

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Alan D Albright

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.

Bracewell LLP
111 Congress Avenue, Suite 2300
Austin, Texas 78701

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

1959; Hershey, Pennsylvania

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.

1981 – 1984, University of Texas School of Law; J.D., 1984

1977 – 1981, Trinity University; B.A., 1981

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 – 2014, 2015 – present
Bracewell LLP
Formerly Bracewell & Giuliani
111 Congress Avenue, Suite 2300
Austin, Texas 78701

Partner

2014 – 2015

Sutherland, Asbill & Brennan One American Center

600 Congress Avenue, Suite 2000

Austin, Texas 78701

Partner

2005 – 2009

Fish & Richardson

111 Congress Avenue, Suite 810

Austin, Texas 78701

Partner

2001 – 2004

Gray Cary

Now DLA Piper

401 Congress Avenue, Suite 2500

Austin, Texas 78701

Partner

1999 – 2001

Thompson & Knight LLP

98 San Jacinto Boulevard, Suite 1900

Austin, Texas 78701

Partner

1992 – 1999

United States District Court for the Western District of Texas

United States Courthouse

200 West 8th Street, 4th Floor Austin, Texas 78701

United States Magistrate Judge

1988 – 1992

Akin Gump Strauss Hauer & Feld

One American Plaza

600 Congress Avenue, Suite 1350

Austin, Texas 78701

The Austin office was subsequently consolidated into the Dallas office.

Associate

1986 – 1988

McGinnis Lochridge & Kilgore

One American Plaza

600 Congress Avenue, Suite 2100

Austin, Texas 78701

Associate

1984 – 1986

Judge James R. Nowlin

United States District Judge for the Western District of Texas

200 West 8th Street

Austin, Texas 78701

Judicial Law Clerk

1983 – 1984

Samuelson, Deitch & Booker

Law Clerk

Firm Defunct

1983 (summer)

Vinson & Elkins LLP

1001 Fannin Street

Houston, Texas 77002

Summer Intern

1983 (Summer)

Susman, Godfrey & McGowan

1000 Louisiana Street

Houston, Texas 77002

Summer Intern

1983 (Spring)

Office of Texas State Representative Kae Patrick

Intern

1982 (Fall)

Campaign to Reelect Texas Governor William Clements

Intern

1982 (Summer)

Office of Virginia Van Steenberg

115 East Lynwood Avenue

San Antonio, Texas 78212

Legal Intern

Other Affiliations (Uncompensated)

2003 – 2005

Good Shepherd Episcopal Pre-K School

3201 Windsor Road

Austin, Texas 78703

Member, Board of Directors

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 United States military. I was not required to register for selective service because I was born in 1959.

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.

Martindale-Hubbell Preeminent Attorney – Judicial Edition (2017 and 2018)

Woodward/White, Inc. Best Lawyers in America

Litigation – Patent (2013, 2016 – 2018)

Intellectual Property Law (2007 – 2008, 2011, 2012, 2017)

American College of Trial Lawyers – Fellow (2017)

Euromoney Institutional Investor’s *Managing Intellectual Property*
Texas Patent and Trademark IP Star (2016 – 2017)

Globe Business Publishing Ltd., IAM Patent 1000 (2011 – 2013, 2015 – 2017)

Chambers USA, Intellectual Property (2010 – 2012, 2016 – 2017)

Thomson Reuters Texas Super Lawyers (2006 – 2016)

American Board of Trial Attorneys (2015)

Texas Law Review (1982 – 1984)

Trinity University – Phi Beta Kappa (1981)

Trinity University – Mortar Board (1980 – 1981)

Trinity University – Blue Key Honor Society (1980 – 1981)

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.

Austin Intellectual Property Law Association (2016)

Federal Bar Association (2007 – 2011)

Lee Yeakel Intellectual Property Law Inn of Court

Master (2010 – present)

Founding Member (2010)

Texas Bar Foundation (1996)

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, 1984

Washington, 2011

- 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 Federal Circuit, 2003

United States Court of Appeals for the Fifth Circuit, 1987

United States District Court for the Eastern District of Texas, 2001

United States District Court for the Northern District of Texas, 1988

United States District Court for the Southern District of Texas, 2010

United States District Court for the Western District of Texas, 1986

United States District Court for the Western District of Washington, 2011

There have been no lapses in membership.

11. Memberships:

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

Good Shepherd Episcopal Pre-K School (2004 – 2005)

Member, Board of Directors

- 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 the best of my knowledge, the organization listed above neither currently discriminates nor formerly 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.

The Elimination of Forms Practice—The Pleadings Standards and How To Meet Them, AM. INTELLECTUAL PROP. L. ASS'N (MID-WINTER INST. 2017). Copy supplied.

Who Is Alice, and What Is She Doing to My Tech Patents?, AUSTIN BUS. J., Apr. 18, 2016. Copy supplied (reprinted under multiple titles).

With Chad Ennis, Opinion: *Is This the End of Forum Shopping?*, INTELLECTUAL PROP. MAG., Mar. 2016. Copy supplied.

With Chad Ennis, *Understanding the Defenses and Tactics in a Patent Case*, INSIDE COUNSEL, Oct. 1, 2015. Copy supplied.

Damages: The Entire Market Value, State Bar of Texas 8th Annual Patent Litigation Course (2012). Copy supplied.

With Karen Weil, Chris Northcutt, and Alan Ratliff, *Tips and Tactics for Drafting and Using Settlement Licenses in Litigation Post ResQNet*, Intellectual Property Owners Association 40th Annual Meeting (Sept. 11, 2012). Copy supplied.

Federal Circuit Passes Torch from Juries to Judges for Willful Infringement Determinations, BRACEWELL.COM, June 25, 2012. Copy supplied.

Current Topics in Patent Litigation: Perspectives from the Bench and Bar—America Invents Act: Effects of Changes in Defense on Conduct of Litigation, AM. INTELLECTUAL PROP. L. ASS'N (SPRING MEETING 2012). Copy supplied.

The Pitfalls of Removal, State Bar of Texas Ultimate Insurance Seminar (2000). Copy supplied.

Letter to the Editor, *Carelessness Brings Restrictions*, THE TRINITONIAN, Oct. 26, 1979. Copy provided.

While attending the University of Texas Law School, I served on the *Texas Law Review* as a staff member (1982 – 1984). In that capacity, I edited several articles primarily for style and to ensure the accuracy of citations.

- 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.

Neal Mixed Use Zoning Case No. C14-2015-0119, Austin Planning Comm'n (Apr. 26, 2016), at 42 (statement of Alan D. Albright). Copy 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 following list reflects my best effort to identify the speeches, talks and remarks that I have delivered. To compile the list, I consulted my own files and internet sources. There may, however have been speeches, talks or remarks that I have been unable to recall or identify, and I have occasional spoken at informal events for which I did not retain any record.

November 2, 2017: Moderator, Judicial Panel, University of Texas School of Law CLE, 22nd Annual Advanced Patent Law Institute, Austin, Texas. Video supplied.

July 21, 2017: Presenter, "The Intersection Between Damages and Technical Experts," 13th Annual Advanced Patent Litigation Course, Texas Bar Association, Horseshoe Bay, Texas. Notes supplied.

June 7, 2017: Presenter, "Long Term Trends and Continuing Evolution of Apportionment," Intellectual Property Owners Association, Patent Damages & Injunctions Committee Conference, Chicago, Illinois. Notes supplied.

May 5, 2017: Moderator, "A Day in Federal Court," Travis County Women Lawyers' Association CLE Conference, Austin, Texas. Video supplied.

February 3, 2017: Presenter, "The Elimination of Forms Practice – The Pleadings Standards and How To Meet Them," American Intellectual Property Law Association (Mid-Winter Institute), Fort Lauderdale, Florida. Notes supplied. Paper also supplied in response to Question 12a.

November 3, 2016: Moderator, Judicial Panel, University of Texas School of Law CLE, 21st Annual Advanced Patent Law Institute, Austin, Texas. Video supplied.

June 8, 2016: Moderator, "Counterfeiting, Trade Secrets, Patents, and Copyrights/Congress and the Supreme Court Weigh In," Association of Corporate Counsel CLE Luncheon, Austin, Texas. Notes supplied.

November 5, 2015: Moderator, University of Texas Advanced Patent Law Institute Patent Damages Roundtable. Audio supplied.

August 27, 2015: Panelist, "Patent Rights from the Pedernales to the Potomac," Intelligent Enterprise Solutions Texas Global Innovation & Intellectual Property Summit 2015, Austin, Texas. I spoke regarding recent activity in patent litigation and legislation. I have no notes, transcript, or recording. The address of Intelligent Enterprise Solutions is 701 Brazos Street, Suite 1600, Austin, Texas 78701.

August 18, 2015: Panelist, "The Integration and Changing Landscape of Patent Litigation in the Eastern District of Texas," Association of Corporate Counsel CLE Luncheon, Austin, Texas. Notes supplied.

May 15, 2015: Moderator, "A Day in Federal Court," Travis County Women Lawyers' Association CLE Conference, Austin, Texas. I moderated a question-and-answer session with United States District Judges. I have no

notes, transcript, or recording. The mailing address of the Travis County Women Lawyers' Association is P.O. Box 684683, Austin, Texas 78768.

March 17, 2015: Presenter, "Trade Secrets Protection Act & Defend Trade Secrets Act: 2015 Updates," The Knowledge Group Webinar. Video and notes supplied.

November 14, 2014: Panelist, "Evidence and Expert Testimony: Winning Hearts and Minds," Austin Bar Association Civil Litigation Section 10th Annual Ultimate Trial Notebook, Austin, Texas. I spoke regarding effective use of experts at trials, focusing on patent cases. I have no notes, transcript, or recording. The address of the Austin Bar Association is 816 Congress Avenue, Suite 700, Austin, Texas 78701.

November 6, 2014: Moderator, "What's New in Damages and Remedies," University of Texas School of Law CLE, 19th Annual Advanced Patent Law Institute, Austin, Texas. Video supplied.

November 5, 2014: Moderator, "University of Texas 2014 Patent Damages Roundtable," University of Texas School of Law CLE, Austin, Texas. Announcement provided. I moderated a roundtable discussion regarding concepts specific to patent damages. I have no notes, transcript, or recording. The address of the University of Texas School of Law Continuing Legal Education is 727 East Dean Keeton Street, Austin, Texas 78705.

July 25–26, 2013: Panelist, "Damages: License Comparability and the Entire Market Value Rule," State Bar of Texas 9th Annual Patent Litigation Course, Albuquerque, New Mexico. Paper from which I spoke supplied.

March 21, 2013: Panelist, "Fundamentals of Patent Litigation and Appeals," Austin Bar Civil Appellate Law Section, Austin Texas. I spoke regarding trial and appellate litigation in patent law. I have no notes, transcript, or recording. The address of the Austin Bar Association is 816 Congress Avenue, Suite 700, Austin, Texas 78701.

September 11, 2012: Panelist, "Tips and Tactics for Drafting and Using Settlement Licenses in Litigation Post *ResQNet*," Intellectual Property Owners Association 40th Annual Meeting, San Antonio, Texas. Paper from which I spoke supplied in response to Question 12a.

May 10, 2012: Presenter, "Current Topics in Patent Litigation: Perspectives from the Bench and Bar—America Invents Act: Effects of Changes in Defense on Conduct of Litigation," American Intellectual Property Law Association, 2012 Spring Meeting, Austin, Texas. Notes supplied.

November 8, 2010: Presenter, CLE Luncheon, Austin Legal Professionals Association, Inc., Austin Texas. I spoke regarding intellectual property issues. I have no notes, transcript, or recording. To the best of my knowledge, the Austin Legal Professionals Association, Inc. does not have a physical address.

October 28, 2010: Moderator, "Judicial Panel," 15th Annual Advanced Patent Law Institute, University of Texas School of Law CLE, Austin, Texas. Video supplied.

May 27, 2010: Moderator, "Perfecting Trade Secrets: Common Pitfalls and Best Practices," University of Texas School of Law CLE, 23rd Annual Technology Law Conference, Austin, Texas. Audio supplied.

November 10, 2008: Panelist, "Be Prepared: The Scout's Guide to Litigation Planning," Annual Conference on Intellectual Property Law, The Center for American and International Law, Plano, Texas. I spoke as part of a panel on patent litigation issues. I have no notes, transcript, or recording. The address of the Center for American and International Law is 5201 Democracy Drive, Plano, Texas 75024. Coverage supplied.

June 26, 2007: Presenter, "Injunctions After eBay/Post eBay Remedies for Ongoing Infringement," American Intellectual Property Law Association CLE Luncheon, Austin, Texas. Notes supplied.

October 27, 2006: Presenter, "Electronic Discovery Landmines To Avoid," University of Texas School of Law 11th Annual Advanced Patent Law Institute, Austin, Texas. Audio supplied.

January 24, 1996: Presenter, Federal Bar Association, Austin Chapter, Austin, Texas. I provided a presentation on discovery, ethics, and civil practice before magistrate judges. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street #400, Arlington, Virginia 22201.

- 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.

There are many news articles that quote me for news stories, primarily while I served as a Magistrate Judge in the Eastern District of Texas from 1992 to 1999. I participated in very few formal interviews, but periodically gave informal interviews or made public statements to the media. I have, to the best of my ability, identified all items called for in the question, including conducting a thorough review of my files and records and searches of publically available

electronic databases. I supply what I have been able to locate, and list them below.

Paul J. Gately, *Waco: Austin Attorney Expected To Fill Vacant Federal Judgeship*, KWTX.COM, Sept. 5, 2017. Copy supplied.

Tommy Witherspoon, *Austin Attorney To Be Named New Federal Judge in Waco*, WACO TRIBUNE-HERALD, Sept. 2, 2017. Copy supplied.

Mary Alice Robbins, *U.S. District Court: County Can't Ask Constable Applicants Views on Same-Sex Marriage, Abortion of Their Religious Affiliation*, Tex. Law., Dec. 6, 2016. Copy supplied.

Ryan Davis, *5 Ways To Botch a Patent Trial*, LAW360.COM, May 27, 2016. Copy supplied (reprinted in multiple outlets).

Ryan Davis, *East Texas Patent Docket Could Be Grounded by Fed. Circ.*, LAW360.COM, Mar. 9, 2016. Copy supplied.

Erin Coe, *5 Ways To Keep the Jury Awake During a Patent Trial*, LAW360.COM, Oct. 1, 2015. Copy supplied (reprinted in multiple outlets).

Shayna Posses, *Former Texas Judge Brings IP Know-How Back to Bracewell*, LAW360.COM, June 2, 2015. Copy supplied.

Alan Albright Brings His IP Litigation Practice Back to Bracewell as Firms Adds Strength to Its National Trial Practice, BRACEWELL.COM, June 1, 2015. Copy supplied.

Chris Tomlinson, *Congress Arrives Too Late in Patent Troll Debate*, HOUS. CHRON., Dec. 31, 2014. Copy supplied.

Austin Attorney Alan Albright Sees Signs That Congress May Tackle Patent Reform, ANDROVETT.COM, Nov. 24, 2014. Copy supplied.

Jeff Bounds, *Court East Texas Still Leads in Patent Lawsuits*, HOUS. CHRON., Sept. 6, 2014. Copy supplied.

Jeff Bounds, *Patent Cases Pour Into East Texas Despite Data Showing District Not So Plaintiff-Friendly*, DALLAS MORNING NEWS, Aug. 27, 2014. Copy supplied.

Biotech Firm Wins \$95.7 Million Patent Verdict, 19 NO. 25 WESTLAW J. INTELLECTUAL PROP. 7, Apr. 3, 2013. Copy supplied.

Q&A With Bracewell & Giuliani's Alan Albright, LAW360.COM, June 1, 2011. Copy supplied.

Austin 'Fleshlight' Sex Toy Maker Files Patent Lawsuit, NEWSRADIOKLBK.COM, July 4, 2010. Copy supplied (reprinted in multiple outlets).

Jeanne Graham, *Come One, Come All: Making a Lateral Move in 2009 Was No Easy Task*, TEXASLAWYER.COM, Mar. 15, 2010. Copy supplied.

First Latina on Texas High Court, TEX. LAW., Oct. 12, 2009. Copy supplied.

Karen Sloan, *Faced with Layoff, Nine Jump IP Ship*, N.Y. L.J., Oct. 6, 2009. Copy supplied.

Albright, 8 Others Join Bracewell & Giuliani from Fish, AUSTIN BUS. J., Oct. 5, 2009. Copy supplied (reprinted in multiple outlets).

A Lawyer Who Leads by Both Vision and Example, 53 BOS. B.J. 5, Fall 2009. Copy supplied.

Fish & Richardson Promotes Millicent Lundburg to Principal, OPENPR.COM, Jan. 11, 2008. Copy supplied.

Fish & Richardson Adds Principals in Austin Office; Kordzik, Garsson Bring Nanotechnology Expertise to Firm's IP Group, PRNEWswire, Sept. 25, 2006. Copy supplied (reprinted in multiple outlets).

Eric Young, *New Managing Partner To Run MoFo's Palo Alto Office*, BIZJOURNALS.COM, Feb. 13, 2005. Copy supplied.

Fish Swims Downstream, TEX. LAW., Jan. 17, 2005. Copy supplied.

Fish & Richardson Moving Into Austin, PRWEB.COM, Jan. 8, 2005. Copy supplied (quotation reprinted in multiple outlets).

Shannon Rentner, *Gray Cary Gains IP Litigator*, AUSTIN BUS. J., Mar. 18, 2001, available at <https://www.bizjournals.com/austin/stories/2001/03/19/story7.html>.

Thompson & Knight L.L.P. Substantially Expands Intellectual Property/Technology Practice; Thompson & Knight Hires Group in Austin, PR NEWswire, Jan. 20, 2000. Copy supplied.

FBI Seeks O'Hair Family Dental Records, UPI.COM, Apr. 30, 1999. Copy supplied.

Arizona Soldier Dies in Vehicle Accident, AUSTIN AMERICAN-STATESMAN, Apr. 22, 1999. Copy supplied.

Darrell McClendon, *Race Underway for Senate, SAB Offices*, THE TRINITONIAN, Mar. 21, 1980. Copy supplied.

Darrell McClendon, *Senate Vice President Impeached*, THE TRINITONIAN, Apr. 7, 1980. Copy supplied.

Darrell McClendon, *SAB, Senate Positions To Open*, THE TRINITONIAN, Feb. 22, 1980. Copy supplied.

Maggie Knapp, *The Fine Art of Giving Backrubs*, THE TRINITONIAN, Feb. 15, 1980. Copy supplied.

Cathy Kopper, *Resignation Provokes Controversy*, THE TRINITONIAN, Feb. 1, 1980. Copy supplied.

Darrell McClendon, *Security, Apathy Cause Concern for Students*, THE TRINITONIAN, Jan. 25, 1980. Copy supplied.

Groups Formulate Survey, THE TRINITONIAN, Dec. 7, 1979. Copy supplied.

Tom Harvey, *Senators Pursue Diverse Projects*, THE TRINITONIAN, Oct. 26, 1979. Copy supplied.

Danny Richard, *Councilmen Aides Value Practical Experience*, THE TRINITONIAN, Sept. 28, 1979. Copy supplied.

Anne Pearson, *Students Participate in Upcoming Elections*, THE TRINITONIAN, Oct. 27, 1978. Copy supplied.

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

I served as a Magistrate Judge for the United States District Court for the Western District of Texas from 1992 – 1999. The position is appointed. The jurisdiction of magistrate judges is set forth at 28 U.S.C. § 636.

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

During my time as a United States Magistrate Judge, I presided over entire civil matters (including trial) by consent of the parties and over criminal trials involving certain misdemeanor and petty offenses. Although I have consulted

with the Clerk's Office for the Western District of Texas, exact records of the cases before me that went to verdict or judgment are not available. I recollect that I presided over between 15–20 such cases.

i. Of these, approximately what percent were:

jury trials:	90%
bench trials:	10% [total 100%]
civil proceedings:	90%
criminal proceedings:	10% [total 100%]

The bulk of my work as a United States Magistrate Judge related to the pretrial phase of civil and felony criminal cases. In that role, I presided over the pretrial phase of approximately 500–600 federal civil cases and approximately 1,000 federal criminal cases. I also ruled on trial-related issues even where I did not preside over the entire trial, including motions *in limine*, motions to suppress, and evidentiary objections. I handled hearings in which the government sought to revoke supervised release and presided over dozens if not hundreds of guilty pleas.

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

My service as a Magistrate Judge took place before the advent of electronic filing, and, accordingly, a number of opinions that I wrote are not available electronically. I have performed a diligent search for written opinions, including contacting the Clerk of the United States District Court for the Western District of Texas and retrieving documents from federal archives. I have supplied a citation for all written opinions that I have been able to identify at Appendix 13b.

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 (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Soc'y of Fin. Exam'rs v. Nat'l Ass'n of Certified Fraud Exam'rs, Inc.*, Nos. A-92-CA-679/A-92-CV-637 (W.D. Tex. Dec. 8, 1993), *vacated*, 41 F.3d 223 (5th Cir. 1995), *cert. denied*, 515 U.S. 1103 (1995).

This Lanham Act case was brought by the Society of Financial Examiners against the National Association of Certified Fraud Examiners regarding the use of the initials "CFE" in their respective professions. The Society of Financial Examiners, which had historically used the initials to designate certified financial examiners sought to prohibit the Association of Fraud Examiners from using the same initials to identify certified fraud examiners. This case turned on whether

“CFE” was too generic to qualify for statutory protection and whether a sufficient likelihood of confusion existed. I prepared a report and recommendation in favor of granting summary judgment to the defendant. The District Court (Judge James Nowlin) adopted this recommendation, but the Fifth Circuit later reversed, concluding that trial of the issues was appropriate. I have supplied the substantive ruling that I issued in this case.

Counsel for Plaintiff National Association of Certified Fraud Examiners

John J. McKetta, III
Graves, Dougherty, Hearon & Moody, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701
(512) 480-5616

Counsel for Defendant Society of Financial Examiners

Steve Ravel
Kelly Hart & Hallman LLP
303 Colorado Street, Suite 2000
Austin, Texas 78701
(512) 495-6429

2. *Tamez v. City of San Marcos*, No. 93-CV-666 (W.D. Tex. July 8, 1996), *aff'd*, 118 F.3d 1085 (5th Cir. 1997), *cert. denied*, 522 U.S. 1125 (1998).

This case was brought by a plaintiff who had pointed a gun at a police officer responding to a “shots fired” call at a house. The police officer shot the plaintiff. After his release from the hospital, the plaintiff filed the instant action alleging federal and state law claims against the police officer and city of San Marcos. I presided over a jury trial. At the close of the plaintiff’s case, I granted judgment as a matter of law to the city, and dismissed that suit. I submitted the case against the police officer to the jury, which found in the plaintiff’s favor and awarded \$275,000. After the verdict, the police officer filed a motion for judgment as a matter of law, which I granted both on grounds of qualified immunity and official immunity. The plaintiff appealed, and the Fifth Circuit affirmed my order. I have supplied the ruling that I issued in this case granting the police officer’s motion for a judgment as a matter of law.

Counsel for Plaintiff Tamez

David Galbraith
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092
(713) 556-7253
Formerly with Law Offices of David Galbraith

Counsel for Defendant City of San Marcos

Ricardo J. Navarro
Denton Navarro Rocha Bernal & Zech, P.C.
701 East Harrison Avenue, Suite 100
Harlingen, Texas 78550
(956) 421-4904

3. *McKeever v. Doss*, No. 1:95-cv-00543-ADA (W.D. Tex. Jan. 21, 1997).

This was a civil rights action against a Texas city and one of its police officers, alleging violations of the Fourth and Fourteenth Amendments during a traffic stop. After the parties consented to me presiding over the case, I considered various summary judgment motions that had been filed previously. I granted summary judgment to the city, and the case proceeded to trial. After a two-day trial, the jury returned a verdict in favor of the police officer. I have supplied the ruling that I issued in this case granting summary judgment to the city.

Counsel for Plaintiff McKeever
Lane D. Thibodeaux
Law Office of Lane D. Thibodeaux
308 North Washington Avenue
Bryan, Texas 77806
(979) 775-5700

Counsel for Defendant Doss
Jesse L. Whittenton
Retired
Formerly with Walker, Bright & Whittenton, P.C.

4. *Pfau v. Reed*, No. 1:95-CV-00135-AWA (W.D. Tex. Aug. 16, 1996), *aff'd*, 125 F.3d 927 (5th Cir. 1997), *vacated and remanded in light of other decisions*, 525 U.S. 801 (1998).

This matter was brought by a former employee of the Defense Contract Audit Agency, who alleged sexual harassment by her supervisor during a portion of her employment. The plaintiff brought suit against her supervisor, the director of the agency, and the Secretary of Defense, alleging causes of action for sexual harassment under Title VII and the Civil Rights Act of 1991, and a claim of intentional infliction of emotion distress. Before my involvement, the District Court dismissed all of plaintiff's claims, aside from her Title VII claims against the director of the agency. Subsequently, the director of the agency filed a motion for dismissal or partial summary judgment relating to the remaining sexual harassment claims. I granted summary judgment, and the Fifth Circuit affirmed. The Supreme Court vacated for further consideration in light of intervening precedent. I was not involved in proceedings on remand. I have supplied the substantive rulings that I issued in this case.

Counsel for Plaintiff Pfau

Bruce A. Coane
Coane and Associates, PLLC
5177 Richmond Avenue, Suite 770
Houston, Texas 77056
(713) 850-0066

Counsel for Defendant Reed

Ernest C. Garcia
Department of Savings and Mortgage Lending
2601 North Lamar Boulevard, Suite 201
Austin, Texas 78705
(512) 475-0787
Formerly with United States Attorney's Office for the Western District of Texas

5. *D&R Assocs. v. Nautilus Ins. Co.*, No. 1:96-cv-00396-ADA (W.D. Tex. 1996).

This matter was a breach of contract case, which had been removed from the Travis County District Court. The parties consented to have me handle the entire case. I ruled on multiple pre-trial motions, including motions to strike (experts, exhibits, and witnesses), multiple motions *in limine*, a motion to limit participation by counsel, and a motion for sanctions. I presided over a week-long jury trial, which resulted in a verdict in favor of the defendants. I later denied the defendants' motion for attorneys' fees. Despite my diligent efforts, I have not been able to locate any substantive orders in this case.

Counsel for Plaintiff D&R Associates

Michael G. Lockwood
P.O. Box 90579
Austin, Texas 78709
(512) 291-6659
Formerly with Kiester & Lockwood

Counsel for Defendant Nautilus Insurance Company

Maria M. Stewart
Formerly with Kiester & Lockwood

Counsel for Defendant Northfield Insurance Company

Franklin H. Perry
Retired
Formerly with Thompson Coe

6. *Jackson v. United States*, No. 1:96-cv-00491-ADA (W.D. Tex. Aug. 20, 1998).

This case was a medical malpractice suit against the United States brought as the result of a botched baby delivery at Fort Hood by their medical staff. An inexperienced military physician had difficulties delivering a baby girl, and failed to obtain help from more experienced physicians, which resulted in permanent injuries to the baby. Both sides consented to trial before me, and I conducted a four-day bench trial. Because of the nature of the suit, there were no substantive pre-trial motions. I entered judgment in favor of liability in favor of the plaintiffs. The parties thereafter settled. I have supplied a copy of the judgment order issued in favor of plaintiffs (at the conclusion of the trial).

Counsel for Jackson Plaintiffs

William Whitehurst
Whitehurst, Harkness, Brees, Cheng, Alsaffar, & Higginbotham, PLLC
7500 Rialto Boulevard, Building Two, Suite 250
Austin, Texas 78735
(512) 476-4346

Counsel for Defendant United States

Kurt J. Bohn
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Guardian Ad Litem

Price Ainsworth
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7. *Perry v. Georgetown*, No. 1:94-cv-000236-ADA (W.D. Tex. 1994),
appeal dismissed, 68 F.3d 470 (5th Cir. 1995).

Plaintiffs brought this civil right action against a Texas city and certain city officials, asserting federal and state law claims arising out of an allegedly false arrest. The parties consented to the case proceeding before me. The city moved for summary judgment, which I granted. I denied the city officials' motion for summary judgment, and their subsequent interlocutory appeal was dismissed by the Fifth Circuit. I presided over a jury trial in which the jury found in favor of the plaintiffs, and the defendants did not appeal. I have supplied copies of the substantive orders I issued in this case.

Counsel for Plaintiff Perry

Bobby Ray Taylor
1709 East Martin Luther King Jr. Boulevard
Austin, Texas 78702
(512) 476-4886

Counsel for Defendant City of Georgetown
Darrell Gerard-Marc Noga
Cantey Hanger LLP
1999 Bryan Street, Suite 3300
Harwood Center
Dallas, Texas 75201
(214) 978-4120

8. *Meyer v. Austin Indep. Sch. Dist.*, No. 1:96-cv-00625-ADA (W.D. Tex. Jan 9, 1997), *aff'd*, 161 F.3d 271 (5th Cir. 1998), *cert. denied*, 526 U.S. 1132 (1999).

This case was brought by a group of high school students and their parents who claimed that the Austin school district and school offices had denied them due process. The Austin school system had suspended the students based on purported gang-related activity. The parties consented to me handling the entire case. I granted in part and denied in part the defendants' motion to dismiss, and I later denied defendants' motion for summary judgment on grounds of qualified immunity. The school system filed an interlocutory appeal from my denial of summary judgment. The Fifth Circuit affirmed my ruling, and the Supreme Court denied a later writ of certiorari. I have supplied a copy of the substantive rulings that I issued in this case.

Counsel for Meyer Plaintiffs
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(512) 477-5791

Counsel for Defendant Austin Independent School District
Ann Clarke Snell
Retired
Formerly with Bickerstaff Heath & Smiley

Kevin Cole
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Austin, Texas 78722
(512) 482-0003
Formerly with Bickerstaff Heath & Smiley

9. *First Defence II, Inc. v. Tex. Commercial Fence, Inc.*, No. 1:96-CA-205-

ADA (W.D. Tex. Dec. 5, 1996).

A company that held a patent for a security fence sued defendant for patent infringement. The defendant admitted that a representative had taken a photo of the plaintiff's patented fence and asked a manufacturer to copy it. The parties consented to me handling the entire case. I ruled on cross-motions for summary judgment, and then presided over a week-long jury trial on issues of patent infringement and invalidity and damages. The jury found for the plaintiff on infringement and validity, but found that there was no willfulness. The parties thereafter settled. I have supplied the substantive rulings that I issued in this case.

Counsel for Plaintiff First Defence II

Eric B. Meyertons
Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C.
1120 South Capital of Texas Highway, Building 2, Suite 300
Austin, Texas 78746
(512) 853-8800

Counsel for Defendant Texas Commercial Fence, Inc.

William James Malone Jr.
8650 Spicewood Sprints #145-598
Austin, Texas 78759
(512) 346-9660

10. *Acoustic Sys., Inc. v. Wenger Corp.*, No. 1:97-cv-00436-ADA (W.D. Tex. Dec. 17, 1998), *appeal dismissed*, 207 F.3d 287 (5th Cir. 2000).

A manufacturer of modular music practice rooms sued a competitor, alleging business torts and antitrust violations. The parties consented to me handling the entire case. Defendants filed for summary judgment based on the state action and *Noerr-Pennington* doctrines. The basic issue was whether or not the assertion of patents that were expired constituted anti-competitive or anti-trust liability. I denied this motion, and the defendants took an appeal, in which they asserted that a denial of summary judgment premised upon either doctrine was immediately appealable. The Fifth Circuit dismissed this appeal, concluding that my denial of summary judgment was not an appealable final order. I have supplied the substantive rulings that I issued in this case.

Counsel for Plaintiff Acoustic Systems, Inc.

Carl F. Schwenker
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The Parsons House
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Formerly with Brobeck, Phleger & Harrison, LLP

Counsel for Defendant Wenger Corporation

Amber Lee Hagy
USPTO – Patent Trial and Appeal Board
Madison East Building, Ninth Floor,
600 Dulany Street
Alexandria, Virginia 22314
Formerly with Arnold White & Durkee LLP

- 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. *Soc’y of Fin. Exam’rs v. Nat’l Ass’n of Certified Fraud Exam’rs, Inc.*, Nos. A-92-CA-679/A-92-CV-637 (W.D. Tex. Dec. 8, 1993), *vacated*, 41 F.3d 223 (5th Cir. 1995), *cert. denied*, 515 U.S. 1103 (1995).

I have supplied the substantive ruling that I issued in response to Question 13c.

Counsel for Plaintiff National Association of Certified Fraud Examiners

John J. McKetta, III
Graves, Dougherty, Hearon & Moody, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701
(512) 480-5616

Counsel for Defendant Society of Financial Examiners

Steve Ravel
Kelly Hart & Hallman LLP
303 Colorado Street, Suite 2000
Austin, Texas 78701
(512) 495-6429

2. *Tamez v. City of San Marcos*, No. 93-CV-666 (W.D. Tex. July 8, 1996), *aff’d*, 118 F.3d 1085 (5th Cir. 1997), *cert. denied*, 522 U.S. 1125 (1998).

I have supplied the substantive ruling that I issued in response to Question 13c.

Counsel for Plaintiff Tamez

David Galbraith
Houston Independent School District
4400 West 18th Street
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(713) 556-7253
Formerly with Law Offices of David Galbraith

Counsel for Defendant City of San Marcos

Ricardo J. Navarro
Denton Navarro Rocha Bernal & Zech, P.C.
701 East Harrison Avenue, Suite 100
Harlingen, Texas 78550
(956) 421-4904

3. *McKeever v. Doss*, No. 1:95-cv-00543-ADA (W.D. Tex. Jan. 21, 1997).

I have supplied the substantive ruling that I issued in response to Question 13c.

Counsel for Plaintiff McKeever

Lane D. Thibodeaux
Law Office of Lane D. Thibodeaux
308 North Washington Avenue
Bryan, Texas 77806
(979) 775-5700

Counsel for Defendant Doss

Jesse L. Whittenton
Retired
Formerly with Walker, Bright & Whittenton, P.C.

4. *Pfau v. Reed*, No. 1:95-CV-00135-AWA (W.D. Tex. Aug. 16, 1996),
aff'd, 125 F.3d 927 (5th Cir. 1997), *vacated and remanded in light of other*
decisions, 525 U.S. 801 (1998).

I have supplied the substantive rulings that I issued in response to Question 13c.

Counsel for Plaintiff Pfau

Bruce A. Coane
Coane and Associates, PLLC
5177 Richmond Avenue, Suite 770
Houston, Texas 77056
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Counsel for Defendant Reed

Ernest C. Garcia
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2601 North Lamar Boulevard, Suite 201
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(512) 475-0787
Formerly with United States Attorney's Office for the Western District of Texas

5. *DeShay v. Bastrop Indep. Sch. Dist.*, No. A-95-CV-535 (W.D. Tex. Jan. 7,

1998), *aff'd*, 180 F.3d 262 (5th Cir. 1999), *cert. denied*, 528 U.S. 930 (1999).

I have supplied the substantive rulings I issued in this case.

Counsel for DeShay Plaintiffs

Karen Key Johnson
Deceased

Counsel for Defendant Bastrop Independent School District

Kelli H. Karczewski
Karczewski & Bradshaw, LLP
315 North Church Street
Nacogdoches, Texas 75961
(936) 564-0010

6. *Jackson v. United States*, No. 1:96-cv-00491-ADA (W.D. Tex. Aug. 20, 1998).

I have supplied the substantive ruling that I issued in response to Question 13c.

Counsel for Jackson Plaintiffs

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Counsel for Defendant United States

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7. *Perry v. Georgetown*, No. 1:94-cv-000236-ADA (W.D. Tex. 1994), *appeal dismissed*, 68 F.3d 470 (5th Cir. 1995).

I have supplied the substantive rulings that I issued in response to Question 13c.

Counsel for plaintiff Perry:
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Austin, Texas 78702
(512) 476-4886

Counsel for defendant City of Georgetown:

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Dallas, Texas 75201
(214) 978-4120

8. *Meyer v. Austin Indep. Sch. Dist.*, No. 1:96-cv-00625-ADA (W.D. Tex. Jan 9, 1997), *aff'd*, 161 F.3d 271 (5th Cir. 1998), *cert. denied*, 526 U.S. 1132 (1999).

I have supplied the substantive rulings that I issued in response to Question 13c.

Counsel for Meyer Plaintiffs
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Counsel for Defendant Austin Independent School District
Ann Clarke Snell
Retired
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4101 Wildwood Road
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Formerly with Bickerstaff Heath & Smiley

9. *First Defence II, Inc. v. Tex. Commercial Fence, Inc.*, No. 1:96-CA-205-ADA (W.D. Tex. Dec. 5, 1996).

I have supplied the substantive rulings that I issued in response to Question 13c.

Counsel for Plaintiff First Defence II

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(512) 853-8800

Counsel for Defendant Texas Commercial Fence, Inc.

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Austin, Texas 78759
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10. *Acoustic Sys., Inc. v. Wenger Corp.*, No. 1:97-cv-00436-ADA (W.D. Tex. Dec. 17, 1998), *appeal dismissed*, 207 F.3d 287 (5th Cir. 2000).

I have supplied the substantive rulings that I issued in response to Question 13c.

Counsel for Plaintiff Acoustic Systems, Inc.

Carl F. Schwenker
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Counsel for Defendant Wenger Corporation

Amber Lee Hagy
USPTO – Patent Trial and Appeal Board
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600 Dulany Street
Alexandria, Virginia 22314
Formerly with Arnold White & Durkee LLP

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

Miller v. Johnson, No. A-99-CA-689 (W.D. Tex. Oct. 27, 1999), *appeal dismissed*, 216 F.3d 1079 (5th Cir. 2000), *cert. denied*, 531 U.S. 1090 (2001).

Castillo v. City of Round Rock, Tex., No. A-96-CV-863 (W.D. Tex. Feb. 2, 1998), *rev'd*, 177 F.3d 977 (5th Cir. 1999), *cert. denied*, 528 U.S. 1019 (1999).

Meyer v. Austin Indep. Sch. Dist., No. 1:96-cv-00625-ADA (W.D. Tex. Jan 9,

1997), *aff'd*, 161 F.3d 271 (5th Cir. 1998), *cert. denied*, 526 U.S. 1132 (1999).

Pfau v. Reed, No. 1:95-CV-00135-AWA (W.D. Tex. Aug. 16, 1996), *aff'd*, 125 F.3d 927 (5th Cir. 1997), *vacated and remanded in light of other decisions*, 525 U.S. 801 (1998).

Tamez v. City of San Marcos, Tex., No. A-93-CV-666 (W.D. Tex. July 8, 1996), *aff'd*, 118 F.3d 1085 (5th Cir. 1997), *cert. denied*, 522 U.S. 1125 (1998).

Travis v. Bd. of Regents of Univ. of Tex. Sys., No. A-94-CA-712 (W.D. Tex. May 24, 1996), *rev'd*, 122 F.3d 259 (5th Cir. 1997), *cert. denied*, 522 U.S. 1148 (1998).

Tex. Life, Accident, Health & Hosp. Serv. Ins. Guar. Ass'n v. Gaylord Entertainment Co., No. A-94-CA-246-LB, 1995 U.S. Dist. LEXIS 21965 (W.D. Tex. Oct. 10, 1995), *aff'd*, 105 F.3d 210 (5th Cir. 1997), *cert. denied*, 521 U.S. 1113 (1997).

Soc'y of Fin. Exam'rs v. Nat'l Ass'n of Certified Fraud Exam'rs, Inc., Nos. A-92-CA-679/A-92-CV-637 (W.D. Tex. Dec. 8, 1993), *vacated*, 41 F.3d 223 (5th Cir. 1995), *cert. denied*, 515 U.S. 1103 (1995).

- 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.

My service as a Magistrate Judge took place before the advent of electronic filing, and, accordingly, a number of opinions that I wrote are not available electronically. I have performed a diligent search for my opinions, including by contacting the Clerk of the United States District Court for the Western District of Texas. I then searched for opinions of reviewing courts refusing to adopt my recommendations, reversing my decisions, or affirming my judgment with significant criticism. The cases that I have been able to find that fit within these criteria are listed below.

Castillo v. City of Round Rock, Tex., No. A-96-CV-863 (W.D. Tex. Feb. 2, 1998), *rev'd*, 177 F.3d 977 (5th Cir. 1999), *cert. denied*, 528 U.S. 1019 (1999).

The Castillos filed state wrongful death and survival claims, and a federal civil rights claim under 42 U.S.C. § 1983, against the defendants. Mr. Castillo died as the result of injuries he suffered during an arrest. The Castillos alleged (i) violations of the Fourth, Fifth, Eighth, and Fourteenth Amendments, (ii) a negligence claim against the City of Round Rock, and (iii) statutory and common-law tort claims against the arresting officers, both in their individual and official

capacities. The defendants filed motions for summary judgment, which I granted as to the Fifth and Eighth Amendment claims, but denied as to the Fourth and Fourteenth Amendment claims. The Fifth Circuit held that defendants were entitled to dismissal on the basis of qualified immunity. I have supplied the substantive rulings that I issued in this case.

Travis v. Bd. of Regents of Univ. of Tex. Sys., No. A-94-CV-712 (W.D. Tex.), *rev'd*, 122 F.3d 259 (5th Cir. 1997), *cert. denied*, 522 U.S. 1148 (1998).

An associate professor of the University of Texas at San Antonio, who had unsuccessfully applied for full professorship, brought this case against the university, provost, and president. She alleged sex discrimination and retaliation for bringing an administrative complaint and lawsuit. I presided over a five-day jury trial, after which the jury found in the plaintiff's favor on her Title VII claims. Defendants appealed, and the Fifth Circuit reversed, concluding that the associate professor had not proved a violation of Title VII as a matter of law.

Texas v. Thompson, No. A-93-CA-343 (W.D. Tex. Dec. 12, 1994), *appeal dismissed in part and rev'd in part*, 70 F.3d 390 (5th Cir. 1995) (*per curiam*).

This case grew out of an investigation by the Texas Department of Agriculture into cotton crop damage in Bogota, Texas. Two defendants moved for summary judgment based upon qualified immunity. I denied the motion, determining that material issues of fact remained. The defendants appealed my rulings. The Fifth Circuit agreed with my conclusion regarding one of the defendants, but found that the evidence was sufficient so support summary judgment for the other. I have supplied the substantive rulings that I issued in this case.

Soc'y of Fin. Exam'rs v. Nat'l Ass'n of Certified Fraud Exam'rs, Inc., No. A-92-CA-679/A-92-CV-637 (W.D. Tex. Dec. 8, 1993), *vacated*, 41 F.3d 223 (5th Cir. 1995), *cert. denied*, 515 U.S. 1103 (1995).

This Lanham Act case addressed whether the designation "CFE" was too generic to qualify for statutory protection and whether a likelihood of confusion existed. I prepared a report and recommendation in favor of granting summary judgment to the defendant. The District Court (Judge James Nowlin) adopted this recommendation, but the Fifth Circuit reversed, concluding that trial of the issues was appropriate. I have supplied the substantive ruling that I issued in response to 13c.

- 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.

As a United States Magistrate Judge, my decisions were not usually published as a matter of course. Although some of my decisions are available on Internet

databases such as Westlaw or LexisNexis, my service as a Magistrate Judge took place before the advent of electronic filing. Accordingly, most of my opinions are not available electronically. These opinions, and other court records, are stored and archived pursuant to the procedures of the United States District Court for the Western District of Texas.

- 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.

Castillo v. City of Round Rock, Tex., No. A-96-CV-863 (W.D. Tex. Feb. 2, 1998), *rev'd*, 177 F.3d 977 (5th Cir. 1999), *cert. denied*, 528 U.S. 1019 (1999). I have supplied the ruling I issued in response to Question 13f.

DeShay v. Bastrop Indep. Sch. Dist., No. A-95-CV-535 (W.D. Tex. Jan. 7, 1998), *aff'd*, 180 F.3d 262 (5th Cir. 1999), *cert. denied*, 528 U.S. 930 (1999). I have supplied the ruling I issued in response to Question 13d.

Medearis v. City of Austin, No. 1:96-cv-00422 ADA (W.D. Tex. Feb. 11, 1997). I have supplied the ruling I issued in response to Question 13c.

McKeever v. Doss, No. 1:95-cv-00543-ADA (W.D. Tex. Jan. 21, 1997). I have supplied the ruling I issued in response to Question 13c.

Meyer v. Austin Indep. Sch. Dist., No. 1:96-cv-00625-ADA (W.D. Tex. Jan 9, 1997), *aff'd*, 161 F.3d 271 (5th Cir. 1998), *cert. denied*, 526 U.S. 1132 (1999). I have supplied the rulings I issued in response to Question 13c.

Pfau v. Reed, No. 1:95-CV-00135-AWA (W.D. Tex. Aug. 16, 1996), *aff'd*, 125 F.3d 927 (5th Cir. 1997), *vacated and remanded in light of other decisions*, 525 U.S. 801 (1998). I have supplied the rulings I issued in response to Question 13c.

Tamez v. City of San Marcos, No. 93-CV-666 (W.D. Tex. July 8, 1996), *aff'd*, 118 F.3d 1085 (5th Cir. 1997), *cert. denied*, 522 U.S. 1125 (1998). I have supplied the ruling I issued in response to Question 13c.

Texas v. Thompson, No. A-93-CA-343 (W.D. Tex. Dec. 12, 1994), *appeal dismissed in part and rev'd in part*, 70 F.3d 390 (5th Cir. 1995). I have supplied the rulings I issued in response to Question 13f.

Soc'y of Fin. Exam'rs v. Nat'l Ass'n of Certified Fraud Exam'rs, Inc., No. A-92-CA-679/A-92-CV-637 (W.D. Tex. Dec. 8, 1993) *vacated* 41 F.3d 223 (5th Cir. 1995), *cert. denied* 515 U.S. 1103. I have supplied the ruling I issued in response to Question 13c.

- 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 never sat by designation on a federal court of appeals.

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:

To assess the necessity or propriety of recusal during my service as a Magistrate Judge, I followed the federal statutory provision governing recusal, 28 U.S.C. § 445, and the Guide to Judiciary Policy. In the Austin division (where I was a Magistrate), civil cases were assigned at random to the two District Judges. If either referred a case to me, I reviewed with my deputy clerk the list of parties and counsel upon filing, as well as appearance notices, to evaluate whether recusal was warranted. I similarly reviewed all criminal cases to evaluate whether recusal was warranted.

During my seven years as a Magistrate Judge, I never recused myself *sua sponte*, and no party moved for my recusal.

- 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.

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 never held public office nor been a candidate for such an 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.

Staff member (part-time), Re-election Campaign of Texas Governor Bill Clements (1982).

Intern, Campaign of John Steen for Mayor of San Antonio (1981).

Intern, San Antonio City Council Member Henry Cisneros (1979).

Volunteer, Campaign of Bob Krueger for United States Senate (1978).

Volunteer, Campaign of Henry Cisneros for San Antonio City Council (1978).

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 1984 to 1986, I served as a judicial law clerk to the Honorable James R. Nowlin of the United States District Court for the Western 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.

1986 – 1988
McGinnis Lochridge & Kilgore
One American Plaza
600 Congress Avenue, Suite 2100
Austin, Texas 78701
Associate

1988 – 1992
Akin Gump Strauss Hauer & Feld
One American Plaza
600 Congress Avenue, Suite 1350
Austin, Texas 78701
The Austin office has been consolidated with the Dallas office.
Associate

1999 – 2001
Thompson & Knight LLP
98 San Jacinto Boulevard, Suite 1900
Austin, Texas 78701
Partner

2001 – 2004
Gray Cary
Now DLA Piper
401 Congress Avenue, Suite 2500
Austin, Texas 78701
Partner

2005 – 2009
Fish & Richardson
111 Congress Avenue, Suite 810
Austin, Texas 78701
Partner

2014 – 2015
Sutherland, Asbill & Brennan One American Center
600 Congress Avenue, Suite 2000
Austin, Texas 78701
Partner

2009 – 2014, 2015 – present
Bracewell LLP
Formerly Bracewell & Giuliani
111 Congress Avenue, Suite 2300
Austin, Texas 78701
Partner

- 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.

Apogee Telecom, Inc. v. Univ. Video Servs., Inc., No. 1:17-cv-00672-SS (W.D. Tex.).

I served as a mediator in this case, which involves a dispute between providers of certain technology to higher education facilities. The parties were unable to settle the case.

Intelligent Water Sols. v. Kohler Co., No. 2:16-cv-000689-JRG (E.D. Tex.).

I served as a mediator in this case, which involved a patent dispute. The parties were able to reach settlement.

WLES, L.P. v. Allen; No. CV-17-0598 (15th Dist. Ct., Grayson Cty., Tex.).

I served as a mediator in this case, which involved a property line boundary dispute. The parties were unable to settle the case.

b. Describe:

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

After completing my clerkship, I began practice at an Austin law firm, where I focused on general litigation. My practice became more focused on insurance bad faith claims when I joined a different firm in 1988. In 1992, I became a United States Magistrate Judge, where I had a wide-ranging docket overseeing numerous aspects of both civil and criminal litigation. After I left the bench in 1999, I focused my career in the field of patent law. For nearly twenty years, I have handled high-profile patent cases in both federal courts and in the International Trade Commission. I have also litigated cases involving trademarks and copyrights. Outside of the intellectual property realm, I have tried cases involving employment issues, such as wrongful termination, and constitutional issues.

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

During my time as an associate at McGinnis and Akin Gump, I primarily worked on commercial litigation on behalf of large insurance companies and financial lending institutions. After leaving the bench, I have been a partner at several large firms, where I have litigated intellectual property matters, particularly patent litigation. My clients have included a number of Fortune 500 companies, as well as other large companies. My clients have been both plaintiffs and defendants in the intellectual property space. In addition, I have represented inventors as plaintiffs in major patent litigation. I have handled a small number of other types of intellectual property cases, including copyright, trademark and trade secret claims.

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

- i. Indicate the percentage of your practice in:
- | | |
|--------------------|-----|
| 1. federal courts: | 90% |
|--------------------|-----|

2. state courts of record: _____%
3. other courts: 10% (Int'l Trade Comm'n)
4. administrative agencies: _____%

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 have been one of the lead trial counsel in approximately 15 cases that have been litigated to verdict, judgment, or final decision. Given the complexity of patent work, my cases have often involved the participation of co-lead counsel, with each of us shouldering responsibility for discrete parts of the case.

i. What percentage of these trials were:

1. jury: 75%
2. non-jury: 25%

- 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 United States Supreme Court.

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. *Microtune (Texas), L.P v. Broadcom Corp.*, No. 4:01-cv-00023-PNB (E.D. Tex. Mar. 20, 2003).

2001 – 2004

I represented the plaintiff, a small startup company, which alleged claims of patent infringement against Broadcom. I was one of two lead counsel in this case, and tried the case to a jury in the Eastern District of Texas. I was responsible for handling depositions of fact witnesses and experts, preparation for trial, and conducting direct and cross examinations of witnesses at trial. The jury found in our favor, and the court entered an injunction on behalf of our client. After the judgment was entered, I was responsible for post-trial motions practice. The parties subsequently agreed to a settlement, ending the litigation. Judge Paul N. Brown presided over the case.

Judge Brown's post-trial opinion enhancing damages and interest is reported at 2003 WL 23326002 (E.D. Tex. Aug. 12, 2003). His opinion awarding attorneys' fees is reported at 2004 WL 716697 (E.D. Tex. Mar. 18, 2004).

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2. *Crossroads Sys. (Tex.), Inc. v. Pathlight Tech. Inc.*, No. 1:00-cv-00248-SS (W.D. Tex. June 13, 2001); *Crossroads Sys. (Tex.), Inc. v. Chaparral Network Storage, Inc.*, No. 1:00-cv-00217-SS (W.D. Tex. Nov. 15, 2001), *aff'd*, 56 F. App'x 502 (Fed. Cir. 2003).

2000 – 2003

I represented the plaintiff, a small startup company, in these two patent infringement suits, both of which concerned the same patent. I was one of two lead counsel in both suits. My responsibilities in the suit against Pathlight included depositions of fact witnesses and experts, preparation for trial, and conducting direct and cross examinations of witnesses at trial. This case settled the night before closing arguments were to be made to a jury. My responsibilities in the suit against Chapparral were roughly the same as in the case against

Pathlight. We obtained a verdict of infringement on behalf of our client, which was affirmed on appeal. I argued the appeal to the Federal Circuit. Judge Sam Sparks presided over both cases in the Western District of Texas.

Judge Sparks' *Markman* opinion in the *Chapparal* case is reported at 2000 WL 35731852 (W.D. Tex. July 27, 2000).

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3. *Lucent Techs., Inc. v. Microsoft Corp.*, No. 3:06-cv-00684-H-CAB (S.D. Cal. Jul. 23, 2008), *appeal dismissed*, 329 F. App'x 262 (Fed. Cir. 2009).

2008 – 2009

Alcatel Lucent filed a series of patent infringement cases against my client Microsoft in several courts across the nation. In particular, I participated in three trials in San Diego. In the first trial (identified above), I joined the case shortly before the trial was set to commence, and primarily the direct and cross examination of a number of witnesses, including experts. I also assisted other trial attorneys prepare the opening and closing arguments. Although the trial resulted in jury verdict of \$1.6 billion, the district court entered a judgment as a matter of law in favor of my client, which the Federal Circuit affirmed. I had similar responsibilities in the other two trials in San Diego. Ultimately, the parties settled all of the litigation. Judge Marilyn Huff presided in the cases in the United States District Court for the Southern District of California.

Judge Huff's opinion regarding the judgment as a matter of law is reported at 2008 WL 2872738 (S.D. Cal. July 23, 2008).

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4. *Alcatel-Lucent USA Inc. v. Amazon.com, Inc.*, 6:09-cv-00422-LED (E.D. Tex. Nov. 2, 2011), *aff'd*, 505 F. App'x 957 (Fed. Cir. 2013).

2010 – 2013

This case was a patent infringement action brought against a number of internet sale companies, including my client Overstock.com. The case against my client went to trial, and I served as lead trial counsel, along with one of my partners. My responsibilities included trial strategy and the conduct of the trial, particularly the handling of direct and cross examinations of fact and expert witnesses. The jury found in my client's favor, not only holding that there was no infringement but also invalidating one of the plaintiff's asserted patents. The jury's verdict later was affirmed by the Federal Circuit, although I was not involved in that appeal. Judge Leonard Davis presided over this case in the Eastern District of Texas, assisted by Magistrate Judge John D. Love.

Judge Davis's order resolving post-trial motions is reported at 2012 WL 12897215 (E.D. Tex. July 30, 2012).

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5. *Syntrix Biosystems, Inc. v. Illumina, Inc.*, No. 3:10-cv-05870-KLS (W.D. Wash. June 19, 2013).

2010 – 2014

I represented a small company in a patent infringement suit against a manufacturer and retailer of sophisticated DNA testing equipment. My client had shared its patented ideas with the defendant subject to a non-disclosure agreement, later to learn that the defendant had manufactured a product infringing on the patent. I was involved in all phases of discovery, including the selections of experts, the preparation of expert reports, and the depositions of fact and expert witnesses. As one of the lead counsel at trial, I handled the direct and cross of examinations of fact witnesses, including the inventor, and I had complete responsibility for the damages portion of the trial. I also gave one of the closing arguments. The jury returned a verdict in my client's favor, in the amount of \$96 million. The defendant appealed, but the case settled prior to argument before the Federal Circuit. Judge Benjamin H. Settle presided over this case in the Western District of Washington.

Judge Settle's *Markman* opinion is reported at 2012 WL 13042846 (W.D. Wash. June 11, 2012). The court's opinion denying plaintiff's motion for partial summary judgment is reported at 2013 WL 364735 (W.D. Wash. Jan. 30, 2013). The court's opinion granting defendant's motion for partial summary judgment is reported at 2013 WL 364722 (W.D. Wash. Jan. 30, 2013). The court's opinion denying defendant's motion for summary judgment is reported at 2013 WL 496061 (Feb. 7, 2013). The court's order granting judgment to plaintiff is reported at 2013 WL 3089448 (June 18, 2013).

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6. *TQP Dev. LLC v. 1-800-Flowers.com, Inc.*, No. 2:11-cv-00248-JRG-RSP (E.D. Tex. July 15, 2015).

2013 – 2015

I represented one of the defendants, Newegg, Inc., in this patent infringement case relating to methods of encrypting data over websites. I was lead counsel and tried the case along with a co-counsel. I handled the voir dire, and was responsible for the direct and cross examinations of fact and expert witnesses. Although the jury returned a verdict in favor of the plaintiff, the court subsequently entered a judgment as a matter of law that there was no infringement. Judge Rodney Gilstrap presided over this case, assisted by Magistrate Judge Roy Payne.

Judge Gilstrap's opinion regarding laches is reported at 2014 WL 12602865 (E.D. Tex. Aug. 7, 2014). The court's order granting judgment as a matter of law on the issue of infringement is reported at 2015 WL 12791162 (E.D. Tex. July 15, 2015). The court's order denying judgment as a matter of law on the issue of invalidity is reported at 120 F. Supp. 3d 600 (E.D. Tex. 2015). The court's order denying judgment as a matter of law on the issues of damages is reported at 2015 WL 6694116 (E.D. Tex. Nov. 3, 2015). Magistrate Judge Payne's *Markman* opinion is reported at 2013 WL 2177896 (E.D. Tex. May 20, 2013).

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7. *Harrell v. DCS Equip. Leasing Corp.*, Nos. A-89-CA-359 & A-89-CA-502 (W.D. Tex. Aug. 27, 1990), *aff'd*, 951 F.2d 1453 (5th Cir. 1992).

1989 – 1990

I represented a client that was accused of fraud in connection with certain investment advice provided. In particular, investors asserted that my client improperly encouraged participation in tax shelters. I was one of the lead trial counsel, and my responsibilities included depositions and the direct and cross examination of witnesses at trial. The jury returned a verdict in favor of our client. Judge James R. Nowlin presided over this case.

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8. *Cricket Prods., Inc. v. RSGA Int'l, Inc.*, Nos. 1:06-cv-10506-WGY & 1:06-cv-11178-WGY (D. Mass. Jan. 9, 2007).

2006 – 2007

This was a patent infringement case filed against a client in Boston. Before I was involved in the litigation, the court schedule a trial on short notice. I acted as lead trial counsel, along with another partner at my firm. My responsibilities included jury selection, the opening statement, and examination of witnesses. After a few days of trial, the parties agreed to a settlement. Judge William G. Young presided over this case.

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9. *Lloyd v. Birkman*, No. 1:13-cv-00505 (W.D. Tex.).

2013 – present

The plaintiffs filed this case against Williamson County, Texas, and a number of its officials, alleging constitutional and statutory violations in connection with his unsuccessful bid to be appointed county constable. I was lead trial counsel for the defendants. In that position, I was responsible the preparation of our fact witnesses for trial and the direct and cross examination of trial witnesses, including both fact and expert witnesses. The court conducted a bench trial, which resulted in a narrow injunction against the county prohibiting the line of questioning for future applicants to the position. The court has yet to rule on attorneys' fees, and its decision therefore is not yet appealable. Judge David Ezra is presiding over this case, assisted by Magistrate Judge Mark Lane.

Judge Ezra's order granting defendants' motions for partial summary judgment is reported at 127 F. Supp. 3d 725 (W.D. Tex. 2015). Judge Ezra's order granting defendants' supplemental motion for summary judgment is reported at 2016 WL 1306650 (E.D. Tex. Apr. 1, 2016). Magistrate Judge Lane's report and recommendation as to summary judgment are reported at 2014 WL 10321038 (W.D. Tex. Nov. 20, 2014).

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10. *Air Measurement Tech., Inc. v. Hamilton*, No. 5:03-cv-00541-WRF (W.D. Tex. 2009).

2003 – 2005

This was an attorney malpractice case filed in 2003, which resulted from allegedly negligent conduct by attorneys during patent prosecution and litigation. I was lead counsel for one of the attorneys and firms accused of malpractice. The action had been initiated in Bexar (Texas) County District Court, and I was responsible for removal of the case to the United States District Court for the Western District of Texas. Removal involved a novel question whether the federal or state court had jurisdiction over a malpractice case involving patent prosecution. I later withdrew from the case because of a conflict that arose after I changed law firms. Judge Royal Ferguson presided over this case.

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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.)

In addition to my litigation practice, I have been committed to fostering Austin's intellectual property bar and mentoring young lawyer. I am a founding member of the Lee Yeakel Intellectual Property Law Inn of Court, and as a master of this organization. The Inn promotes fellowship among members of the IP bar, and is particularly focused on developing the skills and knowledge of younger attorneys. In particular, the Inn prides itself on exposing younger members of the bar to developments in intellectual property law, and to introducing them to more seasoned jurists and practitioners.

I also have dedicated considerable amounts of time to planning and teaching continuing legal education courses. Most significantly, I have been involved for many years in a continuing legal education seminar hosted by the University of Texas School of Law. In addition to having been a speaker on multiple occasions, I also help to design and implement the program.

I have never done any lobbying.

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.

I taught a Trial Advocacy course at the University of Texas School of Law during each semester of the 1998 – 1999 academic year. This course addressed the preparation of a case, from filing through trial, and culminated in mock trials at the end of each semester. I did not use a syllabus, and I was not compensated.

I also taught a 6-week course in macroeconomics to high school juniors and seniors at Crockett High School in Austin, Texas in the Spring of 1991. I taught the course on behalf of Junior Achievement. I do not have any syllabus.

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

I do not expect to receive any deferred income or future benefits from previous business relationships, professional services, firm memberships, former employers, clients, or customers. I do anticipate receiving a matching contribution from my firm for my 401k account for 2017 on April 15, 2018. I also expect the firm to contribute the amount I deferred in 2017 compensation into my 401k account on April 15, 2018. I still retain my 401k account from Bracewell, LLP and the pension from the United States government from my service as a United States Magistrate Judge, but no contributions will be made to those accounts after the ones identified immediately above to take place on April 15, 2018. I also have personal retirement monies invested in mutual funds and de minimum amounts in stocks.

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.

If confirmed, I hope to be able to teach a law school course, if my judicial schedule permits. I have no commitments or agreements to do so, and I have no other plans for outside activities.

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 Statement of Net Worth.

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.

If confirmed, I would recuse myself from every case in which I had previously participated as a lawyer or played any other role. Cases involving my current firm, Bracewell LLP, would raise potential conflict issues, at least initially, and I would anticipate recusing myself from matters involving the firm for a period of time. Otherwise, I am unaware of any family members, other persons, parties, categories of litigation, or financial arrangements that are likely to present potential conflicts of interest.

- 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 and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances. I will also maintain a list of cases in which I was directly involved as an attorney and actively screen parties and counsel in each case for potential conflicts.

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.

My most significant *pro bono* contribution was the representation of Harold Amos Barnard in 1992. *Barnard v. Collins*, 958 F.2d 634 (5th Cir. 1992). Mr. Barnard was sentenced to death under Texas law, and I represented him in the appellate phase of his *habeas* challenge. On appeal, Mr. Barnard asserted that the Texas capital sentencing statute, as applied in his case, violated the Sixth, Eighth, and Fourteenth Amendments. Mr. Barnard also raised arguments as to ineffective assistance of counsel and improper handling of mitigation evidence. My representation entailed hundreds of hours of work on the brief and in preparation for oral argument.

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 February 2017, I submitted an application to the offices of Senator Cornyn and Senator Cruz, expressing my interest in vacancies in the federal district courts of Texas, including the vacancy in the Western District of Texas. On March 16, 2017, I interviewed with the Federal Judicial Evaluation Committee in Dallas, Texas. On April 27, 2017, I interviewed with Senators Cornyn and Cruz in Senator Cornyn's office in Washington, D.C. On July 28, 2017, I interviewed with attorneys from the White House Counsel's Office and the Office of Legal Policy of the Department of Justice in Washington, D.C. Since that time I have been in contact with officials from the White House and the Office of Legal Policy. On January 24, 2018, 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.