

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Walter David Counts, III

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

United States District Judge for the Western 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.

United States District Court for the Western District of Texas  
United States Courthouse  
200 East Wall Street  
Midland, Texas 79701

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

1961; Knox City, Texas

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.

Civilian Education

1983 – 1986, St. Mary's University School of Law; J.D., 1986  
1979 – 1983, Texas Tech University; B.A., 1983

Military Education

1996 – 1998, U.S. Army Command & General Staff College (Non-resident)  
1991 – 1994, U.S. Army Judge Advocate Advanced Course (Non-resident)  
1989 – 1990, U.S. Army Judge Advocate Basic Course (Non-resident)

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.

2009 – present  
United States District Court for the Western District of Texas  
United States Courthouse  
200 East Wall Street  
Midland, Texas 79701  
United States Magistrate Judge

1989 – present  
Texas National Guard  
2200 West 35th Street  
Austin, Texas 78763  
State Judge Advocate (2006 – present)  
Colonel (2007 – present)  
Judge Advocate – First Lieutenant through Lieutenant Colonel (1989 – 2006)

1995 – 2009  
United States Attorney's Office for the Western District of Texas  
601 Northwest Loop 410, Suite 600  
San Antonio, Texas 78216  
Assistant United States Attorney

1987 – 1990; 1991 – 1995  
Travis County District Attorney's Office  
509 West 11th Street  
Austin, Texas 78767  
Assistant District Attorney

1990 – 1991  
David Counts, Attorney at Law  
606 West 11th Street  
Austin, Texas 78701  
Solo Practitioner

Summer 1985; 1986 – 1987  
Martin, Cox, Greenberg & Jones  
(now defunct)  
Austin, Texas  
Associate Attorney (1986 – 1987)  
Summer Associate (Summer 1985)

July 1983  
United States Representative Jack Hightower  
Washington, D.C. 20515

Congressional Intern

Other Affiliations (Uncompensated):

2004 – present  
Pepper-Counts Foundation  
102 North Avenue A  
Knox City, Texas 79529  
Director

2008 – 2009  
San Antonio Christian Schools, Athletic Booster Club  
19202 Redland Road  
San Antonio, Texas 78259  
President

1990 – 2000  
Chap, Inc.  
112 North Central  
Knox City, Texas 79529  
Officer

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.

1989 – present  
Texas Army National Guard  
Colonel / O-6

2004 – 2006  
United States Army (called to active duty)  
Lieutenant Colonel / O-5  
Bagram Airfield, Afghanistan (OEF VI)

I registered for the selective service at age 18.

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.

Civilian Awards

Defender of Justice Award, Texas Civil Rights Project (2014)

James H. DeAtley Award for Exceptionally Complex, Difficult or Significant Trial,  
United States Attorney's Office (2002)

Director's Award for Superior Performance as an Assistant United States Attorney,  
Executive Office of United States Attorneys (2000)

As an Assistant United States Attorney (1995 – 2000), I received multiple  
commendations, awards and recognition at various times from the following:

Federal Bureau of Investigation  
U.S. Secret Service  
U.S. Drug Enforcement Administration  
U.S. Marshals Service  
Organized Crime Drug Enforcement Task Force (OCDETF)  
Internal Revenue Service-CID  
U.S. Bureau of Alcohol, Tobacco & Firearms

Military Awards (in order of precedence)

Legion of Merit  
Bronze Star Medal (OEF VI)  
Meritorious Service Medal (2)  
Army Commendation Medal (3)  
Army Achievement Medal  
Army Reserve Component Achievement Medal (5)  
National Defense Service Medal (2)  
Afghanistan Campaign Medal  
Global War on Terrorism Service Medal  
Armed Forces Reserve Medal ("M" device)  
Army Service Ribbon  
Overseas Service Ribbon  
Army Reserve Overseas Training Ribbon (6)  
Texas Outstanding Service Medal  
Texas Combat Service Ribbon  
Texas Federal Service Medal  
Texas Faithful Service Medal (4)

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  
Judicial Division

Bexar County Bar Association

Federal Magistrate Judges Association

Grand Lodge of Texas Civil Law Committee, 2008 – 2009

Midland County Bar Association

National Association of Assistant United States Attorneys

Western District of Texas Delegate to the National Association, 2008 – 2009

State Bar of Texas

Military & Veterans Law Section

Immediate-Past Chair, 2002 – 2003

Chair, 2001 – 2002

Chair-Elect, 2000 – 2001

Vice Chair, 1999 – 2000

Secretary/Treasurer, 1997 – 1999

Texas Young Lawyers Association, 1986 – 1995

Texas District and County Attorneys Association

Travis County Bar Association

**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, 1986

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.

U.S. Court of Appeals for the Fifth Circuit, 1995

U.S. Court of Appeals for the Armed Forces, 1991

U.S. District Court for the Western District of Texas, 1987

There have been no lapses in memberships.

**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.

Chap, Inc., 1990 – 2000  
Officer, 1990 – 2000

Charles W. Anderson Masonic Lodge, 1997 – present

Community Bible Study (Midland), 2009 – present

Crestview Baptist Church, 2010 – present  
Deacon Council, 2012 – 2015, 2016 – present  
Finance Committee, 2011 – 2014  
Finance Committee Chair, 2012 – 2014  
Personnel Committee, 2014  
Insurance Committee, 2014

Hardin-Simmons University Cowboys Football Parents Group, 2013 – 2016

Military Officers Association of America, 2006 – present

Pepper-Counts Foundation, 2004 – present  
Director, 2004 – present

National Guard Association of Texas, 1986 – present  
Annual delegate at convention, 1986 – present

National Guard Association of the United States, 1989 – present

National Sojourners, 1998 – present

Parkhills Baptist Church, 1995 – 2009  
Deacon Council, 1997 – 2009  
Chair of Deacons, 2001 – 2002  
Vice-Chair of Deacons, 2000 – 2001  
Personnel Committee, various times 1995 – 2009

San Antonio Christian Schools, Athletic Booster Club, 2006 – 2009  
President, 2008 – 2009  
Membership Director, 2006 – 2008

Texas Tech Alumni Association, Texas Tech University, 1983 – present

Texas Tech Chancellor's Council, 2014 – present

Texas Tech Red Raider Club, Texas Tech University, 1983 – present

Veterans of Foreign Wars, 2004 – 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.

It is my understanding that Masonic Lodge membership is limited to men (or was at the time I joined in 1997), but there is a related organization for women (Eastern Star) which was active at Charles W. Anderson Lodge, and both organizations participated in independent and joint events. To the best of my knowledge, the other organizations listed do not, and have not, discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

**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.

None.

- 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.

None.

- 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.

On September 7, 2016, I testified at my confirmation hearing before the Judiciary Committee of the United States Senate to be a United States District Judge for the Western District of Texas. I also answered Questions for the Record presented to me by Chairman Grassley and Senator Tillis. Video of the hearing is available at <https://www.judiciary.senate.gov/meetings/08/31/2016/nominations-09-07-16> for the 114th Congress and a copy of my responses to the written questions is 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.

The list that follows represents my best efforts, through a search of my records and calendar, to identify speeches, remarks and panel discussions in which I have participated. I have attempted to generate as complete a list as possible. There may be other speeches or remarks that I have been unable to identify.

April 28, 2017: Speaker, Naturalization Ceremony for New Citizens, United States District Court for the Western District of Texas, Midland, Texas. Speech supplied.

April 7, 2017: Speaker, Naturalization Ceremony for New Citizens, United States District Court for the Western District of Texas, Midland, Texas. Speech supplied.

December 2010 – March 2017: Speaker, Graduation for the “Thinking for a Change” Program of the United States Probation Office, United States District Court for the Western District of Texas-Midland/Odessa Division, Midland, Texas. I made impromptu remarks and congratulated the graduates during their final meeting of the program on December 15, 2010, November 21, 2011, May 20, 2013, October 29, 2013, May 21, 2014, October 29, 2014, and March 9, 2017. I have no notes, transcripts or recordings. The address for the United States District Court for the Western District of Texas-Midland/Odessa Division is 200 East Wall Street, Midland, Texas 79701.

December 10, 2012, December 4, 2015, and December 2, 2016: Speaker, Criminal Practice in Federal Court Seminar, United States District Court for the Western District of Texas-Midland/Odessa and Pecos Divisions, Midland, Texas. I spoke to Criminal Justice Panel attorneys about my view from the bench. I have no notes, transcripts or recordings. The address for the United States



District Court for the Western District of Texas-Midland/Odessa Division is 200 East Wall Street, Midland, Texas 79701.

2009 – present: Speaker, Veterans Day Ceremony, United States District Court for the Western District of Texas-Midland/Odessa Division, Midland, Texas. I make impromptu comments each year at our annual Veterans Day ceremony on or about November 11th. I missed the 2010 ceremony because I was traveling. I have no notes, transcripts or recordings. The address for the United States District Court for the Western District of Texas-Midland/Odessa Division is 200 East Wall Street, Midland, Texas 79701.

2009 – 2016: Speaker, Patriot Day Remembrance Ceremony, United States District Court for the Western District of Texas-Midland/Odessa Division, Midland, Texas. Each year I have made impromptu comments on or about September 11th, when we have a Patriot Day remembrance ceremony at the U.S. Courthouse. In 2009, I was the featured speaker at the ceremony, and a copy of my speech is supplied. I have no notes, transcripts or recordings for the other years. I missed the ceremony in 2015 because of military duty. The address for the United States District Court for the Western District of Texas-Midland/Odessa Division is 200 East Wall Street, Midland, Texas 79701.

May 17, 2015: Speaker, Baccalaureate Ceremony, Midland Lee High School, Midland, Texas. Speech supplied.

March 28, 2015: Speaker, Annual Banquet, Knox City Chamber of Commerce, Knox City, Texas. Speech supplied.

February 20, 2015: Speaker, 2015 Annual Seminar, Permian Basin Paralegal Association, Midland, Texas. Notes and PowerPoint supplied.

February 6, 2015: Speaker, Keith E. Nelson Memorial Military Law Luncheon, Midyear Meeting, American Bar Association, Houston, Texas. Notes and PowerPoint supplied.

December 12, 2014: Speaker, Midland High School Junior Reserve Officer Training Corps (JROTC) Christmas Banquet, Midland, Texas. Speech supplied.

July 4, 2014: Speaker, Snyder Lion's Club Patriotic Prayer Breakfast, Snyder, Texas. Speech supplied.

March 19, 2014: Lunch Speaker, Permian Basin Paralegal Association, Midland, Texas. Notes and PowerPoint supplied.

October 18, 2013: Speaker, Retirement of Wanda Hutcheson, Texas National Guard Civilian Employee, Camp Mabry, Austin, Texas. I made impromptu remarks celebrating Ms. Hutcheson's 23-year career with the General Counsel's

Office of the Texas National Guard. My comments dealt with her work ethic, work product and many contributions to the organization. I have no notes, transcript or recording. The address of the Texas National Guard is 2200 West 35th Street, Austin, Texas 78763.

July 10, 2012: Speaker, College and Career Readiness Workshop, Texas National Guard and Texas Tech Military and Veterans Program Youth Challenge, Texas Tech University, Lubbock, Texas. Speech supplied.

April 13, 2012: Panelist, "Preparing for a Federal Judicial Clerkship," University of Texas School of Law, Austin, Texas. My comments to law students focused on the work of our court, what I look for when selecting a judicial clerk, what my clerks do, and how the clerk can get the most from the clerkship experience. I have no notes, transcript or recording. The address for the University of Texas School of Law is 727 East Dean Keeton Street, Austin, Texas 78705.

October 26, 2011: Speaker, "Military Careers in the Army Reserve & National Guard," Military Law Association, Texas Tech University School of Law, Lubbock, Texas. I spoke to law students, along with the Honorable William "Bill" Sowder, a state district judge in Lubbock County, during a lunch about being an attorney and judge in civilian practice while serving in the Texas National Guard. I have no notes, transcript or recording. The address for the Texas Tech University School of Law is 1802 Hartford Avenue, Lubbock, Texas 79409.

November 11, 2010: Speaker, Veterans Day Ceremony, Western Texas College, Snyder, Texas. Speech supplied.

February 12, 2010: Speaker, Junior Reserve Officer Training Corps (JROTC) Spring Banquet, Midland High School, Midland, Texas. Speech supplied.

February 11, 2010: Lunch Speaker, Ector County Bar Association, Odessa, Texas. Notes and PowerPoint supplied.

January 14, 2010: Speaker, Naturalization Ceremony for New Citizens, United States District Court for the Western District of Texas, Midland, Texas. Script supplied.

November 19, 2009: Lunch Speaker, Midland County Bar Association, Midland, Texas. Speech supplied.

November 3, 2009: Speaker, Naturalization Ceremony for New Citizens, United States District Court for the Western District of Texas, Midland, Texas. My role was the same as during the January 14, 2010 naturalization ceremony, for which a script is supplied.

October 17, 2009: Speaker, Fall 2009 Meeting, Military Law Section of the State Bar of Texas, Fredericksburg, Texas. Notes supplied.

September 19, 2007: Speaker, Financial Institution Crime Day, Federal Bureau of Investigation, San Antonio, Texas. I spoke to federal agents concerning the United States Attorney's prosecution guidelines in fraud cases. I have no notes, transcript or recording. The address for the Federal Bureau of Investigation in San Antonio is 5740 University Heights Boulevard, San Antonio, Texas 78249.

June 16, 2006: Speaker, "JAG Services in Afghanistan," Annual Meeting ("Honoring the Judiciary"), State Bar of Texas, Austin, Texas. I discussed my successful prosecution of a Colorado conscientious objector reservist recalled to perform duty associated with the War on Terror. I have no notes, transcript or recording, but press coverage is supplied. The address of the State Bar of Texas is 1414 Colorado Street, Austin, Texas 78701.

April 2006: Speaker, Biennial Institute, Military Law Section, State Bar of Texas, San Antonio, Texas. I had recently returned from active military duty at Bagram Airfield, Afghanistan, and was asked to speak about my service. I have no notes, transcript or recording, but press coverage is supplied (the same Texas Bar Journal page provided for the June 16, 2006 event above). The address for the State Bar of Texas is 1414 Colorado Street, Austin, Texas 78701.

October 16, 2002: Speaker, San Antonio Chapter of the Federal Bar Association, San Antonio, Texas. I spoke to members of the Association at a lunch on the topic of public corruption. I have no notes, transcript or recording, but press coverage is supplied. The address of the San Antonio Chapter of the Federal Bar Association is P.O. Box 460878, San Antonio, Texas 78246.

August 28, 2002: Speaker, Complex Case Seminar, National Advocacy Center, University of South Carolina, Columbia, South Carolina. PowerPoint supplied.

I have never taught on a regular basis, but have been a guest lecturer and substitute teacher on occasion. I have no records or notes of any of those occasions. Of the occasions which I can recall, a summary follows:

As an Assistant United States Attorney, I taught as a substitute one time to a class on criminal law at St. Mary's University School of Law. On one, and possibly two, occasions, I taught at the Basic Trial Course at the National Advocacy Center on the campus of the University of South Carolina. I made no presentations, but spent a week of a two-week course instructing federal prosecutors and assisting other instructors in the courtroom as they gave instruction. I have no record of that participation, but it would have been in approximately 2006 and 2007. I also taught a few classes at the San Antonio Police Academy on search and seizure law. I once taught over a two-day period at the Federal Bureau of Investigation Academy in Quantico, Virginia, instructing

in courtroom demeanor and testimony. While there are no records that I have found of that occasion, it was in approximately 1997. There were also a few occasions where I taught at United States Attorney and staff retreats on grand jury practice and search and seizure updates along the lines of in-house training. As an Assistant District Attorney, I taught at the Texas Department of Public Safety one time concerning a search and seizure law update prior to 1995. Also as an Assistant District Attorney, I substitute taught a few night classes at Austin Community College, each having to do with criminal justice. I taught four classes on military justice to ROTC (Reserve Officer Training Corps.) cadets, twice at the University of Texas at Austin and twice at Southwest Texas State University, now Texas State University, in San Marcos, Texas. These were four independent and unrelated blocks of instruction. I have no notes, transcripts, or recordings.

- 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 have done my best to identify all items called for in this question, including a thorough review of my files and searches of publicly available electronic databases.

Approximately 1987 – 1995: While a state prosecutor in Austin, I sometimes made impromptu statements to television and radio outlets when asked questions by the media. Before trial, these would have been limited to announcing charges returned by a grand jury. More often, I provided impromptu interviews as I was leaving the courthouse after a verdict. My comments would have only been to reiterate and support the verdict. I have no notes, transcripts, or recordings.

Approximately 1995 – 2009: While a federal prosecutor in San Antonio, I sometimes made impromptu statements to television and radio outlets when asked questions by the media. Before trial, these would have been limited to announcing charges returned by a grand jury. More often, I provided impromptu interviews as I was leaving the courthouse after a verdict. My comments would have only been to reiterate and support the verdict. I have no notes, transcripts, or recordings.

Bob Campbell, *Judge Applies Small Town Values to Work*, MIDLAND REPORTER-TELEGRAM (TEXAS), Sept. 1, 2009. Copy supplied.

*Assistant U.S. Attorney Counts New Magistrate*, MIDLAND REPORTER-TELEGRAM (TEXAS), June 26, 2009. Copy supplied.

Craig Kapiltan, *Former Frio Tax Man Gets Two Years*, SAN ANTONIO EXPRESS-NEWS, May 2, 2009. Copy supplied.

Guillermo Contreras, *FBI Tied to San Antonio Escort Service*, SAN ANTONIO EXPRESS-NEWS, Apr. 12, 2009, at 01A. Copy supplied.

Forrest Wilder, *Justice Gone AWOL*, TEXAS OBSERVER, March 20, 2009. Copy supplied.

Guillermo Contreras, *Defendants Get 30 Months*, SAN ANTONIO EXPRESS-NEWS, Nov. 21, 2008, at 01B. Copy supplied.

Zeke McCormack, *Boerne Restaurateur Gets Two Years for Arson*, SAN ANTONIO EXPRESS-NEWS, Nov. 13, 2008. Copy supplied.

Zeke McCormack, *Restaurateur Admits Setting Boerne Fire*, SAN ANTONIO EXPRESS-NEWS, May 22, 2008, at 05B. Copy supplied.

Guillermo Contreras, *Two Face Prison in Airline Ticket Scam*, SAN ANTONIO EXPRESS-NEWS, Feb. 13, 2008, at 1B. Copy supplied.

Vianna Davila, *San Antonio Killer Faces Death Today*, SAN ANTONIO EXPRESS-NEWS, Mar. 6, 2007, at 01B. Copy supplied.

Guillermo Contreras, *Uninvited Wedding 'Guest' Indicted*, SAN ANTONIO EXPRESS-NEWS, Oct. 21, 2006. Copy supplied.

Maro Robbins, *Kickback Trial Is Set for Ex-Councilmen; Martin Will Face State Charges Before September 27 Federal Date*, SAN ANTONIO EXPRESS-NEWS, May 22, 2004, at 02B. Copy supplied.

Guillermo Contreras, *Bail Denied in Marriage Fraud Case*, SAN ANTONIO EXPRESS-NEWS, Jan. 24, 2004. Copy supplied.

Maro Robbins, *San Antonio Politicos' Bribe Case Bogs Down; Law Under Which Ex-Councilmen Were Indicted Could Be Declared Unconstitutional by U.S. Supreme Court*, SAN ANTONIO EXPRESS-NEWS, Dec. 4, 2003, at 01A. Copy supplied.

Lisa Thompson, *Erie Woman Charged with Threats to President*, ERIE TIMES-NEWS (PENNSYLVANIA), Nov. 21, 2002. Copy supplied.

William Pack & Maro Robbins, *Exclusive Report; 11th-Hour Strategy Taped; Wolff to Councilmen: Refute Charges or Quit*, SAN ANTONIO EXPRESS-NEWS, Nov. 18, 2002, at 01A. Copy supplied.

Maro Robbins, *Last San Antonio Cop in Drug Sting Is Sentenced*, SAN ANTONIO EXPRESS-NEWS, Sept. 13, 2002, at 01B. Copy supplied.

Maro Robbins, *Ex-Cop Gets Prison Time in Drug Sting; Morales Is Sentenced to Nearly Six Years*, SAN ANTONIO EXPRESS-NEWS, Sept. 5, 2002. Copy supplied.

T.A. Badger, *Cop Given 11 Years in Drug Case; San Antonio Sergeant Ringleader of Scheme*, HOUSTON CHRONICLE, Aug. 11, 2002, at A45. Copy supplied.

Maro Robbins, *Former Cop Gets Term of 15 Years*, SAN ANTONIO EXPRESS-NEWS, June 21, 2002. Copy supplied.

Maro Robbins, *Drug Plot Ringleader Gets Eight Years; Contrition, Guilty Plea Draw Lighter Sentence for Former San Antonio Policeman*, SAN ANTONIO EXPRESS-NEWS, June 20, 2002, at 01B. Copy supplied.

Sonja Garza, *No Telling Why Ex-Cop's Second Trial Had Different Outcome*, SAN ANTONIO EXPRESS-NEWS, Apr. 13, 2002, at 01B. Copy supplied.

Sonja Garza, *Ex-San Antonio Cop Guilty on One Drug Count; Although a Federal Jury Cleared Gutierrez of Four Other Charges, He Now Faces a Ten-Year Term*, SAN ANTONIO EXPRESS-NEWS, Apr. 10, 2002, at 01A. Copy supplied.

T.A. Badger, *Ex-Police Officer Found Guilty on Drug-Trafficking Charge*, ASSOCIATED PRESS, April 9, 2002. Copy supplied.

Sonja Garza, *Mistrial Declared in Cop Corruption; No Reason Is Given for the Stalemate, and Prosecutors Say They'll Retry the Ex-San Antonio Officer*, SAN ANTONIO EXPRESS-NEWS, Mar. 9, 2002, at 01A. Copy supplied.

Sonja Garza, *Former Cop, His Uncle Plead Guilty; Deals Cap Drug Sentences at 20 and Eight Years, Respectively*, SAN ANTONIO EXPRESS-NEWS, Feb. 21, 2002. Copy supplied.

*Officer Pleads Guilty in Drug Scheme*, HOUSTON CHRONICLE, Jan. 5, 2002. Copy supplied.

Yvette M. Mastin, *Rico Conspiracy: Dismantles the Mexican Mafia & Disables Procedural Due Process*, 27 Wm. Mitchell L. Rev. 2295, 2330 (2001). Copy supplied.

Sonja Garza, *Accused Cops' Lawyers Seize on FBI Agent's Secret Tapes; Recorded Conversations Could Bolster Defense Effort*, SAN ANTONIO EXPRESS-NEWS, Sept. 8, 2001, at 01A. Copy supplied.

Sonja Garza, *Cop Sting Defendant Strikes Plea Deal; Former Reserve Deputy Constable Is the Fifth to Admit to Drug Charges*, SAN ANTONIO EXPRESS-NEWS, Aug. 31, 2001, at 01B. Copy supplied.

Sonja Garza, *Ex-Cop Admits Protection Role in Cocaine Plot; Lookout Job Called Minor*, SAN ANTONIO EXPRESS-NEWS, Aug. 29, 2001. Copy supplied.

Maro Robbins, *Former Officer Pleads Guilty; Judge Rejects Claims of Entrapment in FBI Drug Sting that Led to Arrests of Ten Cops*, SAN ANTONIO EXPRESS-NEWS, Aug. 1, 2001, at 01B. Copy supplied.

Maro Robbins, *Civilian Enters Plea in Drug Cops Sting; Accused Officer Gets More Time to Negotiate*, SAN ANTONIO EXPRESS-NEWS, July 13, 2001. Copy supplied.

Maro Robbins, *Cops Claim Entrapment; Officers Say FBI Produced Drug Scheme*, SAN ANTONIO EXPRESS-NEWS, July 11, 2001, at 02B. Copy supplied.

Lisa Sandberg, *Ex-Cop Pleads Guilty in Drug Plot; Bustos Now Will Be Witness*, SAN ANTONIO EXPRESS-NEWS, June 14, 2001, at 01A. Copy supplied.

Maro Robbins, *Two Officers Ordered Released; \$100,000 Bond Set for Central Figures in Police Drug Sting*, SAN ANTONIO EXPRESS-NEWS, May 30, 2001, at 01B. Copy supplied.

Maro Robbins and Bill Hendricks, *Busted San Antonio Cop Cuts a Deal; Agrees to Testify in Return for Lighter Sentence*, SAN ANTONIO EXPRESS-NEWS, May 12, 2001. Copy supplied.

Maro Robbins, *Timing of Pleas Baffles Lawyers; Federal Prosecutors Keeping Mum on Details of the Offers*, SAN ANTONIO EXPRESS-NEWS, Apr. 19, 2001, at 01B. Copy supplied.

*Crime & Court News*, SAN ANTONIO EXPRESS-NEWS, Apr. 19, 2001, at 02B. Copy supplied.

Maro Robbins, *Federal Prosecutors Offering San Antonio Cops Plea Bargains*, SAN ANTONIO EXPRESS-NEWS, Apr. 18, 2001, at 01A. Copy supplied.

Maro Robbins, *Case Hints at Genesis of Sting; Lawyer Claims Copy Machine Tech Was a Pawn of the FBI*, SAN ANTONIO EXPRESS-NEWS, Apr. 1, 2001, at 01B. Copy supplied.

Lisa Sandberg, *Cops' Case to Be Bared Today; A U.S. Magistrate Will Hear Details About Drug Probe*, SAN ANTONIO EXPRESS-NEWS, Mar. 26, 2001, at 01B. Copy supplied.

Cindy Tumiel, *Ten Cops Busted; Chief Terms Case Betrayal of Honor*, SAN ANTONIO EXPRESS-NEWS, Mar. 23, 2001, at 01A. Copy supplied.

Maro Robbins, *21st Century Court – Videotapes and Computers Enhance Trials*, SAN ANTONIO EXPRESS-NEWS, Feb. 26, 2000. Copy supplied.

Gary M. Lavergne, *BAD BOY FROM ROSEBUD: THE MURDEROUS LIFE OF KENNETH ALLEN MCDUFF* (1999). Copy supplied.

Thaddeus Herrick, *Ten Texas Gangsters Found Guilty of Racketeering and Conspiracy*, HOUSTON CHRONICLE, Mar. 4, 1999. Copy supplied.

Maro Robbins, *Mexican Mafia Case Has 11 Facing Trial*, SAN ANTONIO EXPRESS-NEWS, Jan. 10, 1999. Copy supplied.

Bob Stewart, NO REMORSE (1996). Copy supplied.

Rob Harrill, *McDuff Accomplice Admits Role in Slaying*, CORPUS CHRISTI CALLER-TIMES, Sept. 13, 1994, at B2. Copy supplied.

*Man Strikes Plea Deal in Austin Woman's Abduction, Death*, DALLAS MORNING NEWS, Sept. 13, 1994, at 24A. Copy supplied.

Scott W. Wright, *Abductor of Reed Takes Plea Bargain*, AUSTIN AMERICAN-STATESMAN, Sept. 13, 1994. Copy supplied.

Scott W. Wright, *McDuff's Confessed Accomplice to Go on Trial*, AUSTIN AMERICAN-STATESMAN, Sept. 12, 1994. Copy supplied.

Tim Lott, *Proposal to Map Areas Around Austin Schools for Drug-Free Zone Law*, AUSTIN AMERICAN-STATESMAN, Aug. 4, 1994. Copy supplied.

Jim Phillips, *Judge Denies Bail Reduction for Henderson, Mulls Gag Order*, AUSTIN AMERICAN-STATESMAN, May 18, 1994. Copy supplied (reprinted in multiple outlets).

Jim Phillips, *Grand Jury Gives Officials More Time in Baugh Case*, AUSTIN AMERICAN-STATESMAN, Mar. 29, 1994. Copy supplied.

Scott W. Wright and Jim Phillips, *Jurors Send McDuff Back to Death Row; Other Cases Linger*, AUSTIN AMERICAN-STATESMAN, Mar. 2, 1994. Copy supplied (reprinted in multiple outlets).

Jim Phillips, *McDuff Found Guilty of Reed's Murder*, AUSTIN AMERICAN-STATESMAN, Feb. 24, 1994. Copy supplied.

*McDuff Convicted Third Time*, FORT WORTH STAR-TELEGRAM, Feb. 24, 1994. Copy supplied.

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Jim Phillips, *Attorneys for McDuff Want Delay in Reed Trial*, AUSTIN AMERICAN-STATESMAN, Nov. 9, 1993. Copy supplied.

Cindy Loose & Patrice Gaines, *Condom Doesn't Mean Consent, Jury Says*, WASHINGTON POST, July 14, 1993, at C3. Copy supplied.

*McDuff Faces Charges Involving Missing Woman Believed Dead*, DALLAS MORNING NEWS, July 1, 1993. Copy supplied.

Scott W. Wright, *As McDuff Nears Trial, Search for Reed's Body Continues*, AUSTIN AMERICAN-STATESMAN, June 30, 1993. Copy supplied (reprinted in multiple outlets).

*Alleging Misconduct by Jury, Condom Rapist Seeks New Trial*, ASSOCIATED PRESS, June 30, 1993, at 12B. Copy supplied (reprinted in multiple outlets).

Jim Phillips, *Suspects Gets Life Term in Slayings of Father, Son*, AUSTIN AMERICAN-STATESMAN, June 12, 1993. Copy supplied.

Sue Anne Pressley, *Woman Says Attacker Stole a Part of Soul*, WASHINGTON POST, May 16, 1993, at 28. Copy supplied (reprinted in multiple outlets).

Jim Phillips, *Violence – Not Condom – Defines Rape Trial, All Sides Say*, AUSTIN AMERICAN-STATESMAN, May 15, 1993. Copy supplied.

Chip Brown, *Condom Rapist Gets 40 Years*, ASSOCIATED PRESS, May 15, 1993. Copy supplied (reprinted in multiple outlets).

Roy Bragg, *Man Convicted in Condom Rape Case*, HOUSTON CHRONICLE, May 14, 1993. Copy supplied.

Sue Anne Pressley, *'Condom' Rapist Convicted: Prosecutor Says Verdict Means Women Can Protect Themselves*, WASHINGTON POST, May 14, 1993, at A2. Copy supplied (reprinted in multiple outlets).

John Makeig, *Witness's Testimony Delayed Until Monday in McDuff Trial*, HOUSTON CHRONICLE, Feb. 6, 1993, at A32. Copy supplied.

Kimberly Garcia, *Year of Memories, Grief*, AUSTIN AMERICAN-STATESMAN, Dec. 28, 1992. Copy supplied.

Kimberly Garcia, *Suspect in Reed Case Feared McDuff, Sisters Say*, AUSTIN AMERICAN-STATESMAN, Sept. 3, 1992. Copy supplied.

Kimberly Garcia, *Indictment Sought for McDuff in Reed Case*, AUSTIN AMERICAN-STATESMAN, July 7, 1992. Copy supplied (reprinted in multiple outlets).

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.

In July 2009, I was appointed to serve as a United States Magistrate Judge of the United States District Court for the Western District of Texas by the judges of the United States District Court. Although I am the magistrate judge in the Midland/Odessa Division, I frequently preside in the Pecos Division. As a magistrate judge I preside over a wide variety of federal criminal and civil cases, including pretrial, grand jury, and discovery matters, as well as civil jury trials. I issue reports and recommendations on dispositive motions and orders resolving non-dispositive motions in civil cases over which district judges preside. I conduct pretrial proceedings in both civil and criminal cases, as well as mediations in civil cases upon referral from the district court. I handle all aspects, including trials and sentencings, of petty offenses and certain other criminal misdemeanors.

As a magistrate judge, most of my caseload consists of the referral of matters from the district court, with the exception of criminal matters over which I have jurisdiction under 28 U.S.C. § 636(a) and civil cases in which the parties consent to my jurisdiction pursuant to 28 U.S.C. § 636(c).

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

My best estimate is that I have presided over 715 cases that have gone to verdict or judgment, including civil consent cases and certain criminal cases.

i. Of these, approximately what percent were:

jury trials:	1%
bench trials:	99%
civil proceedings:	6%
criminal proceedings:	94%

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

Please see attached list.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of 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 (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

(1) *Carley v. Crest Pumping Technologies*, No. 7:15-CV-00161, 2016 WL 8856917 (W.D. Tex. Jan. 10, 2017).

This civil case was brought by two oilfield workers pursuant to the Fair Labor Standards Act ("FLSA") to recover unpaid overtime wages from their former employer. I denied the employer's two summary judgment motions and found that the employer failed to prove as a matter of law that the employees were exempt from the FLSA's overtime provisions either under the Motor Carrier Act exemption, or as highly compensated employees or executive employees. *Carley v. Crest Pumping Techs., LLC*, No. 7:15-CV-00161-DC, 2016 WL 8849696 (W.D. Tex. July 29, 2016). I presided over a jury trial and the jury returned a unanimous verdict in favor of the plaintiffs as to their unpaid overtime claims. Following a hearing, I ruled that the employer did not act in good faith or with a reasonable belief that its actions were legal by failing to pay overtime wages and I awarded liquidated damages to the employees. *Carley v. Crest Pumping Technologies*, No. 7:15-CV-00161, 2016 WL 8856917 (W.D. Tex. Jan. 10, 2017). The parties filed a stipulation as to damages and I entered final judgment in favor of the plaintiffs. *See* ECF No. 130 (copy supplied). In addition, I awarded attorney's fees to the plaintiffs. *See* ECF No. 134 (copy supplied). Finally, I denied the employer's post-judgment motions for judgment as a matter of law and a new trial. *See* ECF No. 140 (copy supplied).

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(2) *United States v. Madrid*, No. 7:14-CR-00199 (W.D. Tex. June 9, 2015).

This criminal case involved allegations of a complex narcotics-trafficking conspiracy. I guided the case through massive discovery issues. After months of contention among the parties, requiring numerous pretrial conferences, I presided as each defendant entered a guilty plea. *See* ECF Nos. 106, 159, 162, 163, 170 (copies supplied). The sentences imposed by the district court ranged from one year to 84 months in the Federal Bureau of Prisons.

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(3) *United States v. Hilliard*, No. 7:14-CR-00001 (W.D. Tex. Jan. 13, 2015).

This white collar fraud case involved four prominent citizens in Midland and Odessa, accused of conspiring to commit bank fraud and money laundering. The real estate investment scheme involved some 800 properties and over \$45 million in an elaborate mortgage fraud. As the magistrate judge, I presided over several contentious pretrial hearings, mostly dealing with voluminous and complex discovery disputes. *See* ECF No. 57 (copy supplied). All four defendants eventually pleaded guilty. The two lead defendants received sentences of 36 months in the Federal Bureau of Prisons and were ordered to pay restitution.

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(4) *Cobarobio v. Midland Cnty., Tex.*, No. 7:13-CV-00111 (W.D. Tex. Jan. 7, 2015).

This civil rights action arose from events involving an annual veterans' parade in Midland, Texas, which ended tragically in the deaths of four veterans when a parade float attempted to cross the railroad tracks and was hit by an oncoming train. In the aftermath of the train wreck, plaintiff entered the scene of the accident and proceeded to videotape the carnage. Because first responders were attempting to conduct emergency operations in the same area where the plaintiff was filming the injured and dying victims, law enforcement officers requested that plaintiff leave the scene of the accident and cease interfering with their tasks. When plaintiff refused to exit the scene of the train accident, police officers arrested him for interference with public duties and seized his camera. Proceeding *pro se* under the Prisoner Litigation Reform Act, plaintiff filed a civil action against Midland County and several police officers alleging multiple constitutional violations under 42 U.S.C. § 1983. Upon referral and after considering the motions, responses, and briefs of the parties, I recommended dismissal. See ECF No. 19 (copy supplied). The recommendation was adopted in whole by the district court.

Plaintiff's Counsel:

None.

Defense Counsel:

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(5) *Munoz v. Ramirez*, 923 F. Supp. 2d 931 (W.D. Tex. 2013).

Petitioner, the mother who was a citizen of the Republic of Mexico, filed a petition against the father, a citizen of the United States, for return of the parties' child under the Hague Convention on the Civil Aspects of International Child Abduction, as implemented through the International Child Abduction Remedies Act (ICARA). After a bench trial, I ordered respondent, the father, to return the child to Mexico, the child's country of

habitual residence.

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(6) *Bernal v. Gonzalez*, 923 F. Supp. 2d 907 (W.D. Tex. 2012).

Petitioner, a mother and citizen of Mexico, sought return of her children, United States citizens who had relocated from Mexico to Texas with the respondent, their father (a citizen of Mexico). The mother filed her petition under the Hague Convention on the Civil Aspects of International Child Abduction, as implemented through the International Child Abduction Remedies Act (ICARA). After a bench trial, I ordered respondent to return the children to Mexico, their country of habitual residence.



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(7) *United States v. Sauseda*, No. 7:09-CR-00252 (W.D. Tex. Jan. 13, 2012), *aff'd*, 526 F. App'x 349 (5th Cir. 2013), *cert. denied*, 134 S. Ct. 286 (2013).

This case involved drug-related murders wherein the lead defendant gathered his adult brother, two minor sons and a friend of his sons who was also a juvenile, to lie in wait in an alley and shoot some 187 bullets into a car occupied by two drug dealers. The case was death-penalty eligible and I guided the criminal proceedings through all pre-trial phases. The Government eventually decided not to seek the death penalty, but all of the death-related protocols had to be observed for several months prior to that decision. I secured the services of a death-qualified attorney and experts in anticipation for the defense's presentation to the Department of Justice. I presided over discovery disputes, held hearings and made recommendations on certification of the juveniles to adult status that were adopted by the district court. *See United States v. Sealed Defendant*, No. 7:10-CR-00006-1 (W.D. Tex. Apr. 28, 2010), ECF No. 35 (copy supplied), *aff'd*, 416 F. App'x 372 (5th Cir. 2011), *cert. denied*, 132 S. Ct. 182 (2011). Defendants were convicted after trial, with the lead defendant receiving a life sentence. In the post-conviction proceedings, I recommending denying defendants' motions to vacate, set aside, or correct sentences under 28 U.S.C. § 2255. *See Sauseda v. United States*, Nos. 7:09-CR-00252(1)-RAJ-DC, 7:14-CV-00103, 2016 WL 7077234 (W.D. Tex. Jan. 1, 2016); *Sauseda v. United States*, Nos. MO:09-CR-00252(2), MO:14-CV-00097, 2015 WL 12815298 (W.D. Tex. June 19, 2015). These recommendations were adopted in whole by the district court.

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(8) *United States v. Holloway*, No. 7:10-CR-00175 (W.D. Tex. Oct. 14, 2011),  
*aff'd*, 442 F. App'x 932 (5th Cir. 2011).

Following the reversal of defendant's conviction for conspiracy to possess with intent to distribute cocaine base, the Government returned a new indictment charging defendant with distribution of crack cocaine. I presided over the hearing on the motion to dismiss the indictment, which asserted a double jeopardy violation pursuant to the Fifth Amendment. Defendant argued that because the indictments from the reversed case involved the same time frame as the new indictment, double jeopardy applied. I recommended that the conspiracy crime and the object crime were separate offenses that could be tried separately without violating the Double Jeopardy Clause. *See* ECF No. 38 (copy supplied). The district court adopted my report and recommendation to deny the motion to dismiss and the United States Court of Appeals for the Fifth Circuit affirmed.

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(9) *United States v. Thomas*, No. 7:09-CR-00094 (W.D. Tex. Jan. 19, 2010),  
*aff'd*, 419 F. App'x 469 (5th Cir. 2011), *cert. denied*, 132 S. Ct. 239 (2011).

Defendant was charged in a multiple-count indictment for narcotics trafficking, money laundering, bank fraud, and aggravated identity theft. I presided over a series of contentious pretrial hearings. After a week-long jury trial resulted in a guilty verdict, the parties consented to have the magistrate judge preside over the criminal forfeiture portion of the trial, which was held before the same jury that had previously convicted the defendant. The jury found against the defendant on the forfeiture. Defendant was convicted on several counts and sentenced to 360 months in the Federal Bureau of Prisons.

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(10) *United States v. Gunville*, No. 4:08-CR-00136 (W.D. Tex. 2009).

Defendant was a prominent local realtor in Alpine, a town in the Pecos Division of the Western District of Texas, and was accused of stealing Visa gift cards with values totaling several thousand dollars. A superseding indictment was returned, charging the defendant with obstruction of justice in addition to fraud. I presided over the hearing on the Government's motion to detain. I ruled for the defense, denying the Government's motion and setting conditions of release. More than a year after her initial charge, the defendant was acquitted on both counts by a jury.

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Mike Barclay (deceased)

- 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.

(1) *Schell v. TDJ Oilfield Servs., LLC*, No. 7:15-CV-00098 (W.D. Tex. 2016).

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(2) *Cobarobio v. Midland Cnty., Tex.*, No. 7:13-CV-00111 (W.D. Tex. Jan. 7, 2015).

Plaintiff's Counsel:

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(3) *Lindig Constr. & Trucking, Inc. v. Bonelli*, No. 7:15-CV-00116, 2015 WL 7162120 (W.D. Tex. Oct. 15, 2015).

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(4) *Christiana Trust v. Jacob*, No. 7:15-CV-00033, 2015 WL 6143540 (W.D. Tex. July 21, 2015).

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(5) *Bernal v. Gonzalez*, No. 7:12-CV-00091, 2015 WL 3971438 (W.D. Tex. June 29, 2015).

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(6) *Munoz v. United States*, Nos. 7:12-CR-00072, 7:13-CV-00124, 2015 WL 339752 (W.D. Tex. Jan. 23, 2015).

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(7) *Gallardo v. Orozco*, 954 F. Supp. 2d 555 (W.D. Tex. 2013).

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(8) *Munoz v. Ramirez*, 923 F. Supp. 2d 931 (W.D. Tex. 2013).

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(9) *Bernal v. Gonzalez*, 923 F. Supp. 2d 907 (W.D. Tex. 2012).

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(10) *Watson Prof'l Grp., v. United States*, No. 7:10-CV-00120, 2011 WL 7767945 (W.D. Tex. Jan. 26, 2011).

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- 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.

*Lindig Construction & Trucking, Inc. v. Bonelli*, No. 7:15-CV-00116 (W.D. Tex. April 6, 2016), *adopted in part* by 2016 WL 8677200 (W.D. Tex. Aug. 19, 2016). This subrogation lawsuit arose from a motor vehicle accident. I recommended that default judgment should be entered against defendants but found that the court should hold an evidentiary hearing as to the amount of damages due to discrepancies in plaintiff's accounting. Plaintiff objected to the recommendation that the court hold an evidentiary hearing on the issue of damages asserting that the numerical discrepancy identified by the court was due to plaintiff's own clerical error. The district judge adopted my recommendations as to the entry of default judgment. However, the district judge determined an evidentiary hearing was not required since Plaintiff presented a clear accounting of the losses arising out of the accident aside from the clerical error in the motion for default judgment.

*Nestor v. Penske Truck Leasing Co., L.P.*, No. 4:14-CV-00036, 2015 WL 4603313 (W.D. Tex. July 7, 2015), *adopted in part* by 2015 WL 4601255 (W.D. Tex. July 29, 2015). This action arose from a motor vehicle accident. Plaintiffs filed a motion for substitute service, which I initially denied, finding that plaintiffs had not diligently attempted to comply with the Texas Rules of Civil Procedure in serving defendants. After additional attempts to effect service failed, I granted the plaintiffs' amended motion for substitute service. Defendants did not timely answer or otherwise respond to the plaintiffs' complaint, and I issued a report and recommendation finding that the grounds

for default were clearly established and plaintiffs were entitled to default judgment. However, I also found that plaintiffs' damages flowing from the defaulting defendants' acts or omissions could not be distinguished separately without a trial on the merits including the defendants that had appeared in the case because plaintiffs attributed all causes of action to all defendants. Therefore, I recommended denying the motion for default judgment without prejudice subject to re-urging at the time of trial when the court would be able to hold a hearing on the damages issue. The district judge adopted the report and recommendation in part agreeing that default judgment was appropriate and a hearing regarding the amount of damages attributable to the defaulting defendants should take place after trial. However, instead of denying the motion for default judgment without prejudice subject to re-urging at the time of trial, the district judge granted default judgment subject to the amount of damages being determined at a later date.

*United States v. Venegas*, No. 7:13-CR-00061 (W.D. Tex. Dec. 2, 2013), *aff'd*, 594 F. App'x 822 (5th Cir. 2014). Defendant was indicted with one count of using a cellular telephone to entice, persuade, or induce a minor to engage in sexual activity under 18 U.S.C. § 2422(b). Defendant, a deaf individual, notified the court of his intent to elicit expert opinion testimony regarding deaf education. I held a *Daubert* hearing on the Government's motion to exclude this expert testimony. I recommended that the expert's testimony concerning the deaf experience would not be relevant or admissible and recommended the court exclude the testimony. *See* ECF No. 88 (copy supplied). Alternatively, I recommended that whatever probative value the expert's testimony would have would be greatly outweighed by the danger of confusing the jury with issues not properly before it. The district court modified the report and recommendation by making additional factual findings in support of the conclusion that the expert testimony should be excluded at trial. *See* ECF No. 91 (copy supplied). The United States Court of Appeals for the Fifth Circuit affirmed the court's ruling excluding this expert testimony.

*Sherwood v. United States*, No. 4:04-CR-00191 (W.D. Tex. Apr. 5, 2012). Petitioner brought federal habeas claiming, among several complaints, that although he was entitled to represent himself during his criminal case, he was improperly denied his Sixth Amendment right of self-representation. After an evidentiary hearing, believing petitioner properly met his burden prior to trial and therefore had been constructively denied the right to represent himself, I recommended the district court grant relief, setting aside the verdict and granting a new trial. *See* ECF No. 267 (copy supplied). While the district judge adopted the report in part, he rejected the recommendation to grant relief on this ground. *See* ECF No. 273 (copy supplied).

In four additional cases, the district judge set conditions of release after I ordered detention of a defendant. Copies of the orders for the four cases

below are supplied.

*United States v. Raza*, No. 7:13-CR-00267, ECF Nos. 12, 24

*United States v. Martinez*, No. 7:13-CR-00065, ECF Nos. 10, 22

*United States v. Wygocki*, No. 7:11-CR-00264, ECF Nos. 10, 14

*United States v. Aranda*, No. 7:10-CR-00319, ECF Nos. 430, 434

- 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.

Of the opinions and reports and recommendations I have written as a magistrate judge, 44 appear on Westlaw and LexisNexis legal databases. The unpublished opinions are docketed by the United States District Clerk's Office and are available to members of the public via the Court's public access website.

- 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.

As a magistrate judge with a docket comprised predominantly of felony matters, I routinely preside over cases related to due process, search and seizure, and right to counsel issues derived from the Fourth, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. However, I have not written any significant opinions on such issues.

- 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.

As a United States Magistrate Judge, I follow the federal recusal statutes and Code of Conduct for United States Judges. I assess recusal concerns in accordance with 28 U.S.C. § 455. Whether specifically addressed by the Code of Conduct for United States Judges, the recusal statutes, or solely my interest in maintaining impartiality and the appearance of impartiality of the court, I would disclose any potential conflicts and recuse myself if appropriate. Because I was appointed as a magistrate judge in a division several hours from the divisions in which I had practiced most often, I have not had any conflicts that require recusal.

I evaluate each case when referred to me. I also review cases as they proceed and on a continuing basis I examine the list of counsel and parties to determine if an association would appear to create a conflict or if some other reason might exist that would require recusal. I have never been asked to recuse myself and have never found occasion to recuse myself from any cases. As a United States District Judge, I would use the same resources and criteria in the ongoing evaluation of cases for potential conflicts and I would take seriously any concern voiced by any counsel or party to a lawsuit.

**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.

None. I have not been a candidate for any elected or appointed non-judicial office.

- 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.

In the late 1980s, I volunteered to make phone calls and canvass a neighborhood for Paul Ruiz, who campaigned for a seat in the Texas House of Representatives. I have never held office in, nor rendered 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 clerk to a judge.

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

1990 – 1991  
David Counts, Attorney at Law  
606 West 11th Street  
Austin, Texas 78701  
Solo Practitioner

- 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.

1986 – 1987  
Martin, Cox, Greenberg & Jones  
707 West Tenth Street  
Austin, Texas 78701  
Associate Attorney

1987 – 1990; 1991 – 1995  
Travis County District Attorney's Office  
509 West 11th Street  
Austin, Texas 78767  
Assistant District Attorney

1989 – present  
Texas National Guard  
2200 West 35th Street  
Austin, Texas 78763  
Judge Advocate – First Lieutenant through Lieutenant Colonel (1989 – 2006)  
State Judge Advocate (2006 – present)  
Colonel (2007 – present)

1995 – 2009

United States Attorney's Office for the Western District of Texas  
601 Northwest Loop 410, Suite 600  
San Antonio, Texas 78216  
Assistant United States 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.

I did not serve as a mediator or arbitrator.

b. Describe:

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

Immediately following law school in August 1986, I was hired at a civil law firm in Austin, Texas, named Martin, Cox, Greenberg and Jones. I clerked at the firm the summer before my final year of law school. Our practice was largely confined to representing corporations that owned numerous nursing homes and public health entities across Texas. As an associate, my practice entailed the review and production of documents, completing discovery, drafting pleadings and legal research. I made several appearances before regulatory bodies, tried cases before a justice of the peace, attended docket calls, and secured default judgments.

I started as an Assistant District Attorney for Travis County, Texas, in July 1987. I tried felony jury trials. I had varying assignments in the office throughout my tenure, including Chief of the Repeat Offender Program and Major Crimes and Narcotics, which included Asset Forfeiture. I was at the Travis County District Attorney's office from July 1987 to 1990 and again from early 1991 to 1995, with a six-month break in employment when I was in private practice.

My solo legal practice consisted almost entirely of representing clients in criminal court.

During my time as an Assistant United States Attorney, from March 1995 to July 2009, I handled a broad array of federal criminal matters, including narcotics, financial fraud, firearms, immigration, money laundering, counterfeiting, racketeering, gang cases, and public corruption. I was involved in matters from the investigative phase through indictment, pretrial, plea negotiations, trial and appeals. During approximately the final ten years of my tenure in the United States Attorney's Office for the Western District of Texas, I had supervisory duties as the Deputy Chief of Major Crimes, in addition to carrying a full trial caseload. In my capacity

as Deputy Chief, I supervised 18 attorneys, two paralegals, and five legal assistants. Other duties assigned during my employment were as District Crisis Management Coordinator (1997 to 2003), District Anti-Terrorism Coordinator (2001 to 2002), and District Mentoring Program Manager (2006 to 2009).

From 1989 to present, I have represented the Texas National Guard in legal matters that include military justice, contracts, fiscal law, claims, and administrative law. Since December 30, 2006, I have been the State Judge Advocate for the Texas National Guard, which is the top attorney in the Texas military forces, including Army, Air and State Guard. I have also been the State Ethics Officer since 2006. In addition to my military legal duties, I oversee the recruitment, training, retention, and management of judge advocate personnel and the deployment of legal services in the Texas National Guard at home and abroad.

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

From 1986 to 1987, I represented commercial entities and healthcare professionals in civil litigation. From 1987 to 1990, and again from 1991 to 1995, I represented the State of Texas, predominantly in the prosecution of criminal cases. For approximately six months, spanning parts of 1990 and 1991, I represented clients in criminal courts as a solo practitioner. From 1995 to 2009, I represented the United States, its departments and agencies, in criminal litigation. From 1989 to present, I have represented the Texas National Guard and its members in a vast array of legal issues.

- 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.

From 1986 to 1987, as a first-year associate, I appeared in court infrequently. From 1987 to 2009, my practice consisted of almost 100% litigation and I practiced in various courts daily. My practice from 1987 to 1995 was a state court litigation practice. My practice from 1995 to 2009 was federal litigation.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 70% |
| 2. state courts of record:  | 25% |
| 3. other courts:            | 1%  |
| 4. administrative agencies: | 4%  |

- ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 15% |
| 2. criminal proceedings: | 85% |



- 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.

I have tried approximately 200 trials to verdict, including state and federal. I was most often sole counsel, though I served as chief or associate counsel in numerous cases as well. I tried many more bench trials in state court than in federal court. I only tried two bench trials in federal court. As for state court, I tried approximately 30 felony jury trials. I tried approximately 20 federal jury trials.

- i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 40% |
| 2. non-jury: | 60% |

- 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 not 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:

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

(1) *United States v. Cantu*, No. 5:07-CR-00662 (W.D. Tex. May 7, 2009).

I represented the United States in this fraud case. The elected treasurer of Frio County, Texas, set up an elaborate system to steal from county residents, as well as the taxpayers of the United States since some of the funds he stole were derived from federal programs. After a number of hard-fought and contentious preliminary hearings, the defendant pleaded guilty just before trial. The defendant was sentenced to 24 months in the Federal Bureau of Prisons and ordered to pay \$265,000 restitution. The dates of my

representation were 2007 to 2009. The case was litigated before United States District Judge Xavier Rodriguez.

Defense Counsel:

Richard Haynes  
Richard Haynes & Associates, P.C.  
314 North Post Oak Lane, Second Floor  
Houston, TX 77024  
(713) 868-1111

(2) *United States v. Hernandez*, No. 2:06-CR-00568 (W.D. Tex. Mar. 21, 2007).

I represented the United States in this prosecution. This jury trial was tried in Del Rio, Texas, by a visiting judge from the Western District of Arkansas. Late one night, as Edwards County Sheriff's Deputy Hernandez approached a Chevrolet Suburban as the result of a traffic stop, he peered inside the back portion of the vehicle and saw approximately eight suspected illegal immigrants. When the Deputy reached the driver's door, the driver attempted to flee by immediately accelerating the Suburban. Deputy Hernandez, knowing that several people were lying in the back of the Suburban, nevertheless repeatedly fired his service weapon into the back of the car, severely injuring two victims. He was found guilty of civil rights violations by a jury and sentenced to a year and a day in the Federal Bureau of Prisons. The dates of my representation were 2006 to 2007. The case was heard by United States District Judge Robert T. Dawson.

Co-counsel for the Government:

Bill Baumann, deceased

Defense Counsel:

Edward Camara, Jr.  
Law Offices of Edward Camara, Jr.  
P.O. Box 1610  
San Antonio, TX 78209  
(210) 223-5893

Jimmy B. Parks, Jr., deceased

(3) *United States v. Martin*, No. 5:02-CR-00527 (W.D. Tex. Apr. 6, 2005).

I represented the United States in this corruption prosecution, in which two sitting San Antonio city council members took bribes over the course of several months from two prominent attorneys in return for delivering their votes to award city contracts to certain recipients. All four defendants were convicted, sentenced to federal prison, and ordered to pay restitution. The city council members resigned, and the attorneys were disbarred.

The dates of my representation were 2002 to 2005. The case was heard by United States District Judge Royal Furgeson.

Co-counsel for the Government:

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Defense Counsel:

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Gerald Goldstein (for defendant Pena)  
Van G. Hilley, deceased  
Goldstein, Goldstein & Hilley  
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Davis & Santos  
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(210) 225-2285

Jay S. Norton (for defendant Sanders)  
Offices of Alan Brown  
222 Main Plaza

San Antonio, TX 78205  
(210) 227-5103

(4) *United States v. Fragozo, Jr.*, No. 5:01-CR-00167 (W.D. Tex. June 17, 2002), *aff'd sub nom. United States v. Gutierrez*, 343 F.3d 415 (5th Cir. 2003).

I prosecuted this case for the United States. A number of San Antonio police officers, a Bexar County sheriff's deputy, a deputy constable, and others were caught in a Federal Bureau of Investigation sting when they transported and protected loads of what they believed to be cocaine for cash payments. All but one of the 12 defendants entered guilty pleas. A jury found the remaining defendant guilty. He was sentenced to 15 years in the Federal Bureau of Prisons, while sentences for the other defendants were 12 years or less. In addition to trying the case, I wrote the appellate brief and argued the appeal successfully at the United States Court of Appeals for the Fifth Circuit. The dates of my representation were 2001 to 2004. The case was heard by United States District Judge Edward C. Prado. On direct appeal, the case was heard by Circuit Judge Patrick Errol Higginbotham, Circuit Judge William Lockhart Garwood, and District Judge Martin Leach-Cross Feldman of the Eastern District of Louisiana, sitting by designation.

Co-counsel for the Government:

Bill Baumann, deceased

Defense Counsel:

Joel Perez (for defendant Fragozo, Jr.)  
Law Office of Joel Perez  
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Hasdorff & Convery, P.C.  
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Guyer Law Office  
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(210) 226-6808

Chris K. Gober (for defendant Saenz)  
Chris K. Gober, Attorney at Law, P.C.  
424 East Nueva Street  
San Antonio, TX 78210  
(210) 224-5811

Edward Camara, Jr. (for defendant Gutierrez, Jr.)  
Law Offices of Edward Camara, Jr.  
P.O. Box 6130  
San Antonio, TX 78209  
(210) 223-5893

Jimmy B. Parks, Jr., deceased (for defendant Gutierrez, Jr.)

Alberto L. Rodriguez (for defendant Fragozo)  
Rodriguez Law Office  
700 North Saint Mary's Street, Suite 1400  
San Antonio, TX 78205  
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Roy R. Barrera, Jr. (for defendant Bustos)  
The Law Offices of Nicholas & Barrera  
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Robert O. Switzer (for defendant Cedillo, Jr.)  
Law Offices of Robert O. Switzer  
111 Soledad, Suite 1200  
San Antonio, TX 78205  
(210) 299-1053

(5) *United States v. Ledbetter*, No. 5:01-CR-00228 (W.D. Tex. Nov. 5, 2001).

I prosecuted this fraud case for the United States. The defendant defrauded a number of individuals through an insurance fraud scheme. He often targeted widows and widowers. He had ready-made access to a number of ministers, widows and widowers through his connections to a Presbyterian ministers' association. He stole approximately \$2 million from multiple victims. The defendant pleaded guilty just before trial to mail and wire fraud. He was sentenced to ten years in the Federal Bureau of Prisons and was ordered to pay millions of dollars in restitution. The dates of my representation were 2000 to 2003. The case was heard and decided by United States District Judge Edward C. Prado.

Defense Counsel:

The Honorable Charles A. Stephens, II  
County Court at Law No. 2 (formerly a Solo Practitioner)  
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(830) 221-1180

J. Scott Sullivan  
Law Offices of J. Scott Sullivan  
22211 Interstate Highway Ten West, Suite 1206  
San Antonio, TX 78257  
(210) 227-6000

(6) *United States v. Vargas*, No. 6:99-CR-00013 (W.D. Tex. July 2, 2001).

I represented the United States in this criminal case involving a methamphetamine distribution and money laundering organization that stretched from the interior of Mexico through San Antonio, Waco, and Dallas, Texas. I prosecuted the San Antonio and Waco branches of the trafficking cell. The San Antonio prosecution resulted in the conviction of 23 individuals, all receiving multiple-year sentences. I spent close to a year splitting time between San Antonio and Waco while handling these related cases. Approximately 60 defendants were convicted in the Waco portion of the prosecution. Eight additional defendants were successfully prosecuted in Dallas. The case culminated with three defendants going to trial in the Waco Division at the end of a multi-year investigation and prosecution. Two of those defendants received life sentences and the other defendant received 40 years in the Federal Bureau of Prisons. The defendants were convicted of conspiracy to distribute methamphetamine and money laundering. In addition to prosecuting the case at trial, I later wrote the brief on appeal and successfully argued the case before the United States Court of Appeals for the Fifth Circuit. The dates of my representation were 1998 to 2003. The jury trial was heard by United States District Judge Walter Smith. The direct appeal in *United States v. Pita-Raygo*, No. 01-51100, 2002 WL 32180386, at \*11 (5th Cir. Sept. 27, 2002) (unpublished) was before Circuit Judge E. Grady Jolly, Circuit Judge Edith H. Jones, and Circuit Judge Jacques L. Wiener, Jr. The direct appeal in *United States v. Cruz*, No. 01-50642, 62 F. App'x 557, 557 (5th Cir. Mar. 6, 2003) (unpublished) was heard by Circuit Judge Patrick Errol Higginbotham, Circuit Judge Emilio M. Garza, and Circuit Judge James L. Dennis.

Defense Counsel:

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Attorney at Law  
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James N. Vasilas (for defendant Adame)  
Law Office of James N. Vasilas  
436 West Davis Street

Dallas, TX 75208  
(214) 358-5140

Richard E. Carrizales (for defendant Perez)  
Carrizales Law Offices  
100 North Central Expressway, Suite 800  
Richardson, TX 75080  
(214) 821-6055

Victor Amador (for defendant Cruz)  
Law Office of Victor Amador  
777 Main Street, Suite 600  
Ft. Worth, TX 76102  
(800) 879-4609

(7) *United States v. Perez*, No. 5:98-CR-00265 (W.D. Tex. Sept. 30, 1999).

I represented the United States in this case. The lead defendant, the general at the time of the Texas Mexican Mafia, his captain, and a number of lieutenants committed 15 murders in the San Antonio area. This gang extorted money, distributed drugs, and committed violent home invasions, as well as many other illegal acts. In one of the home invasions, five innocent people were executed when mafia members broke into a different house than the one they had intended. That episode remains one of the worst mass murders in San Antonio's history. The defendants were prosecuted under the Racketeering Influenced Corrupt Organizations (RICO) statute and the case was tried to a jury over the course of several months. There were a total of 16 defendants, ten of whom elected to go to trial. All defendants were convicted. The defendants who negotiated pleas received lengthy sentences short of life imprisonment. All ten defendants who went to trial were found guilty of RICO conspiracy and substantive counts, and are now serving life sentences in federal prison, with the exception of the lead defendant, who was later tried by Bexar County, convicted of capital murder, and executed. The dates of my representation were 1997 to 2008. The case was heard by United States District Judge Edward C. Prado.

Co-counsel for the Government:

Bill Baumann, deceased

Defense Counsel:

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(210) 299-1482

(8) *State v. Valdez*, No. 92-5263 (331st Dist. Ct., Travis County, Tex., 1995).

I represented the State of Texas in this criminal case which became known throughout Austin and much of the nation as the "condom rape" case. The defendant raped his victim at knifepoint in the victim's home. The victim was a volunteer at the Austin Rape Crisis Center and had condoms in her home that the Center routinely distributed. She insisted that he wear a condom if he was going to assault her, stating that she would rather die by his hand during the assault than die a slower death after contracting HIV/AIDS. The case attracted significant media attention when a Travis County grand jury initially "no-billed" the case. The case was later presented to another grand jury which returned a "true bill." The resulting jury trial ended in a guilty verdict and the defendant received a 40-year sentence. Post-conviction, I drafted the State's brief on appeal and argued the case successfully before the Texas Third Court of Appeals in Austin. The dates of my representation were 1992 to 1995. The case was heard by Travis County District Judge Bob Perkins. On appeal, the case was heard by Chief Justice Jimmy Carroll, Justice Woodie Jones, and Justice Mack Kidd.

Co-counsel for the Government:

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Defense Counsel:

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(512) 472-7578

(9) *State v. McDuff*, No. 93-5281 (147th Dist. Ct., Travis County, Tex., 1995).

I represented the State of Texas in this case. The defendant was a serial rapist and killer in the 1960s who resumed his spree of kidnapping, sexually assaulting, and murdering young women shortly after he was paroled from the state prison system in the late 1980s. He was tried over eight to ten weeks in Seguin, Texas, on a change of venue from Austin because of media attention. He had been previously tried and convicted of a murder in Waco, Texas. The unique feature of the Travis County case was that we did not find the victim's body until years after trial, as her killer sat on death row. Prosecuting the case without the victim's body presented problems from the beginning and required innovative solutions to overcome unique evidentiary issues. Law enforcement from many different counties, as well as state and federal agencies, worked together over a number of months to bring the defendant and his co-conspirator to justice. Mr. McDuff

was found guilty, received the death penalty, and was executed. His co-conspirator, Mr. Worley, pleaded guilty the day of trial on a change of venue to Corpus Christi, Texas. He received a 40-year prison sentence. The dates of my representation were 1991 to 1995. The case was heard by Travis County District Judge Will Flowers.

Co-counsel for the Government:

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(512) 971-0273

Defense Counsel:

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Gunter, Bennett and Anthes, P.C.  
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(512) 476-2494

Andrew J. Forsythe (for defendant McDuff)  
Williams & Forsythe  
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Austin, TX 78701  
(512) 477-9959

Dain Whitworth (for defendant Worley)  
Law Office of Dain Whitworth  
131 North Virginia  
Port Lavaca, TX 77979  
(512) 567-1467

(10) *State v. Myers* (Texas Army National Guard Court-Martial 1992).

As a junior captain, I successfully defended a private before a court-martial panel, opposing a trial counsel (prosecutor) who was a lieutenant colonel and a seasoned attorney. My client was accused of maliciously disposing of a very expensive target recognition computer device from the weapon system of an armored tank while on duty at Fort Hood, Texas, as a response to an angry encounter with a first sergeant. The prosecution was brought by the Texas National Guard on behalf of the state. After a court-martial, the panel acquitted my client of the charge and he continued to serve in the National Guard. To my knowledge, this is the only acquittal from a court-martial panel (equivalent to a jury in civil practice) in Texas National Guard history, and I am proud to have defended this young soldier. The case was not assigned a cause number and there is no record of it of which I am aware. The dates of my representation were 1991 to 1992. The case was heard by a military judge, Lieutenant Colonel James Attaway.

Counsel for the Government:

Lieutenant Colonel Peter G. Smith  
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1800 Ross Tower  
500 North Akard Street  
Dallas, TX 75201  
(214) 965-9900

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.)

While at the United States Attorney's Office, I was named the first Anti-Terrorism Coordinator for the Western District of Texas from 2001 to 2002. I was responsible for coordinating the response to emerging events and the planning for contingencies in a diverse and expansive district, made of up seven federal divisions and spanning rural counties and towns as well as two time zones. Along with the United States Attorney, I organized the first Anti-Terrorism Task Forces (now Joint Terrorism Task Forces) and worked to improve cooperation and coordination among federal and state law enforcement agencies within all divisions of the district. These functions were conducted while I continued to litigate cases on my regular docket and supervise 18 attorneys, two paralegals and five legal assistants. In October 2007, I took leave for a few days to travel to Washington, D.C., as a member of the National Association of Assistant United States Attorneys (NAAUSA), to participate in non-public meetings with House of Representatives and Senate staffers to discuss proposed legislation to strengthen retirement pay for federal prosecutors.

Upon my appointment as the United States Magistrate Judge for the Midland/Odessa Division, I began the first federal Reentry Court Program in the Western District of Texas. The court is a modest attempt to address the success of the post-conviction population. This is a program that provides the opportunity for participants to earn up to a one-year reduction of supervised release at the discretion of the United States District Judge. Typically the participants have been on supervised release previously, but have not succeeded for a variety of reasons. This is not only a drug court as it encompasses a level of oversight and care to post-release supervision across the spectrum of federal offenses. Currently, four United States probation officers work with me to ensure that our participants are complying and working toward their stated goals. This is an effort to bridge the gap between people in prison and their return to the community.

A few years ago I began working with our United States District Judge and a number of Midland County employees to initiate a Veterans Court in Midland County. After two years of preparatory work, the court began in January 2016, under the direction of a state district judge. The Veterans Court is an effort to assist veterans with their special needs

and circumstances while holding them accountable for criminal activity. There are a number of interested parties, including the Veterans Administration, which assist in securing treatment, as well as identifying and accessing benefits for veterans.

I have not performed any lobbying activities.

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.

None.

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.

Future benefits I expect to receive are from the government Thrift Savings Plan in which I am currently enrolled, as well as retirement and deferred compensation accounts which I funded during my time as an Assistant District Attorney in Travis County, Texas.

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.

I have no plans, commitments, or agreements to pursue outside employment if confirmed.

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 Report.

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 would be recused from any case I supervised or prosecuted as an Assistant United States Attorney for the Western District of Texas. If any matter were to arise that involved an actual or potential conflict of interest, I would handle it by careful and diligent application of the Code of Conduct for United States Judges as well as other relevant canons and statutory provisions.

- 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 carefully review any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct of United States Judges, and any other laws, rules and practices governing such circumstances.

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.

Throughout my legal career, almost all of which has been as a state and federal prosecutor and as a judge, I have been prohibited by law or significantly limited in my ability to engage in the practice of law outside government service. Through my service as a Judge Advocate in the Texas National Guard, however, I have been able to assist numerous service members and their families with legal issues, not merely as a duty of my employment, but through contact with those members because of my 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 April 2015, I submitted an application to the Federal Judicial Evaluation Committee, which is the selection committee formed by Senators John Cornyn and Ted Cruz. On July 30, 2015, I was interviewed by the Committee in Dallas, Texas. On October 20, 2015, I met with Senators Cornyn and Cruz and their

counsel in Washington, D.C. On October 23, 2015, I was informed by Senator Cornyn's staff that my name had been forwarded to the White House. On November 4, 2015, I met with eight members of the Texas Democratic House Delegation in Washington, D.C. Beginning on January 19, 2016, I was in contact with officials from the Office of Legal Policy at the Department of Justice. On March 4, 2016, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On March 15, 2016, the President submitted my nomination to the Senate. On September 7, 2016, I went before the Senate Judiciary Committee for a hearing. The Senate Judiciary Committee did not hold a vote on my nomination and on January 3, 2017 my nomination was returned by the Senate to the President under provisions of Senate Rule XXXI, paragraph 6 of the Standing Rules of the Senate.

In January 2017, I submitted a second application to the Federal Judicial Evaluation Committee, and, on March 17, 2017, I was interviewed by the Committee in Dallas, Texas. Since April 24, 2017, I have been in contact with members of the White House Counsel's Office. On May 3, 2017, I interviewed with attorneys from the White House Counsel's Office in Washington, D.C. I have been in contact with officials from the Office of Legal Policy at the Department of Justice since May 23, 2017. On September 11, 2017, 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.