

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**PUBLIC**

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

Edwin Scott Frost

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

United States District Judge for the Northern 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 Northern District of Texas  
United States Post Office and Courthouse  
341 Pine Street, Room 2313  
Abilene, Texas 79601

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

1962; Denver 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.

1985 – 1987, Texas Tech University School of Law; J.D., 1987

1980 – 1984, Angelo State University; B.B.A, 1984

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.

2011 – present  
United States District Court for the Northern District of Texas  
United States Post Office and Courthouse  
341 Pine Street, Room 2313

Abilene, Texas 79601  
United States Magistrate Judge

1986 – 1987; 1990 – 2011  
Office of the United States Attorney for the Northern District of Texas  
United States Federal Building and Courthouse  
1205 Texas Avenue, Seventh Floor  
Lubbock, Texas 79401  
Assistant United States Attorney, Civil Division (1990 – 2011)  
Intern (1986 – 1987)

1988 – 1990  
McLean Sanders Price Head & Ellis (now Brackett & Ellis)  
100 Main Street  
Fort Worth, Texas 76102  
Associate

1987 – 1988  
United States District Court for the Northern District of Texas  
United States Federal Building and Courthouse  
1205 Texas, Room C-210  
Lubbock, Texas 79401  
Law Clerk for United States District Judge Samuel R. Cummings

1984 – 1985  
C&W Food Stores  
(now defunct)  
San Angelo, Texas  
Convenience Store Manager

Other affiliations (uncompensated):

1994 – 2011  
Lubbock Trail Riders, Inc.  
No physical address  
Treasurer/Board Member

2003 – 2006; 2010  
Texas State Championship Enduro Circuit  
No physical address  
President (2004 – 2006)  
Vice President (2003)  
Treasurer (2010)  
Board Member (2003 – 2006, 2010)

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 did not serve in the military. I registered for selective service upon turning 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.

Outstanding Performance Rating, United States Attorney's Office (1993 – 2010)  
Hall of Fame, Texas State Championship Enduro Circuit (2009)  
Special Achievement Award, United States Department of Justice (1996)  
Special Achievement Award, United States Department of Justice (1993)  
American Jurisprudence Award, Business Torts, Texas Tech University School of Law (1987)

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.

Abilene Bar Association (2011 – present)  
American Bar Association (2011 – present)  
Federal Magistrate Judges Association (2011 – present)  
Fort Worth/Tarrant County Young Lawyers Association (1988 – 1990)  
Lubbock Bar Association (1990 – approximately 2000)  
National Association of Assistant United States Attorneys (1993 – 2011)  
Tarrant County Bar Association (1988 – 1990)  
United States District Court Operations Committee, Northern District of Texas (2013 – present)  
West Texas Bankruptcy Bar Association (1990 – 2005)

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, 1988

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.

United States Court of Appeals for the Fifth Circuit, 1989  
United States District Court for the Northern District of Texas, 1988  
United States District Court for the Western District of Texas, 2007

I allowed my membership in the United States District Court for the Western District of Texas to lapse in December 2007. The purpose of the admission was solely to handle cases on behalf of the United States in which the United States Attorney's Office for the Western District of Texas had been recused. I did not renew my membership upon conclusion of the cases.

**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.

American Motorcyclist Association (1991 – present)

Lubbock Trail Riders, Inc. (1991 – 2011)

Treasurer/Board Member (1994 – 2011)

Texas State Championship Enduro Circuit (1991 – 2011)

President (2004 – 2006)

Vice President (2003)

Treasurer (2010)

Board Member (2003 – 2006, 2010)

- 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.

To my knowledge, none of these organizations discriminate or formerly discriminated on the basis of race, sex, religion or national origin 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.

As president of the Texas State Championship Enduro Circuit from 2004 to 2006, I authored a quarterly *President's Column* in the organization's newsletter. The articles contained news of upcoming events and reports on past events. I did not retain copies of the articles, nor have I been able to locate copies.

- 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.

From 2005 to 2010, while treasurer for the Lubbock Trail Riders, Inc., I prepared a year-end financial statement for the organization, consisting primarily of dues received and rent paid. I did not retain copies of these reports.

In 2010, while treasurer for the Texas State Championship Enduro Circuit, I prepared a year-end financial statement for the organization, consisting primarily of membership fees received, sanction fees received, and expenses paid. I did not retain a copy of this report.

- 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.

None.

- 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.

I have searched my files as well as public databases and the Internet to compile the list below. I have attempted to generate a complete list; however, it is possible there have been events I have been unable to identify or recall.

2011 – present: Speaker, Naturalization Ceremonies, United States District Court for the Northern District of Texas, San Angelo, Texas. I preside over quarterly naturalization ceremonies for new citizens and have conducted ceremonies on the first Wednesday of the following months: September and December 2011; March, June, September, and December 2012; March, June, September, and December 2013; March, June, September, and December 2014; and March, June, September, and December 2015. With slight modifications, I gave essentially the same remarks on each occasion. A copy of my most recent remarks is supplied, as well as representative press coverage.

May 1, 2015: Speaker, Monthly Meeting, Abilene Bar Association, Abilene, Texas. Notes supplied.

April 20, 2013; April 5, 2014; April 18, 2015: Panelist, “Annual Judicial Clerkship and Internship Training Academy,” Texas Tech University School of Law, Lubbock, Texas. I discussed what I expect from a law clerk and provided examples of the duties my clerks typically perform. I have no notes, transcript or recording, but press coverage is supplied. The address for Texas Tech School of Law is 1802 Hartford Avenue, Lubbock, Texas 79409.

January 2015: Speaker, “Junior Leadership Forum,” Leadership San Angelo, San Angelo, Texas. I spoke to groups of high school students about the role of our federal courts and my career as judge and lawyer, and answered questions about the law in general. I have no notes, transcript or recording. The address for Leadership San Angelo is c/o San Angelo Chamber of Commerce, 418 West Avenue B, San Angelo, Texas 76903.

September 13, 2013: Guest Lecturer, Federal Courts, Abilene Christian University, Abilene, Texas. I spoke to a government class about the federal court system. I have no notes, transcript or recording. The address of Abilene Christian University is 1600 Campus Court, Abilene, Texas 79601.

October 6, 2011: Presenter, “CJA Federal Criminal Law Program,” Texas Criminal Defense Lawyers Association, Austin, Texas. I spoke on arraignments, detention hearings, and misdemeanors as part of an introductory program for attorneys interested in accepting appointments in federal criminal cases. I have no notes, transcript or recording. The address for the Texas Criminal Defense Lawyers Association is 6808 Hill Meadow Drive, Austin, Texas 78736.

Fall 2011: Speaker, Monthly Meeting, Abilene Bar Association, Abilene, Texas. As the new federal magistrate judge in Abilene, I was asked to introduce myself to the membership and speak about the federal court system and my duties as magistrate judge. I have no notes, transcript or recording. The address of the Abilene Bar Association is Post Office Box One, Abilene, Texas 76901.

August 19, 2011: Speaker, Investiture Ceremony, United States District Court for the Northern District of Texas, Abilene, Texas. Notes supplied.

January 2009: Speaker, Induction into the Hall of Fame, Texas State Championship Enduro Circuit, Fort Worth, Texas. Notes supplied.

January 2005 – 2007: Speaker, Awards Banquet, Texas State Championship Enduro Circuit, Fort Worth, Texas. As president of the Texas State Championship Enduro Circuit, I presided over the annual awards banquet each January, welcoming guests, summarizing the year's activities, and coordinating the presentation of awards. I have no notes, transcripts or recordings. The address of the Texas State Championship Enduro Circuit is Post Office Box 64188, Lubbock, Texas 79464.

1994 – 2003: Instructor, "Basic Civil Trial Advocacy Course," National Advocacy Center, Columbia, South Carolina. This intensive two-week course is mandatory for all new civil Assistant United States Attorneys and many agency attorneys, and is designed to familiarize students with the nuances of federal practice and provide a refresher on discovery, motion practice, evidence, and trial skills. The course concludes with students participating in a one-day mock trial before visiting federal judges and actual jurors. Instructors are assigned to the first or second week, and present lectures, lead discussion groups, direct evidentiary exercises, offer personal critiques, and serve as mentors. I served as an instructor approximately six to eight times, lecturing on at least one of the above topics. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

- 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 searched my files as well as publicly available Internet sources to create a comprehensive response to this question; however, it is possible that I have given other interviews that I have been unable to identify or recall.

Jane Jeschke, *New Citizens Bring Global Shine to West Texas*, San Angelo Standard-Times, March 7, 2012. Copy supplied.

Kyle Suratt, *U.S. Magistrate Judge Philip Lane Retiring*, San Angelo Standard-Times, June 6, 2011. Copy supplied.

*Bitter Pill; Inadmissible*, Texas Lawyer, September 6, 1999. 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.

On June 16, 2011, I was appointed to the position of United States Magistrate Judge for the United States District Court for the Northern District of Texas, Abilene and San Angelo Divisions, to serve an eight-year term. At that time, U.S. District Judge Samuel Cummings (now Senior Judge) presided over the San Angelo and Abilene Divisions, with the exception of fifty percent of the Abilene criminal docket, which was handled by Chief United States District Judge Jorge Solis. On cases assigned to Judge Cummings, I presided over criminal misdemeanors from initial appearance through sentencing, but all felony defendants were transferred to Lubbock after initial appearance. With regard to civil cases, I handled prisoner litigation and Social Security appeals from inception to judgment, assuming consent of the parties, and if not, by report and recommendation to the district judge. Judge Cummings retained responsibility for all general civil cases.

On January 1, 2015, Judge Cummings took senior status, and his Abilene caseload was reassigned to Judge Solis. Since that time, in addition to traditional misdemeanor assignments and standard felony pretrial proceedings, such as initial appearances, arraignments, detention hearings, and applications for search warrants, I have received a broad range of referrals, which include rearraignments, revocations of supervised release, and competency hearings (all of which are then submitted by report and recommendation to the district judge). I am now also responsible for pretrial management of all Abilene civil cases, and am authorized to handle those cases to conclusion upon consent of the parties. My San Angelo Division duties remain the same, as Senior Judge Cummings retains responsibility for that docket.

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

Court records indicate that I have presided over and entered judgment or verdict in 308 cases. Approximately 65% of those were civil and 35% criminal. Only two cases went to trial, both by jury; the other cases noted above were resolved via dispositive motion, settlement of the parties, or entry of a plea.

- i. Of these, approximately what percent were:

jury trials:	100%
bench trials:	0%
civil proceedings:	100%
criminal proceedings:	0%

- 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 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).

(1) *McCorkle v. Cobra Enters., Inc.*, No. 1:15-CV-154-P-BL (N.D. Tex. Nov. 17, 2015).

Plaintiff sued a gun manufacturer, ammunition manufacturer, and distributor pawn shop after a handgun allegedly malfunctioned and exploded in plaintiff's hand upon its first use, causing him injury. Defendant handgun manufacturer, with consent, removed to federal court on diversity jurisdiction, alleging the pawn shop—the only non-diverse defendant—had been fraudulently joined. Defendants cited a written release executed between plaintiff and the pawn shop, and argued the release eliminated any theory of recovery against the pawn shop, which they urged the court to dismiss. Plaintiff claimed the release was invalid and that valid claims remained against the pawn shop, and subsequently filed a motion to remand the case back to state court. Interpreting the release under Texas contract law, I concluded each of plaintiff's arguments was unavailing. I recommended the pawn shop be dismissed and the case remain in federal court. After no objections were filed, the district judge adopted my report and recommendation, dismissed the pawn shop, and denied plaintiff's motion to remand. My report and recommendation and the district judge's order are supplied.

Plaintiff's counsel:

Jacob Austin Blizzard  
Parker & Blizzard PLLC  
702 Hickory Street, Suite C  
Abilene, TX 79601  
(325) 676-1000

Defendant's counsel (handgun manufacturer):

Darrell L. Barger  
Hartline Dacus Barger Dreyer LLP  
800 North Shoreline Boulevard, Suite 2000 North Tower  
Corpus Christi, TX 78401  
(361) 866-8000

Defendant's counsel (pawn shop):

Anthony B. James  
Hodge & James  
402 South F Street, Second Floor  
Westoria Building

Harlingen, TX 78550  
(956) 425-7400

Defendant's counsel (ammunition manufacturer):

Robert L. Craig, Jr  
Craig Terrill Hale & Grantham  
P.O Box 1979  
Lubbock, TX 79408  
(806) 744-3232

(2) *Tigé Boats, Inc. v. Interplastic Corp.*, No. 1:15-CV-114-P-BL, *adopted by* 2015 WL 9268423 (N.D. Tex. Dec. 21, 2015).

Plaintiff boat manufacturer filed suit against suppliers of allegedly faulty “gelcoat” water sealant products, seeking declaratory and injunctive relief that no arbitration agreement existed between the parties. Plaintiffs argued that a series of purchase order transactions conducted in 2013 and 2014 constituted the boundaries of the dispute. The purchase order transaction documents contained and referred to multiple, arguably conflicting, arbitration provisions. Defendants moved the court to compel arbitration, arguing that an arbitration agreement in a 2006 open account agreement between the parties governed the gelcoat transactions and provided that the arbitrator alone had the power to determine arbitrability. I issued a report and recommendation, recommending that the arbitrator should determine the issue of arbitrability in the first instance and that the 2006 agreement’s unquestionably broad arbitration provision covered the gelcoat dispute. Therefore, I recommended granting defendants’ motion to compel arbitration and staying the case pending such arbitration. Over objections from and additional evidence presented by plaintiff, the district judge adopted my recommendation. My report and recommendation is supplied.

Plaintiff's counsel:

Robert B. Wagstaff  
McMahon Surovik Suttle PC  
400 Pine Street, Suite 800  
Abilene, TX 79601  
(325) 676-9183

Defendants' counsel:

Skyler Y. Stuckey  
Gray Reed & McGraw  
1601 Elm Street, Suite 4600  
Dallas, TX 75201  
(214) 954-4135

Andrew K. York  
Looper Reed & McGraw PC  
1601 Elm Street, Suite 4600  
Dallas, TX 75201  
(214) 954-4135

John Willard Ursu  
Greene Espel PLLP  
222 South Ninth Street, Suite 2200  
Minneapolis, MN 55402  
(612) 373-0830

(3) *Bennett v. Harrington Hoists*, No. 1:15-CV-072-P-BL, 2015 WL 5513576 (N.D. Tex. Aug. 27, 2015), *adopted by* 2015 WL 5472497 (N.D. Tex. Sept. 17, 2015).

Plaintiff filed a personal injury suit in state court alleging he was injured while working inside an electric windmill when a hoist manufactured by defendant Harrington Hoists malfunctioned and fell on his hand. Defendants removed on diversity jurisdiction, arguing fraudulent joinder of two individual defendants who would have destroyed diversity. Plaintiff filed a motion to remand, asserting first that the two individual defendants were not fraudulently joined, and second that removing defendants had failed to establish diversity of even the entity defendants. I concluded that defendants had attempted to establish the citizenship of certain limited liability company defendants according to the rules used to establish the citizenship of a corporation. I recommended the case be remanded to state court because no federal court jurisdiction existed. Over no objections, the district judge adopted my recommendation.

Plaintiff's counsel:

Cade W. Browning  
Browning Law Firm, PLLC  
P.O. Box 1600  
Abilene, TX 79604  
(325) 437-3737

Defendant's counsel (Harrington Hoists, Inc.):

Benton Williams, II  
Cooper & Scully PC  
Founders Square  
900 Jackson Street, Suite 100  
Dallas, TX 75202  
(214) 712-9544

Defendants' counsel (Pyron Wind Farm, LLC, E.On Climate &Renewables North America, LLC, E.On Global Commodities North America, LLC, Mr. Darnell):

Douglas D. Fletcher  
Fletcher Farley Shipman & Salinas LLP  
9201 North Central Expressway, Sixth Floor  
Dallas, TX 75231  
(214) 987-9600

(4) *Stewart v. Guzman*, No. 1:11-CV-036-BL, 2012 WL 6629566 (N.D. Tex. Dec. 20, 2012), *rev'd*, 555 F. App'x 425 (N.D. Tex. Feb. 20, 2014), on remand (N.D. Tex. Apr. 23, 2015).

A prisoner alleged multiple prison guards and administrators displayed deliberate indifference to his serious medical needs when they denied him proper treatment for his asthma on five separate occasions. All parties consented to jurisdiction before the magistrate judge, after which I granted summary judgment for the nine defendants, finding that after defendants pled qualified immunity, the prisoner had failed to meet his evidentiary burden by relying on his own testimony and unsworn statements from fellow inmates. The prisoner appealed to the Fifth Circuit Court of Appeals, which reversed, stating, "while unsworn affidavits are usually insufficient to raise a genuine issue of material fact, . . . an unsworn declaration in writing of a person which is subscribed by him as true under penalty of perjury and dated may substitute for a sworn declaration." 555 F. App'x 425 (N.D. Tex. Feb. 20, 2014).

I conducted a jury trial on the issue of deliberate indifference. The jury found in favor of seven of the defendants; however, the jury found two defendants displayed deliberate indifference and were not entitled to qualified immunity. The jury found these two defendants liable for punitive damages in the amount of \$2,500 each. I entered judgment accordingly. Defendants filed numerous post-judgment motions in an attempt to attack the verdict and vacate the judgment, all of which I denied. The parties conducted extended post-judgment discussions and came to an agreement whereby the prisoner would move to vacate the judgment and the State would pay the prisoner the dollar amount awarded by the jury, rather than the individual defendants paying such amount. Ultimately, I granted the prisoner's motion to vacate and the State paid his award.

Plaintiff appeared *pro se*

Defendants' counsel:

Briana Marie Webb  
Seth Byron Dennis  
Office of the Attorney General of Texas

300 West 15th Street  
Austin, TX 78701  
(512) 463-2100

(5) *Hagle v. Colvin*, No. 1:13-CV-132-C (N.D. Tex. Jan. 15, 2015), *adopted in* 2015 WL 736165 (N.D. Tex. Feb. 20, 2015).

This was a report and recommendation issued in regard to a Social Security disability appeal. The claimant alleged that the Administrative Law Judge (“ALJ”) reached an improper conclusion about his ability to perform work in the national economy, and thus claimed that the ALJ’s decision was not based on substantial evidence. I analyzed the matter under the applicable framework and determined that the ALJ had properly analyzed the claimant’s ability to work. As such, I recommended that the ALJ’s decision be affirmed and the claimant’s case be dismissed. The district judge adopted my report and recommendation over the claimant’s objections.

Plaintiff’s counsel:

Marianna E. McKnight  
Marianna E. McKnight, Attorney at Law  
2448 East 81st Street, Suite 2038  
Tulsa, OK 74137  
(918) 742-6600

Defendant’s counsel:

Keith D. Simonson  
Office of General Counsel  
Social Security Administration  
1301 Young Street, A702  
Dallas, TX 75202  
(210) 767-3459

(6) *SEC v. Stanford International Bank, Ltd.*, No. 3:09-CV-0298-N, 2014 WL 3702558 (N.D. Tex. July 25, 2014).

In 2012, I was referred, by U.S. District Judge David Godbey, a substantial portion of the pretrial management for approximately 100 cases involving asset recovery in a major Ponzi scheme. The referral order authorized me to enter scheduling orders, hear and resolve all discovery disputes, and enter findings, conclusions, and recommendations in pending motions to dismiss. I continued to assist in the *Stanford* cases until February 2014, at which time my regular duties had increased to the point that my continued involvement was impossible.

This matter from the *Stanford* litigation involved a discovery dispute between the

receiver and a non-party bank. The receiver requested a judicial determination as to which subpoenaed documents, produced *in camera* by the non-party bank, were exempt from disclosure pursuant to the Bank Secrecy Act, because such would reveal the existence of a Suspicious Activity Report.

Receiver/Movant's counsel:

Kevin Sadler  
Baker Botts, LLP  
1001 Page Mill Road  
Building One, Suite 200  
Palo Alto, CA 94304  
(650) 739-7518

Whitney Bank/subpoenaed party's counsel:

Kenneth C. Johnson  
Kane Russell Coleman and Logan, PC  
1601 Elm Street, Suite 3700  
Dallas, TX 75201  
(214) 777-4200

(7) *Janvey v. Suarez*, 978 F. Supp. 2d 685 (N.D. Tex. Oct. 17, 2013).

Another matter arising out of the *Stanford* litigation, this case involved a choice of law issue. The defendant moved to dismiss, contending that Florida law controlled the claims of the receiver, and that such law warranted dismissal of the complaint against her. In a report and recommendation to the district judge, I determined the majority of defendant's objections should be denied. The district judge adopted my recommendations.

Receiver's counsel:

Kevin Sadler  
Baker Botts, LLP  
1001 Page Mill Road  
Building One, Suite 200  
Palo Alto, CA 94304  
(650) 739-7518

Defendant's counsel:

Michael J. Stanley  
Stanley Frank & Rose  
7026 Old Katy Road, Suite 259  
Houston, TX 77024

(713) 980-4381

(8) *Janvey v. Conzelman*, No. 3:11-CV-2788, 2013 WL 5583850 (N.D. Tex. Oct. 10, 2013).

In this *Stanford* litigation case, defendants moved to dismiss for lack of personal jurisdiction and for failure to state a claim on three separate grounds. I made a report and recommendation to the district judge, recommending that the motion be denied since the personal jurisdiction argument had been unsuccessfully made in prior *Stanford* cases, and that the complaint was sufficient to withstand dismissal. The district judge adopted my recommendations.

Receiver's counsel:

Kevin Sadler  
Baker Botts, LLP  
1001 Page Mill Road  
Building One, Suite 200  
Palo Alto, CA 94304  
(650) 739-7518

Defendants' counsel:

Thomas L. Taylor  
Taylor Law Office  
4550 Post Oak Place, Suite 241  
Houston, TX 77027  
(713) 626-5300

(9) *Flores v. Boecker*, No. 1:10-CV-098-BL, 2012 WL 2681046 (N.D. Tex. July 6, 2012), *rev'd in part*, 531 F. App'x 472 (5th Cir. 2013), on remand.(N.D. Tex. Jun. 26, 2014).

In this prisoner litigation case, Mr. Flores contended a correctional officer subjected him to excessive use of force and retaliation, and was deliberately indifferent to his serious medical needs. Specifically, Mr. Flores alleged that a correctional officer intentionally slammed his finger in a cell door. The correctional officer claimed that the injury was accidental and that he did not see Mr. Flores's hand when shutting the door. Summary judgment was granted in favor of the defendant because the plaintiff failed to demonstrate a retaliatory intent or a chronology of events from which retaliation could be inferred. That order was reversed in part on appeal. *See* 531 F. App'x 472 (5th Cir. 2013). The Fifth Circuit opined that a potential issue of fact remained as to the officer's intent, and remanded for further proceedings. I presided over the jury trial, where a verdict was returned for the defendant.

Plaintiff appeared *pro se*

Defendants' counsel:

Patrick Pope  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711  
(512) 463-2080

(10) *Robledo v. Leal*, No. 1:11-CV-077-BL, 2012 WL 1138620 (N.D. Tex. Apr. 5, 2012), *rev'd in part*, 531 F. App'x 479 (5th Cir. 2013), on remand (N.D. Tex. Aug. 4 & Sept. 25, 2014).

Mr. Robledo alleged his constitutional rights were violated when he was subjected to a visual body cavity search in the presence of female officers while returning from worship service at the prison chapel. I dismissed the case, finding the search reasonable when balanced against legitimate penological interests. Mr. Robledo appealed, and the Fifth Circuit affirmed in part and reversed in part. 531 F. App'x 479 (5th Cir. 2013). On remand, after further briefing and discovery, I granted summary judgment for the defendants, which was not appealed. My orders granting partial summary judgment and summary judgment are supplied.

Plaintiff appeared *pro se*

Defendants' counsel:

Leah Jean O'Leary  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711  
(512) 463-2080

- 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) *Tigé Boats, Inc. v. Interplastic Corp.*, No. 1:15-CV-114-P-BL, *adopted in* 2015 WL 9268423 (N.D. Tex. Dec. 21, 2015). My report and recommendation was previously supplied in response to Question 13c.

Plaintiff's counsel:

Robert B. Wagstaff  
McMahon Surovik Suttle PC



400 Pine Street, Suite 800  
Abilene, TX 79601  
(325) 676-9183

Defendants' counsel:

Skyler Y. Stuckey  
Gray Reed & McGraw  
1601 Elm Street, Suite 4600  
Dallas, TX 75201  
(214) 954-4135

Andrew K. York  
Looper Reed & McGraw PC  
1601 Elm Street, Suite 4600  
Dallas, TX 75201  
(214) 954-4135

John Willard Ursu  
Greene Espel PLLP  
222 South Ninth Street, Suite 2200  
Minneapolis, MN 55402  
(612) 373-0830

(2) *Cardoza v. United States*, No. 1:13-CV-71-BL (N.D. Tex. Dec. 4, 2015).  
Decision supplied.

Plaintiff appeared *pro se*

Defendants' counsel:

Tami C. Parker  
United States Attorney's Office  
801 Cherry Street, Suite 1700  
Fort Worth, TX 76102  
(817) 252-5200

(3) *Gaines v. United States*, No. 1:09-CV-223-BL (N.D. Tex. Sept. 9, 2015).  
Decision supplied.

Plaintiff appeared *pro se*

Defendants' counsel:

Brian Walters Stoltz  
United States Department of Justice

1100 Commerce Street, Third Floor  
Dallas, TX 75242  
(214) 659-8626

(4) *Harris v. Colvin*, No. 4:14-CV-00327-Y-BL, 2015 WL 5319814 (N.D. Tex. Aug. 19, 2015), *adopted by* 2015 WL 5320080 (N.D. Tex. Sept. 10, 2015).

Plaintiff's counsel:

Michael T. Kelly  
Morgan & Weisbrod  
11551 Forest Central Drive, Suite 300  
Dallas, TX 75382  
(214) 373-3761

Defendant's counsel:

Natalie E. Olszewski  
United States Social Security Administration  
1301 Young Street, Suite A702  
Dallas, TX 75202  
(214) 767-6942

(5) *Decker v. Colvin*, No. 7:12-CV-158-BL, 2014 WL 4494145 (N.D. Tex. Sept. 11, 2014).

Plaintiff's counsel:

Tom I. Schrandt  
Law Office of Tom Schrandt  
1401 Holliday Street, Suite 408  
Wichita Falls, TX 76301  
(940) 322-4040

Defendant's counsel:

Dianne Marie Mullins Pryor  
United States Social Security Administration  
1301 Young Street, Suite A702  
Dallas, TX 75202  
(214) 767-3204

(6) *Robledo v. Leal*, No. 1:11-CV-077-BL (N.D. Tex. Aug. 4 and Sept. 24, 2014)  
Decisions previously supplied in response to Question 13c.

Plaintiff appeared *pro se*

Defendants' counsel:

Leah Jean O'Leary  
Texas Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711  
(512) 463-2080

(7) *SEC v. Stanford Int'l Bank, Ltd.*, No. 3:09-CV-0298-N, 2014 WL 3702558 (N.D. Tex. July 25, 2014).

Receiver/Movant's counsel:

Kevin Sadler  
Baker Botts, LLP  
1001 Page Mill Road  
Building One, Suite 200  
Palo Alto, CA 94304  
(650) 739-7518

Whitney Bank/subpoenaed party's counsel:

Kenneth C. Johnston  
Kane Russell Coleman and Logan, PC  
1601 Elm Street, Suite 3700  
Dallas, TX 75201  
(214) 777-4200

(8) *Esquivel-Solis v. United States*, No. 1:10-CV-293-BL (N.D. Tex. Feb. 21, 2014). Decision supplied.

Plaintiff appeared *pro se*

Defendant's counsel:

D. Gordon Bryant, Jr.  
United States Attorney's Office  
500 South Taylor, Suite 300 LB 238  
Amarillo, TX 79101  
(806) 324-2356

(9) *Janvey v. Suarez*, 978 F. Supp. 2d 685 (N.D. Tex. Oct. 17, 2013).

Receiver's counsel:

Kevin Sadler  
Baker Botts, LLP  
1001 Page Mill Road  
Building One, Suite 200  
Palo Alto, CA 94304  
(650) 739-7518

Defendant's counsel:

Michael J. Stanley  
Stanley Frank & Rose  
7026 Old Katy Road, Suite 259  
Houston, TX 77024  
(713) 980-4381

(10) *Janvey v. Conzelman*, No. 3:11-CV-2788, 2013 WL 5583850 (N.D. Tex. Oct. 10, 2013).

Receiver's counsel:

Kevin Sadler  
Baker Botts, LLP  
1001 Page Mill Road  
Building One, Suite 200  
Palo Alto, CA 94304  
(650) 739-7518

Defendants' counsel:

Thomas L. Taylor  
Taylor Law Office  
4550 Post Oak Place, Suite 241  
Houston, TX 77027  
(713) 626-5300

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

I know of no cases in which certiorari was granted. Certiorari was denied in the following cases:

*Mitchell v. Texas Dept. of Criminal Justice, et al.*, No. 1:11-CV-45, 2011 WL 6029884 (N.D. Tex. Dec. 5, 2011), *appeal dismissed in* 533 F. App'x 467 (5th Cir. 2013), *cert. denied*, 103 S. Ct. 553.

*Montoya v. Olson*, No. 1:12-CV-120-BL, *cert. denied*, 134 S. Ct. 939.

*Krieg v. Steele*, No. 1:13-CV-52, *aff'd*, 599 F. App'x 231 (5th Cir. 2015), *cert. denied*, 136 S. Ct. 238.

- 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.

To the best of my knowledge, only four of my final orders have been appealed to the Fifth Circuit and subsequently reversed or reversed in part:

*Summers v. Fed. Bureau of Prisons*, No. 1:13-CV-138-BL, *rev'd in part*, 2015 WL 9466008 (5th Cir. 2015) (*per curiam*). Plaintiff brought claims under the Federal Tort Claims Act, *Bivens*, and 42 U.S.C. § 1983 complaining of the medical care he received in federal prison regarding his digestive system, which ultimately required the employment of a permanent colostomy bag. After a review of the extensive medical record, I dismissed plaintiff's claims as frivolous, specifically finding the FTCA claim to be time-barred. The Fifth Circuit Court of Appeals affirmed in substantial part, but reversed on the FTCA timing aspect, saying "it cannot be said that it is 'clear from the face of the complaint' that Summers's FTCA claim is barred by the applicable statute of limitations." A copy of my order of dismissal is supplied.

*Stewart v. Guzman*, No. 1:11-CV-036-BL, 2012 WL 6629566 (N.D. Tex. Dec. 20, 2012), *rev'd and remanded*, 555 F. App'x 425 (5th Cir. 2014). I granted summary judgment for defendants in this prisoner *pro se* complaint matter, finding that after defendants pled qualified immunity, plaintiff failed to meet his evidentiary burden by relying on his own testimony and unsworn statements from fellow inmates. The prisoner appealed to the Fifth Circuit, which reversed, stating, "while unsworn affidavits are usually insufficient to raise a genuine issue of material fact, . . . an unsworn declaration in writing of a person which is subscribed by him as true under penalty of perjury and dated may substitute for a sworn declaration." I then conducted a trial on remand in which the jury found in favor of seven of the defendants but found that two defendants displayed deliberate indifference and were not entitled to qualified immunity. Later, I granted plaintiff's motion to vacate the judgment after he reached an agreement with the State.

*Flores v. Boecker*, No. 1:10-CV-098-BL, 2012 WL 2681046 (N.D. Tex. July 6, 2012) *rev'd in part*, 531 F. App'x 472 (5th Cir. 2013). In this prisoner litigation case, a prisoner alleged that a correctional officer intentionally slammed his finger in a cell door, and claimed excessive use of force, retaliation, and deliberate indifference to serious medical needs. The correctional officer claimed that the injury was accidental. Summary judgment was granted in favor of the defendant because the plaintiff failed to demonstrate a retaliatory intent or a chronology of

events from which retaliation could be inferred. The Fifth Circuit reversed, opining that a potential issue of fact remained as to the officer's intent, and remanded for further proceedings. I presided over a jury trial where a verdict was returned for the defendant.

*Robledo v. Leal*, No. 1:11-CV-077-BL, 2012 WL 1138620 (N.D. Tex. Apr. 5, 2012), *aff'd in part, vacated in part, rev'd in part* 531 F. App'x 479 (5th Cir. 2013). Mr. Robledo alleged his constitutional rights were violated when he was subjected to a visual body cavity search in the presence of female officers while returning from worship service at the chapel. Finding the search reasonable when balanced against legitimate penological interests, the case was dismissed. Mr. Robledo appealed, and the Fifth Circuit Court of Appeals affirmed in part and reversed in part, holding that the claims brought under the Religious Land Use and Institutionalized Person's Act (RLUIPA), the Fourth Amendment, and a theory of retaliation were not based on an indisputably meritless legal theory. Therefore, dismissal of such claims as frivolous was an abuse of discretion. On remand, after further briefing and discovery, I granted summary judgment for the defendants, which was not appealed.

To the best of my knowledge, I have issued 192 reports and recommendations in civil cases. For these reports and recommendations that were adopted by the district judge and then appealed to the Fifth Circuit, I am aware of only three cases that were reversed or reversed in part:

*Copeland v. Astrue*, No. 1:12-CV-142-C-BL, *adopted sub. nom in Copeland v. Colvin*, 2013 WL 3779734 (N.D. Tex. July 19, 2013), *rev'd*, 771 F.3d 920 (5th Cir. 2014). I recommended a Social Security plaintiff's claim for disability benefits be denied. I found the administrative law judge did not err in finding plaintiff could still perform her past relevant work as a home health aide. Over objections, the district judge adopted my report and recommendation. Plaintiff appealed to the Fifth Circuit Court of Appeals, primarily arguing a rebuttable presumption existed that when a claimant's earnings are below a certain threshold, the work giving rise to those earnings does not count as "substantial gainful activity" under the Social Security regulations. The Fifth Circuit held such a rebuttable presumption exists and remanded for the Commissioner to address plaintiff's earnings and determine whether the presumption had been rebutted.

*Wagner v. Campuzano*, No. 1:12-CV-205-C, 2013 WL 4851618 (N.D. Tex. Sept. 11, 2013), *aff'd in part, rev'd in part*, 562 F. App'x 255 (5th Cir. 2014). Plaintiff prisoner brought suit against prison employees alleging retaliation and violation of his free exercise rights under the First Amendment, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and the Texas Religious Freedom Restoration Act (TRFRA). I dismissed plaintiff's claims as frivolous. The Fifth Circuit agreed with my determination as to the retaliation claim, but held the First Amendment and RLUIPA claims had an arguable basis in law. Therefore, the Fifth Circuit reversed on the First Amendment and RLUIPA claims, and other

claims which were contingent thereon.

*Robledo v. Livingston*, No. 1:12-CV-061-C (N.D. Tex. Nov. 20, 2012), *adopted in* No. 19 (N.D. Tex. Feb. 21, 2013), *aff'd in part, vacated in part*, 562 F. App'x 235 (5th Cir. 2014). A prisoner plaintiff claimed that prison employees violated his free exercise rights when he was placed in segregated housing and not allowed to participate in certain weekly religious meetings. I recommended dismissal and the district judge adopted my recommendation. The Fifth Circuit affirmed in part, but disagreed with the district court ruling that plaintiff's Religious Land Use and Institutionalized Persons Act (RLUIPA) claims were based on an indisputably meritless legal theory and therefore frivolous. Accordingly, the Fifth Circuit vacated the RLUIPA decision and the decisions that were contingent thereon. My recommendation and the district judge's adoption order are supplied.

Every report and recommendation is subject to review by the district judge, and my recommendations have been adopted in approximately 96% of those cases. The following constitute those reports and recommendations which were not adopted or only adopted in part:

*Diaz-Burgos v. Hall*, No. 6:13-CV-054-C (N.D. Tex. Mar. 24, 2015), *declining to adopt in* No. 17 (N.D. Tex. Apr. 17, 2015). I recommended dismissal of a prisoner complaint that alleged that his First Amendment rights of free exercise were infringed when the prison administrators failed to provide a pastor for his religion. I ordered defendants to show cause as to their efforts to help plaintiff obtain a volunteer to come to the prison to help plaintiff in his study of Apostolic Christianity. Satisfied both with the fairly extensive efforts defendants made, and with plaintiff's failure to show a constitutional violation, I recommended dismissal. The district judge declined to adopt my recommendation, but did find plaintiff had failed to state a constitutional claim against the Federal Bureau of Prisons. The district judge ordered the individual defendants to answer, and when they moved for summary judgment, the district judge granted it over no objections from plaintiff. My report and recommendation and the district judge's order are supplied.

*Pina-Suarez v. Rios*, No. 1:11-CV-109-C, 2012 WL 9139393 (N.D. Tex. Apr. 5, 2012), *adopted in part in* 2013 WL 5345839 (N.D. Tex. Sept. 24, 2013). In this prisoner civil rights case, I recommended, *inter alia*, that several named defendants be made to file an answer or other responsive pleading, and recommended that some of plaintiff's claims be dismissed as frivolous. The district judge believed that only two named defendants should be made to answer, and all other claims and named defendants should be dismissed. In the end, the district judge dismissed all claims against all defendants due to plaintiff's failure to comply with the court's orders.

*Barton v. Huerta*, No. 1:14-CV-085-C, 2014 WL 4097450 (N.D. Tex. Aug. 1, 2014), *declining to adopt in* 2014 WL 4088582 (N.D. Tex. Aug. 19, 2014), *aff'd*,

613 F. App'x 426 (5th Cir. 2015). In this prisoner case, I recommended the granting of a preliminary injunction prohibiting a specific prison guard from searching plaintiff's prison cell for the duration of the litigation. On de novo review, the district judge disagreed and denied the injunction. The Fifth Circuit Court of Appeals found the district judge did not abuse his discretion in denying the injunction.

*Michaels v. Colvin*, No. 4:14-CV-382-Y, 2015 WL 4940616 (N.D. Tex. June 26, 2015), *adopted in part* in 2015 WL 4940620 (N.D. Tex. Aug. 19, 2015). In this Social Security benefits appeal, the claimant argued that following a denial of his claim by the administrative law judge, newly submitted evidence was not adequately considered by the appeals council. I concluded the law did not require remand for consideration of the evidence. The district judge adopted my report and recommendation in all respects, except to the extent that a good cause requirement could be read as being required from my recommendation.

The following three cases all share a close factual and procedural relationship. In each case, prisoner plaintiffs from the same prison unit claimed their rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA) were violated by prison employees, who subjected them to strip searches in the presence of female officers. The law was not clearly established at the time I dismissed an identical case, *Robledo v. Leal*, No. 1:11-CV-077-BL, 2012 WL 1138620 (N.D. Tex. Apr. 5, 2012), *aff'd in part, vacated in part, rev'd in part*, 531 F. App'x 479 (5th Cir. 2013), and I recommended dismissal of the three cases below, all as frivolous under RLUIPA. While those recommendations were pending with the district judge, the Fifth Circuit issued an opinion in *Robledo v. Leal*, 531 F. App'x 479 (5th Cir. 2013), which reversed my dismissal and clarified the law. Based on the *Robledo* opinion, the district judge declined to adopt my report and recommendation in the following cases that were pending at the time.

*Starks v. Correll*, No. 1:11-CV-204-BL, 2012 WL 8525334 (N.D. Tex. Jan. 24, 2012), *declining to adopt* in 2013 WL 3488474 (N.D. Tex. July 11, 2013).

*Blackshear v. Correll*, No. 1:11-CV-205-BL, 2012 WL 8670192 (N.D. Tex. Jan. 25, 2012), *declining to adopt* in No. 30 (N.D. Tex. July 18, 2013). The district judge's order is supplied.

*Poulin v. Leal*, No. 1:12-CV-126-C (N.D. Tex. Nov. 20, 2012), *declining to adopt* in No. 15 (N.D. Tex. July 19, 2013). My recommendation and the district judge's order are supplied.

- 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.

All but one of my opinions, *Janvey v. Suarez*, 978 F. Supp. 2d 685 (N.D. Tex.



Oct. 17, 2013), are unpublished, but all are filed and stored in the federal court's electronic case management system. In addition, many of my decisions are available on Westlaw or Lexis.

- 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.

*Bhambra v. GEO Group, Inc.*, 1:14-CV-104-C (N.D. Tex. Mar. 30, 2015), adopted in No. 19 (N.D. Tex. Aug. 4, 2015). My recommendation and the district judge's order are supplied.

*Diaz v. Fed. Bureau of Prisons*, No. 1:14-CV-200-C, 2015 WL 10459592 (N.D. Tex. Oct. 9, 2015), adopted in 2016 WL 1060310 (N.D. Tex. Mar. 11, 2016).

*Carlisle v. Dunn*, No. 6:13-CV-005-C (N.D. Tex. Nov. 25, 2014), report and recommendation incorporated and adopted in 2015 WL 1239622 (N.D. Tex. Mar. 17, 2015), case dismissed in No. 96 (5th Cir. 2015). The Fifth Circuit's dismissal is supplied.

*Marte v. GEO Group Inc.*, No. 1:14-CV-203-C (N.D. Tex. Oct. 27, 2015). My recommendation and the district judge's order are supplied.

- 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.

I have not sat by designation on any federal appellate court.

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. Whether called for by the Code of Conduct for United States Judges, the recusal statutes, or my general interest in maintaining impartiality and the appearance of impartiality of the court, I am conscious of my duty to disclose any potential conflict and to recuse myself if necessary.

I evaluate each case when referred to me, and also review cases as they proceed for potential conflicts which were not disclosed by our district's conflict database or if there is some other reason why I should consider recusal. I recall having been asked to recuse myself in several *pro se* cases simply because of a previous adverse ruling which prompted a bias allegation and motion to recuse from the plaintiff, but such requests were denied by me or the United States District Judge assigned to the case as baseless, and I did not keep a record of these instances. During my time as a magistrate judge, I have not had to recuse myself from any cases, and other than the above exception, no party has filed a motion seeking my recusal.

**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.

I have not held any public office other than my current 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.

I have not been a member, held any office or rendered service to any political party or election committee. I have not held a position or played a role in any political campaign.

**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;

From 1987 to 1988, I clerked for the Honorable Samuel R. Cummings, District Judge of the United States District Court for the Northern District of Texas.

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

I have never practiced alone.

- 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.

1988 – 1990

McLean, Sanders, Price, Head & Ellis (now Brackett & Ellis)  
100 Main Street  
Fort Worth, Texas 76102  
Associate

1990 – 2011

Office of the United States Attorney for the Northern District of Texas  
United States Federal Building and Courthouse  
1205 Texas Avenue, Seventh Floor  
Lubbock, Texas 79401  
Assistant United States Attorney, Civil Division

- 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 have not served 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.

In 1988, I joined the law firm of McLean, Sanders, Price, Head & Ellis in Fort Worth, Texas. I had day-to-day responsibility for general civil litigation matters, including insurance defense and commercial litigation in federal and state courts. My practice included motion practice, written discovery, discovery disputes, depositions, research, and trial preparation.

In 1990, I joined the United States Attorney's Office, Lubbock Division, as an Assistant United States Attorney in the Civil Division. I was

responsible for all types of civil cases involving the United States or its agencies when filed in federal or state court in and around Lubbock, Abilene, and San Angelo, Texas. My practice was primarily defensive, involving tort, employment discrimination, commercial, prisoner, immigration and Social Security disability actions. Affirmatively, I handled tax cases, commercial collection cases, and civil penalty cases. I was responsible for any appeals arising from my cases, and argued four times before the Fifth Circuit Court of Appeals. Prior to 2005, I also represented federal creditors in bankruptcy proceedings, particularly Chapter 12 farm cases.

Since June 2011, I have served as federal magistrate judge for the Northern District of Texas in the Abilene and San Angelo Divisions.

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

During my time in private practice, the majority of my work involved representation of business clients, both individual and corporate. As an Assistant United States Attorney, I represented the United States and its agencies in all civil cases. Representative clients include the Farm Service Agency (formerly Farmers Home Administration), the Small Business Administration, the U.S. Postal Service, and the Internal Revenue Service.

- 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.

As an Assistant United States Attorney, 100 percent of my practice involved litigation. I appeared in court frequently throughout my career. As an associate at McLean Sanders, my time was devoted solely to litigation, although court appearances were occasional.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 95%
- 2. state courts of record: 5%
- 3. other courts: 0%
- 4. administrative agencies: 0%

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 99%
- 2. criminal proceedings: 1%

- 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 tried 39 cases to verdict, judgment or final decision. Of these cases, 29 were tried as sole counsel, eight as lead counsel, and two as associate counsel.

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:

- 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) *Wright v. United States Dep't of Commerce*, No. 6:09-CV-094-C (United States District Court for the Northern District of Texas, San Angelo Division, Apr. 29, 2011); United States District Judge Samuel Cummings.

From 2009 to 2011, I was lead counsel for the government in this alleged age discrimination case. Plaintiff, a National Weather Service employee with 20 years of experience, was not selected for a position as a lead meteorologist, a position ultimately awarded to a female 24 years his junior. Plaintiff claimed violations of the Age Discrimination in Employment Act and Title VII of the Civil Rights Act. During the two-day trial, I was able to convince the jury that age and years of experience do not necessarily determine the most qualified candidate. The jury found in favor of defendants.

Plaintiff's counsel:

Daryl J. Sinkule  
Shellist Lazarz Slobin, LLC  
11 Greenway Plaza, Suite 1515  
Houston, TX 77046  
(713) 621-0993

(2) *Fagras v. Peters*, No. 5:06-CV-075-C (United States District Court for the Northern District of Texas, Lubbock Division, Aug. 13, 2007); United States District Judge Samuel Cummings.

In 2007, I was lead counsel for the government in this case, after a late substitution. Plaintiff, an air traffic controller, alleged he was subjected to a hostile work environment and discriminated against based on age and retaliation after participating in a protected activity (reporting his supervisor for sexually harassing a female coworker). Two years after the complaint was filed, and two weeks before trial, the Assistant United States Attorney assigned to the case took an unexpected leave of absence and I was substituted as lead counsel. I was able to familiarize myself with the file and, along with my civil chief, try the case to a jury, which found in favor of defendants after a two-day trial.

Plaintiff's counsel:

Michael J. Fagras  
Solo Practitioner (formerly of Lampin, Kell, Fagras, Linson, Buehler & Chandler)  
5770 Mexico Road, Suite A  
St. Peters, MO 63376  
(636) 498-4000

Defendant's co-counsel:

John R. Parker  
United States Attorney's Office  
1100 Commerce Street, Third Floor  
Dallas, TX 75242  
(214) 659-8600

(3) *Fox v. United States Postal Serv.*, No. 6:05-CV-053-C (United States District Court for the Northern District of Texas, San Angelo Division, Jan. 25, 2007); United States District Judge Samuel Cummings.

From 2005 to 2007, I was sole counsel for the government in this alleged discrimination case. Plaintiff alleged discrimination by the Postal Service in violation of Section 504 of the Rehabilitation Act of 1973 and the Architectural Barriers Act of 1968 for failing to make the Post Office building in Coleman, Texas accessible by wheelchair. I moved for summary judgment on the basis that the building had not been modified since enactment of the Architectural Barriers Act, and the motion was granted.

Plaintiff's counsel:

James C. Harrington  
Texas Civil Rights Project  
1405 Montopolis Drive  
Austin, TX 78741  
(512) 474-5073

(4) *Foster v. United States Marshals Serv.*, No. 5:05-CV-091-J, 2005 WL 3742804 (United States District Court for the Northern District of Texas, Lubbock Division, Nov. 4, 2005); United States District Judge Mary Lou Robinson.

In 2005, I was sole counsel for the government in this case. Plaintiff, a court security officer (CSO), was terminated from his employment after being diagnosed with hearing loss. He brought claims under the Rehabilitation Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Back Pay Act, and for violations of due process under the Fifth Amendment. Prior to filing the instant suit, Mr. Foster had also joined in an action with several other CSOs in the District of Idaho alleging similar claims, which were dismissed. A motion for summary judgment was filed on behalf of the defendants based on preclusion theories. Mr. Foster conceded all claims were barred by the prior judgments, except for the Rehabilitation Act and due process claims which he asserted were not adjudicated in Idaho. The district court dismissed all claims with prejudice, except for the Rehabilitation Act and Back Pay Act claims. These claims were dismissed without prejudice, as the trial court in Idaho dismissed those claims for lack of jurisdiction. *See* 2005 WL 3742804 (N.D. Tex. Nov. 4, 2005).

Plaintiff's counsel:

Robert C. Huntley  
The Huntley Law Firm  
815 West Washington Street  
Boise, ID 83701  
(208) 388-1230

(5) *Lazdowski v. Potter*, No. 5:03-CV-118-C, 2004 WL 1490059 (United States District Court for the Northern District of Texas, Lubbock Division, July 1, 2004); United States District Judge Samuel Cummings.

From 2003 to 2004, I was sole counsel for the government in this alleged retaliation case. Plaintiff, a Postal Service employee, originally filed suit for retaliation in 2000 and, after trial by jury, was awarded damages and restoration to his prior position. The instant suit alleged that defendants failed to comply with the judgment, in that plaintiff was greeted upon his return with a hostile work environment and ultimately forced to resign. I filed a motion to dismiss or alternatively for summary judgment, which the district court granted. Plaintiff appealed, and the Fifth Circuit affirmed. *See* 134 F. App'x 737 (5th Cir.

2005).

Plaintiff's counsel:

J. Craig Johnston  
Johnston & Miller  
2402 52nd Street  
Lubbock, TX 79412  
(806) 785-1499

(6) *Zamudio v. Mineta*, No. 6:03-CV-110-C (United States District Court for the Northern District of Texas, San Angelo Division, Mar. 24, 2004); United States District Judge Samuel Cummings.

From 2003 to 2005, I was sole counsel for the government in this case. Plaintiff brought action on behalf of her husband who was alleged to be incapacitated and unable to sue on his own behalf. Although not divulged by plaintiff, this incapacitation was the result of sanctions imposed by the district court which prevented the husband from bringing further actions based on the same claims. I filed a motion to dismiss on behalf of both defendants, which was granted. Plaintiff appealed, and the Fifth Circuit affirmed the dismissal. *See* 129 F.App'x 79 (5th Cir. 2005).

Plaintiff appeared *pro se*

(7) *S. Dynamics Therapy, Inc. v. Thompson*, No. 5:03-CV-155-C, 2003 WL 22670991 (United States District Court for the Northern District of Texas, Lubbock Division, Nov. 10, 2003); United States District Judge Samuel Cummings.

In 2003, I was sole counsel for the government in this case. Plaintiff, a provider of various therapy to patients covered by Medicare and Medicaid, contended that it was erroneously advised by defendant Trailblazer on how to code certain claims, which resulted in the denial of payments and allegations of fraud. Plaintiff alleged constitutional rights violations, breach of contract, negligence, tortious interference, false representation and fraud. Defendants sought dismissal of the complaint for lack of jurisdiction because plaintiff failed to meet requirements for review under the Social Security Act. The district court agreed and granted defendants' motion to dismiss.

Plaintiff's counsel:

J. Edwin Price  
Solo Practitioner  
2301 Broadway  
Lubbock, TX 79401  
(806) 747-5000

(8) *Hastey v. Bush*, No. 5:03-CV-088-C, 2003 WL 22289885 (United States District



Court for the Northern District of Texas, Lubbock Division, Oct. 6, 2003); United States District Judge Samuel Cummings.

From 2003 to 2004, I was sole counsel for the government in this case. A *pro se* plaintiff, who raised chickens for the purpose of game fighting competitions, sued the President, Attorney General and Chairman of the House Agricultural Committee for allegedly conspiring with animal rights activists by enacting the Farm Bill of 2002, which the plaintiff contended created a statutory entitlement of rights for animals, in violation of his constitutional rights. Summary judgment was granted in favor of the defendants. Plaintiff appealed, and the Fifth Circuit affirmed the dismissal. *See* 100 F. App'x 319 (5th Cir. 2004).

Plaintiff appeared *pro se*

(9) *United States v. Ramirez*, No. 5:00-CV-351-C, 291 B.R. 386, 47 Collier Bankr.Cas.2d 1626 (United States District Court for the Northern District of Texas, Lubbock Division, Mar. 11, 2002); United States District Judge Samuel Cummings.

From 2000 to 2002, I was sole counsel for the United States, on behalf of the Farmers Home Administration (FmHA), in this an adversary proceeding for determination of its rights in certain property following dismissal of the bankruptcy case upon debtors' failure to make required payments. The district court held that, while dismissal of the Chapter 11 case after confirmation did not operate to reinstate deed of trust liens released by FmHA pursuant to the terms of the plan, the FmHA could avoid the effects of the confirmed plan by rescinding it based on the debtors' repudiation and material breach (failing to make any promised payments or to pay ad valorem taxes on the property).

Debtors' counsel:

Deborah J. Penner  
Solo Practitioner  
P.O. Box 65166  
Lubbock, TX 79464  
(806) 794-0287

(10) *Brown. v. United States*, No. 5:95-CV-027-C (United States District Court for the Northern District of Texas, Lubbock Division, Apr. 29, 1996); United States District Judge Samuel Cummings.

From 1995 to 1997, I was co-counsel for the government in this Federal Tort Claims Act suit involving alleged medical malpractice by a Veterans Administration hospital during plaintiff's spinal surgery, which resulted in paraplegia. Settlement negotiations proved unsuccessful and the case proceeded to trial before the court. After a two-day trial involving expert testimony on complex medical issues, the district judge found in favor of the United States and adopted my proposed findings of fact. On appeal, plaintiffs contended Mr. Brown's consent did not authorize lysis surgery, which dislodged spinal

roots from adhesions in the thoracic level, as such was unnecessary and exploratory. Plaintiffs further argued that the trial court's findings did not reflect a proper weighing of the evidence to provide for meaningful review. The Fifth Circuit affirmed the judgment. *See* 116 F.3d 1476 (5th Cir. 1997).

Plaintiff's counsel:

Roger D. Brown  
(current business contact information unknown)

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.)

Throughout my career with the Department of Justice, I supplemented my regular duties with volunteer assignments and the acceptance of appointed positions at both the local and national level. In approximately 1994, I began serving as an instructor at the Attorney General's Advocacy Institute in Washington, D.C., now known as the National Advocacy Center (NAC) in Columbia, South Carolina. Although the NAC offers training to federal attorneys in many areas of the law, I confined my teaching to the Basic Civil Trial Advocacy Course, an intensive two-week program which was mandatory for all new civil Assistant United States Attorneys and many agency attorneys. The course was designed to familiarize students with the nuances of federal practice and provide a refresher on discovery, motion practice, evidence, and most importantly, trial skills. The course concluded with students participating in a one-day mock trial before federal judges and actual jurors. As an instructor, I was assigned to one of the two weeks, and was charged with presenting lectures, leading discussion groups, directing evidentiary exercises, offering personalized critiques, and serving as mentor and trial advisor to the students. Since becoming a magistrate judge, I have continued to volunteer at the NAC as time allows.

In 1999, I was selected to participate in a program administered by the Executive Office for United States Attorneys through which periodic performance evaluations of all United States Attorney's Offices were conducted. The evaluation and review staff assembled teams of experienced Assistant United States Attorneys to conduct these evaluations, immersing them in assigned districts for one week to determine whether the office was compliant with mandatory Department of Justice policy and practice requirements. Among other things, the team members interviewed all United States Attorney's Office personnel, judges, and representatives from law enforcement and civil client agencies, soliciting candid observations regarding the performance of the office. At the conclusion of the evaluation, the team would draft a report containing detailed findings and recommendations which was ultimately provided to the United States Attorney. I

participated in an average of two evaluations per year from 2000 to 2011.

In 1999, I was appointed by the United States Attorney for the Northern District of Texas to serve as one of three Professional Responsibility Officers (PRO) for the District, and continued to occupy the position under four successive United States Attorneys. In this capacity, I provided daily guidance and periodic training on applicable federal and state rules of professional conduct to all Assistant United States Attorneys in the Northern District of Texas. As the only PRO stationed outside of the Dallas/Fort Worth divisions, and the only civil PRO in the Northern District, I consulted regularly with both criminal and civil attorneys and offered advice on professional responsibility issues which arose in daily practice. Our district also hosted an annual in-house continuing legal education seminar for all Assistant United States Attorneys and agency attorneys, during which I attempted to provide the participants with the proper tools for ensuring that their conduct conformed to applicable professional responsibility standards.

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.

None.

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 to pursue outside employment.

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 do not have any family members, persons, parties, litigation, or financial arrangements that are likely to present potential conflicts of interest if I am confirmed. If any person likely to present a potential conflict of interest appeared as a party in a case before me, I would recuse myself from the case, assuming the case was not automatically reassigned as a result of the court's conflict screening process. If any such conflict arose, I would address it in the manner instructed by the Code of Conduct for United States Judges, Canon 3.

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

I would continue to follow the federal recusal statute and the Code of Conduct for United States Judges. I would use the conflict screening process provided by the court, as well as personally reviewing each case assigned to me for potential conflicts. If necessary, I would seek advice from the Code of Conduct Committee of the Judicial Conference. In cases where any uncertainty exists, I would err on the side of 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 do not recall what, if any, pro bono work I performed during the relatively brief time I was in private practice.

As an Assistant United States Attorney, I was prohibited from the outside practice of law, except in very limited circumstances. I did contribute to the community as permissible, including providing volunteer service to the Ronald McDonald House in Lubbock, Habitat for Humanity in Lubbock, and coaching in various youth sport leagues in Lubbock.

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.

On February 28, 2015, I submitted my application to Senators John Cornyn and Ted Cruz, in response to their call for applications for the position of United States District Judge for the Northern District of Texas, Lubbock Division. On July 30, 2015, I interviewed with the Senators' Federal Judiciary Evaluation Committee in Dallas, Texas. On October 7, 2015, I interviewed with Senators Cornyn and Cruz in Washington, D.C. On October 23, 2015, I was notified by Senator Cornyn's office that my name had been sent to the White House for consideration. On November 4, 2015, I traveled to Washington, D.C., to meet with eight of the Texas members of the United States House of Representatives – Al Green, Eddie Bernice Johnson, Filemon Vela, Henry Cuellar, Joaquin Castro, Marc Veasey, Sheila Jackson Lee, and Ruben Hinojosa. On January 16, 2016, I was contacted by White House staff and officials from the Office of Legal Policy at the Department of Justice. On March 1, 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.

- 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.