored by and meets at the Summit United Methodist Church, which is located at 1901 East End Boulevard North, Marshall, Texas 75670.

November 2004: Texas County Judges Judicial Education Conference, Lubbock, Texas: "The Unauthorized Practice of Law in Texas." I have no notes, transcript, or recording. The sponsor of the event was the Texas Association of Counties, which is located at 1210 San Antonio Street, Austin, Texas 78701.

March 11, 2004: I introduced Mike Childress of the Eastman Chemical Company at a Marshall Rotary Club weekly event. I have no notes, transcript, or recording. The address of the Rotary Club is 410 East Houston Street, Marshall, Texas 75670.

November 2003: Texas County Judges Judicial Education Conference, Lubbock, Texas, "Dealing with the Pro Se Litigant." I have no notes, transcript, or recording. The sponsor of the event was the Texas Association of Counties, which is located at 1210 San Antonio Street, Austin, Texas 78701.

August 14, 2003: I introduced U.S. Representative Max Sandlin at a Marshall Rotary Club meeting. I have no notes, transcript or recording. The address of the Rotary Club is 410 East Houston Street, Marshall, Texas 75670.

December 2002: I delivered the Commencement Address to the Graduating Class at Texas State Technical College, Marshall, Texas. Video recording supplied.

1998: As part of my re-election campaign for Harrison County Judge, three separate television commercials were produced for me. Video recordings supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I made numerous public statements regarding various issues concerning Harrison County to the media in my capacity as Harrison County Judge from 1989 through 2002. Likewise, I made numerous public statements to the media concerning the Texas Unauthorized Practice of Law Committee in my capacity as Chair from 1998 through 2008. None of these are within my possession in written form, but exist within the public domain as published by various media sources during my tenure in these offices. My best efforts to recover these include the following:

Sandra Cason, *Local Lawyer, Community Activist Dies*, MARSHALL NEWS MESSENGER, Dec. 18, 2008. Copy supplied.

John MacCormack, *Corpus Lawyer Spat Back On Television*, SAN ANTONIO EXPRESS-NEWS, Oct. 10, 2007, at 1B. Copy supplied.

Brenda Sapino Jeffreys, *The License and the Law Group; Corpus Christi Counsel Runs TV Ads, Files UPL Complaint Questioning Competitor's Credentials*, TEXAS LAWYER, Oct. 8, 2007. Copy supplied.

Erica Facer, *Fix 'er Upper – Harrison County Courthouse Undergoes Major Renovations*, MARSHALL NEWS MESSENGER, Aug. 5, 2007. Copy supplied.

Keli Silva, *County Courthouse Continues to Reclaim Glory*, LONE STAR EAGLE, Apr. 20, 2007. Copy supplied.

Richard Connolly, *Bishop Is Back*, Houston Press, July 27, 2006. Copy supplied.

Erica Facer, *Making All ESDs Equal – Proportion Would Give ESD No. 3 Same Authority to Raise Funds as the Other Districts*, MARSHALL NEWS MESSENGER, May 10, 2007. Copy supplied.

Staff, *Saturday Foundation Program Features Ex-U.S. Ambassador to Sweden*, MARSHALL NEWS MESSENGER, Sept. 14, 2006. Copy supplied.

John Council, *Lawyers Displaced by Katrina Get OK to Practice in Texas*, BROWARD DAILY BUSINESS REVIEW, Sept. 13, 2005. Copy supplied.

Staff, *Former FBI Head Main Speaker at Davidson Foundation Fall Meeting*, MARSHALL NEWS MESSENGER, Aug. 24, 2005. Copy supplied.

Texas County Eyes Drilling on Airport Grounds, GAS DAILY, July 26, 2005. Copy supplied.

Mary Alice Robbins, *Proposal in the Works to Modernize Foreign Legal Consultant Rule*, TEXAS LAWYER, July 25, 2005. Copy supplied.

Staff, *Carlile Family Recognized for Courthouse Preservation Efforts*, MARSHALL NEWS MESSENGER, Sept. 15, 2004. Copy supplied.

John Council, *Document Service Attacked by Texas Panel*, BROWARD DAILY BUSINESS REVIEW, Oct. 3, 2003. Copy supplied.

John Council, *Bring It On*, TEXAS LAWYER, Dec. 23, 2002. Copy supplied.

John Williams, *Yellow Dogs Lose Bite in East Texas*, HOUSTON CHRONICLE, Nov. 18, 2002. Copy supplied.

Jay Root, *Dream Team? Democrats Hope Their Multiethnic Slate Will Re-Energize Their Party*, FORT WORTH STAR-TELEGRAM, Oct. 9, 2002. Copy supplied.

Lee Hancock, *East Texas Voters Say Jury Still Out on Perry*, DALLAS MORNING NEWS, Aug. 26, 2002. Copy supplied.

Local: Panel Suspends Harrison Justice, LONGVIEW NEWS-JOURNAL, May 22, 2002. Copy supplied.

John Council, *In Unusual Turn of Events, UPLC Settles Declaratory Judgment*, TEXAS LAWYER, Apr. 22, 2002. Copy supplied.

Jasmine Kripalani, *Breaking Up Easy To Do on the Web*, FORT WORTH STAR-TELEGRAM, Mar. 16, 2002. Copy supplied.

John Williams, *Courthouse's Future Brighter: Anonymous Donor Gives \$1 Million for Possible Renovation*, HOUSTON CHRONICLE, Dec. 10, 2000. Copy supplied.

John Williams, *Community Split by Fate of Courthouse/Rural and Urban Voters at Odds over Restoration of Vintage Building*, HOUSTON CHRONICLE, Sept. 10, 2000. Copy supplied.

Fire Contained at Superfund Site, ASSOCIATED PRESS, July 29, 2000. Copy supplied.

Fire Crews Contain Blaze at Closed U.S. Army Plant, Now Superfund Site, ASSOCIATED PRESS, July 28, 2000. Copy supplied.

Krista Larson, *Marshall Honors Farmer for Civil-Rights Work; Residents Recall his National Impact in Long Fight Against Segregation*, DALLAS MORNING NEWS, July 26, 1999. Copy supplied.

Toru Yamauchi, *Kicked Out: Public, Media Barred from Caddo Lake Meeting*, MARSHALL NEWS MESSENGER, July 1, 1999. Copy supplied.

Polly Ross Hughes, *Bill to Lay Down the Law on Self-Help Software*, HOUSTON CHRONICLE, June 13, 1999. Copy supplied.

Clay Robison, *For Now, Court Ruling Favors Publisher of Legal Materials*, HOUSTON CHRONICLE, Apr. 16, 1999. Copy supplied.

Osler McCarthy, *Court Rules Against Legal Panel*, AUSTIN AMERICAN-STATESMAN, Apr. 16, 1999. Copy supplied.

Peggy Fikac, *Court Sets Aside Rule That Made Committee Records Secret*, ASSOCIATED PRESS, Apr. 15, 1999. Copy supplied.

Polly Ross Hughes, *Potential Ban on Legal Software Spurs Reform Call*, HOUSTON CHRONICLE, Feb. 14, 1999. Copy supplied.

Susan Barbosa, *More People Go To Court On Their Own; Local Attorneys Suggest Low-Cost Consultations Can Help Spot Problems*, THE LEDGER, Dec. 30, 1998. Copy supplied.

Brenda Sapino Jeffreys, *The People's Protector*, TEXAS LAWYER, Dec. 14, 1998. Copy supplied.

Sam Attlesey, *Candidates Work the Anthill Crowd at Marshall Festival*, DALLAS MORNING NEWS, Oct. 18, 1998. Copy supplied.

Janet Elliott, *Nolo Press Tries to Crack a Closed Book: Publisher Presses UPL Committee for Open Records*, TEXAS LAWYER, Aug. 31, 1998. Copy supplied.

Osler McCarthy, *How-to Legal Software Gets a Day in Texas Court*, AUSTIN AMERICAN-STATESMAN, Aug. 7, 1998. Copy supplied.

Amanda Bishop, *Law Panel Probing Big Six Firms; Attorneys Ask if Accountants Are Practicing Law Without Authorization*, DALLAS BUSINESS JOURNAL, June 5, 1998. Copy supplied.

Jim Barlow, *Lawyers Want Law Kept to Themselves*, HOUSTON CHRONICLE, May 31, 1998. Copy supplied.

Ken Herman, *On Brink of his Dream, Mauro Suddenly Pauses*, AUSTIN AMERICAN-STATESMAN, July 6, 1997. Copy supplied.

The State Has a \$3.4 Billion Highway Fund, SAN ANTONIO EXPRESS-NEWS, May 15, 1996. Copy supplied.

Sam Attlesey, *Political Discontent; Fed Up with Candidate Choices, Bellwether County's Voters Consider Alternatives*, DALLAS MORNING NEWS, Dec. 3, 1995. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I served as County Judge of Harrison County, Texas from August 29, 1989 through December 31, 2002. I was initially appointed in 1989 to fill an unexpired term, and then I was reelected in 1990, 1994, and 1998. During that time, my responsibilities were both judicial and administrative (as provided for by the Texas Constitution). A general description of this court's jurisdiction includes: civil matters within a prescribed dollar amount at issue, original probate jurisdiction, misdemeanor criminal jurisdiction (including juvenile matters), and mental health and involuntary commitment jurisdiction.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

Approximately 300.

i. Of these, approximately what percent were:

jury trials:	5%
bench trials:	95%
civil proceedings:	60%
criminal proceedings:	40%

b. Provide citations for all opinions you have written, including concurrences and dissents.

None. In a typical County Court, judicial orders are dispositive only and do not include a recital of factors (factual and legal) considered in reaching a judgment. After entry of judgment, either party may request formal Findings of Fact and Conclusions of Law, which would cause the trial court to set forth both the factual and legal basis for its dispositive ruling. This is ordinarily done as a predicate to perfecting an appeal. During my service as County Judge, no such requests were made in cases in which I presided.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

The majority of the cases I presided over were sealed under provisions of state law, and are not subject to disclosure. These include all mental health adjudications and criminal matters involving juveniles. Such sealed files can only be unsealed by subsequent court order for good cause shown. Probate matters and criminal matters involving adults are not sealed. Of the matters not sealed, I consider the following cases in which I presided to be substantively significant:

1. *In re West*, Cause No. 90-12,042 (County Court, Harrison County, Texas)

Ms. West's parents sought a guardianship over their adult married daughter alleging that her capacity to deal with her personal affairs had been compromised as a result of her involvement in a remote religious community situated in Oklahoma. The proposed Ward (Ms. West) argued that her conduct was simply her free exercise of her rights as a citizen. Each side presented expert psychiatric testimony and the parties each testified at length. The parents established a material deviation by their daughter from her prior behavior patterns, and the expert testimony showed convincingly that she suffered from delusions and reduced reality levels. After much deliberation, I granted the Guardianship on a temporary basis. The Ward's parents placed her in a program of active counseling, and within a matter of months, Ms. West's relationship with her children and family had been fully restored. Based on updated psychiatric

testimony and the joint application of all parties, the Guardianship was terminated upon my finding that Ms. West's capacity had been fully restored.

Counsel for Applicant:
Edwin E. Buckner, Jr.
Law Offices of E.E. Buckner
(Then with Sandlin and Buckner)
101 Kildare Road
Linden, Texas 75563
(903) 756-8853

Attorneys Ad Litem for the Proposed Ward:
David B. Fugler
The Roth Law Firm
115 North Wellington Street
Marshall, Texas 75670
(903) 935-1665

Terry L. Cox (now deceased)

2. *Estate of Vaughan*, Cause No. 89-11,795-CCL (County Court, Harrison County, Texas)

After a tragic airplane crash which caused the death of a locally prominent oil and gas developer, his will was offered for probate. His estate was extensive and its makeup was complex. He also had surviving children by different spouses. Though no formal objections to the probate of his will were filed, various beneficiaries with differing priorities were present at its admission to probate and carefully scrutinized the process. Disputed claims against his estate were presented after the will was admitted. Extensions to complete the Inventory, Appraisal and List of Claims were granted to allow completion of an extensive rendition.

Counsel for Applicant:
Phillip B. Baldwin, Jr.
Law Offices of Phillip B. Baldwin, Jr.
1900 South Washington Avenue
Marshall, Texas 75670
(903) 938-6345

3. *State of Texas v. Gonzales*, Cause No. 97-409 (County Court, Harrison County, Texas)

In March 1996 the defendant struck a woman in the face. He pleaded *nolo contendere* and I sentenced him to one year in the County Jail with credit for time already served. The defendant refused counsel and entered his own plea of no

contest. This was a Class A offense and the harm done to the victim warranted significant jail time.

Counsel for Applicant:
Rick Berry
Berry and Berry, PC
(Then the Harrison County Criminal District Attorney)
111 West Austin Street
Marshall, Texas 75670
(903) 938-6044

4. *State of Texas v. Wilkerson*, Cause No. 2000-453 (County Court, Harrison County, Texas)

Defendant pleaded *nolo contendere* to possession of marijuana and was sentenced to one year in jail with a fine of \$4000. His application for probation was granted and he was placed on 24 months active probation and ordered to pay \$500 and all costs of court within 90 days. The defendant knowingly waived counsel and acted *pro se*.

Counsel for Applicant:
Rick Berry
Berry and Berry, PC
(Then the Harrison County Criminal District Attorney)
111 West Austin Street
Marshall, Texas 75670
(903) 938-6044

5. *State of Texas v. McCray*, Cause No. 2000-0121 (County Court, Harrison County, Texas)

In this assault case the defendant pleaded guilty and was sentenced to one year in jail with credit for time already served. The defendant knowingly waived counsel and acted *pro se*. No probation was granted.

Counsel for Applicant:
Rick Berry
Berry and Berry, PC
(Then the Harrison County Criminal District Attorney)
111 West Austin Street
Marshall, Texas 75670
(903) 938-6044

6. *State of Texas v. Keel*, Cause No. 99-0177 (County Court, Harrison County, Texas)

This was a DWI case where the defendant had made bail and was released on bond. He failed to appear for trial. To verify his failure to appear his name was called in open court and from the courthouse door. Afterward his bond was forfeited and a writ was issued for his arrest. He was apprehended and at a subsequent trial before another judge, he pleaded *nolo contendere* to driving while intoxicated and was sentenced.

Counsel for Applicant:
Rick Berry
Berry and Berry, PC
(Then the Harrison County Criminal District Attorney)
111 West Austin Street
Marshall, Texas 75670
(903) 938-6044

7. *State of Texas v. Blasingame*, Cause No. 97-0309 (County Court, Harrison County, Texas)

This defendant had previously pleaded guilty to assault and had been placed on probation. One of the terms of his probation was that he pay restitution to the victim for the costs of medical treatment related to this assault. On the subsequent application of both the defendant and his victim, made in open court, the amount of the restitution was lowered as the related medical costs were less than earlier believed.

Counsel for Applicant:
Rick Berry
Berry and Berry, PC
(Then the Harrison County Criminal District Attorney)
111 West Austin Street
Marshall, Texas 75670
(903) 938-6044

8. *State of Texas v. Thompkins*, Cause No. 93-806 (County Court, Harrison County, Texas)

Defendant was charged with reckless driving. He pleaded guilty and was sentenced to 6 months in jail and a \$1500 fine. The jail time portion of the sentence was probated, and he was placed on 12 months active probation. He was ordered to pay half of the fine immediately with the remaining half payable in equal monthly payments over the period of probation. Defendant fully complied and after 12 months was discharged from probation.

Counsel for Applicant:
Rick Berry
Berry and Berry, PC
(Then the Harrison County Criminal District Attorney)
111 West Austin Street
Marshall, Texas 75670
(903) 938-6044

Counsel for Defendant:
George Valton Jones
109 West Austin Street
Marshall, Texas 75670
(903) 927-2220

9. *State of Texas v. Swank*, Cause No. 93-320 (County Court, Harrison County, Texas)

In this misdemeanor theft case, the defendant pleaded guilty and was placed on 24 months active probation. He was also ordered to pay a \$300 fine and to perform 250 hours of community service.

Counsel for Applicant:
Rick Berry
Berry and Berry, PC
(Then the Harrison County Criminal District Attorney)
111 West Austin Street
Marshall, Texas 75670
(903) 938-6044

Counsel for Defendant:
Edwin E. Buckner, Jr.
Law Offices of E.E. Buckner
(Then with Sandlin and Buckner)
101 Kildare Road
Linden, Texas 75563
(903) 756-8853

10. *State of Texas v. Williams*, Cause No. 92-1058 (County Court, Harrison County, Texas)

This was a DWI case in which the defendant pleaded guilty. Based on a plea agreement with the prosecutor, he was placed on probation for 24 months but was ordered to actually serve an immediate 120 days in jail prior to the probationary period. He was also ordered to perform community service during probation, and he was ordered not to drive a motorized vehicle while on probation. His Texas

driver's license was surrendered to the District Attorney to be held until his probation was complete and he was discharged.

Counsel for Applicant:
Rick Berry
Berry and Berry, PC
(Then the Harrison County Criminal District Attorney)
111 West Austin Street
Marshall, Texas 75670
(903) 938-6044

Counsel for Defendant:
Steve A. Kattner
428 North Fredonia Street
Longview, Texas 75601
(903) 758-2040

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

I have written no opinions.

- e. Provide a list of all cases in which certiorari was requested or granted.

None.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

In a typical County Court, judicial orders are dispositive only and do not include a recital of factors (factual and legal) considered in reaching a judgment. After entry of judgment, either party may request formal Findings of Fact and Conclusions of Law, which would cause the trial court to set forth both the factual and legal basis for its dispositive ruling. This is ordinarily done as a predicate to

perfecting an appeal. During my service as County Judge, no such requests were made in cases in which I presided, so I did not issue opinions in any cases.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

None.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

None.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself *sua sponte*. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself *sua sponte*;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I am not aware of any matters that arose during my tenure as County Judge in which my recusal was requested by any party or counsel, nor am I aware of any matter in which I recused myself *sua sponte*.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Since 1994, I have served by appointment of the Texas Supreme Court to the Texas Unauthorized Practice of Law Committee (a standing committee of the Texas Supreme Court). I served as a State Committee Member from 1984 through 1989. I was reappointed to the Committee as its Chair in 1998 and served as Chair until 2009. Since 2009, I have continued to serve as a State Committee Member.

In 2008, I was appointed by the Harrison County Commissioners Court to represent Harrison County on the Board of the Northeast Texas Regional Mobility Authority. This is an appointed public office charged with developing regional transportation policy and implementation within 11 counties in Northeast Texas. Currently, I am serving a two-year term which concludes in February 2012. The position is subject to reappointment at that time.

Other than being commissioned as a Texas Notary Public, these are the only public offices I have sought or held.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held an official position (compensated or uncompensated) in any political campaign other than my own campaigns for County Judge.

On February 18, 2010, I attended an event of the Harrison County Democrats and read a letter on behalf of John Sharp, candidate for the United States Senate expressing his regrets for being unable to attend. In addition, from time to time, I have attended local community Democratic events, but I have not otherwise rendered any services to any political party or election committee.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
 - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a law clerk.

- ii. whether you practiced alone, and if so, the addresses and dates;

1991 – present
Smith and Gilstrap
100 West Houston Street
Marshall, Texas 75670

Since the death of my former law partner, Ernest F. Smith, in 1991, I have maintained my practice of law on a solo basis.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1981 – 1984
Abney, Baldwin, and Searcy
107 West Austin Street
Marshall, Texas 75670
Attorney/Associate

1984 – present
Smith and Gilstrap
100 West Houston Street
Marshall, Texas 75670
Partner/Attorney

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

Since 2002, I have been an active mediator, and I have helped settle several significant cases. These have included disputes involving wrongful death, construction of trust agreements, disputes over real property, a variety of personal injury claims, and many others. Several have involved extended parties and multiple claims. Because mediations are confidential and regularly involve settlement provisions that the parties insist be kept private, my notes are intentionally destroyed after the conclusion of each mediation. However, while being consistent with this trust and confidentiality, I can discuss my more significant mediations in general terms.

1. Wrongful Death of a Child: I successfully mediated a wrongful death case where a minor child was struck and killed by a passing motorist in a residential area. In addition to the expected claims of negligence by the plaintiffs, the defendant claimed the plaintiffs were inattentive and failed to properly supervise the child. After a full day of mediation, the

defendant driver's insurance carrier agreed to pay a large sum of money as damages.

2. Breach of Fiduciary Duty Dispute: I successfully mediated a commercial dispute involving a family-owned energy business. The longtime business owner died, leaving a 10% interest in the business to a trusted employee, and a 90% interest to his son. The employee had substantially operated the business for many years prior to the father's death, while the son had no prior experience with the business. After his father's death he relied on the employee and became, in effect, an absentee officer, director and stockholder. Eventually, business disputes arose between the employee and the son. The son accused the employee of a breach of fiduciary duty for entering into bad business deals on behalf of the company; the employee accused the son of breach of contract based on his lack of involvement in the company. After a day of mediation, the employee agreed to pay the son a sum of money and relinquished his 10% interest in the company.

3. Damage to Real Estate Caused by Oil and Gas Drilling: Plaintiff landowner sued an oil company claiming that the oil company's oil and gas drilling location, access roadway and pipelines on his land had exceeded what was reasonable (as allowed under the oil and gas lease in force) and that such excesses had caused consequential damage to the remainder of his farm land. He offered evidence of erosion and chemical discharges which reduced hay production for his cattle. The oil company showed that the landowner had damaged some of its fixtures and had locked out oil company employees from coming onto the land. After much time exploring non-monetary solutions whereby the oil company could carry out its mineral production in alternate ways that would lessen the impact of same on the landowner's cattle operations, the parties entered into a confidential and comprehensive settlement agreement which called for a small cash payment to the landowner, a list of repairs to the land that the oil company agreed to make, along with several specific alterations in how the oil company carried out their mineral production activities on this land.

4. Division of Marital Assets Upon Divorce: This was a divorce proceeding in which the marital estate was extensive but almost totally illiquid, and neither spouse's income could service their substantial debts alone. The wife attempted to pierce one of the husband's trusts that had been established by his parents during their marriage, and she sought a recovery of half of the corpus of the trust. After much effort, the parties agreed to a cash payment to the wife in lieu of her claims against the trust along with an agreed division of the marital estate. This division included provisions to liquidate some of their joint assets through a third party receiver and use the proceeds to pay down certain of their debts.

5. Damage to Home Caused by Utility Company: Homeowners sued an electric utility that had reworked buried power lines in the right of way of the city street where the homeowners' home was located. The utility's digging accidentally ruptured a sewer line which flooded raw sewage into the home, causing extensive damage to the home and its contents. The utility asserted a statute of limitations defense and disputed the valuations tendered by the homeowners as to repair costs for the home and replacement costs of certain contents. After mediating all these issues, the utility agreed to pay the homeowners a substantial sum and obtain a full release of all claims.

6. Wrongful Discharge and Breach of Contract: An employee sued his employer for wrongfully discharging him and for breaching its contract to pay him commissions for sales that he initiated or played a substantial role in bringing to the employer's manufacturing company. The employer filed a counterclaim asserting that the employee had misrepresented his contributions to the sales of the company thereby being paid substantial commissions he was not due. After mediating these issues, the employer agreed to pay the employee a sum of money in return for a full and mutual release of all claims by both parties. The employee also agreed to execute a voluntary resignation from the company.

7. Partition of Real Property: Multiple joint owners (tenants in common) of rural land with frontage on Interstate 20 sought a judicial partition of the commonly held lands but disagreed on how to structure a division of same in a way that was fair and reasonable. After mediating this over two separate days, the parties agreed to allow owners with development plans to obtain interstate frontage and owners with agricultural plans to obtain larger acreage amounts by foregoing claims to the frontage along Interstate 20. A confidential settlement memorandum was signed evidencing the agreed terms and including a method to share the costs of the new survey necessary to carry out the property division.

8. Dispute regarding Restoration of Commercial Office Building: Owners of a downtown commercial building sought to construct a residential apartment for their own use within their commercial building. The building was over 75 years old and the city issued a building permit but required certain additional steps be taken to lessen any future fire dangers which were not expressly contained within the city's Building Code. Owners undertook construction and remodeling but as the project neared a conclusion the City Inspector indicated that a Certificate of Occupancy would be withheld until certain additional construction measures were undertaken. The owners filed suit seeking an injunction ordering the city to issue its Certificate of Occupancy without such additional measures.

Following mediation, the owners agreed to make modified construction changes in order for the city to issue its Certificate of Occupancy.

9. Residential Construction Dispute: Owners contracted with a builder to construct a residence for them pursuant to specific plans and specifications. The builder drew advances as construction progressed, but as the project neared completion the owners asked for several upgrades/change-orders as to the internal finishes within the home. The builder made these changes and expended his funds without making additional draws from the owner. When these upgrades were done, the owners refused to accept the home or pay the remaining contract balance, including the owners' holdback retainage. During mediation, various additional changes and corrections addressing the owners' objections were agreed upon and the owners agreed to pay their contract balance due and their retainage to a third party escrow agent to facilitate final payment after these additional changes were made.

10. Personal Injury Matter: Plaintiff was injured in a multi-vehicle accident at the intersection of two U.S. Highways, and sustained serious and permanent personal injuries. The defendant and his insurance carrier disputed fault and alleged contributory negligence by the plaintiff. After mediating the matter, a settlement resulted in which the defendant's insurance carrier agreed to pay an amount acceptable to the plaintiff. Both parties agreed to execute releases and dismiss the pending suit with prejudice.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

I have a broad-based general practice of law on both sides of the docket, involving both litigation and transactional matters. While the overall general nature of my practice has not changed, the internal components of my practice vary. These changes are dictated by the area and regional economy. By way of example, times of intense oil and gas activity in East Texas have generally caused an increase in energy-related matters within my practice, from both a trial and transactional perspective. However, when energy related activity in the general economy slows, so does this corresponding component of most general practices, including my own. Similar illustrations could be drawn in other areas of my practice, which despite these shifts has consistently remained a general and broad-based practice.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

My typical clients are broad and diverse. In addition to representing individuals and families in varied situations, I also represent nine local governmental entities (municipalities and emergency services districts), as well as corporate clients that include (or have included) such national companies as: Kansas City Southern Railway (FELA and contract litigation), Texas Eastman Chemical Company (real estate; oil and gas matters), CapitalOne Bank (banking and patent litigation), and local/regional businesses such as: Louis A. Williams and Associates (a general managing insurance agent), Ark-La-Tex Energy, LLC (a regional oil and gas exploration company), and Smith Steel Casting Company (a local steel foundry). I am not certified in any area by the Texas Board of Legal Specialization.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

I would estimate that I appear in Court (either State or Federal) on average three or four times a month. These appearances relate to various matters including trials, motions and hearings.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 25%
- 2. state courts of record: 75%
- 3. other courts: 0%
- 4. administrative agencies: 0%

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 90%
- 2. criminal proceedings: 10%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Cases tried to verdict/judgment where I was sole or chief counsel: 50

Cases tried to a verdict/judgment where I was non-lead (local) counsel: 40

- i. What percentage of these trials were:

- 1. jury: 20%
- 2. non-jury: 80%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never appeared or practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *In The Matter of Johnson*, Cause No. CCL07G0003, Cass County Court at Law; 2007

This case commanded statewide attention when a mentally-challenged African-American male was brutally attacked and left for dead on the side of a rural Cass County Road by several white teenagers who were engaged in underage drinking. After the entry of a nine million dollar verdict in a resulting civil damages case, a guardianship case was instituted to provide a safe and accountable method for supervising the use of the damage recovery for the benefit and care of the victim, Mr. Johnson. I was appointed in June 2007 by Judge Donald Dowd of the Cass County Court at Law to represent Mr. Johnson as his Attorney Ad Litem. As a result, I met with Mr. Johnson on several occasions and I worked closely with Mr. Morris Dees of the Southern Poverty Law Center, who was lead counsel in the damages case. Immediately after the judgment in the damages case was rendered, multiple persons came forward claiming direct interests in the judgment and asserted an interest in serving as Guardian for Mr. Johnson as a means of obtaining possession and control of the award. A Special Needs Trust judicially imposed (in lieu of a permanent guardianship) was ultimately settled on as a secure means of administering these funds for Mr. Johnson's benefit. I participated in developing this as an alternative to a typical guardianship. Also, after the judgment in the damages case, efforts were made to use suspicious employment contracts to assert partial ownership in the award by at least one attorney who had not participated in the damages trial but had conspired with distant relatives of Mr. Johnson in an attempt to claim a contingent interest in the judgment. The efforts of pro bono counsel protected Mr. Johnson's rights and then his recovery.

Co-counsel:
Morris Dees
Southern Poverty Law Center
P.O. Box 2087
Montgomery, Alabama 36102
(334) 956-8200

Glenn A. Perry
Sloan, Bagley, Hatcher, and Perry
P.O. Drawer 2909
Longview, Texas 75606
(903) 757-7574

Opposing counsel:
Claudene T. Arrington
Arrington Law Firm, PLLC
111 East Second Street
Hope, Arkansas 71802
(870) 777-0017

2. *Friberg v. Kansas City S. Ry. Co.*, Case No. 2:98-CV-00253-TJW, U.S. District Court for the Eastern District of Texas; on appeal at 267 F.3d 439 (5th Cir. 2001); 1998 – 2000

In this case, plaintiffs sought money damages based on an alleged violation of the Texas Anti-Blocking Statute [Tex. Trans. Code § 471.007(a)]. Plaintiff contended that the defendant railroad damaged their nursery business by allowing idle trains on a side-track to block the primary entrance to their nursery. Defendant alleged federal pre-emption under the Supremacy Clause of the U.S. Constitution due to the application of the Interstate Commerce Commission Termination Act of 1995 (codified at 49 U.S.C. § 10101 *et seq.*). I acted as co-counsel for the Kansas City Southern Railroad through the trial and the entry of the judgment. I conducted the voir dire, examined selected fact witnesses, and presented the closing arguments for the defendant. When the jury was unable to reach a unanimous verdict, both parties waived their right to a unanimous verdict and entered into a High-Low Agreement as to the jury's verdict. Judgment was entered by U.S. District Judge T. John Ward based on the verdict of all the jurors, save one juror who prevented a unanimous decision. The jury was unanimous on the issue of liability, but split on the issue of damages.

The trial court's earlier denial of summary judgment based on federal pre-emption grounds was appealed to the U.S. Court of Appeals for the Fifth Circuit, 267 F.3d 439 (5th Cir. 2001). The appellate court reversed the trial court. I did not participate in the appeal.

Co-counsel:
William Stephen Boyd
Baylor Health Care System
3500 Gaston Avenue
Dallas, Texas 75246
(214) 820-7465

Paul O. Wickes
5600 Tennyson Parkway, Suite 285
Plano, Texas 75024
(972) 473-6900

Opposing counsel:
John M. Smith
Kelly A. Williams
Harbour, Smith, Harris, and Merritt
P.O. Drawer 2072
Longview, Texas 75606
(903) 757-4001

3. *Amburn v. Cottrell*, Cause No. 254-96, 276th Judicial District Court, Marion County, Texas; on appeal at 1999 WL 1101360 (6th Texas Court of Appeals at Texarkana 1998); 1996 – 1998

This case involved the question whether a prescriptive easement claimed by plaintiff Amburn was enforceable against land owned by defendant Cottrell. Judge William R. Porter presided. I represented defendant as lead counsel at trial and on appeal. There was no evidence that the use of an established oil-field roadway by the plaintiff over and across the defendant's land was adverse. In fact, undisputed evidence showed that the defendant had freely consented to the plaintiff's use of the roadway across her land. After an adverse verdict imposing a prescriptive easement was returned by the jury, the trial court denied Cottrell's motion for entry of a judgment *non obstante veredicto*. The Texas 6th Court of Appeals unanimously reversed the jury's verdict and rendered judgment for defendant, finding there was no evidence of adverse use by the plaintiff.

Co-counsel:
William Gleason (Now District Attorney for Marion County)
c/o Marion County Courthouse
102 West Austin Street
Jefferson, Texas 75657
(903) 665-7111

Opposing counsel:
Jesse M. DeWare IV
P.O. Box 668
Jefferson, Texas 75657
(903) 665-2567

4. *Abney v. Slaughter*, Cause No. 7030, County Court at Law, Harrison County, Texas; on appeal at 305 S.W.3d 804 (Tex. App.-Texarkana 2010, n.w.h.); 2008 – 2010

I represented plaintiff Abney in his posture as Executor of the Estate of Tommy B. Slaughter at trial and on appeal. At issue was the meaning and effect of a section of a holographic will where a George Slaughter devised certain specific tracts of land to each of his three sons to be theirs alone, but reserved the “production and nonproduction royalty” from all his lands to vest equally in his three sons. Tommy Slaughter’s Estate sued the remaining two brothers to obtain a judicial declaration of the meaning of “production and nonproduction royalty.” Judge Jim Ammerman II ordered that each son owned all the minerals under the specific tracts of land set aside to them individually in their father’s will. The Estate appealed to the 6th Texas Court of Appeals, which reversed and rendered in favor of the Estate, holding that “production royalty” was the typical royalty paid when oil and gas is produced and marketed. The appellate court also construed the language “unproduction royalty” to be a shut-in payment, a term that has a longstanding meaning and application under Texas oil and gas law and within the energy industry.

Opposing counsel:
R. Ned Dennis
Law Offices of R. Ned Dennis
308 West Houston Street
Marshall, Texas 75670
(903) 938-3746

5. *Michel v. EnCana Oil and Gas (USA) Inc.*, Cause No. 08-0618, 71st District Court, Harrison County, Texas; 2008 – 2009

This case addressed (as a matter of first impression in Texas) the application of a horizontal severance clause in oil and gas leases and whether continuous operations under an oil and gas lease would suspend or delay the application of such a severance beyond the stated primary term in the leases. I represented nine mineral-owner plaintiffs as lead counsel in the trial court. After the entry of summary judgment in favor of plaintiffs by 71st District Court Judge Bonnie Leggat Hagan, a mediated settlement was reached wherein defendants purchased new leases from plaintiffs, which made the contested issues moot.

Co-counsel:
Mark Mann
The Mann Firm
300 West Main Street
Henderson, Texas 75652
(903) 657-8540

Opposing counsel:
Thomas F. Lillard (Counsel for EnCana)
Lillard, Wise, and Szygenda PLLC
5949 Sherry Lane, Suite 1255
Dallas, Texas 75225
(214) 739-2000

Donald Jackson (Lead Counsel for NFR Energy)
Haynes and Boone
One Houston Center, Suite 2100
Houston, Texas 77010
(713) 547-2026

W. F. Palmer (Local Counsel for NFR Energy)
The Palmer Law Firm
P.O. Drawer M
Marshall, Texas 75671
(903) 935-9331

6. *Positive Techs., Inc. v. LG Display Co., LTD.*, Case No. 2:07-CV-67-TJW, U.S. District Court for the Eastern District of Texas; 2008

This patent infringement case was brought before the Hon. T. John Ward, United States District Judge, Eastern District of Texas-Marshall Division. It involved advanced technology as to the process effecting the transmission and delivery of light through LCD television screens and similar LCD-based electronic products. As co-counsel for defendant LG Display Co., Ltd., I participated in preparing the case for trial, all pre-trial hearings before the court, and in the mediation that occurred on the eve of trial and which resulted in a settlement. The mediation lasted over twenty consecutive hours and resolved significant disputed damages claims.

Co-counsel:
William S. Sessions
Jon B. Crocker
Sunwoo Lee
Holland and Knight, LLC
2099 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 419-2410

Jennifer P. Ainsworth
Wilson, Robertson and Cornelius
909 ESE Loop 323, Suite 400
Tyler, Texas 75711
(903) 509-5001

Opposing counsel:
Otis Carroll
Collin Maloney
Ireland, Carroll and Kelley, PC
6101 South Broadway, Suite 500
Tyler, Texas 75703
(903) 561-1600

Thomas J. Friel
Cooley, Godward, Kornish, LLP
101 California Street, 5th Floor
San Diego, California 94111
(415) 693-2000

7. *London v. Timberlake*, Cause No. 28,478, 71st District Court, Harrison County, Texas; 1981 – 1982

This was a boundary-line dispute that turned on a question of whether a predecessor in title was married or single at the time he acquired this real property. I was lead trial counsel for plaintiff London. I handled all aspects of this case, from its filing through the entry of judgment based on a jury verdict. The central issue was whether the predecessor in title to plaintiff London was married in 1908. The defendant based his case on the testimony of several elderly witnesses who each testified unequivocally that the predecessor did not marry until 1910. Plaintiff was able to produce no live witnesses who professed any personal knowledge of the date of marriage, but we discovered the original marriage license stored in a non-indexed cardboard box in the basement of the Gregg County Courthouse, which showed the predecessor's marriage date as February 7, 1901. Presented with the actual marriage license at trial, the jury disregarded the conflicting live testimony and found for plaintiff. The Honorable Ben Z. Grant, of the 71st Texas District Court, entered judgment on the jury's verdict for the plaintiff. No appeal was perfected.

Co-counsel:
Ruben K. Abney (now deceased)

Opposing counsel:
Sam R. Moseley
Law Offices of Sam R. Moseley
110 West Houston Street
Marshall, Texas 75670
(903) 938-2393

Bailey C. Moseley (Now Associate Justice of the 6th Texas Court of Appeals)
100 North Stateline Avenue, Suite 20
Texarkana, Texas 75501
(903) 798-3047

8. *Philpot v. Fields*, Cause No. 34,794, 71st District Court, Harrison County, Texas; appeal reported at 633 S.W.2d 546 (Tex. App.-Texarkana 1982, n.w.h.); 1981 – 1982

I represented defendant Fields as lead counsel at trial and on appeal in this dispute over the enforceability of a surface lease. The lease at issue stated that it existed for a term of 20 years “and so long thereafter” as certain uses of the land were made by the lessee (plaintiff). The 20-year initial term had expired but the plaintiff had continued to use the land in the manner prescribed under the terms of the lease. Judge Ben Z. Grant held that the lease remained valid and enforceable beyond the initial 20-year term and despite its indefinite duration, for as long as Fields continued to meet the use requirements specified under the lease. The 6th Texas Court of Appeals affirmed.

Co-counsel:
Ruben K. Abney (now deceased)

Opposing counsel:
Bailey C. Moseley (Now Associate Justice of the 6th Texas Court of Appeals)
100 North Stateline Avenue, Suite 20
Texarkana, Texas 75501
(903) 798-3047

9. *C-2 Communications Techs., Inc. v. AT&T, Inc.*, Case No. 2:06-CV-241-TJW, U.S. District Court for the Eastern District of Texas; 2006 – 2008

This was a patent infringement case brought before the Hon. T. John Ward, United States District Judge, Eastern District of Texas-Marshall Division. It involved advanced technology as to the process of transmitting voice communications over an internet-based system rather than by a traditional trunkline system. I was co-counsel defending Qwest Communications Corporation. I participated in preparing the case for trial, all pre-trial hearings (including the claim construction or “Markman” hearing), the voir dire, and several days of active trial prior to settlement.

Co-counsel:
Steven Bauer
Jake Baron
Proskauer Rose, LLP
One International Place
Boston, Massachusetts 02110
(617) 526-9700

David J. Beck
Beck, Redden and Secrest, LLP
1221 McKinney Street, Suite 4500
Houston, Texas 77010
(713) 951-3700

Opposing counsel:
William Christopher Carmody
Ian B. Crosby
Susman Godfrey, LLP
901 Main Street, Suite 5100
Dallas, Texas 75202
(214) 754-1900

Robert M. Parker
Parker and Bunt, PC
100 East Ferguson, Suite 1114
Tyler, Texas 75702
(903) 531-3535

10. *Knuckols, as Trustees of the Smyrna Cemetery v. Ormes*, Cause No. 40,017, 71st District Court, Harrison County, Texas; appeal reported at 744 S.W.2d 337 (Tex. App.-Texarkana, 1988, n.w.h); 1985 – 1988

In this case the plaintiff Smyrna Cemetery Association sought a permanent injunction to force the removal of a stone border constructed by defendant Ormes around the gravesite of his wife, in contravention of the Cemetery's rules and guidelines which prohibited construction of a "retaining wall" within the Cemetery. I was counsel for the Cemetery and its trustees at trial and on appeal. The Hon. Sam F. Baxter, 71st District Judge, granted summary judgment for the Cemetery and defendant appealed. The 6th Texas Court of Appeals reversed the summary judgment and remanded the case for a full trial, finding that a material question of fact existed as to whether the stone grave border constituted a "retaining wall" as prohibited by the Cemetery's rules. Midway through trial, the parties resolved the case by agreeing that the current structure surrounding the grave could be maintained, but no additional structures of a similar nature could be built around any graves not already affected.

Co-counsel:
Max A. Sandlin, Jr.
Mercury Public Affairs
601 Pennsylvania Avenue, NW
Suite 1000/North Building
Washington, DC 20004
(202) 551-1440

E. E. Buckner
E. E. Buckner, Esq.
101 East Kildare Street, P.O. Box 629
Linden, Texas 75563
(903) 756-8853

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have served on the Unauthorized Practice of Law Committee (UPLC), a standing committee of the Texas Supreme Court, since 1984, and as its Chair from 1998 to 2009. The Committee is charged with enforcing existing statutory prohibitions regarding the unauthorized practice of law in Texas, and at its core is a consumer protection entity. The inability of Texas consumers, untrained in the law, to give informed consent to unauthorized legal services which often directly impact their lives and property has been the driving force leading scores of Texas lawyers to volunteer countless hours (on a pro bono basis) to carry out this charge of the Texas Supreme Court. The particular instances of the unauthorized practice of law encountered during my tenure as Chair were both varied and creative. As examples, the UPLC sought and obtained injunctions against do-it-yourself divorce kits being sold out of cars at retail parking lots in Houston; offers of free Wills from funeral homes in Dallas (with help from funeral directors in completing these pre-printed Wills) as an incentive for those who would view available cemetery spaces for sale; and the sale of Living Trust kits by non-lawyers who targeted the elderly and used free dinner meetings coupled with scare tactics about the probate process to sell these living trusts for sums many times more than a lawyer would charge.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

From 1982 to 1984, I taught Business Law for Undergraduates at East Texas Baptist University in Marshall, Texas. I no longer have a syllabus for this course.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no such arrangements.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

None.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Statement.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I know of no actual or potential conflicts of interest at present. However, my son, Stephen Gilstrap, recently graduated from Yale Law School and will take the Texas Bar Examination. Should he become licensed to practice law in Texas and should he also become licensed to practice before the United States District Court for the Eastern District of Texas, I would carefully comply with the federal recusal statutes as applied to him and to any future law firm or firms he might become associated with.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I will comply fully with the Code of Conduct for United States Judges. In cases where any uncertainty exists I will err on the side of recusal rather than non-recusal.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have been a regular and active provider of pro bono services throughout my practice. While I have not maintained records of the time spent, I estimate that I spend an average of at least 80 hours per year providing pro bono services. As a general rule, the pro bono matters I have undertaken over the course of my practice have typically been in the areas of family law, real estate practice, probate and guardianship matters. My pro bono efforts while serving as Chair and Member of the Texas Unauthorized Practice of Law Committee and my efforts in the *Johnson* case, discussed above, illustrate my commitment to pro bono service.

26. **Selection Process**:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In January 2009, United States District Judge Thad Heartfield announced he would take senior status effective in January 2010. I submitted my application to the Texas Democratic House Delegation on July 3, 2009 and interviewed with the twelve-member delegation in late 2009. In March 2010, the delegation unanimously recommended me and two other applicants to the President for his consideration.

In April 2010, Senators Kay Bailey Hutchison and John Cornyn invited interested persons to apply through them for this vacant position. In July 2010, their judicial screening committee personally interviewed the three persons named in the Texas Democratic House Delegation's letter to the President. In late September 2010, the Senators invited the same three applicants to interview with them in Washington. On October 12, 2010, Senator Hutchison advised me that both

Senators had decided to recommend me to the White House for the vacant position in the Eastern District of Texas.

Since October 15, 2010, I have been in contact with pre-nomination officials from the Department of Justice. On December 1, 2010, I interviewed with officials from the White House Counsel's Office and the Department of Justice. On May 19, 2011, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

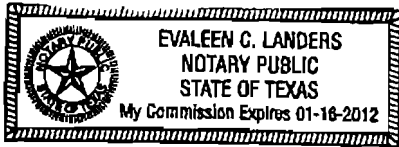
No.

AFFIDAVIT

I, James Rodney Gilstrap, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

May 9th, 2011
(DATE)

James Rodney Gilstrap
(NAME)



Evaleen G. Landers
(NOTARY)