

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)
My birth name is Frankie Montalvo, and I go by Frank Montalvo
2. Address: List current place of residence and office address(es).
Residence: San Antonio, Texas
Office: 288th District Court, Bexar County Courthouse,
100 Dolorosa, San Antonio, Texas, 78205
3. Date and place of birth.
Bayamon, Puerto Rico, May 6, 1956
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).
Married to the former Maria D. Martinez. Mrs. Montalvo is employed as a part-time mathematics instructor at San Antonio College, 1300 San Pedro Ave., San Antonio, TX, 78212.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.
 - 1) University of Puerto Rico- 8/72 to 5/76- Bachelor of Science with honors
 - 2) University of Michigan- 9/76 to 12/77- Master of Science in Bioengineering, degree awarded in 4/78.
 - 3) Wayne State University- 1/79 to 5/79- School of Engineering, no degree earned
 - 4) Wayne State University Law School- 5/80 to 6/85- Juris Doctor
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.
Attended graduate school between college graduation and the beginning of employment with Chrysler Corporation.
Chrysler Corporation Proving Grounds- Impact Laboratory, PO Box 387, Chelsea, MI 48118
Test Engineer- 1/78 to 6/78
General Motors Proving Grounds- Safety R & D Laboratory, 1 GM Road, Milford, MI 48042
Project Engineer- 6/78 to 1/83

General Motors Technical Center, 30200 Mound Road, Warren, MI 48090

Analysis Engineer- 1/83 to 2/84

Senior Analysis Engineer- 3/84 to 2/85

Staff Engineer- 3/85 to 1/88

Groce, Locke & Hebdon, a Professional Corporation, 1200 Frost Bank Tower, 100 E. Houston St., San Antonio, Texas, Associate Attorney, 2/88 to 7/91

Ball & Weed, a Professional Corporation, 745 E. Mulberry, Suite 500, San Antonio, Texas, 78212, Associate Attorney, 8/91 to 12/94

Judge, 288th Judicial District Court, Bexar County Courthouse, 100 Dolorosa, San Antonio, Texas, 78205

Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.
I have not.

Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

San Antonio Black Achievement Awards- Community service award, March 15, 2003

FBI Citizens Academy- Invited to participate in the Bureau's academy for community and civic leaders, March 10, 2003

Texas Supreme Court- Appointed to preside over Judicial disciplinary proceeding- January 2003

National Security Forum- Maxwell Air Force Base- May 27-31, 2002

Guest of the Secretary of the Air Force

Court Reporters Certification Board- On June 20, 2001 a unanimous Supreme Court of Texas appointed Judge Montaivo, Chairman of the licensing and regulatory agency governing 3000 court reporters and 300 court reporting firms in the state of Texas. The agency has been in existence since 1977.

Fellow Texas Bar Foundation- 1998

Honorary Deputy Sheriff Bexar County- 1998

Numerous certificates and letters of appreciation from community organizations and entities such as the Lions Club, University Of Texas at San Antonio, St. Mary's University San Antonio Hispanic Police Officers Association and San Antonio College.

9. Bar Associations: List all bar associations, 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.

State Bar of Texas 1987- present
 District 10C Grievance Committee 1992 - 1994
 College of the State Bar of Texas 1991 - 1994
 Pattern Jury Charge Committee 1997-1998

San Antonio Bar Association 1988- present
 Member Fee Dispute Committee 1990 - 1994
 Vice Chairman Fee Dispute Committee 1993 - 1994

Bexar County Women's Bar Association
 Judicial Advisory Board 1995- present

Hispanic National Bar Association 1990 - 1991
 Co-chairman organization committee for annual
 Convention held in San Antonio in September 1991

Chairman- Budget Committee Bexar County Juvenile Board-1996-
 present

Chairman- County Auditor Oversight Committee- 1998- present

Bexar County Juvenile Board-1995- present

Advisory Board of Directors- Bexar County Dispute Resolution Center-
 1995-1998

Bexar County Women's Bar Association- Board of Judicial Advisors-
 1995- 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.

I do not belong to any organizations that are active in lobbying before public bodies.

Saint Elizabeth Ann Seton Parish 1988-present

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please

explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

State Bar of Texas- November 5, 1987

State Bar of Michigan- April 3, 1986.

U.S. District Court Eastern District of Michigan- May 9, 1986.

U.S. District Court Western District of Texas- April 15, 1988.

U.S. District Court Southern District of Texas- September 2, 1988.

U.S. District Court Northern District of Texas- February 28, 1989.

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 legal policy. If there were press reports about the speech, and they are readily available to you, please supply them. See Attachment B.

Author/Speaker- San Antonio Bar Association- Trial Seminar- Post Trial Procedure: Request for Findings of Fact and Conclusions of Law- November 17, 1999

Author/Speaker- St. Mary's University Law Alumni Association- General Practice Seminar- July 17, 1999

Speaker- Mexican American Bar Association- New Rules of Civil Procedure- February 9, 1999

Author/Speaker- San Antonio Bar Association Trial Seminar- "Presenting and Defending Robinson motions"- November 21, 1997

Author- San Antonio Young Lawyers Association- The Docket Call- "A View from the Bench: How to Compute Time Pursuant to Rules"- November 1997

Author/Speaker- State Bar of Texas 13th Annual Advanced Personal Injury Law Course- "Inside the Courtroom: The Sexual Harassment Case"- July 1997

Speaker- San Antonio Bar Association Trial Seminar- "Exhibits and Demonstrative Aids" April 11, 1997

Author- San Antonio Young Lawyers Association- The Docket Call- "A View from the Bench: Motions for Continuance"- November 1996

Author- San Antonio Bar Association- San Antonio Lawyer- "Jury Research: A General Overview"- Summer 1994

Author/Speaker- Texas Association of Defense Counsel, Spring Meeting Charleston, South Carolina- "The Role of Trial Consultants in the Defense of Complex Products Liability Cases"- April 1993

Author- "Cervical Spine Injury Mechanisms"- 27th Stapp Car Crash Conference San Diego, California- 1983

Author - "Possible Position and Postures of Unrestrained Front-Seat Children at the Instant of Collision"- 9th Experimental Safety Vehicle Conference- Tokyo, Japan-1982

I have never given speeches involving constitutional law or legal policy.

13. Health: What is the present state of your health? List the date of your last physical examination.
Good state of health. Last physical examination was in June 2002, and on 2/24/03 my personal physician reviewed and signed the health questionnaire from the Department of Justice.
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.
Judge- 288th Judicial District Court- In Texas the District court is the highest court of general jurisdiction in a county. The 288th is required by statute to give preference to civil and family law cases. I have held that position since January 1, 1995. This is an elected position. I was first elected in November 1994, and subsequently re-elected in 1998 and 2002.
15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) 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, please provide copies of the opinions.

15 (1) As a State District Judge I do not write opinions; but, the following are ten of the most significant matters over which I have presided.

Filemon Garza Gutierrez, Et. Al. v. Curtis, Mallet-Prevost, Colt & Mosle, In the 288th District Court, Docket Number 2000-CJ-18358, Len G. Blackwell, Et. Al. v. Curtis, Mallet-Prevost, Colt & Mosle, In the 288th District Court, Docket Number 2000-CJ-18347.

These cases involve allegations that Curtis Mallet-Prevost, through the legal services it provided to the InverWorld Entities in the United States, Cayman Islands and the United Kingdom, caused substantial injury to the class and the estate in bankruptcy. Alleged damages are in excess of three hundred and fifty (350) million dollars. The class consisted of approximately one thousand investors from the United States, Mexico and Venezuela. Jose P. Zollino, Chairman of various of the InverWorld entities and George Fahey, the President of InverWorld Inc., and InverWorld Securities Inc., have both plead guilty to federal charges for their actions that resulted in the demise of the InverWorld Entities. Curtis Mallet contends that the illegal actions of Zollino, Fahey and possibly others within the InverWorld Entities were the sole or primary causes of any damages asserted by the plaintiffs.

After extensive litigation involving numerous contested hearings, scores of depositions and massive paper discovery, this court gave final approval to a settlement that concluded these cases on March 25, 2003. The settlement was accepted without objection or opting out by any party.

The Board of Adjustment of the City of San Antonio v. Wende 92 S. w. 3rd 424,
(Texas Supreme Court, 2002)

The city's board of adjustment found a company had land with a preexisting nonconforming use and residential zoning did not apply. The city's department of building inspections approved the board's decision. The trial court, Judge Frank Montalvo, presiding, affirmed the board's decision. The Court of Appeals for the Fourth District of Texas reversed, 27 S. w. 3rd 162. Petitioners, the board, department, and city, petitioned for review to the Texas Supreme Court. Review was granted and the Court of Appeals for the Fourth District of Texas decision was reversed.

The land, a quarry, was annexed into the city and zoned as a quarry district. Subsequently, two more tracts were annexed and zoned residential. The company filed a registration statement of nonconforming use for them with the department, which

approved it, thereby giving the company the right to use them as part of its quarrying operations. Taxpayers appealed to the board. At the board's hearing, the company produced its preexisting pre-annexation leases. The board approved the department's decision and the trial court affirmed the board's decision. The court of appeals reversed, holding the preexisting leases were insufficient to establish nonconforming use rights. Under the city's development code, a nonconforming use would exist if the purpose for which land was leased did not comply with the use regulations applicable to the district in which it was located. The city's determination that leasing land or showing that the land was designed, arranged, or intended to be used for a nonconforming purpose could establish nonconforming use rights, was not absurd merely because it was contrary to the common law and zoning ordinances in other cities.

Wellish v. United Services Automobile Association, 75 S.W. 3rd 53

Petition for review to the Texas Supreme Court denied, September 12, 2002.

The trial court, Judge Frank Montalvo, presiding, granted summary judgment to insurance company and against appellant parents on the parents' claims for damages under multiple theories arising out of the death of their daughter as a result of fatal injuries she sustained as a passenger in an auto accident. The vehicle was insured. The parents settled with the driver's estate. They then sought recovery of insurance policy limits under their own uninsured/underinsured coverage. The insurance company involved was the same one that had paid benefits on behalf of the driver's estate. It denied the parents' claim. The parents sued and received a verdict exceeding the amount they previously recovered from the driver's estate and the uninsured motorist limits combined. On the same day judgment was entered, the insurance company paid to the parents the limit available under their underinsured motorist policy. The parents made extra-contractual claims against the insurance company for the alleged breach of the duty of good faith and fair dealing, statutory violations, and mental anguish. After the trial court granted summary judgment, the appellate court found no improper payment delay as the insurance company only waited to pay until the parents established they had a right to the money. Accordingly, the parents also were not entitled to mental anguish damages. The judgment was affirmed.

Crescendo Investments Inc. v. Brice, 61 S.W.3d 465

Petition for review to the Texas Supreme Court denied, February 14, 2002.

The plaintiffs were the victims of an investment scheme directed by Hugh Scott. Appellees Bill and Julie Brice are the only remaining defendants. The Brices owned Brice Foods, Inc., (BFI) which was the general partner in a limited partnership, which owned the franchise (and some actual shops) of "I Can't Believe It's Yogurt!" (ICBIY).

Scott operated various Cayman Islands corporations, which obtained master franchises from BFL/ICBIY to develop large international areas. Plaintiff investors sued defendant corporate officers for securities fraud and civil conspiracy. Defendants were officers and stockholders in a corporate general partner of a limited partnership that franchised yogurt stores. Plaintiffs invested in yogurt store franchisees. Plaintiffs sued Hugh Scott, the man who sold them interests in those franchisees. Plaintiffs also sought to hold defendants liable as aiders and abettors of fraudulent sale of securities, participants in a civil conspiracy, and as control persons under the Texas Securities Act. On appeal, the court found (1) the evidence did not show defendants were acting as aiders and abettors; (2) the trial court did not abuse its discretion in granting a directed verdict on the conspiracy claim against one defendant; (3) the evidence was legally and factually sufficient to support the verdict; (4) the allegedly conflicting jury findings could be reconciled; (5) the trial court did not abuse its discretion in excluding evidence or refusing to give a spoliation of evidence instruction; (6) the issue of the trial court's refusal to allow substitution of nominal plaintiffs was moot; (7) the trial court did not err in its award of costs; and (8) there were no cumulative errors by the trial court that required reversal.

Littleton v. Prange, 9 S.W.3d 223, Petition for Review Texas Supreme Court, denied March 2, 2000. Certiorari denied, October 2, 2000, Littleton v. Prange, 531 U.S. 872

Appellant, a transsexual sought relief from an order from Judge Montalvo, which granted summary judgment in favor of appellee doctor who challenged appellant's status as a surviving spouse in wrongful death action, asserting appellant was a man and could not be the surviving spouse of another man. Appellant was a transsexual, born as a male, and had had a sex change operation. Appellant married a man and lived with him until his death when she filed a medical malpractice suit under the wrongful death statute as the surviving spouse. The doctor filed for summary judgment, challenging appellant's status as a proper wrongful death beneficiary, asserting that she was a man and could not be the surviving spouse of another man; the trial court agreed. This was a case of first impression in Texas, and the court held that the underlying statutory law was simple enough. Texas does not permit marriages between persons of the same sex, and as a matter of law, appellant is a male, thus as a male, she could not be married to another male. Her marriage was invalid, and she could not bring a cause of action as the surviving spouse of another male.

In the Matter of M.R.R., Jr., A Juvenile, 2 S.W.3d 319

Defendant appealed a guilty finding of delinquent conduct for committing the offense of capital murder of a four year old child, asserting that the trial court erred in admitting

his written confession. Upon his confession to a drive by shooting, defendant was charged with delinquent conduct for the commission of capital murder. A jury found defendant guilty and assessed a determinate sentence of 40 years' imprisonment. On appeal, defendant challenged the admissibility of his written confession, which was obtained in the absence of Miranda warnings and without compliance with the requirements for detaining and processing juveniles. The court affirmed, concluding that neither the lack of Miranda warnings nor the non-compliance with the requirements of the Texas Family Code for detaining and processing juveniles rendered the confession inadmissible. Applying an objective standard, the court found that defendant was not in custody when he gave his statement because police informed him that he was not under arrest and was not restrained from leaving. Further, the court found that the statement was voluntary where he voluntarily went to the police station and police reminded defendant that he was not obligated to talk. Finally, the trial court erred by admitting the co-conspirator's confession, which contained references to defendant. The error, however, was harmless in light of the admission of defendant's confession and other untainted damaging evidence.

Jones v. Beech Aircraft, 995 S.W. 2^d 767, disapproved, BMC Software Belgium, N.V. v. Marchand, 83 S.W.3d 789 (Texas 2002)

Plaintiff aircraft crash survivors sought review of a decision of the 57th Judicial District Court, Bexar County (Texas), which sustained a special appearance by defendant aircraft manufacturer. The underlying wrongful death action, alleging product defect and negligence claims, resulted from an airplane crash in which plaintiffs were all foreign nationals who were barred from asserting tort claims in their country. This accelerated appeal was generated by the trial court's order sustaining a special appearance by Beech Aircraft Corporation, a Kansas aircraft manufacturer. The underlying wrongful death action, alleging product defect and negligence claims, resulted from an airplane crash in New Zealand that killed six people. Their survivors are all foreign nationals who were barred from asserting tort claims in their country.

The question more than just jurisdictional involved whether to allow forum selection. Plaintiffs had the burden of proving the existence of a relationship between defendant aircraft manufacturer and its subsidiaries such that the court could disregard separate corporate structures to establish minimum contacts in Texas for purposes of personal jurisdiction. Applying an abuse of discretion standard in reviewing the trial court's ruling the court of appeals held that the relationship between defendant and its subsidiaries was such that defendant was engaged in business through the activities of the subsidiaries. Further, although defendant's web site alone would not be sufficient to establish jurisdiction in Texas, it was a factor to consider along with other contacts. The

aircraft had been operated in Texas and had been modified there and a similar crash had occurred in Texas through which appellants alleged, and the appeals court agreed, defendant had acquired notice of the alleged defect. Further, the most convenient and efficient way to resolve the controversy was to allow appellants to proceed in Texas. In *BMC Software* the Texas Supreme Court for the first time clearly articulated the standard for reviewing a trial court's order denying a special appearance. The Supreme Court observed that the San Antonio Court of Appeals had held that, because personal jurisdiction involves both legal and factual questions, appellate courts should review the trial court's decision for an abuse of discretion. However, it also noted that other courts of appeals review the trial court's factual findings for legal and factual sufficiency and review the trial court's legal conclusions *de novo*. The Supreme Court held that the better approach was the latter and disapproved of those cases applying an abuse of discretion standard only, specifically listing *Jones v. Beech Aircraft* as one of those cases.

The Honorable Frank Montalvo, Judge, Relator v. The Fourth Court of Appeals, Respondent, 917 S.W. 2d 1(Texas, 1995)

Relator judge, on his own initiative, sought a writ of mandamus concerning a writ of mandamus conditionally issued by respondent, Fourth Court of Appeals, compelling him to vacate an order setting an abbreviated schedule for a hearing on motions to transfer venue, one of which had been pending for over eighteen months. His order also set an abbreviated schedule for discovery and hearing of the motions to transfer venue. The injured party objected to the schedule established by Judge Montalvo and sought a writ of mandamus directing him to vacate his order. The lower court conditionally granted the writ, concluding that restricting the time for and scope of discovery on the venue issues deprived the injured party of an adequate remedy by appeal. The Supreme Court held that the injured party failed to present evidence that the limitation on discovery or schedule deprived it of any ability to develop evidence pertinent to the venue issue. Therefore, the lower court abused its discretion in issuing the writ of mandamus without a clear showing that the injured party had met the requirement of an inadequate remedy by appeal.

Dwight L. Lieb v. Ronald A. Lindsey and Broadway Funding Corp., Cause No. 99-CI-09567, Appeal dismissed

Mr. Lieb, the plaintiff, alleged that he owned a controlling interest in Broadway Funding Corporation ("BFC"). BFC owned, either directly or through subsidiaries, La Fogata and Tomatillo's, two of the most popular and highly successful restaurants in San Antonio. BFC also owned a large tract of land in north San Antonio that was intended for development into a third restaurant.

Mr. Lieb's interest in BFC was not documented; to the contrary, he and his business partner, Mr. Lindsey, had always operated BFC informally with little or no documentation. The only writing was BFC's charter from the Texas Secretary of State. When a dispute developed between Mr. Lieb and Mr. Lindsey, Mr. Lindsey hired lawyers to prepare corporate documents, which completely excluded Mr. Lieb from any ownership or management authority in BFC. Elizabeth Mangum, a minority owner of BFC, along with Robert Baccus, who had invested only in La Fogata, intervened in the case in support of Mr. Lindsey. Mr. Lindsey and Ms. Mangum removed BFC's records from its offices, and denied Mr. Lieb any salary or benefits.

Shortly after the suit was filed, the Court appointed an auditor and entered an injunction, at Mr. Lieb's request, to prevent withdrawal of funds or assets from BFC. In response, Mr. Lindsey, acting as president of BFC, put BFC in Chapter 11 bankruptcy proceedings. Mr. Lindsey also caused BFC to remove the lawsuit to the U. S. Bankruptcy Court. The Bankruptcy Court remanded most of the claims for trial in the Bexar County District Court, but retained control of any claims that could impact the ongoing business of the two restaurants or disposition of the land. Resolution of the case required sorting out unique questions of how a corporation functions with nothing in writing but its charter, how undocumented ownership of a corporation could be "restored," and what relief the 288th District Court could grant without invading the Bankruptcy Court's jurisdiction.

The jury found in favor of Mr. Lieb. On July 13, 2000, the 288th District Court entered declaratory judgment that Mr. Lieb was rightful owner of 42.5 percent of the stock of BFC and had voting control over all of BFC's shares, including the shares owned by Mr. Lindsey and Ms. Mangum. The Court imposed a constructive trust over all shares in BFC until such time as Mr. Lieb's ownership and voting control was properly documented. The Court also awarded, based upon the jury's verdict, attorney's fees of \$240,000.00, jointly and severally against Mr. Lindsey, Ms. Mangum, and Mr. Baccus, and \$180,100.00 in punitive damages against Mr. Lindsey. An appeal was taken but was dismissed, leaving Mr. Lieb with full ownership and control over BFC.

MOC-O&G, Inc., Et. Al. v. Paradigm Oil, Inc., Docket Number: 97-CI-14664, Appeal dismissed.

The controversy in this case surrounds the successive assignments of oil and gas exploration leases in various tract of land in south Texas and whether the various covenants contained in the assignments run with the land.

Batesville Farming Co. entered into an oil and gas lease with M.O. Cardin regarding a 2,500-acre tract in Zavala County. On or about December 1979, Laverne Lee and

others entered into an oil and gas lease with MOC-O&G, Inc. involving another tract of land also in Zavala County.

Shortly thereafter, M. O. Cardin, MOC-O&G, Inc. joined by a group of individual investors entered into a letter agreement regarding the assignment of said leases to Steve Gose. The letter agreement provided, among other things, that Steve Gose, his successors and assigns shall provide to MOC-O&G, inc, the right of reassignment of the leases at any time Gose or his successors or assigns desired to release, surrender, abandon or allow the leases to expire. Thereafter on or about January 1980, MOC-O&G, Inc assigned the leases to Gose. The assignments were filed and recorded and clearly indicated that they were subject to the terms and conditions of the letter agreement. In early 1993 Gose assigned both leases to PNB Securities Corporation, and in May 1993, PNB Securities Corporation assigned both leases to Paradigm Oil, defendant herein.

On or about November of 1995, due to market conditions, Paradigm executed a release to the record owners of the land of the 2,500 acres lease. Also on the same date, Paradigm executed a release of the 10,000 acres lease, to the record owners of the land. Plaintiffs allege that Paradigm as successor and assign of Steven Gose became obligated and bound by the terms of the letter agreement and by the terms of the assignment of said leases. Thus Paradigm was bound and obligated to offer to MOC-O&G, Inc. the right of reassignment of the leases prior to Paradigm releasing them to the landowners. After a hotly contested trial a jury returned a verdict for plaintiffs. The jury found that Paradigm had notice of the agreement to reassign the leases to MOC-O&G, Inc. and plaintiffs had not waived the right to enforce the agreement. Based on geological expert testimony the jury assessed the fair market value of the lease and awarded that amount as damages.

15. (2) Summary and Citations of Trial Court Decisions Reversed on Appeal

(The numbers correspond with the full opinions found in attachment A)

1. In the Matter of J.C.C. 952 S.W.2d 47

Order certifying juvenile as an adult was reversed and remanded because State failed to use due diligence in prosecuting appellant before his eighteenth birthday. State lacked an explanation as to why it did not prosecute J.C.C. on a regular petition, several months earlier, when it prosecuted his twin brother for the same alleged arson. Therefore, no evidence supported trial court's order. Absence of written findings in the order was harmless, since findings were clearly identifiable and unambiguous.

2. **In the Matter of B.J.** 960S.W.2d 216
 Trial court attempted, but failed to give proper admonishments to twelve-year-old boy charged with serious alleged sexual offenses. Reversed due to fundamental error. Additionally, questions arose concerning the youth's mental competency to stand trial. A fitness hearing was ordered upon remand.
3. **Cox & Smith Inc. v. Cook** 974 S.W.2d 217
 Jury verdict for sexual discrimination claim was reversed due to legally and factually insufficient evidence. The Court of Appeals applied the reasonable belief standard used in employment discrimination cases. In order for appellee to have a reasonable belief, she had to subjectively believe, in good faith, that her employer was illegally discriminating against her; and, her belief had to be objectively reasonable given the context in which it occurred. Here the five instances of appellant's alleged misconduct were either not directed at appellee personally, not sexual in nature, or represented an isolated event that, in and of itself, did not constitute unlawful discrimination. Court held that appellee lacked the threshold requirement of a reasonable belief and; therefore, could not establish a prima facie case of unlawful sexual discrimination. Take-nothing judgment rendered against appellee.
4. **Monreal v. Cody** unpublished 1998 WL 354805
 Appellant, plaintiff in a personal injury cause of action, challenged the trial court's directed verdict and obtained a new trial. Court of Appeals recognized that appellant presented a "very thin broth", but concluded that she ladled-up more than a scintilla of evidence on each element of her negligence claim which required it to reverse and remand. Case tried before a jury who after deliberating for less than an hour returned a defense verdict.
5. **In Re Weekley Homes** 985 S.W.2d 111
 Although appellant initially failed to meet condition precedent to arbitration as expressed in its contract, it did not waive its right to arbitrate. Purchase agreement required parties to attend mediation before invoking arbitration

clause. When appellant filed its first appeal, regarding denial of its motion to compel arbitration, it had not attended mediation. However, appellant did attend mediation at a later date, but the dispute remained unresolved. Appellant filed a second motion to compel arbitration. The trial court denied it, stating that appellant waived its right to arbitrate during the first appeal. However, arbitration rights must be intentionally waived. The purchase agreement in question did not imply or expressly state that waiver occurred by failure to meet the condition precedent of mediation. The Court of Appeals held that appellant consistently asserted its arbitration rights during the first appeal and no waiver occurred. Conditional writ of mandamus granted.

6. Green Tree Financial Corp. v. Garcia 988 S.W.2d 776

Objection to omitted jury instruction regarding predicate requirements for punitive damages was preserved by appellant corporation at charge conference. Trial court erred in not submitting requested jury charge to specifically require jury finding on corporation's liability for its employees' acts. Evidence was legally and factually sufficient to support actual damage award, but it was not conclusive as to punitive damages. Entire judgment reversed so that second jury, upon remand, could hear all evidence in order to determine whether appellant committed alleged tortious acts with malice.

7. Jones v. Beech Aircraft Corp. 995 S.W.2d 767

Using an abuse of discretion standard, the Court of Appeals reversed the trial court granting of a special appearance. It held that defendant corporation exercised dominance and control over its subsidiaries, because all entities had common officers and directors. In other words, the parent corporation and its subsidiaries were effectively acting as one entity. This finding combined with several other factors, such as an interactive web page, established general jurisdiction for purposes of minimum contacts. Additionally, traditional notions of fair play and substantial justice were satisfied, partly because the burden on defendant was weak due to its relationship with its subsidiaries.

The standard of review issue was revisited by the Texas Supreme Court, in BMC Software Belgium, N.V. v. Marchand, 83 S.W.3d 789. The Court expressly disapproved all cases applying an abuse of discretion standard when reviewing a trial court's order granting a special appearance.

8. In the Matter of S.F., a Juvenile 2 S.W.3d
389

Case overturned based on procedural distinction between juvenile and criminal law. Adult criminal proceedings allow a defendant to stipulate to evidence and enter a guilty plea while simultaneously preserving his right to appeal the trial court's denial of his motion to suppress. At the time, Texas Juvenile law, however, did not provide a similar procedural safeguard. All parties in this case, including the trial court, mistakenly believed that the juvenile preserved his right to appeal the suppression point. Court of Appeals held that defendant had, in fact, waived his right to appeal when he entered a plea of true. Consequently, the juvenile's plea was involuntary, because it was based on an erroneous belief regarding his right to appeal.

9. Eubanks v. LDDS Communications Inc. unpublished 1999WL511519

Former employee sued for gender discrimination, retaliatory discharge, and defamation. Trial court granted summary judgment for employer. Appeals court affirmed all but the discrimination claim. Review under a no evidence summary judgment only requires the appeals court to find that the non-movant presented more than a scintilla of evidence. In this case, the trial court had granted a motion by the employer to strike a deposition presented by plaintiff based on failure to identify the witness during discovery, and that her affidavit was conclusory, speculative, and based on hearsay. The appeals court found the affidavit admissible and considered the affidavit in their review. On this basis, the appeals court found sufficient evidence to raise a question of fact.

10. Reveron v. Reveron unpublished
2001WL 1230520

Texas resident files for divorce from a Georgia resident. The couple's minor child is also a Georgia resident. Trial court grants wife's special appearance and dismisses the petition for divorce based on lack of personal jurisdiction. Husband appeals. Appeals court affirms the special appearance but reverses the dismissal. The appeals court found that the trial court had subject matter jurisdiction over the divorce action. Texas Family Code provides jurisdiction if either party is domiciled in the state for the six months preceding the time a suit

is filed. The husband satisfied this requirement. Further, the appeals court found that the trial court had jurisdiction to enter a child support order based on a prior Georgia consent order, even though the minor child was not subject to personal jurisdiction in Texas, and neither he nor his mother had ever resided in Texas.

11. **Lonza AG v. Blum** 70 S.W.3d 184
- Former employee of domestic subsidiary brought actions for wrongful termination, fraud, conversion and intentional infliction of emotional distress against Swiss parent corporation. The trial court denied parent corporation's special appearance to contest personal jurisdiction. Parent corporation appealed. The Court of Appeals held that parent corporation was not subject to personal jurisdiction in Texas because; it insufficient contacts with the state, had never sold its products to any customers in Texas, had never employed plaintiff, and could not be held to general jurisdiction due to voluntarily waiving personal jurisdiction in another case in a different district in Texas. In so holding the Court of Appeals disregarded undisputed evidence that Lonza AG had plead guilty to and paid a substantial fine in the Northern District of Texas for an antitrust violation, an offense that had the requisite element of presence in the State of Texas during the relevant time period which also was the relevant period in the underlying lawsuit.
12. **In Re Escamilla** unpublished 2002WL1022945
- In ongoing child custody proceedings incident to divorce, former wife filed petition for writ of mandamus seeking to vacate the temporary orders granting former husband's petition for modification of custody. The Court of Appeals held that: (1) evidence was insufficient to support trial court's finding that children were endangered in former wife's custody; (2) former husband's speculation as to potential harm to children arising out of former wife's residence with unrelated adult male was insufficient to establish necessity of custody change; and (3) former wife lacked appellate remedy. Writ was conditionally issued.

13. **Changing Surface, Inc. v. Crum** unpublished 2002WL1972078

This is an interlocutory appeal from an order granting a temporary injunction enforcing certain restrictive (no compete clauses) covenants in an employment contract. Although the trial court granted injunctive relief to the employer, it did not grant the complete relief sought. The employer, Changing Surface, Inc., perfected this appeal to challenge the limited scope of the temporary injunction granted by the trial court. The appeals court found that the trial court's grant of limited temporary relief failed to maintain the status quo because it did not restrain the defendant from working for competitors of the plaintiff. The appeals court reversed and remanded for further proceedings.

14. **In Re Kenwood Communications Corp** 2003 Tex. App. Lexis 2101

The defendant sought mandamus to vacate the trial court's order denying its motion to compel arbitration. Original Master Dealer Agreement executed by the plaintiff but not by defendant contained a broad arbitration clause. California law was controlling. Plaintiff claimed that because the contract was not duly executed in California, defendant had waived its right to the arbitration provision contained therein. KCC maintained the condition that it execute the contract in California was waived, and, because both parties intended to be bound and performed under the contract, the arbitration agreement was enforceable. The Court held that defendant, the party protected by the arbitration clause, had the right (under California law) to and did waive this condition precedent to the formation of a binding contract. Therefore the parties were bound to arbitration. Writ was conditionally granted and all proceeding stayed pending the arbitration.

15. **Maldonado v. State Farm Lloyds** 13-97-504- CV, 13th Court of Appeals District, unpublished

Appeal from a motion granting summary judgment that the Texas standard homeowner's insurance policy did not provide coverage for damage due to foundation movement. While the case was pending the Texas Supreme Court issued an opinion where it found that the policy did provide such coverage and the case was remanded to the trial court.

16. **Britton v. Quintanilla** 04-95-00221-CV, 4th Court of Appeals District, unpublished

Parents of three middle school students sued Britton a vice-principal for allegedly using excessive force in disciplining students and for negligence. The trial court denied Britton's motion for summary judgment based upon the defense of qualified immunity. The Court held that Britton's actions in conducting a strip search of the three students while looking for money missing from a fundraising event did not constitute discipline and therefore she was entitled to the defense of qualified immunity.

17. **Spain vs. Montalvo** 921 S.W. 2d 852

Mandamus relief sought after trial court disqualified plaintiff's attorney to prevent violation of disciplinary rule of professional conduct prohibiting a lawyer from being a material witness and trial attorney in the same case. The order disallowed representation in any professional capacity. Mandamus instructed trial court to reform the disqualification order to allow counsel to assist plaintiff in the preparation of the case; otherwise, the disqualification order remained unchanged.

15. (4) Citations for Opinions on Federal or State Constitutional Issues

1. **In the Matter of B.J.** 960 S.W. 2d 216

Trial court attempted, but failed to give proper admonishments to twelve-year-old boy charged with serious alleged sexual offenses. Reversed due to fundamental error. Additionally, questions arose concerning the youth's mental competency to stand trial. A fitness hearing was ordered upon remand. (Attach. A no. 2)

2. **Jones v. Beech Aircraft Corp.** 995 S.W. 2d 767

Using an abuse of discretion standard, the Court of Appeals reversed the trial court granting of a special appearance. It held that defendant corporation exercised dominance and control over its subsidiaries, because all entities had common officers and directors. In other words, the parent corporation and its subsidiaries were effectively acting as one entity. This finding combined with several other factors, such as an interactive web page, established general jurisdiction for purposes of minimum contacts. Additionally, traditional notions of fair play and

substantial justice were satisfied, partly because the burden on defendant was weak due to its relationship with its subsidiaries. (Attach. A no. 7)

The Texas Supreme Court, in *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, revisited the standard of review issue. The Court expressly disapproved all cases applying an abuse of discretion standard when reviewing a trial court's order granting a special appearance.

3. **In the Matter of S.F., a Juvenile** 2 S.W.3d 389

Juvenile's plea of true violated due process, because it was based on a mistaken belief regarding his right to appeal, and therefore, involuntary. Case overturned based on procedural distinction between juvenile and criminal law. Adult criminal proceedings allow a defendant to stipulate to evidence and enter a negotiated guilty plea while simultaneously preserving defendant's right to appeal the trial court's denial of his motion to suppress. At the time, Texas Juvenile law, however, did not provide a similar procedural safeguard. All parties in this case, including the trial court, mistakenly believed that the juvenile preserved his right to appeal the suppression point. Court of Appeals held that defendant had, in fact, waived his right to appeal when he entered a plea of true. Consequently, the juvenile's plea was involuntary, because it was based on an erroneous belief regarding his right to appeal. (Attach A no.8)

4. **Lonza AG v. Blum** 70 S.W.3d 184

Former employee of domestic subsidiary brought actions for wrongful termination, fraud, conversion and intentional infliction of emotional distress against Swiss parent corporation. The trial court denied parent corporation's special appearance to contest personal jurisdiction. Parent corporation appealed. The Court of Appeals held that parent corporation was not subject to personal jurisdiction in Texas because; it insufficient contacts with the state, had never sold it's products to any customers in Texas, had never employed plaintiff, and could not be held to general jurisdiction due to voluntarily waiving personal jurisdiction in another case in a different district in Texas. In so holding the Court of Appeals disregarded undisputed evidence that Lonza AG had plead guilty to and paid a substantial fine in the Northern District of Texas for an antitrust violation, an offense that

had the requisite element of presence in the State of Texas during the relevant time period which also was the relevant period in the underlying lawsuit. (Attach A no.11)

5. In the Matter of M.R.R., Jr., A Juvenile

2 S.W.3d 319

Defendant appealed a guilty finding of delinquent conduct for committing the offense of capital murder of a four year old child, asserting that the trial court erred in admitting his written confession. Upon his confession to a drive by shooting, defendant was charged with delinquent conduct for the commission of capital murder. A jury found defendant guilty and assessed a determinate sentence of 40 years' imprisonment. On appeal, defendant challenged the admissibility of his written confession, which was obtained in the absence of Miranda warnings and without compliance with the requirements for detaining and processing juveniles. The court affirmed, concluding that neither the lack of Miranda warnings nor the non-compliance with the requirements of the Texas Family Code for detaining and processing juveniles rendered the confession inadmissible. Applying an objective standard, the court found that defendant was not in custody when he gave his statement because police informed him that he was not under arrest and was not restrained from leaving. Further, the court found that the statement was voluntary where he voluntarily went to the police station and police reminded defendant that he was not obligated to talk. Finally, the trial court erred by admitting the co-conspirator's confession, which contained references to defendant. The error, however, was harmless in light of the admission of defendant's confession and other untainted damaging evidence. (Attach. A no.18)

6. In the Interest of Digges

981 S.W. 2d 445

The Appeals Court held that a Judicial writ of withholding procedure did not violate divorced father due process rights to fundamental fairness based on absence of limitations period and on the limited number of defenses he was permitted to raise. Trial court had discretion to consider whether the order would impose undue financial burden on father. (Attach. A no. 19)

7. In the Matter of S. P.

9 S.W. 3d 304

The Appeals Court held that juvenile claims that he had inefficient assistance of counsel because counsel did not use peremptory challenges on two venire persons, elicited favorable testimony from state's witnesses, failed to develop his theory of the case, failed to request an updated psychological evaluation before disposition and did not bring up alleged jury misconduct at the motion for new trial failed to prove that his counsel was deficient. (Attach. A no.20)

16. Public Office: State (chronologically) any public offices you have held, 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.

I have not held public office other than judicial office. Nor, have I had any unsuccessful candidacies for elective office.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
1. 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; **Not Applicable**
 2. whether you practiced alone, and if so, the addresses and dates; **Not Applicable**
 3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Following my graduation from law school, I continued working as an Automotive Safety Engineer for General Motors. On February 1st, 1988, I joined the law firm of Groce, Locke & Hebdon, 1200 Frost Bank Tower, 100 E. Houston St., San Antonio, Texas, as an Associate Attorney and remained there until the end of July 1991. At that law firm, my practice primarily involved the litigation and trial of complex products liability cases, on the defense side. The practice also included the litigation and trial of general negligence and consumer law cases.

From August 1st, 1991, to December 31, 1994, I practiced with the law firm of Ball & Weed, 745 E. Mulberry, Suite 500, San Antonio, Texas, 78212, as an Associate Attorney. The areas of practice remained unchanged. I was sworn in as Judge of the 288th Judicial District Court on January 1st, 1995.

- 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?

My practice primarily involved the litigation and trial of complex products liability cases, on the defense side. The practice also included the litigation and trial of general negligence and consumer law cases. It did not change over the years.

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

Typical former clients included automotive manufacturers and liability insurance defense policyholders.

- 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, giving dates.

During the time I was engaged in the practice of law, I appeared in court frequently. There were no variances in the frequency of appearances over those years.

2. What percentage of these appearances was in:
 - (a) federal courts; **20%**
 - (b) state courts of record; **80%**
 - (c) other courts.

3. What percentage of your litigation was:
 - (a) civil; **100%**
 - (b) criminal.

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.

Tried approximately 12-13 cases to a jury verdict and 3-5 cases that settled during jury selection or mistried and settled subsequently. I was sole/chief counsel in about five of those cases.

5. What percentage of these trials was:
 - (a) jury; **100%**
 - (b) non-jury

18. **Litigation:** Describe the ten 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 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.

Victoria Way and Mike Way v. Freightliner Corp., 45th District Court, Bexar County, Texas, Docket No: 86-C1-20326. The case was tried before Judge Carol Knight-Sheen. Co-counsel Jack Hebdon (Mr. Hebdon is now retired, 8 Garden Square, San Antonio, Texas, 210-826-1854) and I represented Freightliner. Counsel for plaintiffs were Norman C. Dean (P.O. Box 311176, New Braunfels, Texas 78131-1176, 830-606-0855) and Doug Chavez (802 N. Carancahua St., Corpus Christi, Texas, 78470-0700, 361-888-9392). This case involved defect allegations in the design of the brakes of a Freightliner tractor. I handled the majority of the pre-trial litigation and shared the trial responsibilities with co-counsel. The case was tried to a jury verdict in 1989.

Norma Valento v. BMW, A.G. Et. Al., 150th District Court, Bexar County, Texas, Docket No: 91-ci-16112. The case was tried before Judge Carleton Spears. Co-counsel for BMW, A.G. was Michael Myers, (745 East Mulberry, Suite 500, San Antonio, Texas, 78212, 210-731-6300. Opposing counsel for plaintiff were Franklin Houser (Mr. Houser is now retired, 251 Blue Bonnet Blvd. San Antonio, Texas 78209, 210-824-5497) and Buddy Rake, Jr. (1313 E. Osborn Rd. Suite 100, Phoenix, Arizona, 85014, 602-248-3000). This case involved crashworthiness defects allegations resulting in injuries to plaintiff's decedent. I assisted with the pre-trial litigation and shared the trial responsibilities with co-counsel. This case was tried to a jury verdict in 1993.

Trinity Retirement Living Foundation, Inc. v. Sikes Construction Co., Et. Al., 73rd District Court, Bexar County, Texas, Docket No: 88-CI-04785. I represented the finish architect in this multimillion-dollar construction defect case. The case settled on the eve of trial without any contribution from client. Lead counsel for plaintiff was Lewin Plunkett, Plunkett & Gibson, Renaissance Plaza, 70 NE Loop 410, Suite 1100, San Antonio, Texas, 78216, 210-734-7092.

Leal v. General Motors Corporation, Brownsville division, U. S. District Court Southern District of Texas, Docket No: 1:88cv00029. I represented General Motors in this complex products liability case involving crashworthiness defect allegations that resulted in the death of members of the Leal family. I handled the totality of the pretrial proceedings and settlement negotiations. Opposing counsel for plaintiff were Richard Schechter, (11 E. Greenway Plaza, Suite 2010, Houston Texas, 77046, 713-623-8919) and Albert Villegas (1324 E. 7th Street, Brownsville, Texas, 78520-7241, 956-544-3352).

Perales v. Russell E. Friel Et. Al., 111th District Court, Webb County, Texas, (Docket number unavailable) Judge Antonio Zardenetta presiding, (Judge Zardenetta is retired, 1338 Canyon Brook, San Antonio, Texas, 78248, 210-493-7538). Represented the driver and trucking company in a lawsuit resulting from a tractor-trailer/bicyclist accident. I handled all of the pre-trial proceedings and settlement negotiations. Counsel for plaintiff was Steve T. Hastings, 101 N. Shoreline, #420, Corpus Christi, Texas, 78401, 361-888-5273.

Helen Ditmore v. General Motors, El Paso division, U. S. District Court Western District of Texas Judge Harry L. Hudspeth presiding, Docket No: EP86CV214. I assisted co-counsel David M. Prichard (10101 Reunion Place, San Antonio, Texas 78216, 210-477-7401) and Ray A. Weed (745 East Mulberry, Suite 500, San Antonio, Texas 78212) with the pre-trial litigation and jury trial. This case involved product defect allegations that resulted in a house fire and serious injuries to plaintiff. Lead counsel for plaintiff was Michael Cohen, P. O. Box 1021, El Paso, Texas, 79946, 915-577-0757. The case was tried to a jury verdict in 1988.

Hoefert v. Alamo Rental, Inc., San Antonio division, U. S. District Court Western District of Texas Judge Edward C. Prado presiding, Docket No: SA91CA541. Served as counsel for Alamo Rental Inc. with Ray A. Weed (745 East Mulberry, Suite 500, San Antonio, Texas 78212, 210-731-6300). Handled the pre-trial litigation and trial preparation, case settled shortly before trial. It

involved product defect allegations in a vehicle manufactured by General Motors and rented by Alamo. Plaintiff's alleged that those defects caused the wrongful death of her husband. Plaintiff's counsel were Rene Diaz (1506 Bexar Crossing, San Antonio, Texas, 78232, 210-979-0100) and James L. Branton (One Riverwalk Place, 700 N. St. Mary's St. Suite 1700, San Antonio, Texas, 78205, 210-224-4474).

Tobias v. General Motors, 346th District Court, El Paso County, Judge Jose Baca presiding, Docket No: 89-6669. Represented General Motors together with David M. Prichard (10101 Reunion Place, San Antonio, Texas 78216, 210-477-7401). Actively involved in the pre-trial litigation and jury trial. This case involved allegations of manufacturing defect in a tire and wheel assembly causing a vehicle accident and injuries to plaintiffs. The case was tried to a jury verdict in 1991.

Alvarado v. Hyundai Motor Company, Et. Al., 229th District Court, Duval County, Texas, Judge Benjamin Euresi Jr. Together with David M. Prichard (10101 Reunion Place, San Antonio, Texas 78216, 210-477-7401) represented defendant Hyundai Motor America, during pre-trial litigation and trial of this case. The lawsuit arose from injuries sustained by plaintiff Mario Alvarado in a single vehicle rollover accident. Plaintiffs alleged that the seat belt design was unreasonably dangerous. The case originated in Webb County and plaintiff non-suited the case after a partial motion for summary judgment was granted. That part of the case was ultimately resolved by the Texas Supreme Court, in *Hyundai v. Alvarado*, 892 S. W. 2d. 853, wherein the Court held that a non-suit after the granting of a partial motion for summary judgment is entered results in a dismissal with prejudice as to the issues decided in the summary judgment. The case was re-filed in Duval County. I was involved in all of the pre-trial and trial proceedings in both the Webb and Duval County actions. Lead counsel for plaintiffs was Steve T. Hastings, 101 N. Shoreline, #420, Corpus Christi, Texas, 78401, 361-888-5273. Counsel for other defendants were Eduardo R. Rodriguez, P. O. Box 2155 Brownsville, Texas, 78522, 956-542-7441 and Darrell L. Barger, North Tower, 800 N. Shoreline Blvd., Suite 2000, Corpus Christi, Texas, 78401, 361-866-8009. The case settled after the Duval County jury trial.

Carol Quick, Et. Al. v. John DeSalme Et. Al., 37th Judicial District Court, Bexar County, Texas, Judge John Cornyn (currently serving as U. S. Senator for the state of Texas) presiding, docket No. 88-CI-10660. This case arose from an

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.
Upon turning age sixty (60) I will qualify to receive a retirement pension from the Texas County and District Retirement System due to having more than eight years of continued service to Bexar County, Texas.
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.
I cannot identify any current or previous activity or association of mine that would pose a potential conflict of interest with my service in the Federal Judiciary. Should any such conflict, actual or perceive, were to arise, it can be resolved by following the ethical guidelines for the Federal Judiciary.
3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court?
If so, explain.
I do not.
4. List sources and amounts of all income received during the calendar year preceding 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.)
See attached financial disclosure report.

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5. Please complete the attached financial net worth statement in detail.

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.

I have not held a position or played a role in a political campaign other than my own.

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.

In 1988, helped with a program at the local parish, that assisted undocumented residents with Immigration Amnesty applications. Assisted the individual applicants in filling the forms and working their way through the legal requirements to make valid applications. This took place over several months.

From 1989 until the end of 1994, served as a volunteer pro-bono mediator during Settlement Week. Settlement Week a program of the Bexar County Judiciary, initiated in the fall of 1989, to promote settlement of cases through mediation. There are two such weeks every year.

From 1992 to 1994, served as member of the Grievance Committee, the entity created by state law to hear grievances about attorneys. Between attending hearings and studying the materials provided by the State Bar of Texas in anticipation of same, it took about eight to ten hours a month.

Throughout the years I have been actively involved in educating the public about the legal system. For example, I speak four or five times a year to groups across Bexar County, interested in learning about the mediation process and how to avail themselves of the services of the Bexar County Dispute Resolution Center. Also, for the past six years I have served as a speaker to the classes of the Inter American Air Forces Academy of Lackland Air Force Base. Public Law 101-511 created the IAAA and it is mandated to provide concentrated instruction in democratic government and human rights to its students that come from most of the Latin American countries. Just last week I spoke to a group of Latin American visitors attending the American Bar Association annual conference on mediation.

As a fluent Spanish speaker, I am called on a regular basis to assist individuals, the vast majority of which are of limited resources, to orient them about Courthouse services and access to justice. This happened as an attorney and continues as a Judge, my role is different but the needs addressed are the same.

In 1999, helped implement a program to assist pro se litigants with limited resources who come to the Bexar County Courthouse seeking assistance. The main focus of the

program was assistance in family law cases. Upon the determination of a judge, if the matter pending before the bench was deemed too complicated to be handled without a lawyer, the litigant was directed to the Pro Bono Coordinator at the San Antonio Bar Association to determine whether the person qualified for pro bono assistance. If the applicant met the financial criteria, the case would be reviewed by the Civil District Courts Staff Attorney for assignment to a volunteer lawyer with the program.

The program had 195 volunteer lawyers who submitted their name and agreed to consider taking a pro bono case. The program continued until late 2002 when a larger program was undertaken in conjunction with Texas Rural Legal Aid. The main focus of that program is also pro bono assistance in family law cases.

In 2001, helped create a system to expedite the hearings on individuals arrested on civil arrest warrants (capias). Most of these persons do not have counsel or the means to hire one. The system was implemented to expedite their appearance before a Judge after arrest and the appointment of counsel if needed. It avoided having someone in jail without a hearing for a period longer than allowed by statute.

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 you have done to try to change these policies?
I have never belonged to any such organization.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).
Yes, there is a selection commission that recommended my nomination. I was interviewed by a commission, composed of persons selected by the U.S. Senators for the state of Texas. Following the commission's recommendation Senators Cornyn and Hutchison interviewed me. Upon the Senators recommendation to The White House, the White House Counsel, Hon. Alberto Gonzalez, the F. B. I., and the Department of Justice interviewed me.

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 how you would rule on such case, issue, or question? If so, please explain fully.
No one has done that.

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-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of 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.

Under the separation of powers structure set forth in the Constitution, the power to fashion public policy lies not with the judiciary, but with the legislative and executive branches of government. The role of a District Court is to decide cases or controversies that are within its jurisdiction through the application of the Constitution, laws passed by Congress and administrative enactments of the Executive. Strict adherence to precedent (*stare decisis*) is the best known way to provide stability in the law. It is the District Court's role to decide cases or controversies; not to implement policies to correct perceived injustices.

Self-restraint by a federal judge means fidelity to the principle of *stare decisis* and strict adherence to higher court rulings.