

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used):
Xavier Rodriguez
2. Address: List current place of residence and office address(es).
Residence:
San Antonio, Texas

Office:
300 Convent, Suite 2200
San Antonio, Texas 78205
210/224-5575
3. Date and place of birth.
September 20, 1961
San Antonio, Texas
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 Raenell Woytek Rodriguez
Homemaker
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.
The University of Texas School of Law
Dates of attendance: 1983-1987
Degree received: Juris Doctor granted August 1987

The University of Texas School of Public Affairs
Dates of attendance: 1983-1987
Degree received: Master of Public Affairs granted August 1987

Harvard University
Dates of attendance: 1979-1983
Degree received: Bachelor of Arts granted June 1983
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.

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November 2002-Present
Fulbright & Jaworski L.L.P.
Partner
300 Convent, Suite 2200
San Antonio, Texas 78205

September 2001 – November 2002
Supreme Court of Texas
Justice
201 West 14th Street
Austin, Texas 78701

January 1996 – September 2001
Fulbright & Jaworski L.L.P.
Partner, Associate, August 1987 – December 1995
Law Clerk, July 1986 – August 1986
Law Clerk, May –1985 – August 1985
300 Convent, Suite 2200
San Antonio, Texas 78205

June 1983 – November 1993
United States Army Reserve
2LT, 1LT, Captain
321st Civil Affairs Group & 1st JAG Detachment
1920 Harry Wurzbach Hwy.
San Antonio, Texas 78209

July 1986
Plunkett, Gibson & Allen
Law Clerk
San Antonio, Texas

May 1986 – June 1986
Groce, Locke & Heddon
Law Clerk
San Antonio, Texas

1985 – 1987
Kazen & Price, Attorneys at Law
Law Clerk to Dan R. Price (now deceased)
Austin, Texas

May 1984 – August 1984
United States Department of State
Graduate Student Intern, Office of Politico-Military Affairs
Washington, D.C.

June 1983 – August 1983
U.S. Representative Henry B. Gonzalez
Staff Asst.
Federal Building
San Antonio, Texas

7. 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.

June 1983 – November 1993
United States Army Reserve
2LT, 1LT, Captain 457-78-6625
321st Civil Affairs Group & 1st JAG Detachment
1920 Harry Wurzbach Hwy.
San Antonio, Texas 78209
Honorable Discharge

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

Elected membership to American Law Institute December 2001 – Present

Elected Fellow Texas Bar Foundation 2001 – Present

Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization

Recognized by the SAN ANTONIO BUSINESS JOURNAL as one of 40 Rising Stars (1996)

Military Awards – Army Commendation Medal, Army Reserve Components Achievement Medal, Reserve Officers Association of the United States 1985-1986 and 1986-1987 Reilly Memorial Graduate Scholarship; Distinguished Military Graduate MIT ROTC Program 1983

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

Former Chair, Labor & Employment Law Section 2000-2001

Former Chair, Standing Committee on Legal Assistants 1999-2000

American Bar Association

Member, Standing Committee on Legal Assistants 1999-2002

Member, Labor & Employment Law Section, Equal Employment Opportunity Committee 2003-present

**San Antonio Bar Association
Member**

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

None.

Please list all other organizations to which you belong.

State of Texas, Board for Educator Certification, Former Vice-Chair (1999-2001)

National Assoc. For the Advancement of Minorities in Technology, Board Member (2001 – present)

St. Mary's University School of Law, Dean's Advisory Council (1999 – present)

San Antonio Area Foundation, Board Member (2000-2001 and 2003 to present)

South San Antonio Chamber of Commerce, Past Chairman of the Board (1997)

Respite Care of San Antonio, Inc., Past President (1994-1995)

Harvard Club of San Antonio, Past President

University of Texas at San Antonio, College of Social and Behavioral Sciences, Former Advisory Council Member

Abiding Presence Lutheran Church, Former Chair, Building Project Management Committee (1993-1999)

Mayor's Task Force on Kelly Privatization, Former Member

City of San Antonio Board of Review for Historic Districts, Former Member (1991- 1992)

Leadership San Antonio Alumnus and Former Committee Member, Greater San Antonio Chamber of Commerce (1989-1990)

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.

Texas, 1987 – present

United States Court of Appeals for the Fifth Circuit 1990 – present

United States Court of Military Appeals 1990

(now known as the U.S. Court of Appeals for the Armed Forces – I did not seek license to practice in the newly renamed Court since my honorable discharge from the U.S. Army)

United States District Courts:

Western District of Texas, 1988 – present

Northern District of Texas 1998 – present

Southern District of Texas 1988 – present

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. **None**. If there were press reports about the speech, and they are readily available to you, please supply them.

Employment Discrimination Law, 2000 Cumulative Supplement
(contributor)(Bureau of National Affairs)

Written Employment Contracts, TEXAS EMPLOYMENT LAW (co-author)(James Publishing, Inc.)

Independent Contractors, DEFENSE RESEARCH INSTITUTE EMPLOYMENT LAW BASICS (author)

Texas Legal Assistant Handbook, Member, Editorial Advisory Board
(James Publishing, Inc.)

The Employment At-Will Doctrine, TAB EMPLOYMENT LAW HANDBOOK (author)

Fifth Circuit Update, in STATE BAR OF TEXAS PROF. DEV. PROGRAM, Advanced Employment Law Course (2003) (author)

Employment Law Cases and State Supreme Courts, in Southern Methodist University School of Law 20th Annual Multi-State Labor & Employment Law Seminar (2002) (author and speaker)

Supreme Court Update, in STATE BAR OF TEXAS PROF. DEV. PROGRAM, *Advanced Evidence & Discovery Course* (2002) (speaker)

Employment Law Cases and the Texas Supreme Court, in University of Texas School of Law 9th Annual Labor & Employment Law Conference (2002) (author and speaker)

Effective Oral Argument, Travis County Bar Association, Bench Bar XII (2002) (speaker)

Supreme Court Update, in SOUTH TEXAS COLLEGE OF LAW, *Advanced Civil Trial Law Conference* (2002) (speaker)

STATE BAR OF TEXAS PROF. DEV. PROGRAM, *Advanced Employment Law Course* (2002) (course director)

Paralegal Overtime: Yes, No or Maybe? American Bar Association GP Solo, Vol. 19, No. 1 (January/February 2002)

Employment Medical Issues: The Family and Medical Leave Act, the Americans with Disabilities Act, and the Texas Worker's Compensation Act, in SAN ANTONIO HUMAN RESOURCES MANAGEMENT ASSOCIATION, *Employment Law Update* (2001) (author and speaker)

Employment Law Torts, in STATE BAR OF TEXAS PROF. DEV. PROGRAM, *Advanced Personal Injury Law Course* (2001) (speaker)

But Wait We're a Non-Union Employer: How the NLRA Affects You in SAN ANTONIO MANUFACTURER'S ASSOCIATION 2001 LEGAL UPDATE (2001) (author and speaker)

Arbitration of Employment Law Cases, in STATE BAR OF TEXAS, ALTERNATIVE DISPUTE RESOLUTION SECTION, *Mid-Year CLE Program* (2001) (speaker)

State Statutory/Contract Update, in STATE BAR OF TEXAS PROF. DEV. PROGRAM, *Advanced Employment Law Course* (2001) (author and speaker)

Employment Law Torts, in STATE BAR OF TEXAS PROF. DEV. PROGRAM, *Advanced Personal Injury Law Course* (2000) (speaker)

Privacy in Today's Workplace - Electronic Monitoring and Other Issues, in SAN ANTONIO HUMAN RESOURCES MANAGEMENT ASSOCIATION, *Employment Law Update* (2000) (author and speaker)

Hiring and Firing, in STATE BAR OF TEXAS PROF. DEV. PROGRAM, *State Bar College Summer School* (2000) (author and speaker)

Remedies, in UNIVERSITY OF TEXAS 7TH ANNUAL CONFERENCE ON LABOR AND EMPLOYMENT LAW (2000) (author and speaker)

Recruiting Tactics, Employment Agreements and Temporary Employees in TEXAS SOCIETY FOR HEALTHCARE HUMAN RESOURCES ADMINISTRATION 2000 LEGAL UPDATE (2000) (author and speaker)

Managing Affirmative Action Programs -- A Guide for Texas Employers, in The Texas Labor Letter (February 2000)

Using Employment Agreements to Protect Business Assets, Texas Lawyer (February 7, 2000)

Paralegal Overtime: Yes, No or Maybe? 63 Tex. Bar J.266 (March 2000)

State Law Resurgent, in STATE BAR OF TEXAS PROF. DEV. PROGRAM, *Advanced Employment Law Course* (2000) (author and speaker)

Implementing Progressive Discipline Policies, in COUNCIL ON EDUCATION IN MANAGEMENT PROGRESSIVE DISCIPLINE, COACHING AND TERMINATION LAW (2000) (author and speaker)

Employee Benefits and Retention, in The Labor Letters *Managing A Workforce in 2000* (2000) (speaker)

Developments in the Substantive Law: Employment Law, Texas Lawyer (December 20, 1999)

Common Mistakes Employers Make, in ANNUAL SAN ANTONIO CPA CE SYMPOSIUM (1999) (author and speaker)

Emerging Employment Law and Risk Management Trends, in RISK AND INSURANCE MANAGEMENT SOCIETY, INC., SOUTH TEXAS CHAPTER (1999) (author and speaker)

Managing Affirmative Action to Avoid Reverse Discrimination Claims, in TEXAS EMPLOYMENT LAW COUNCIL'S EDUCATIONAL CONFERENCE AND ANNUAL MEETING (1998) (author and speaker)

Employment Litigation Risks and Employment Trends in the Coming Millennium, in TEXAS SOCIETY FOR HEALTHCARE HUMAN RESOURCES ADMINISTRATION 1998 LEGAL UPDATE (1998) (author and speaker)

Avoiding Employment Law Claims, in UNIVERSITY OF HOUSTON ADVISING SMALL BUSINESS OWNERS (1998) (author and speaker)

Independent Contractor vs. Employee, in CLE INTERNATIONAL EMPLOYEE HANDBOOK CONFERENCE (1998) (author and speaker)

1997 Labor and Employment Law Highlights, in RISK AND INSURANCE MANAGEMENT SOCIETY, INC., SOUTH TEXAS CHAPTER (1998) (author and speaker)

1997 Labor and Employment Law Highlights, in TEXAS ASSOCIATION OF DEFENSE COUNSEL, 1997 FALL MEETING (1997) (author and speaker)

Wrongful Discharge Claims under the Texas Worker's Compensation Act, in STATE BAR OF TEXAS, LABOR AND EMPLOYMENT LAW SECTION, *Basics of Labor and Employment Law* (1997) (author and speaker)

Legal Issues in the Electronic Era, in NATIONAL COUNCIL OF STATE HOUSING AGENCIES, *Annual Spring Meeting* (1997) (author and speaker)

Avoiding Retaliation Claims in Texas: Disciplining and Terminating Employees Out on Comp, in COUNCIL ON EDUCATION IN MANAGEMENT WORKERS' COMP UPDATE (1994 and 1997) (moderator, author and speaker)

Update on Federal Law, in STATE BAR OF TEXAS PROF. DEV. PROGRAM, *Advanced Employment Law Course* (1996) (author and speaker)

Discipline and Discharge, in TEXAS SOCIETY FOR HEALTHCARE HUMAN RESOURCES ADMINISTRATION (1996) (author and speaker)

Age Discrimination and Title VII, in STATE BAR OF TEXAS ANNUAL LABOR & EMPLOYMENT LAW UPDATE (1996) (author and speaker)

Survey of Recent Federal and State Cases, in COUNCIL ON EDUCATION IN MANAGEMENT PERSONNEL LAW UPDATE (1996) (moderator, author and speaker)

Rule 26: Confusion and Dissolution, in STATE BAR OF TEXAS PROF. DEV. PROGRAM, *Advanced Employment Law Course* (1995) (author and speaker)

How to Avoid Employment-Related Torts, in LORMAN BUSINESS CENTER, INC.'S EMPLOYMENT DISCHARGE AND DOCUMENTATION SEMINAR (1995) (author and speaker)

Survey of Recent Workers' Compensation Cases, in COUNCIL ON EDUCATION IN MANAGEMENT WORKERS' COMP UPDATE (1995) (moderator, author and speaker)

Wrinkles in the Law: Age Discrimination in the 90s, in STATE BAR OF TEXAS ANNUAL LABOR & EMPLOYMENT LAW UPDATE (1995) (author and speaker)

Age Discrimination or Voluntary Quit?, in COUNCIL ON EDUCATION IN MANAGEMENT PERSONNEL LAW UPDATE (1994) (speaker)

Demonstrative Evidence, in TEXAS ASSOCIATION OF DEFENSE COUNSEL SEMINAR (1994) (author and speaker)

Avoiding Employment Discharge Claims, in UNIVERSITY OF HOUSTON EMPLOYMENT LAW INSTITUTE (1992, 1993, 1994 and 1995) (author and speaker)

Avoiding Liability for Sexual Harassment, in COUNCIL ON EDUCATION IN MANAGEMENT TEXAS PERSONNEL LAW UPDATE (1994) (author and speaker)

Legal Liability for Workplace Violence, in COUNCIL ON EDUCATION IN MANAGEMENT TEXAS SAFETY & HEALTH UPDATE (1994) (author and speaker)

High-Tech Privacy Issues, in COUNCIL ON EDUCATION IN MANAGEMENT PERSONNEL LAW UPDATE (1993) (author and speaker)

Americans With Disabilities Act; How Will a Jury Evaluate Reasonable Accommodation, in COUNCIL ON EDUCATION IN MANAGEMENT PERSONNEL LAW UPDATE (1993) (speaker)

Avoiding Employment Discharge Claims, in UNIVERSITY OF HOUSTON HEALTH LAW INSTITUTE (1992 and 1993) (author and speaker)

Damages: An Overview of Recent Developments, in STATE BAR OF TEXAS PROF. DEV. PROGRAM, *Texas Torts in the 90's Course* (1992) (author and speaker)

Workers' Compensation Employment Issues, TEXAS ASSOCIATION OF BUSINESS (1992) (author and speaker)

Workplace Defamation, in LORMAN BUSINESS CENTER, INC.'S EMPLOYMENT LAW PROGRAM (1991) (speaker)

The Law of Wrongful Discharge, Protected Concerted Activity, and Federal and State Laws Governing the Employment Relationship, in PROFESSIONAL EDUCATION SYSTEMS, INC.'S LEGAL ISSUES IN SUPERVISING NURSES (1990 and 1991) (speaker)

Drugs and Alcohol: Policies and Testing in the Workplace, in TEXAS ASSOCIATION OF BUSINESS EMPLOYMENT AND LABOR LAW SYMPOSIUM (1990) (author and speaker)

W. Wendell Hall, Xavier Rodriguez and Carol Jenson, *Wrongful Termination and Erisa Preemption*, in S.M.U. SCHOOL OF LAW, MODERN TRENDS IN BUSINESS TORTS LITIGATION SEMINAR (1990) (co-author)

Legal Issues: Confidentiality, Discrimination and Testing Considerations, in UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO AIDS EDUCATIONAL SYMPOSIUM (1989) (co-author and speaker)

13. Health: What is the present state of your health? List the date of your last physical examination.

Good, annual physical examination done December 2002.

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.

Justice, Supreme Court of Texas. September 2001 – November 2002, appointed. The Supreme Court of Texas has statewide, final appellate jurisdiction in all civil and juvenile cases. In addition, the Court has administrative responsibilities, including, but not limited to, promulgating rules of civil procedure, policies regarding the Office of Court Administration, the Commission on Judicial Conduct, and the State Bar of Texas.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written.

Department of Transportation v. Garza, 70 S.W.3d 802 (Tex. 2002)

The issue was whether a 45 mile per hour speed-limit sign, accurately reflecting the legal speed limit, but allegedly too high for its proximity to a school zone, was a "condition or use of tangible personal or real property" thereby causing a waiver of TxDot's governmental immunity in a lawsuit by parents of a student killed by a car. Texas Civil Practice and Remedies Codes § 101.060(a)(2) permits waiver of sovereign immunity for the absence, condition or malfunction of a road sign if it is not corrected by the responsible governmental unit within a reasonable time after receiving notice. The Texas Supreme Court held that plaintiffs' allegations do not come within the Tort Claims Acts' waiver of sovereign immunity for a "condition" of a traffic sign.

Southwest Key Program, Inc. v. Gil-Perez, 81 S.W. 3d 269 (Tex. 2002)

The Court concluded that Southwest Key's failure to provide protective equipment for use during a football game was the only alleged causal nexus underlying each theory of negligence. The Court held that the evidence was legally insufficient to support the jury's findings that the organizer's negligence proximately caused Gil-Perez's injury. None of the

medical experts' testimony established that more probably than not Gil-Perez would not have been injured had he been wearing ordinary protective gear. Accordingly, Gil-Perez failed to establish that Southwest Key's negligence was a proximate cause of his knee injury.

In Re Swept, I. P., 85 S.W.3d 800 (Tex. 2002)

The issue in this case was whether a county probate court abused its discretion by transferring a lawsuit alleging underpaid royalties from a Harris County District Court on grounds that the suit was "appertaining to" or "incident to" an estate administration the probate court supervised. The Court held that the Harris County suit, seeking a declaration involving royalty calculations by one company involved in Colorado operations, involves interest in the estate that already passed to descendants. Any possible recovery in that suit would not effect estate property. Accordingly, the "controlling issue" in the Harris County suit cannot be said to be the settlement, partition, or distribution of the estate property. The Court conditionally granted mandamus because, by erroneously transferring the Harris County case, the Denton County Court interfered with the Harris County Court's jurisdiction.

Lubbock County, Texas v. Trammel's Lubbock Bail Bonds, 80 S.W.3d 580 (Tex. 2002)

The issues in this case were: (1) whether Lubbock County's bail-bond service charge is unlawful because it is not authorized by any statute; (2) whether the Presentment Statute under Texas Local Government Code § 89.004(a) is jurisdictional, and (3) whether the Presentment Statute delays accrual of a claim for the reimbursement of funds against a county until the claim has been presented to and rejected by the County Commissioners. The Texas Supreme Court concluded that fact questions remained regarding the extent to which the bail-bond service charge was used for providing copies to the bail-bond companies and was thus authorized by statute. The court reaffirmed that the Presentment Statute was not jurisdictional and did not delay the accrual of a cause of action against the county for reimbursement of unauthorized charges.

Argonaut Ins. Co. v. Baker, 87 S.W.3d 526 (Tex. 2002)

The issue was whether a worker's compensation insurer can be reimbursed from a settlement with a person who caused an accident for the amount of the deductible the employer paid as well as what the insurer paid in worker's compensation benefits to the injured employee. The Court concluded that the Texas Insurance Code provision forbidding payment of an employer's worker's compensation deductible does not bar an insurer from recovering by its subrogation right the settlement amount it paid that included the employer's deductible. Texas Labor Code § 417.002 states that the net amount recovered by a claimant in a third party action shall be used to reimburse the insurance carrier "for benefits...that have been paid for the compensable injury." Section 417.002 does not limit the carrier's right to reimbursement to those provisions made in excess of the deductible amount.

Dow Chemical Co. v. Bright, 89 S.W. 3d 602 (Tex. 2002)

The issue was whether Dow retained sufficient control over a subcontractor's (Bright's)

work to impose a duty on the company, the premise's owner, to protect an independent contractor's employee from the contractor's negligence. The Court held that Dow did not owe a duty to Bright under either a contractual right to control or actual control of the contractor's work. Dow's contract with the independent contractor did not delegate to Dow the right to control means, methods or details of the contractor's work nor did it grant Dow the power to direct the order in which the work should be done. By requiring the contractor to comply with safety regulations, Dow owed the contractor's employees a narrow duty that its safety requirements and procedures do not unreasonably increase the probability and severity of injury. The independent contractor assigned Bright his duties and Dow did not instruct him how to perform his job and was not involved in how or when to secure the pipe that fell on him. Dow's safe-work permit system did not unreasonably increase the probability and severity of Bright's injury and is not evidence that the contractor and Bright were not free to do work in their own way or that Dow controlled the work method or its operative details.

State v. Hodges, 92 S.W.3d 489 (Tex. 2002)

The issues in this direct appeal were: (1) whether Texas Election Code § 162.015(a)(2), which prohibits a person from appearing on the general election ballot as a candidate for a political party, other than the party holding the primary in which the person voted or was a candidate, can reasonably be construed to permit Judge David Hodges to appear as a Democratic party candidate in the November 2002 general election even though he voted in the March 2002 Republican party primary; and (2) whether § 162.015(a)(2) is unconstitutional as applied to Hodges. The Court concluded that Hodges' interpretation of the section was not reasonable because it conflicts with the election code's overall structure. Hodges' construction of § 162.015(a)(2) would allow a prospective candidate who lost a party's nomination in the primary to seek the same office as a candidate for another political party -- an interpretation antithetical to the statute's purpose, which is to prevent candidates from having more than one candidacy for the same office in a single election cycle. In addition, the Court concluded that the section did not violate either the Texas or United States Constitutions. The Court concluded that strict scrutiny was not required because the burden on Hodges' right to vote was not severe. The Court further found that the statute was constitutional because it is reasonable, non-discriminatory and advances the state's important and compelling interest in maintaining the integrity and stability of the political process.

In re Jane Doe 10, 78 S.W. 3d 338 (Tex. 2002)

The issue in this case was whether a trial court's failure to enter findings of fact or conclusions of law on a statutory factor allowing a minor to get an abortion without telling her parents must result in automatically granting the application. In this case, a trial judge hearing an application for a "judicial bypass" left blank a space next to one factor that would permit an abortion without parental notification. The Court concluded that the trial court's failure to issue findings of fact or conclusions of law on the question whether notification may lead to physical, sexual or emotional abuse of a minor is deemed a finding in the girl's favor if some evidence exist in the record that notification may lead to any of these types of abuse.

Board of Adjustment of City of San Antonio v. Wende, 92 S.W.3d 424 (Tex. 2002)

The issue in this case was whether, under a city zoning ordinance, the Board of Adjustment improperly allowed quarrying as non-conforming use on two tracts that, before they were annexed and zoned for housing, had been leased for quarrying but not yet used for it. The Court agreed with the City of San Antonio's Board that pre-existing leases established non-conforming – use rights under the City's development ordinances. The City's adoption of its ordinances fall within its legislative discretion.

Texas Home Management, Inc. v. Peavy, 89 S.W.3d 30 (Tex. 2002)

The issue in this case was whether the operator of a home for the mentally retarded owed a duty of care to a murder victim killed by one of its residents. The Peavy's claim that THM was negligent when it allowed one of its residents unsupervised visits to Houston, Texas. The Court held that THM did not establish as a matter of law that it had no duty. In this case a right to control arises from THM's contract with the state. Further, the danger could be foreseen, based on the resident's previous history of assaults

(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

Southwest Key Program, Inc. v. Gil-Perez, 81 S.W. 3d 269 (Tex. 2002). Dissent argued that there was some evidence to support the jury's causation finding.

Argonaut Ins. Co. v. Baker, 87 S.W.3d 526 (Tex. 2002). Dissent argued that employee was being required to pay a deductible amount in contravention of the worker's compensation scheme.

Texas Home Management, Inc. v. Peavy, 89 S.W.3d 30 (Tex. 2002). The dissent disagreed that THM exercised "control" over its resident and disagrees that it was reasonably foreseeable that the resident would murder an innocent victim.

(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

State v. Hodges, 92 S.W.3d 489 (Tex. 2002)

The issues in this direct appeal were: (1) whether Texas Election Code § 162.015(a)(2), which prohibits a person from appearing on the general election ballot as a candidate for a political party, other than the party holding the primary in which the person voted or was a candidate, can reasonably be construed to permit Judge David Hodges to appear as a Democratic party candidate in the November 2002 general election even though he voted in the March 2002 Republican party primary; and (2) whether § 162.015(a)(2) is unconstitutional as applied to Hodges. The Court concluded that Hodges' interpretation of the section was not reasonable because it conflicts with the election code's overall structure. Hodges' construction of § 162.015(a)(2) would allow a prospective candidate who lost a party's nomination in the

primary to seek the same office as a candidate for another political party – an interpretation antithetical to the statute’s purpose, which is to prevent candidates from having more than one candidacy for the same office in a single election cycle. In addition, the Court concluded that the section did not violate either the Texas or United States Constitutions. The Court concluded that strict scrutiny was not required because the burden on Hodges’ right to vote was not severe. The Court further found that the statute was constitutional because it is reasonable, non-discriminatory and advances the state’s important and compelling interest in maintaining the integrity and stability of the political process.

If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

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.

**State Board for Educator Certification
1999-2001 Appointed by then Gov. George W. Bush**

**City of San Antonio Board of Review for Historic Districts, Former Member
(1991- 1992). Appointed by Mayor Nelson W. Wolff and City Council.**

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;

**Fulbright & Jaworski L.L.P.
Partner, November 2002-present**

300 Convent, Suite 2200
San Antonio, Texas 78205

Supreme Court of Texas
Justice, September 2001 – November 2002
201 West 14th Street
Austin, Texas 78701

Fulbright & Jaworski L.L.P.
Partner, January 1996 – September 2001
Associate, August 1987 – December 1995
300 Convent, Suite 2200
San Antonio, Texas 78205

- 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?

I concentrate my practice on the areas of labor and employment law and general litigation, where I represent both corporations and individuals who have been sued by their present or past employees based on alleged discrimination, harassment, retaliation, breach of contract, or breach of a noncompetition agreement. I also provide counseling and investigative assistance to clients to assist in their compliance with state and federal labor and employment laws. I have extensive experience in general litigation (personal injury defense, commercial litigation, defamation, contractual disputes and insurance bad-faith litigation).

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

I am board certified in labor and employment law by the Texas Board of Legal Specialization. Representative clients include: Universal Health Services, Inc., H.E. Butt Grocery Company, State Farm Insurance Company, National Instruments, SONY and Motorola.

- 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.

Frequent court appearances in both federal and state courts.

2. What percentage of these appearances was in:
- (a) federal courts;
Approximately 40% of my practice is before federal courts
 - (b) state courts of record;
Approximately 60% of my practice is before Texas courts
 - (c) other courts.
0%

3. What percentage of your litigation was:
- (a) civil;
100%
 - (b) criminal.
0%

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.
12 as lead counsel, 1 as second chair

5. What percentage of these trials was:
- (a) jury;
90%
 - (b) non-jury.
10%

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.

Deal v. State Farm County Mutual Ins. Co. of Texas, 5 F.3d 117 (5th Cir. 1993). Action was brought against insurance company and owner of insurance agency, alleging violations of Title VII and Age Discrimination in Employment Act (ADEA). The District Judge dismissed for lack of jurisdiction. Plaintiff appealed. The United States Court of Appeals held that: (1) for purposes of Title VII and ADEA, insurance company was not "employer" of plaintiff, who worked for agency, and (2) owner of insurance agency, while an insurance agent, was not "agent" of insurance company within meaning of Title VII and ADEA provisions defining "employer." I represented State Farm as lead attorney in the district court and assisted in the handling of the appeal.

Trial Court: Southern District of Texas, Corpus Christi Division
 Trial Judge: Hon. Hayden Head

Plaintiff's Counsel: William J. Kolb
 Law Office of William J. Kolb
 500 Texas Commerce Plaza
 Corpus Christi, Texas 78470
 Telephone: (361) 661-1662

Co-Defendant's Counsel: M. Colleen McHugh
 Bracewell & Patterson, L.L.P.
 2000 One Shoreline Plaza, Suite 800
 Corpus Christi, Texas 78401-3700
 Telephone: (361) 882-6644

Texas Employers' Ins. Ass'n v. Guerrero, 800 S.W.2d 859 (Tex. App. - San Antonio 1990, writ denied). Employee brought suit for worker's compensation benefits. The district court entered judgment on a jury verdict awarding worker benefits for total and permanent disability, and carrier appealed. On motion for rehearing, the Court of Appeals held that incurable reversible error occurred as result of employee's counsel's appeal for ethnic unity in his closing jury argument. I was junior counsel in the underlying trial and argued the appeal before the San Antonio Court of Appeals.

Trial Court: 293rd Judicial District Court in Zavala County, Texas
 Trial Judge: Hon. Alex Gonzalez
 Court of Appeals: San Antonio Court of Appeals

Plaintiff's Counsel: Rene R. Barrientos
Law Office of Rene R. Barrientos
First National Bank Building
750 E. Mulberry, Suite 402
San Antonio, Texas 78212
Telephone: (210) 733-3399

Suucedo v. Rheem Mfg. Co., 974 S.W.2d 117 (Tex. App. – San Antonio 1998, pet. denied). Employee brought breach of contract, promissory estoppel, fraud, defamation, and intentional infliction of emotional distress action against employer and supervisor. The District Judge entered summary judgment for employer. Employee appealed. The Court of Appeals held that: (1) publication of information did not provide basis for defamation claim; (2) employee failed to show extreme and outrageous conduct by supervisor as would support claim for intentional infliction of emotional distress, (3) employee's promissory estoppel claims were barred by statute of frauds, (4) employee could not maintain fraud claim; and, on rehearing (5) employer's representation as to annual salary did not alter-at-will status. I represented Rheem as lead attorney in the district court and argued the appeal before the San Antonio Court of Appeals

Trial Court: 341st Judicial District Court, Webb County, Texas
 Trial Judge: Hon. Elma Salinas Ender
 Court of Appeals: San Antonio Court of Appeals

Plaintiff's Counsel: Carlos M. Zaffirini, Sr.
Zaffirini, Castillo & Pellegrin
1407 Washington Street
P. O. Box 627
Laredo, Texas 78042-0627
Telephone: (210) 724-8355

Rogers v. City of San Antonio, Texas, 211 F. Supp. 2d 829 (W.D. Tex. 2002). This is an action for declaratory, equitable, and injunctive relief brought by fifteen military reservists who are currently (or retired from) working for the City of San Antonio Fire Department. The plaintiffs challenge a number of the policies and practices of the City's Fire Department as being discriminatory under the provisions of the Uniform Services Employment and Reemployment Rights Act of 1994 ("USERRA"), 38 U.S.C. §§ 4301 *et seq.* (2000). The challenged employment practices at issue concern, for instance, how military leave is excluded from the "twenty-seven" hour cap imposed on lost overtime, "bonus day" leave, "perfect attendance" leave, unscheduled overtime compensation and upgrading opportunities. In sum, plaintiffs argue the City, in implementing these employment practices, unlawfully discriminate against them by deeming them "absent" from work whenever they are on leave fulfilling their military reserve duties, as opposed to viewing them as "constructively present at work." Plaintiffs contend that the City's practices have resulted in disparate treatment

discrimination on the basis of their military reserve status. I represented the City of San Antonio as lead attorney during the initial cross motions for summary judgment. This lawsuit is pending before the trial court on other issues.

Trial Court: Western District of Texas, San Antonio Division
Trial Judge: Hon. Orlando Garcia

Plaintiff's Counsel: Martha P. Owen
Wiseman, Durst & Owen, P.C.
1004 West Avenue
Austin, Texas 78701
Telephone: (512) 479-5017

Rosales v. H.E. Butt Grocery Co., 905 S.W.2d 745 (Tex. App. – San Antonio 1995, no writ). Venue challenge in defamation and invasion of privacy action. I represented H.E. Butt Grocery Company as lead counsel in the district court proceedings and argued the matter on appeal.

Trial Court: 365th Judicial District Court of Maverick County, Texas
Trial Judge: Hon. Amado Abascal
Court of Appeals: San Antonio Court of Appeals

Plaintiff's Counsel: Rene R. Barrientos
Law Office of Rene R. Barrientos
First National Bank Building
750 E. Mulberry, Suite 402
San Antonio, Texas 78212
Telephone: (210) 733-3399

EEOC v. H.E. Butt Grocery Co., No. SA-00-CA-0352 (W.D. Texas, San Antonio Division). EEOC filed suit alleging that employer discriminated against a class of applicants on the basis of age. I served as lead counsel for the employer and negotiated a consent decree with the EEOC.

Trial Court: Western District of Texas, San Antonio Division
Trial Judge: Hon. Fred Biery

Plaintiff's Counsel: Chris Pittard
U.S. Equal Employment Opportunity Commission
San Antonio District Office
5410 Fredericksburg Road, Suite 200
San Antonio, Texas 78229
Telephone: (210) 281-7636

Robertson v. Neutral Posture Ergonomics, No. 2009-CI-12178. Covenant not to compete action filed against employee. I represented Intervenor in support

of the defendant employee.

Trial Court: 225th Judicial District Court of Bexar County, Texas
Trial Judge: Hon. John Specia, Jr.

Plaintiff's Counsel: Malinda Gaul
Gaul & Dumont
105 S. St. Mary's Street, Suite 950
San Antonio, Texas 78205
Telephone: (210) 225-0685

Co-Defendant's Counsel: Lamont Jefferson
Haynes and Boone, L.L.P.
112 East Pecan Street, Suite 1600
San Antonio, Texas 78205-1540
Telephone: (210) 978-7413

John Perrott Ent., Inc. v. Kerstein, 2000 WL 33348247 (W.D. Tex. 2000).
JPE brought claims sounding in quantum meruit and breach of contract for services it allegedly provided in the development of a game park/tourism development in Mozambique. District Court granted Defendants' motion to dismiss for lack of personal jurisdiction. I represented the executor of Defendant's estate as lead counsel.

Trial Court: Western District of Texas, San Antonio Division
Trial Judge: Hon. D.W. Suttle

Plaintiff's Counsel: Calboun Bobbitt
Drought, Drought & Bobbitt, L.L.P.
112 E. Pecan, Suite 2750
San Antonio, Texas 78205
Telephone: (210) 225-4031

Bunzl de Mexico S.A. de CV v. Knoll, et al. (AAA arbitration matter).
Bunzl alleged that two former employees breached their noncompetition agreements and violated fiduciary duties. I successfully defended the two former employees.

Arbitrator: Randolph Tower
Clemens & Spencer, P.C.
112 E. Pecan, Suite 1500
San Antonio, Texas 78205
Telephone: (210) 227-7121

Plaintiff's Counsel: Ricardo G. Cedillo
Les J. Strieber, III
Davis, Cedillo & Mendoza, Inc.
McCombs Plaza, Suite 500
755 E. Mulberry Avenue
San Antonio, Texas 78212-3129
Telephone: (210) 822-6666

Richard E. Jaudes
Thompson Coburn LLP
One Mercantile Center
St. Louis, Missouri 63101-1693
Telephone: (314) 552-6431

Rebecca A. Flores v. State Farm Mutual Automobile Insurance Company,
CA No. SA-92-CA-0569. Title VII action with various tort claims, including
workplace violence issues. I obtained a summary judgment for the employer.

Trial Court: Western District of Texas, San Antonio Division
Trial Judge: Hon. H. F. Garcia

Plaintiff's Counsel: James A. Kosub
Malinda A. Gaul
Law Offices of Kosub & Gaul
105 S. St. Mary's, Suite 2300
San Antonio, Texas 78205
Telephone: (210) 225-0685

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.)

I routinely provide counseling and investigative assistance to clients to assist in their compliance with state and federal labor and employment laws. In addition, I assist employers in implementing "best practices" and securing a productive workplace.

In addition, I have handled hundreds of cases involving alleged violations of Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act and the Texas Labor Code. In such cases I have counseled clients as to their responsibilities under these statutes.

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 my departure from Fulbright & Jaworski L.L.P. there will be an estimated accounting done of my capital account and 80 percent of my account will be disbursed at that time. Thereafter, in April of the following year, there will be a final accounting done and any remaining monies owed will be distributed at that time. Upon my departure from Fulbright & Jaworski L.L.P., monies held in the firm profit sharing plan and retirement accounts will be "rolled over" into my non-firm IRA account.

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 do not own any stocks, therefore I do not foresee any financial arrangements that would cause a conflict of interest. With regard to cases where my current law firm appears as an attorney of record, I will comply with the Code of Judicial Conduct and recuse myself for an appropriate period of time.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? **No.** If so, explain. **N/A**
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.)

See attached Financial Disclosure Report.

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

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.

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I was a candidate for Justice, Supreme Court of Texas (Place 4) in the March 2002 Republican Primary. Minor financial contributor to George W. Bush for President campaign. Minor financial contributor to Tim Bannwolf for Mayor campaign. Precinct Chair, Republican Party, Bexar County of Texas 1999-2001.

FD-278
1/2002

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. Sec. 101-111)

1. Name Reporting (Last name, first, middle initial) Braguer, Xavier	2. Court or Organization West, Dist. Texas	3. Date of Report 05/05/2003
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full or part-time) District Judge - Non-Rec	5. Report Type (check type) X Nomination Date 05/02/2003 Initial <input type="checkbox"/> Renewal <input type="checkbox"/> Final <input type="checkbox"/>	6. Reporting Period 03/03/2002 to 04/30/2003
7. Home or Office Address 0 Cornett Street, Suite 2200 San Antonio, Texas 78205		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts checking the HDGE box for each section where you have no superior information. Sign on the last page.

POSITIONS (Reporting individuals only, see pp. 9-13 of Instructions)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions)	
Partner	Fulbright & Jaworski L.L.P.
Member, Bd. of Directors	San Antonio Area Foundation

AGREEMENTS (Reporting individuals only, see pp. 14-15 of Instructions)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements)	
2003	Fulbright & Jaworski L.L.P. Retirement Plan (to be paid out upon departure from F&J)

NON-INVESTMENT INCOME (Reporting individual and spouse, see pp. 17-24 of Instructions)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income)		
2002	Supreme Court of Texas	95,210.30
2002	Fulbright & Jaworski L.L.P.	84,800.00
2003	Fulbright & Jaworski L.L.P.	104,000.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Rodriguez, Xavier	05-05-2003

IV. REIMBURSEMENTS — transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 23-27 of instructions.)

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS
(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1	EXEMPT		
2			
3			

VI. LIABILITIES
(Includes those of spouse and dependent children. See pp. 32-37 of instructions.)

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	First National bank	Note - for payment of Fairbairn Capital Account to be paid upon closing of Fairbairn Capital Account.	M
2			
3			
4			
5			
6			

* VAL. CODES: F-\$1,000 or less K-\$13,001-\$30,000 L-\$30,001 to \$100,000 M-\$100,001-\$250,000 N-\$250,001-\$500,000
 O-\$500,001-\$1,000,000 P1-\$1,000,001-\$5,000,000 P2-\$5,000,001-\$25,000,000 P3-\$25,000,001-\$50,000,000 P4-\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: **ROBERT J. KAVLER**

Date of Report: **05/05/2003**

(Includes those of spouse and dependent children. See pp. 14-15 of instructions.)

II. Page 1 INVESTMENTS and TRUSTS - income, value, transactions

A Description of Assets including trust assets	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period			
	(1) Amount	(2) Type	(3) Value	(4) Value	If not exempt from disclosure			
	(A-H) Code	(I-P) Code	(Q-W) Code	(X) Code	(2) Date	(3) Value	(4) Gain	(5) Identity of Buyer-seller
1 Fidelity IRA	Dividend	M						
2 Fidelity Profit Sharing Plan	Dividend	T						
3 Fidelity 401k Plan	Dividend	T						
4 American Express IRA	Dividend	P						
5 American Express Cash Reserve	Interest	J						
6 USAA Mutual Funds	Dividend	K						
7 Fidelity Capital Account	Interest	M						
8 Fidelity Savings	Interest	K						
9								
10								
11								
12								
13								
14								
15								
16								
17								
Gain Codes: A-\$1,000 or less	B-\$1,001-\$2,500	C-\$2,501-\$5,000	D-\$5,001-\$15,000	E-\$15,001-\$50,000				
Vol. B1, B4	F-\$50,001-\$100,000	G-\$100,001-\$1,000,000	H-\$1,000,001-\$5,000,000	I-\$5,000,001 or more				
41 Codes: J-\$15,000 or less	K-\$15,001-\$50,000	L-\$50,001-\$100,000	M-\$100,001-\$250,000	N-\$250,001-\$500,000				
41 Codes: O-\$500,001-\$1,000,000	P-\$1,000,001-\$5,000,000	Q-\$5,000,001-\$15,000,000	R-\$15,000,001-\$50,000,000	S-\$50,000,001 or more				
41 Mth Codes: Q-Arbitrage	R-Cost (real estate only)	S-Assessment	T-Cash/Market					
41 (2)	U-Bank Value	V-Other	W-Estimated					

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Business Name	05/05/2003

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.
(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Rodriguez, Xavier	05/05/2003

CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and benefits and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. App. 5, sections 501 et. seq., 5 2 U.S.C. 1753 and Judicial Conference regulations.

Signature _____



Date MAY 5, 2003

Notes: Any individual who knowingly and willfully identifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 5, Section 504).

FILEING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
 Administrative Office of the United States Courts
 One Columbus Circle, N.E.
 Suite 2-301
 Washington, D.C. 20544

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		LIABILITIES	
Cash on hand and in banks		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		Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property			
Cash value-life insurance			
Other assets itemize:			
		Total liabilities	\$388,614.99
		Net Worth	\$557,909.85
Total Assets	\$946,524.84	Total liabilities and net worth	
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, cosigner or guarantor		Are any assets pledged? (Add schedule)	No.
None		Are you defendant in any suits or legal actions?	No.
On leases or contracts		Have you ever taken bankruptcy?	No.
None			
Legal Claims			
None			
Provision for Federal Income Tax	0		
Other special debt	none		

See attached.

Firstmark/SATCU Savings	89.69	
Fid IRA Cash Reserves	32.23	FDRXX
Fid IRA Baron Growth	7688.98	293,137 BGRFX
Fid IRA Blue Chip Growth	24814.95	791,293 FBGRX
Fid IRA Dividend Growth	24718.39	1163,766 FDGFX
Fid IRA Equity Income	31568.72	852,978 FEQIX
Fid IRA Govt Income	1276.41	121,911 FGOVX
Fid IRA Low Priced Stock	7777.07	328.84 FLPSX
Fid IRA Mid Cap Stock	12013.3	759,374 FMCSX
Fid IRA Inter Bond	77087.36	7131,116 FTHRXX
Fid IRA Weitz Value	13396.91	498,954 WWALX
Fid IRA Oakmark Equity Income	5745.4	326,815 OAKBX
FJ Profit Plan Weitz Value	350.96	13,071
FJ Profit Plan Van Kampen Emer Grth	707.23	24,885
FJ Profit Plan Dreyfus App	694.67	23,261
FJ Profit Plan Fid Puritan	1753.26	115,498 FPURX
FJ Profit Plan Fid Govt Income	726.96	69,433 FGOVX
FJ Profit Plan Fid Retire Mmkt	2156.11	2156,11 FRTXX
FJ Profit Plan Spartan US Eq Index	695.44	23,158 FUSEX
FJ 401k Weitz Value	392.74	14,627
FJ 401k Van Kampen Emrg Grth	199.62	7,024
FJ 401k Dreyfus App	389.23	13,035
FJ 401k Fid Puritan	785.61	51,753 FPURX
FJ 401k Fid Govt Income	1021.15	97,531 FGOVX
FJ 401k Fid Retire Mmkt	1009.84	1009,84 FRTXX
FJ 401k Spartan US Eq Index	195.11	6,497 FUSEX
AXP New Dim A IRA	3299.82	178,465 INNDX
AXP New Dim A	4282.51	231,612 INNDX
AXP Equity Value Fund A IRA	4453.98	690,539 IEVAX
AXP Equity Select Fund IRA	7437.46	820,007 INVPX
AXP Cash Reserve	4354.91	
USAA Growth & Tax	19945.97	1520,272 USBLX
USAA Growth	6108.9	621,455 USAAX
USAA 1st LMR	5334.41	794,994 UFSGX
USAA 1st SMR	5334.41	794,994 UFSGX
2002 Infiniti QX4	25000	
2003 Lexus ES 300	32200	
Frost Market Index Acct (Tax Acct)	54679.49	
.25 X 49.5 acres Lavaca Cty	16042.5	
Personal Property	100,000	
FJ Capital Account	140,000	
Frost Savings LMR	1,752	
Frost Savings SMR	1,292	
Frost Checking	2,246	
Frost XR & RWR Savings	15,474	
18211 Newcliff	280000	
Total Assets	946524.84	
Mastercard	2838.47	
Infiniti	25391.78	
Toyota/Lexus	19299.55	
Frost Note - FJ Cap Acct	134167	

1200

Wells Fargo Newcliff Mortgage	209756.66
Total Debts	388614.99
Net Worth as of Apr. 20, 2003	557909.85

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.

I routinely provide pro bono legal services to Respite Care of San Antonio, a non-profit organization that provides varied services to families caring for disabled children. In addition, I have provided pro bono legal services to Any Baby Can, a non-profit organization that provides support and crisis assistance to families of children with special health care needs. In addition, I have participated in a Community in Justice clinic providing pro bono family law assistance. On average, I contribute over 200 hours per year of my time to charitable causes and over 120 hours per year to pro bono matters.

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? **No.** If so, list, with dates of membership. What you have done to try to change these policies? **N/A**
3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? **Yes.** If so, did it recommend your nomination? **I do not have personal knowledge, but I assume the selection committee recommended me to Senators Hutchison and Cornya.** 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).

In November of 2002, I was interviewed on one occasion by representatives from the White House Counsel's office. Several month's later I was asked to interview before the Texas Senators' selection committee. Several weeks later I interviewed with both Senators. After the senators forwarded their recommendation to the White House I was interviewed by representatives of the Department of Justice, Office of Legal Policy and the Federal Bureau of Investigation.

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? **No.** If so, please explain fully. **N/A**

- 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.

Our Constitution provides for the separation of powers of the three branches of our government. The legislative branch of our government has been elected to consider the needs of our society and legislate accordingly. A judge should not go beyond the traditional role of interpreter of the Constitution and laws and should not assume a policy-maker role. Judges should defer to the political branches of government when they permissibly exercise governmental power. In addition, a judge should apply the law in a manner that is both predictable and uniform. When a judge departs from the philosophy of judicial restraint, predictability and uniformity fall victim. In reviewing statutes, a judge should attempt to ascertain the "plain meaning" of the language in question. If the wording of the statute is unclear, a judge should defer to the legislative intent behind the statute. Similarly, when reviewing the decisions of administrative agencies, a judge should recognize that these agencies were created by the Legislature and accordingly a judge should defer to the enabling legislation of that agency.

A judge who adheres to the philosophy of judicial restraint also ensures that a party has standing and has suffered an "injury in fact." The judge also makes certain that the subject matter is ripe for adjudication. Once a case is properly before the court, the corollary to this limited judicial intervention is that a decision is limited to a resolution of the grievance currently before the court.