

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).
Answer: Kathleen Cardone, Kathleen Cardone Rodriguez
2. Address: List current place of residence and office address(es).
Answer: Residence: El Paso, Texas
Office: TAMS, 1444 Montana, Suite 205, El Paso, TX, 79902
3. Date and place of birth.
Answer: December 25, 1953; Medina, New York
4. Marital Status: (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).
Answer: Bruce E. Neugebauer
Employed: Intel Analyst, H.I.D.T.A., Federal Building, 600 South Mesa Hills, El Paso, Texas, 79912.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.
Answer: J.D. , May 12, 1979
August, 1976 to May, 1979
St. Mary's School of Law
One Camino Santa Maria
San Antonio, Texas 78284

Bachelor of Arts, May 11, 1976
August, 1971 to May, 1976
State University of New York At Binghamton
Binghamton, New York
Double Major: Spanish Language and Literature/Latin American Studies

Andean Center for Latin American Studies
August, 1974 to June, 1975
Quito, Ecuador
non-degree
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor or employee since graduation from college.
Answer: From January 1, 2001 to the present I have been an assigned/visiting Judge for the State of Texas. I preside over both civil and criminal trials. My current assignment is to the 34th Impact Court for El Paso County, Texas, where I preside over criminal cases involving drug-related offenses.

From January 1, 2001 to the present I have been working as a mediator. The mediation work I have done has involved both state and federal lawsuits. I have performed 100s of hours of mediations in civil matters including medical malpractice, employer/employee litigation, wrongful death and personal injury cases. I have also acted as a hearing officer for various employer/employee disputes.

From January 1, 1997 to the present I have been employed as a part-time instructor with the El Paso Community College where I teach a course entitled *Law and Legal Terminology*.

From September 21, 1999 to December 31, 2000, I served as Judge of the 388th Judicial District Court where I set up policy and procedures for a newly created state district court. As the first judge of that court it was my responsibility to implement the legislative mandate for a specialized court. It was during this period that I also developed and founded the El Paso County Domestic Relations Office.

From January 1, 1997 to September 21, 1999 I was employed as a mediator where I handled all types of civil litigation at both the federal and state level.

From November 8, 1995 to December 31, 1996 I served as Judge of the 383rd Judicial District Court. I presided over a court of general jurisdiction (both criminal and civil) with an emphasis on family law matters. During my tenure as Judge of the 383rd, I created the first specialized family law district court for El Paso County and I established a unified family court docket.

From December 14, 1990 to November 8, 1995, I was an Associate Judge with the Family Law Court of El Paso County, Texas. As an Associate Judge I presided over all assigned family law cases including divorce, child custody, child support and enforcement.

From October, 1983 to December, 1990 I was Judge of the Municipal Court #5 for the City of El Paso, Texas. I presided over Class C misdemeanor violations and performed magistrate duties.

From January, 1980 to December, 1990 I was a self-employed attorney in private practice where I handled civil, criminal and family law matters.

From August 1979 to June, 1980 I was a briefing attorney for the Honorable Philip A. Schraub, a United States Magistrate for the Southern District of Texas. In addition to research, I was assigned Social Security cases and prisoner's petitions.

Throughout my time in El Paso, Texas, I have served as a Member of the Board of Directors for a number of non-profit organizations. Here is a list and my years of service.

Member, Board of Directors

Upper Rio Grande Workforce Development Board
10th Floor, 221 North Kansas St., El Paso, TX 79901
Spring, 2001 to Present

Member, Board of Directors

YWCA, Paso Del Norte Region
1918 Texas Ave., El Paso, TX 79901
1997 to 2002

Member, Board of Directors

El Paso Holocaust Museum and Study Center
7100 Westwind Dr., El Paso, TX 79912
1997 to 2002

Member, Board of Directors

El Paso Bar Foundation
Lower Level, El Paso County Courthouse, 500 East San Antonio, El Paso, TX 79901
1998 to 2002

Member, Board of Directors

El Paso Center for Family Violence
3800 North Piedras Street, El Paso, TX 79930
Fall, 2001 to Present

Member, Board of Directors

El Paso County Domestic Relations Office
Lower Level, El Paso County Courthouse, 500 East San Antonio, El Paso, TX 79901
July, 1999 to September 2001

Member, El Paso County Mexican American Bar Association

El Paso County Courthouse, 500 East San Antonio, El Paso, TX 79901
1985 to Present
President, 1987-1988

Co-Chair, Kids VOTE El Paso

January, 1998 to August, 1999

Member, Board of Directors

Child Crisis Center of El Paso
7100 North Stevens St. El Paso, TX 79930
January, 1997 to 1998

Member, Board of Directors

CASA (Court Appointed Special Advocates)
3rd Floor, El Paso County Courthouse, 500 East San
Antonio, El Paso, TX 79901
January, 1997 to 1998

Member, Board of Directors

El Paso Association of Performing Arts
McKelligon Canyon Pavillion, Mckelligon Road, El Paso,
TX 79930
January, 1997 to 1999

Member, Board of Directors

El Paso County Purchasing Board
El Paso County Courthouse, 500 E. San Antonio, El Paso,
TX 79901
1995 to 1996

Member, Board of Directors

El Paso County Juvenile Board
El Paso County Courthouse, 500 E. San Antonio, El Paso,
TX 79901
1995 to 1996

Member, Gender Bias Task Force Committee

Eighth Court of Appeals
12th Floor, El Paso County Courthouse, 500 E. San
Antonio, El Paso, TX 79901
1995 to 1996

Member, Board of Directors

Child Welfare Board
El Paso County Courthouse, 500 E. San Antonio, El Paso,
TX 79901
Vice-Chair, 1987 to 1988

Member, Board of Directors

YWCA, Paso Del Norte Region
1918 Texas Ave., El Paso, TX 79901
Spring, 1981 to Spring, 1983
Chair, Women's Resource Center

7. Military Service: Have you had any military service? If so, give particulars, including dates of service, branch of service, rank or rate, serial number and type of discharge received.
Answer: None
8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.
Answer: None
9. Bar Associations: List all bar associations, or legal or judicial related committees 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.
Answer: Member, State Bar of Texas
August, 1979 to present
- Member, Board of Directors
El Paso Bar Foundation
1998 to Present
- Member, El Paso Family Law Bar Association
1990 to present
- Member, El Paso Bar Association
1995 to present
- Member, El Paso County Mexican American Bar Association
1985 to Present
President, 1987-1988
- Member, Board of Directors
El Paso County Juvenile board
1995 to 1996
- Member, Gender Bias Task Force Committee
Eighth Court of Appeals
1995 to 1996
- Member, Child Support Guidelines Committee
Supreme Court, State of Texas
1987
- Member, National Association of Women Judges
2002-present

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Answer: To my knowledge, I belong to no organization which is active in lobbying before public bodies. The other organizations to which I belong are as follows:

Member, Board of Directors
El Paso Center for Family Violence
Fall, 2001 to Present

Member, Board of Directors
Upper Rio Grande Workforce Development Board
Spring, 2001 to present

Member, Executive Forum
January, 1997 to Present

Member, Latinas 100
1999 to Present

Member, Italian American Cultural Society
1995-present

Member, El Paso Buffalo Bills Fan Club
1995-present

Member, PTA – Polk Elementary School
2001-present

Member, Insights Muscum
2002-present

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such membership lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Answer: *State Bar of Texas*
Admitted: November, 1979

United States District Court for the Southern District of Texas
Admitted: December 11, 1979

United States District Court for the Western District of Texas
Admitted: February 24, 1981

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or policy. If there are press reports about the speech, and they are readily available to you, please supply them.
- Answer:** *Judicial Ethics and Courtroom Decorum*, Panel Member, El Paso Women's Bar Association CLE, November 8, 2002
Collaborative Law, TAMS Newsletter, Fall, 2001
When Close Isn't Good Enough - Procedural Issues on the Border, El Paso Family Law on the Border Conference; November 9, 2001
Let's talk about it - Mediation in Criminal Justice, Presented to the Texas Probation Association Annual Conference; April 11, 2001
Divorce Mediation or Let's Agree to Split the Sheets and the Children, TAMS newsletters, Spring & Summer, 1998
Flowchart of the Judicial System, Presented at Junior League's Court Link Seminar, August 26, 1998
Legal Issues, Presented at the TAPS, Teenage Parents Seminar, Project Redirection, November, 1997
Mediation, Panelist at the Advanced Family Law Course, State Bar of Texas, August, 1997
 Faculty; 22nd annual Advanced Family Law Course, State Bar of Texas, August, 1996
The Crisis of the 90's, Family Law and its aftermath, Presented at the EPISD Administrator's Summer training; Summer, 1996
Diary of A Baby Judge or Never Having to say you're sorry, Presented at the 1996 College for New Judges, State of Texas
Conservatorship: 1995 Legislation and its effect, Presented to the El Paso County Family Law Bar Association, Fall 1995
The Art of Persuasion: Persuading the Judge, Presented at the 18th Annual Marriage Dissolution Institute, State Bar of Texas, May 5, 1995
Rewriting Our Future, Presented at the Young Families Conference, March 29, 1988
Women's Issues Today, panelist YWCA Women's Resource Center, July 12, 1983
13. **Health:** What is the present state of your health? List the date of your last physical examination.
- Answer:** State of health: Excellent
 Last physical exam: February 18, 2003
14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.
- Answer:** 1. From January 1, 2001 to the present - *Assigned Judge, State of Texas*. This is neither an elected nor appointed position.

Under Texas statute, as a former District Court Judge, I now qualify to sit as an assigned judge in any county within the State of Texas. I have general jurisdiction over any criminal or civil matter brought in the Courts of the State.

2. From September 21, 1999 to December 31, 2000 - *Judge, 388th Judicial District Court*. This was an appointed position to fill a vacancy until the next general election. I presided over a court of general jurisdiction (both criminal and civil) with an emphasis on family matters.

3. From November 8, 1995 to December 31, 1996 - *Judge, 383rd Judicial District Court*. This was an appointed position to fill a vacancy until the next general election. I presided over a court of general jurisdiction (both criminal and civil) with an emphasis on family matters.

4. From December 14, 1990 to November 8, 1995 - *Associate Judge, Family Law Court*. This is an appointed position. My jurisdiction was over all family law cases filed in El Paso County, Texas, under Titles I, II, and IV of the Texas Family Code.

5. From October, 1983 to December, 1990 - *Judge, Municipal Court #5 for the City of El Paso*. This is an elected position. However, I was initially appointed to fill a vacancy until the next city election. Thereafter, I ran unopposed for two subsequent terms. My jurisdiction was over Class C misdemeanor violations committed within the City of El Paso, Texas.

15. Citations:

If you are or have been a judge, provide:

(1) citations for the ten most significant opinions you have written;

Answer: Since I was a trial judge, I wrote no significant opinions. However, the ten most significant cases I presided over are as follows:

1. *Steven Jones v. The Toro Company*, Cause No. 2000-2429; County Court at Law No. 3, El Paso County, Texas - This was a civil suit tried before a jury. The Plaintiff, Steven Jones, sued his former employer, The Toro Company, alleging that his employer had discriminated against him for filing a workers' compensation claim in violation of VTCA, Labor Code, Section 451. The jury found against the Defendant and awarded to the Plaintiff the following amounts: \$25,000 for lost employment benefits in the past and \$150,000 for lost employment benefits in the future;

\$300,000 for mental anguish damages; and \$30,000,000 in exemplary damages. At a hearing for entry of judgment, the court found that the evidence supported the jury findings. However, I as the trial judge, determined that the cap on exemplary damages was applicable to the case and the cap was applied. Plaintiff's attorneys were Mr. John Wenke, Esquire, 1201 N. Mesa, Suite H., El Paso, Texas, 79902, 915-532-3224; and Mr. George Andritos, Esquire, 1201 N. Mesa, El Paso, Texas, 79902, 915-577-9994. Defendant's attorneys were Ms. Chris Borunda, Esquire, and Mr. Lisa Elizondo, Esquire, Carr Flora, P.C., 5809 Acacia Circle, El Paso, Texas, 79912, 915-587-1050.

2. *State of Texas v. Jarrod Duran*, Cause No. 970D03833, 41st Judicial District Court, El Paso County, Texas – This was a criminal case tried before a jury. Jarrod Duran was charged with one count of attempted murder and six counts of attempted capital murder for allegedly shooting at the El Paso County Sheriff's Department's SWAT team when they attempted to enter his home to arrest him for the attempted murder of a woman. The jury convicted Mr. Duran of aggravated assault and six counts of deadly conduct. The jury sentenced him to eight years of confinement and a fine of \$10,000 on the aggravated assault conviction and confinement of one year and a fine of \$1,000 for the deadly conduct. On appeal (Cause No. 08-01-00110-CR, 8th Cir., TX, 2002), the judgment of the trial court was affirmed. The State's attorney was Mr. Ballard Shapleigh, Esquire, Assistant District Attorney, El Paso County Courthouse, 500 East San Antonio, El Paso, Texas, 79901, 915-546-2059. The Defendant's attorney was Mr. Dolph Quijano, Esquire, 707 Myrtle, El Paso, Texas, 79901.

3. *Heriberto Munoz v. Texas Worker's Compensation Insurance Fund n/k/a Texas Mutual Insurance Company*, Cause No. 99-3193; County Court at Law No. 3, El Paso County, Texas – This is a suit for a declaratory judgment. The issue in this case was whether or not the Plaintiff, Heriberto Munoz, had an obligation to reimburse the Defendant, Texas Worker's Compensation Insurance Fund, n/k/a Texas Mutual Insurance Company, for benefits that he had received. The Plaintiff, a painter, was injured on the job. The Plaintiff had signed a contract of employment with All Client Industries, an employee leasing facility. Mr. David Rutledge was also a signatory to that agreement.

After the Plaintiff was injured on the job, David Rutledge submitted Worker's Compensation paperwork. However, All Client Industries was a non-subscriber. A jury verdict was rendered in the 327th District Court in Cause No. 97-3212, wherein the Plaintiff was granted a money judgment against the Defendant, All Client Industries. However, the Defendant, Texas Worker's Compensation Insurance Fund n/k/a Texas Mutual Insurance Company, decided not to participate in that trial. The Defendant sought reimbursement for benefits paid to Plaintiff. Plaintiff deposited the disputed amount into the Court's registry and then sought this declaratory judgment. After a hearing before the Court, I ruled that the Plaintiff had no obligation to reimburse the Defendant and awarded the Plaintiff his attorney's fees and costs. The attorney for the Plaintiff was Ms. Gina M. Palafox, Esquire, 4157 Rio Bravo, El Paso, Texas, 79902, 915-533-4884. The attorney for the Defendant was Mr. Stephen H. Nickey, Esquire, 415 N. Mesa, El Paso, Texas, 79901, 915-533-5938.

4. *Tae Sun Smith v. Smith Foods*; Cause No. 98-2957; County Court at Law No. 3, El Paso County, Texas – This was a civil case to be tried to a jury. However, after complex discovery and motion hearing and two unsuccessful attempts to select a jury, the case was transferred after a Motion to Transfer Venue was filed by the Defendant and granted by me as the presiding judge. The Plaintiff sued the Defendant after she was mugged and assaulted outside of the Defendant's grocery store by two unknown assailants. The Plaintiff alleged a premises case stating that the Defendant did not have proper security at the store. The attorney for the Plaintiff was Mr. James F. Scherr Esquire, 109 N. Oregon Street, 12th Floor, El Paso, Texas, 79901, 915-544-0100. The attorney for the Defendant was Mr. Mark C. Walker, Esquire, 100 N. Stanton, El Paso, Texas, 79901, 915-532-2000.
5. *In the Interest of Janani Martinez*, Cause No. 94-12787; 65th Judicial District Court, El Paso, County, Texas – This is a family law case regarding termination of parental rights and custody of a minor child. The case was tried to a jury. After the father of the minor child was shot and killed in front of the minor child's home, the paternal grandparents filed a Petition to Terminate the mother's parental rights and a Motion to Modify a prior court order granting primary custody of the minor child to the mother. In the

original Decree of Paternity, the mother and father were named joint managing conservators with the mother as primary caretaker. The father was granted standard possession which entitled him to a long Thanksgiving visitation every other year. On a Wednesday evening, when the father went to the home of the mother to pick up the minor child for the long holiday visitation, the stepfather came out of the residence and shot the father dead. He left him there to die, returned into the home, and advised the mother of the child what he had done. The mother and stepfather then left the jurisdiction of the Court and were not found until approximately two years later. The case was tried to a jury. The jury did not terminate the parent-child relationship between the child and the mother. However, they granted custody to the grandparents. The attorney for the grandparents was Ms. Doris Sipes, Esquire, 1011 N. Mesa, El Paso, Texas, 79902, 915-544-5235. The attorney for the mother was Mr. Mark T. Davis, Esquire, 1554 Lomaland, El Paso, Texas, 79935, 915-779-3596. The attorney for the minor child was Ms. Maria B. Ramirez, Esquire, 1316 Montana, El Paso, Texas, 79903, 915-544-6115.

6. *State of Texas v. Roberto Macias*, Cause No. 20010D02195, 41st Judicial District Court, El Paso County, Texas -- This is a criminal case which was tried to a jury twice and on both occasions resulted in a mistrial because the jury was unable to reach a verdict. A few months after the second trial, the Defendant pleaded guilty to the court. The Defendant had been charged with the offense of DWI manslaughter. He had spent the day of the incident moving furniture for his family from the old home to the new home. At the end of the day after making the last delivery of furniture, he stopped and bought a six pack of beer which he immediately began drinking. On the way home, he was involved in a head on collision with a car which was traveling in the opposite direction. The Defendant claimed that his car stalled in the intersection due to mechanical failure. After the juries were unable to reach a verdict, the Defendant pleaded to the DWI manslaughter. Attorney for the State was Dolores Reyes, Assistant District Attorney, El Paso County Courthouse, 500 East San Antonio, El Paso, Texas, 79901, 915-546-2059. The attorney for the Defendant was Mr. Robert R. Harris, Esquire, 1009 Montana, El Paso, Texas, 79902, 915-545-1657.

7. *In the Interest of Jesus Vargas, Jr.*, Cause No. 90-3175; 65th Judicial District Court, El Paso County, Texas – This is a family law case that was tried to a jury regarding custody of the minor child. The parents had divorced several years prior to this modification that was filed by the father. The father then sought custody from the mother. I had previously presided over this case when I was the presiding judge of 388th Judicial District Court. At that time we attempted to resolve the dispute through the alternative dispute resolution method known as a summary jury trial. However, the parents were never able to settle the matter. Since the child was of the age permitted by law to make a designation of where he would like to reside, he selected to reside with his father. His mother disagreed and the case was tried to the jury. The jury returned a verdict naming the parties as joint managing conservators with the father as primary caretaker. The attorney for the father was Mr. Jose M. Gonzalez, Esquire, 120 North Florence, El Paso, Texas, 79901, 915-532-2577. The attorney for the mother was Mr. Luis Labrado, Esquire, 2601 Montana, El Paso, Texas, 79903, 915-562-1140. The attorney for the minor child was Mr. Gary Aboud, Esquire, 400 East Overland, El Paso, Texas, 79901, 915-532-2480.

8. *In the Interest of Ericka Alicia Martinez and Edward Paul Martinez, Jr.*, Cause No. 94-12787, 383rd Judicial District Court, El Paso County, Texas – This is a family law case involving child custody. The father of the child filed a Motion to Modify child custody and requesting that he be named as the primary caretaker of the minor children. This case had languished in the court system for a long time. The parties agreed to have this case tried before the court and I was assigned as the presiding judge. After a three day hearing, I determined that the mother should remain as the primary caretaker with the father receiving increased visitation. The attorney for the mother was Mr. Roberto Barreda, Esquire, El Paso County Legal Assistance Society, 1301 North Oregon, El Paso, Texas, 79902, 915-544-3022. The attorney for the father was Mr. G. Daniel Mena, Esquire, 3233 North Piedras, El Paso, Texas, 79930, 915-564-1336. The attorney for the minor children was Ms. Susan Urbiceta, Esquire, 521 Texas Avenue, El Paso, Texas, 79901, 915-544-9061.

9. *In the Interest of Deanna and Jared Said*, Cause No. 95-14929; 383rd Judicial District Court, El Paso County, Texas

– This is a family law case involving the issue of child custody. After many years of contentious custody hearings, the mother of the minor children was awarded primary custody. However, in approximately 2001, the older daughter was placed in a foster home after spending several weeks in a runaway shelter where she had fled after reporting that her mother had threatened to kill her with a knife. The case is being tried before the court and I have been assigned as the presiding judge. The children have been temporarily placed with their father. The case is still pending. The attorney for the father is Ms. Susan M. Urbietta, Esquire, 521 Texas Avenue, El Paso, Texas, 79901, 915-544-9061. The attorney for the mother is Ms. Angelica Juarez, Barrill, Esquire, 220 Blacker, El Paso, Texas, 79901, 915-544-6480. The attorney for the minor children is Ms. Kristina Voorhies, Esquire, El Paso County Domestic Relations Office, 500 East San Antonio, Suite. LL108, El Paso, Texas, 79901, 915-834-8200

10. *In the Matter of Enrique Escobar and Ysleta Independent School District*; binding arbitration – This case was tried before me as a hearing examiner. The Plaintiff had requested a hearing after he was suspended by the Ysleta Independent School District from his position as Executive Director of Facilities as a result of pending criminal charges of misapplication of fiduciary property and theft by a public servant. Mr. Escobar had obtained records belonging to the school district after he had been suspended from work. He obtained these documents by calling upon an employee of the district to bring the documents to him. Mr. Escobar claimed that the documents were necessary for his defense and that the documents were not ordinarily kept as permanent records but destroyed by the district. Therefore, there could be no misapplication. After a five day hearing before me as the hearing officer, I determined that Mr. Escobar was terminated for good cause. The attorney for Mr. Escobar was Mr. Thomas E. Stanton, Esquire, Stanton & Antcliff, 521 Texas Avenue, El Paso, Texas, 79901, 915-532-1122. The attorney for the Ysleta Independent School District was Mr. Bruce A. Kochler, Esquire, 100 North Stanton, Suite 1700, El Paso, Texas, 79901, 915-532-2000.

- (2) a short summary of and citations where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

Answer. *Maria Teresa Zavala v. State of Texas*; #08-96-00136-CR (8th Cir., Texas, 1998) – **reversed and remanded** – Maria Zavala appealed her conviction for aggravated assault after a jury had found her guilty and assessed punishment at eight years of community supervision and a fine of \$1,000. The court of appeals overruled Point of Error Nos. One, Two, Three, Four, and Five. In her 6th point of error, the Ms. Zavala attacked the legal sufficiency of the evidence supporting the finding by the jury of the use of a deadly weapon. In reviewing the record, the appellate court found no evidence that the knife was used or was intended to be used as a deadly weapon or that the wound inflicted was a serious bodily injury. Without such evidence, the jury could not have found that the knife was a deadly weapon and Ms. Zavala could not be convicted of aggravated assault. However, since I had also submitted a charge of assault to the jury which is a lesser included offense of aggravated assault, the court of appeals reformed the judgment to reflect conviction for the lesser included offense of assault and remanded to the trial court for a new hearing on punishment consistent with the lesser charge. /

Alejandro Marrufo v. State of Texas, #08-96-004CR (8th Cir., Texas, 1996) – **modified** – Alejandro Marrufo appealed his conviction for the offense of aggravated assault, enhanced by the allegation of two prior felonies. I, as the trial court, had assessed punishment at twenty-five years imprisonment. The court of appeals overruled Point of Error Nos. One, Two, Three, Four, Five, Six, Seven, Eight, Nine, and Eleven. In Point of Error No. Ten, Mr. Marrufo alleged that the judgment and sentence were erroneous in that they reflected that the punishment phase of the trial was heard by the jury and that it was the jury that had assessed the punishment. In fact, the punishment hearing was held by the court and I, as the judge, assessed the sentence. Therefore, the appellate court ordered that the judgment and sentence be modified to accurately reflect that the court assessed punishment.

(3) citations for significant opinions on federal or state constitutional rulings on such opinions.

Answer: None

If any of the opinions or rulings were in state court or were not officially reported, please provide copies of the opinions.

Answer: See attached

16. **Public Office:** State (chronologically) any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Answer: Public offices held (other than judicial): None

Unsuccessful candidacies:

1. November, 1996 – 383rd Judicial District Court
2. November, 2000 – 388th Judicial District Court

- a. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Answer: None

17. **Legal Career:** Please answer each separately.

- a. Describe chronologically your law practice and legal experience after graduation from high school including:

1. whether you served as clerk to a judge, and if so, the name for the judge, the court and the dates of the period you were clerk;

Answer: Law Clerk, Honorable Philip A. Schraub, U.S. Magistrate for the Southern District of Texas, Corpus Christi; August, 1979 – June, 1980

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

Answer: A sole practitioner from January, 1980 to December, 1989. Addresses: 818 Texas Avenue, El Paso, Texas, 79901 from January, 1980 to approximately August, 1986; 310 North Mesa, Suite 402, El Paso, Texas, 79901 from approximately August, 1986 to December, 1989.

3. 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;

Answer: Kathleen Cardone, Attorney and Counselor at Law from approximately January, 1980 to December, 1989; Cardone & Kurita, from approximately December, 1989 to December, 1990.

- b. 1. What has been the general character of your law practice dividing it into periods with dates if its character has changed over the years;

Answer: The general character of my law practice was as a sole practitioner doing general civil and criminal work throughout the period of time that I was in private practice.

2. Describe your typical former clients, and mention the areas, if any, in which you specialized.

Answer: My typical former client was an individual working person in the El Paso, Texas community. I had no area of specialization.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, providing dates.

Answer: I appeared in court frequently.

2. What percentage of these appearances was in:

(a) federal courts;

Answer: 1%

(b) state courts of record;

Answer: 99%

(c) other courts.

Answer: None

3. What percentage of your litigation was:

(a) civil proceedings;

Answer: 90%

(b) criminal proceedings.

Answer: 10%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled) indicating whether you were sole counsel, chief counsel, or associate counsel.

Answer: The number of cases in courts of record I tried to a verdict is in the 100s, the exact number being unknown to me. My practice was largely in the family law area and virtually every case ended in a final judgment of divorce. I was always sole counsel.

(5) What percentage of these trials was:

Answer: (a) jury 2%;

(b) non-jury 98%

18. Litigation: Describe the ten (10) most significant litigated matters which you personally handled. 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, 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 parties

Answer: It has been over 15 years since I closed my law office. As a sole practitioner, records were destroyed after a number of years. However, I will recount the cases I have been able to recreate.

1. *In the Matter of the Marriage of Sharon Ann Eloreaga and Michael David Elorreaga and in the Interest of Michael D. Elorreaga, Jr. and Evelina R. Eloreaga, Minor Children;* Cause No. 85-3154, 210th District Court – Approximately five years after the parties were originally divorced and the mother was awarded custody, a Motion to Modify custody was filed by the father of the children alleging that the mother was no longer able to care for the minor children. Subsequent to the divorce the mother had a series of problems including: (1) a remarriage that had resulted in divorce after a number of incidents of family violence; (2) a report to the Texas Department of Protective and Regulatory Services by the maternal grandmother who alleged that the children were in danger if they remained in the mother's home; and (3) hospitalization of the mother in a psychiatric ward after a threat to commit suicide. This was a hotly disputed custody case wherein the father alleged that the mother was no longer mentally fit to care for the children. I represented the mother, Sharon Ann (Eloreaga) Parrish from approximately February 28, 1990 through November 5, 1990. The final disposition of the case was that my client, the mother, was awarded custody of the minor children and the father was ordered to pay an increased amount of child support. The case was tried before the Honorable Sam M. Paxson. Opposing counsel was John G. Mundie, Esquire, 4621 Pershing Drive, El Paso, Texas, 79903, 915-566-8688.
2. *In re: Michael M. Szfranski, Debtor, Michael M. Szfranski, Plaintiff, v. Edie Rubalcaba, District Clerk, El Paso County, Texas and Sara Elizabeth Saylor, Defendants;* Cause No. 88-30644 (Chapter 11); In the United States District Court for the Western District of Texas. This was a post divorce property enforcement case. I had previously represented Ms. Sara Elizabeth Saylor in a very contentious divorce involving a division of marital

property. The major asset of the parties had been a business known as *Mikbeth*. At the conclusion of the divorce, Sara Elizabeth Saylor was awarded a significant money judgment against her husband, Michael M. Szfranski and Mr. Szfranski was awarded the business and any related debts. Mr. Szfranski immediately filed a Chapter 11 Bankruptcy to avoid payment. I represented the Respondent, Sara Elizabeth Saylor, from approximately May 30, 1989 through August 14, 1990. The final disposition of the case was that my client, Ms. Saylor was awarded the money being held in the Registry of the Court and was released by the United States Small Business Administration for her portion of the debt owing on the business known as *Mikbeth*. The Judge who presided was the Honorable Ronald B. King. Opposing counsel was Herbert Ehrlich, Esquire, 109 North Oregon St., 12th Floor, El Paso, Texas, 79901; 915-544-0100.

3. *In the Interest of Erin Stephanie Wyrick and William Evan Wyrick, Minor Children*; Cause No. 87-9825; 41st District Court. This was a post divorce modification where the father of the children sought to reduce his child support obligation. After the request for a reduction in child support was filed by the father, the mother made allegations that the father's visitation should be restricted because the father had abused the children. I represented the father, James L. Wyrick, Jr. from approximately May 8, 1989 through December 4, 1990. The final disposition of the case was that the father's child support was reduced to \$150.00 per month and the father was given unrestricted access. The presiding judge was the Honorable Mary Anne Bramblett. Opposing counsel was Sergio Coronado, Esquire, 918 E. San Antonio, El Paso, Texas, 79901; 915-532-4500.
4. *In the Interest of Shaunessy Lynn Miller, A Minor Child*; Cause No. 80-7468; 41st District Court. This was a post divorce custody dispute. The father, Lloyd Miller, filed a Motion to Modify custody alleging that the minor child should no longer reside primarily with the mother. The mother had remarried. The child had made an outcry to her father that the new stepfather had punished her by handcuffing her and locking her in a room. While the case was pending in court, the child was required to obtain psychological counseling and the father was awarded temporary custody. I represented the Respondent, Lloyd Steven Miller from approximately March 20, 1988 through

February 22, 1990. The final disposition of the case was that my client, Lloyd Miller, was given custody of his daughter and the mother and stepfather were allowed access which was to begin only upon completion of parenting classes. The case was presided over by the Honorable Mary Anne Bramblett. Opposing counsel was William J. Ellis, Esquire, 609 Myrtle, El Paso, Texas, 79901; 915-542-1883.

5. *In the Matter of the Marriage of Elizabeth G. Romero and Jose Hector Romero and in the Interest of Denise Nicole Romero and Amanda Christine Romero, Minor Children*; Cause No. 88-3193; 41st District Court. This was a divorce case involving family violence. After the mother had requested a protective order alleging that the father had committed family violence, she filed for a divorce seeking custody of the minor children. Since the custody of the minor children was a contested issue, the Court ordered a Social Study. I represented the Respondent, Jose Hector Romero from approximately April 3, 1988 through November 30, 1988. The final disposition of the case was that the mother was awarded custody and my client, Mr. Jose Hector Romero, was awarded standard visitation. The judge who presided over this case was the Honorable Mary Anne Bramblett. Opposing counsel was the Honorable David Briones, U.S. District Judge for the Western District of Texas, 511 E. San Antonio, El Paso, Texas, 79901; 915-534-6744.
6. *In the Matter of the Marriage of G. Silva, Jr. and M.T. Silva and In the Interest of Guillermo Silva, III, and Alejandro Benjamin Silva, Minor Children*; Cause No. 89-6266; 34th District Court. This was a divorce case which had been filed by the father. He was not requesting custody of the minor children. His main concern was to maintain his retirement which he had earned through employment. The mother filed a counterclaim for divorce requesting both the custody of the minor children and 50 percent of the retirement. I represented the Respondent, M.T. Silva from approximately June 21, 1989 through December 4, 1990. The final disposition of the case was that my client, Maria Teresa Silva was awarded custody of the minor children as well as fifty percent of the retirement accumulated through the marriage. The stock accounts were set aside as an educational fund for the minor children. The presiding judge was the Honorable William Moody. Opposing counsel was Mr. Arne C. Schonberger, Esquire, El Paso

County Attorney's Office, 500 East San Antonio, 5th Floor, Room 503, El Paso, Texas, 79901; 915-546-2050.

7. *In the Matter of the Marriage of Rosa Aguilar and Ruben Aguilar and In the Interest of Raelene Aguilar, Randy Aguilar and Rosanne Aguilar, Minor Children*; Cause No. 89-11571; County Court at Law No. 4. This was a divorce case involving child custody and division of assets and liabilities. The parties had filed for a divorce and reconciled in approximately 1985. Four years later the mother filed a divorce petition requesting custody of the minor children and an equitable division of the marital estate. At the hearing on temporary orders, the mother was awarded the exclusive use and possession of the home and temporary custody of the minor children. The father refused to vacate the marital residence as ordered and the mother found it necessary to seek subsequent orders from the court finding the father in violation of the court's prior order and removing him from the home. I represented the Petitioner, Rosa Aguilar from approximately October 5, 1989 through December 13, 1990. The final disposition of the case was that my client, Rosa Aguilar, was awarded custody of the minor children and the marital residence. The judge presiding was the Honorable Guadalupe Rivera. Opposing counsel was Richard Contreras, Esquire, 2150 Trawood Drive, El Paso, Texas, 79935; 915-594-1970.
8. *In the Matter of the Marriage of P.H.P. and D.E.P. and in the Interest of S.P.P., A Minor Child*; Cause No. 88-5776; 327th District Court. This was a divorce case involving child custody and division of assets and liabilities. However, the main issue in the divorce was the division of the marital estate and tracing of separate property. The wife was born and raised in Germany and had met her husband when he was stationed in Germany with the United States Army. Even after the divorce, she remained in Germany because her husband was sent to Vietnam. Throughout the marriage the wife worked. When the parties were finally able to establish a marital residence together in the United States in 1965, the wife emigrated to the United States and by so doing, gave up the possibility of a partnership in her family business. When the parties bought a family home, the wife's family gave them \$27,000 for the down payment. Upon divorce, the husband denied the wife's right to her \$27,000 reimbursement. I represented the wife, D.E.P., from approximately July 17,

1988 through March 6, 1989. The final disposition of the case was that the parties entered into an Agreement Incident to Divorce wherein the wife was awarded custody of the minor child, the marital residence, and \$600 per month in spousal support. The judge presiding was the Honorable Enrique H. Pena. Opposing counsel was Robert L. Reinhardt, Esquire, 9924 Dyer, El Paso, Texas, 79924, 915757-1968.

9. *In the Matter of the Marriage of Marcos Gonzalez Olvera and Heribertha Olvera and In the Interest of Juan Marcos Olvera, A Minor Child*; Cause No. 89-9550; County Court at Law #5. . This was a divorce case involving child custody and division of assets and liabilities. The father had filed the divorce petition requesting custody of the minor children and an equitable division of the marital estate. The mother filed a counterclaim seeking custody. Throughout the discovery process, the father failed to cooperate in disclosing assets, in particular, his retirement benefits through his twenty one years of employment with Union Pacific Railroad Company. I represented the Petitioner, Rosa Aguilar from approximately January, 1989 through January, 1991. The final disposition of the case was that my client, Heribertha Olvera, was awarded custody of the minor children and fifty percent of the divisible retirement benefits held by the U. S. Railroad Retirement. The presiding judge was the Honorable Herb Cooper. Opposing counsel was Mr. Tom Rosas, Esquire, deceased.

10. *In the Interest of Christopher Lawrence Matta*; Cause No. 99-5022; 168th Judicial District Court. This is a paternity suit involving custody/possession and child support. The father of the minor child filed a suit for paternity requesting the court to find him to be the legitimate father of the minor child and granting him custody. At the conclusion of the case, the parties were named joint managing conservators of the minor child. I represented the mother, Guadalupe R. Garza from approximately June 10, 1988 through November 28, 1988. The judge presiding was the Honorable Guadalupe Rivera. Opposing counsel was Richard Contreras, Esquire, 2150 Trawood Drive, El Paso, Texas, 79935, 915-594-1970.

19. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

- Answer:*
1. Summary jury trial - I have had the opportunity to participate in a form of dispute resolution known as a summary jury trial. The lawsuit in question involved a claim under the Deceptive Trade Practices Act. After the claim was presented to the jury in a summary fashion, the jury deliberated and returned with a non-binding verdict. The litigants, with knowledge of the verdict, then immediately began mediation and the lawsuit was settled.
 2. Complex mediation – As a trained mediator, I have mediated a lawsuit which due to its complexity and the number of litigants required co-mediators. The claim involved an entire housing subdivision which was built on ground containing clay. After the homes were built and sold (for the price of \$250,000 to \$500,000), the foundations began cracking, the swimming pools began lifting, and a 19 foot tall rock retaining wall began to lean. There were approximately seven Plaintiffs (home buyers) and eight Defendants (land developers and contractors).
 3. El Paso County Domestic Relations Office – Between the years 1999 and 2000, I researched and developed an office known as the El Paso County Domestic Relations Office. This office is responsible for handling all of the monthly child support collection and disbursement for the County of El Paso (involving some 49,000 accounts). It also provides child support monitoring and enforcement for those accounts. In addition to the child support, this office has a Family Court Services Division that provides home studies for contested custody litigation and mediation services. Most recently, this office has developed a Family Law Information System for pro se litigants which allows them to seek information and support.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Answer: None

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Answer: A judge should disqualify himself or herself in a proceeding in which the judge's impartiality may be questioned. This would include instances where a judge has a personal bias or prejudice concerning a party, where the judge has personal knowledge of disputed evidentiary facts, where the judge has served as a lawyer in the matter in controversy, where a lawyer with whom the judge previously practiced law has served as a lawyer during such association, where the judge knows that the judge or his/her spouse or minor child residing in the judge's household has a financial interest in the subject matter in controversy, or where the judge or the judge's spouse is related within the third degree of consanguinity to a litigant or an attorney.

With those rules in mind, I will resolve any potential conflict of interest by first informing the litigants and their attorneys of the conflict. Then, I will disqualify myself from the case and request that the case be randomly reassigned to one of my fellow judges.

The only category of litigation that I believe is likely to present a potential conflict of interest during my initial service as Federal District Court Judge would be if I were to be assigned a case where I had previously acted as a mediator. Since I would have personal knowledge of disputed evidentiary facts, I would request that the case be randomly reassigned.

Regarding financial arrangements that are likely to present potential conflicts of interest during my initial service, I do not believe that there will be any. However, should one arise, I will follow the same procedure.

3. Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, please explain.

Answer: None

4. 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, patents, 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.)

Answer: See attached Financial Disclosure Statement

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Answer: See attached Net Worth Statement

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Answer: No

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		3/31/2003	LIABILITIES		3/31/2003
Cash on hand and in banks		\$ 36,945	Notes payable to banks-secured		
U.S. Government securities-add schedule			Notes payable to banks-unsecured		
Listed securities-add schedule			Notes payable to relatives		
Unlisted securities-add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid income and interest		
Doubtful			Real estate mortgages payable-add schedule		
Real estate owned-add schedule		236,000	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts-itemize:		
Autos and other personal property		64,000			
Cash value-life insurance		10,755			
Other assets itemize:					
			Total liabilities		\$ -0-
			Net Worth		\$347,700
Total Assets		\$347,700	Total liabilities and net worth		\$347,700

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	no	Are any assets pledged? (Add schedule)	no
On leases or contracts	no	Are you defendant in any suits or legal actions?	no
Legal Claims	none	Have you ever taken bankruptcy?	no
Provision for Federal Income Tax	Paid quarterly		
Other special debt	none		

III. GENERAL (PUBLIC)

1. 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.
Answer: In approximately 1980, after first coming to El Paso, I volunteered with the YWCA, El Paso del Norte to provide legal counseling to women. I volunteered one night per week for approximately 2 hours per night for 2 years.
 From approximately 1997 through 1999, I served as a mediator for the Children's Court of El Paso County, where I provided mediation services, pro bono, to assist families in the reunification process. I did approximately two mediations per month, five hours each.
 In 1999, working through the County of El Paso, I founded the El Paso County Domestic Relations Office. This office serves as an intermediary between the courts and the litigants and has significantly reduced the costs of family law matters such as mediations, social studies, and enforcements. The El Paso County Domestic Relations Office also has, as one of its departments, Family Court Services. The purpose behind this office is to provide services to people who wish to handle their divorce pro bono or have other legal questions regarding family law. In order to create this office, I traveled throughout the State of Texas visiting various other Domestic Relations Offices in Fort Worth, San Antonio, and Austin, all at my own expense. Then, working with a student from the University of Texas at El Paso, I prepared a formal presentation for the County Commissioners of El Paso in order to get their support for the creation of such an office at County expense. The number of hours I dedicated to this project was in the hundreds.
 In the years 2001-2002, I served as the Chair of the Child Care Management Services committee which is instrumental in providing affordable child care to the families of El Paso County through the YWCA, El Paso del Norte.
2. 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. Do you currently belong, or have you belonged, to any organization which discriminates - through either formal membership requirements or the practical implementation of membership policies? If so, list with dates of membership. What have you done to try to change these policies?
Answer: No.
3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Answer: Yes

If so, did it recommend your nomination?

Answer: Yes

Please describe your experience in the judicial selection process (including the circumstances leading to your nomination and the interviews in which you participated).

Answer: Upon learning that there would be a vacancy in El Paso for the United States District Court for the Western Division of Texas, I wrote a letter advising my United States Senator, the Honorable Kay Bailey Hutchison, that I was interested in applying. After a period of time, I was contacted by the Texas Judiciary Advisory Committee and given an interview with approximately 24 committee members and representatives from both Senator Kay Bailey Hutchison's office and Senator John Cornyn's office. A short period of time passed, and I was then contacted by a representative of Senator Kay Bailey Hutchison's office to arrange a personal interview in the Washington, DC offices of Senator Kay Bailey Hutchison and Senator John Cornyn. At the conclusion of the personal interviews by the Senators, I was advised that I would be notified of the Senators' decision at a later date. Thereafter, I was contacted telephonically by Senators Hutchison and Cornyn and was told that it was their decision to recommend me for nomination.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

Answer: No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-solution;

- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Answer It is a basic tenet of our democratic government that there is to be a separation of powers between the executive, legislative, and judicial branches. This framework allows for intelligible and applicable laws by which we in society can conduct ourselves knowing that a violation of these laws may result in either criminal or civil consequences. This sort of justice cannot be achieved unless there is a system of general rules which are impartially applied.

The role of the judge is to make a decision that is in accordance with these recognized principles and rules of law and to do so by following defined procedures. It is not to insert one's own views into the law, even if that law is unclear.

A good judge should be fair and impartial. A good just judge should not show bias, partiality or favoritism and should listen to both parties. A good judge should *do justice according to the law* by treating the parties to the litigation fairly and impartially based on the authoritative rules of law.

To rule *according to the law*, the judge must apply the law, not legislate from the bench, loosen jurisdictional requirements such as standing and ripeness, or impose personal views that could jeopardize the fundamental principals of the rule of law, the constitution and the separation of powers.