I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   Earl Leroy Yeakel III (Lee Yeakel).

2. Address: List current place of residence and office address(es).

   Residence: Austin, Texas

   Office: Texas Court of Appeals, Third District
   Price Daniel Sr. Building
   209 West 14th Street, Room 101
   Austin, Texas 78701.

3. Date and place of birth

   April 28, 1945; Oklahoma City, Oklahoma USA

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es)

   Married – Anne Paula Riquelmy (Yeakel), Executive Director, Texas Bar Foundation, 1414 Colorado Street, Room 605, Austin, Texas 78701.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   University of Virginia School of Law
   June 1999 to May 2001
   Received Master of Laws in the Judicial Process
   May 20, 2001;

   University of Texas School of Law
   September 1966 to May 1969
   Received Doctor of Jurisprudence
   May 31, 1969;

   University of Texas at Austin
   September 1963 to August 1966
   Received Bachelor of Arts
   August 27, 1966.

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

Employment:

1998 – Present:
Justice, Texas Court of Appeals, Third District
Price Daniel Sr. Building
209 West 14th Street, Room 101
Austin, Texas 78701;

1998:
Chief Justice, Texas Court of Appeals, Third District
Price Daniel Sr. Building
209 West 14th Street, Room 101
Austin, Texas 78701;

1990 – 1998:
Shareholder/Attorney, Clark, Thomas & Winters, a Professional Corporation
300 West 6th Street
Austin, Texas 78701;

1985 – 1990:
Partner/Attorney, Giles & Yeakel
7200 North MoPac
Austin, Texas 78731;

1982 – 1985:
Shareholder/Attorney, Stubbeman, McRae, Sealy, Laughlin & Browder, P.C.
221 West 6th Street
Austin, Texas 78701;

1974 - 1982:
Partner/Attorney, Kammerman, Yeakel & Overstreet
221 West 6th Street, Suite 1420
Austin, Texas 78701;

1969 – 1974:
Associate Attorney and Law Clerk, Mitchell, Gilbert & McLean

315 Westgate Building
Austin, Texas 78701;

1967 - 1970:
Officer Candidate & Officer, United States Marine Corps;

1967 - 1968:
Real Estate Salesman, M.D. Williamson Real Estate.

1966 - 1967:
Tax Examiner, Internal Revenue Service.

Board Service:

2002 - 2003:
President-Elect, Rotary Club of Austin, Texas

2002 – Present,
Trustee, Austin Rotary Foundation;

2001 – Present:
President (2003 - Present);Vice President (2001 - 2003); Austin Chapter, The English-Speaking Union

1990 – Present:
Trustee (1990 – Present), Vice President (2001 – Present), & Member of Executive Committee 1997 – Present), Theodore Roosevelt Association;

1994 – 1996:
Director, Rotary Club of Austin, Texas;

1971 - Approx. 1980:
Director, Bateo Incorporated;

Approx. 1970 – Approx. 1973:
Director, Jiffy Franks, Incorporated.

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.

Yes: United States Marine Corps, November 22, 1967 to October 22, 1970; Lance Corporal

& Officer Candidate #2404732 USMCR; 2d Lieutenant & 1st Lieutenant #0107870 USMCR; 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

None.

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

1. American Bar Association:
   a. Fellow, American Bar Foundation;
2. American Law Institute.
3. Texas Commission on Uniform State Laws (Appointed by Governor Perry, 2002)
4. National Conference of Commissioners on Uniform State Laws.
5. American Judicature Society:
6. Robert S. Calvert Inn, American Inns of Court;
7. State Bar of Texas:
   a. Sustaining Life Fellow, Texas Bar Foundation;
   b. Member, College of the State Bar of Texas;
   c. Sunset Act Committee (1979);
   d. Chairman, Subcommittee, District 9 Committee on Admissions (1977-1985);
8. Travis County Bar Association:
   a. Director (1976-1978);
   b. Member, Judicial Screening Committee (1989-1991);
9. Texas Young Lawyers Association (1969-1980):
   a. State Director, District 29 (1978-1979);
   b. Chairman, Legislative Committee (1976-1978);
   c. Chairman, Local Affiliates Committee (1978-1979);
   d. Member, various other committees;
10. Austin Young Lawyers Association (1969-1980):
    a. President (1977-1978),
    b. Vice-President (1976-1977);
    c. Secretary-Treasurer (1975-1976);
11. Austin Chapter, Federal Bar Association:
    a. President (1997-1998);
    b. President-Elect (1996-1997);
    c. Vice-President (1995-1996);
    d. Secretary (1994-1995);
    e. Delegate to National Council (1997);
12. Bar Association for the Fifth Federal Circuit (approx. 1990-1998);
13. Texas Association of Defense Counsel (approx. 1987-1998).

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 am not a member of any organization which lobbies public bodies, although the courts appear in front of the Texas Legislature from time to time on budget matters. The National Conference of Commissioners on Uniform State Laws sends members to state legislatures to be resource witnesses on uniform acts it has recommended. The American Law Institute does the same.

Other organizations to which I belong:

1. Rotary Club of Austin.
2. Theodore Roosevelt Association, Oyster Bay, New York;
3. Leadership Austin Association;
4. Travis County Grand Jury Association;
5. Austin Chapter, The English-Speaking Union;
6. Austin Lawyers Chapter, The Federalist Society;
7. The Sons of the Republic of Texas;
8. Longhorn Foundation Advisory Council, University of Texas at Austin,
9. Chancellor's Council, University of Texas at Austin.

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.

1. State Bar of Texas: September 15, 1969;
2. The Supreme Court of the United States: November 3, 1975;
3. The United States Court of Appeals for the Fifth Circuit: January 24, 1972;
4. The United States Court of Appeals for the Ninth Circuit: April 25, 1988;
5. The United States Court of Appeals for the Eleventh Circuit: October 13, 1981;
6. The Temporary Emergency Court of Appeals, December 18, 1978;
7. The United States District Court for the Western District of Texas: October 29, 1970;
8. The United States District Court for the Northern District of Texas: November 16, 1970;
9. The United States District Court for the Southern District of Texas: January 30, 1974;
10. The United States District Court for the Eastern District of Texas: July 6, 1979;
11. The United States District Court for the Western District of Louisiana: August 8, 1977;
12. The United States District Court for the Western District of Oklahoma: August 1, 1979;
13. The United States District Court for the Eastern District of Wisconsin: May 21, 1980;
14. The United States District Court for the Southern District of Alabama: June 9, 1987;
15. The United States Tax Court: April 28, 1997.

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.

Lee Yeakel & Dane McKaughan, *Sovereign Immunity*, *in* STATE BAR OF TEX. 12TH ANNUAL ADVANCED ADMINISTRATIVE LAW COURSE 2 (2000);

Quo Vadis Immunitas? The Texas Sovereign Immunity Doctrine as Applied to Breach of Contract - Where Is It? How Did It Get There? Where Is It Going? (Thesis submitted to University of Virginia School of Law (2001)).

Addresses to numerous civic clubs (such as Rotary, Lions, Kiwanis, and Sertoma), political clubs and organizations, bar associations, law firms, and schools on the Texas court system in general and the appellate process, both in general and with specific emphasis on the Third Court of Appeals, since joining the court in 1998. No specific speeches or papers were prepared other than those provided. I have generally spoken from an outline and am providing copies of those outlines that I have retained.

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

I am in good health and last had a physical examination September 24, 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.

Chief Justice, Texas Court of Appeals, Third District of Texas (1998) & Justice, Texas Court of Appeals,Third District of Texas (1998 - Present). Both positions are elected positions. However, in Texas when there is a judicial vacancy, the governor may appoint a person to serve until the next general election. Governor Bush appointed me chief justice in February 1998. I lost my race to retain the office in November 1998 to a member of the court. Governor Bush appointed me to fill her position in December 1998. I was elected to a full six-year term in November 2000. The court is one of fourteen intermediate appellate courts in Texas. Our court hears all appeals from twenty-four Texas counties as well as cases that may be transferred to the court by the Supreme Court of Texas under its docket-equalization authority. The court hears all appeals from trial court decisions, both civil and criminal, except criminal cases in which the death penalty has been assessed. The court also entertains petitions for mandamus and other requests for extraordinary relief.

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.

(1) Ten Most Significant Opinions:

1. *Dubiva, Inc. v. Bradford*, 81 S.W.3d 876 (Tex. App.—Austin 2002, no pet.) (Yeakel, J., dissenting). The majority reversed and remanded a case where the trial court severed the issue of attorney's fees, holding that the trial court could not so sever in order to allow the issues in the case in chief to be determined on appeal before determining whether attorney's fees should be awarded. I would have held that it is within the trial court's discretion to manage the case pending before it, that the trial court does have the power to sever an attorney's fees issue and reserve it for another day, and would have considered the merits of the appeal rather than dismissing the appeal for lack of jurisdiction on the basis that the trial court's judgment did not dispose of all the issues before it and thus was not a final judgment.

2. *Pretsy v. Moritz*, 60 S.W.3d 285 (Tex. App.—Austin 2001, no pet.). The case holds that plaintiffs did not waive their complaint that a juror was unqualified when the complaint was raised for the first time in a motion for new trial, and that plaintiffs were materially injured when an unqualified juror voted with the 10-2 majority for the defendant. (Texas law provides that a civil case may be determined by a 10-2 vote, thus the unqualified juror's vote was determinative on the case.)

3. *South Tex. College of Law v. Texas Higher Educ. Coordinating Bd.*, 40 S.W.3d 130 (Tex. App.—Austin 2001, pet. denied) (Yeakel, J., dissenting). The majority affirmed a trial-court judgment that Texas A&M University and South Texas College of Law could not enter into a cooperative arrangement whereby the institutions would allow cross-attendance of students with credit awarded. The crux of the dispute was over whether this would give Texas A&M a *de facto* law school at South Texas, as the Coordinating Board had not authorized Texas A&M to award law degrees. Clearly, Texas A&M would require Coordinating Board approval if it sought to award a law degree. However, my view is that the cooperative arrangement was consistent with Texas law, which encourages cooperation among public and private educational institutions, and that the scope of the particular agreement did not come within the purview of the Coordinating Board, although an attempt to establish a college of law at Texas A&M, a merger of the two institutions, or an attempt by Texas A&M to award law degrees would. Thus, I would have held that the Coordinating Board exceeded its legislative mandate by its premature action to terminate the relationship.

4. *Travis County Attorney v. J.S.H.*, 37 S.W.3d 692 (Tex. App.—Austin 2000, no pet.).

The case holds that an admitted, but unadjudicated, offense is not a "final conviction" as the term is used in the Texas expunction statute and affirmed two trial court orders of expunction.

5. *Waldrep v. Texas Employers Ins. Ass'n*, 21 S.W.3d 692 (Tex. App.—Austin 2000, pet denied). The case holds that a college football-scholarship athlete who was injured playing football for a university could not recover worker's compensation benefits for his injury. (The injury occurred in 1974, and the court's holding was based on Texas law and Southwest Conference and National Collegiate Athletics Association rules and regulations in effect at the time. The holding expresses no opinion as to whether the decision would be the same in an analogous situation arising today.)

6. *Vela v. Marywood*, 17 S.W.3d 750 (Tex. App.—Austin 2000), *pet. denied*, 53 S.W.3d 684 (Tex. 2001). The case holds that an adoption agency owes a duty of complete disclosure when discussing adoption procedures with and advising a birth mother, and the evidence conclusively established that the birth mother did not voluntarily sign a relinquishment affidavit because of misrepresentations by the adoption agency. Thus, the trial court erred in terminating the birth mother's parental rights to her child based solely on the relinquishment affidavit.

7. *Boone Ins. Agency v. American Airlines, Inc.*, 17 S.W.3d 52 (Tex. App.—Austin 2000, pet. denied). The case holds that issues regarding airline ticket reissue fees and other airline-assessed penalties for failing to travel according to the ticket's original terms were preempted by the federal Airline Deregulation Act and, thus, could not be determined under Texas state law.

8. *Gutierrez v. State*, 8 S.W.3d 739 (Tex. App.—Austin 1999, no pet.). The case holds that by confessing guilt at the punishment phase of his trial (Texas has a bifurcated trial procedure, the first phase determining guilt or innocence and the second phase determining punishment), a defendant is estopped from challenging the propriety of juror note taking during the trial's guilt/innocence phase.

9. *In re L.M.*, 993 S.W.2d 276 (Tex. App.—Austin 1999, pet. denied). L.M., then eleven years old, was the youngest person ever charged with murder in Texas. The victim was a two-year old child staying at the house L.M. shared with her grandparents and older sister. Because of her age, she was tried as a juvenile. A jury acquitted L.M. of capital murder and manslaughter, but found her guilty of criminally negligent homicide and injury to a child. However, the juvenile court, on his own motion, ordered a new trial. At the second trial, the State charged L.M. with only injury to a child. The second jury convicted her. During its investigation, the Austin Police Department conducted an interview with and took statements, both written and oral, from L.M. outside the presence of either grandparent and without either a lawyer or other adult representing L.M. The grandparents, who were L.M.'s guardians, were not notified of the interview. The trial court admitted L.M.'s statements in

evidence before the jury. Our court held that L.M.'s statements were taken in violation of the Texas Family Code. Further, we held that to determine whether a juvenile has waived her right to counsel, the voluntariness of the waiver must be viewed through the eyes of the juvenile, here an eleven year-old girl who had no previous experience with law-enforcement officials. The interview was thus suspect and, at the very least, it could not be said that the juvenile's statements were not the product of fright or despair. We held that the statements should have been suppressed and that their admission was not harmless, and reversed the adjudication of delinquency.

10. *Gulf Metals Indus., Inc. v. Chicago Ins. Co.*, 993 S.W.2d 800 (Tex. App.—Austin 1999, pet. denied). The "qualified polluter's exclusion" clause in Texas general-liability insurance policies provides that the insurance does not generally cover damages caused by the discharge of "irritants, contaminants, or pollutants" by the insured. However, the "discharge, dispersal, release, or escape" is covered if "sudden and accidental." The federal Environmental Protection Agency ordered Gulf Metals to clean up a polluted site that had been maintained by Gulf Metals and its predecessors for many years. Gulf Metals made a claim on its insurer, who denied coverage on the basis that the release of the contaminants had been gradual and consistent over an extended period of time. Gulf Metals sued. Our court affirmed the trial court's summary judgment in favor of the insurer, holding that "sudden," as used in the "sudden and accidental" exception to the exclusion, includes a temporal element, requiring the release to be swift, rapid, or abrupt.

(2) Reversals.

1. *Central Counties Cent. for Mental Health & Mental Retardation Servs. v. Rodriguez*, 45 S.W.3d 707 (Tex. App.—Austin 2001), *rev'd & dism'd w.o.j.*, 46 Tex. Sup. Ct. J. 493, 2003 Tex. LEXIS 20 (Mar. 6, 2003) (per curiam); *Austin State Hosp. v. Fiske*, 46 Tex. Sup. Ct. J. 493, 2003 Tex. LEXIS 21 (Mar. 6, 2003) (per curiam). The Texas Board of Mental Health and Mental Retardation was required by statute to adopt a patients' bill of rights, governing inpatient mental-health facilities, for the purpose of protecting the health, safety and rights of such facilities' patients. The Board did so. In two different cases, consolidated for this appeal, patients sued facilities alleging violations of the bill of rights. In each instance, the facility moved the trial court to dismiss the case for lack of jurisdiction on the basis that, as the defendant facility was a state facility, it could not be sued without its consent. The trial courts denied the pleas to the jurisdiction, resulting in appeals to our court. The Texas Health and Safety Code allows a "mental health facility" to be sued for violations of, *inter alia*, the patients' bill of rights and defines "mental health facility" by adopting the definition in another section of the code, which includes state-operated mental health facilities. Our court affirmed the trial courts, holding that the statutory scheme "clearly and unambiguously waives sovereign immunity from suit." In two *per curiam* opinions, the supreme court reversed and dismissed for lack of jurisdiction on the basis of another case decided by the supreme court the same day (*Wichita Falls State Hosp. v. Taylor*, 46 Tex. Sup. Ct. J. 494, 2003 Tex. LEXIS 22 (Mar. 6, 2003)), which held that the code did not

clearly and unequivocally waive sovereign immunity from suit for state-operated mental-health facilities.

2. *St. Joseph Hosp. v. Wolff*, 999 S.W.2d 579 (Tex. App.—Austin 1999), *rev'd* 94 S.W.3d 513 (Tex. 2002). This extremely complex case originated as a medical-malpractice case by Wolff against various medical practitioners and institutions and, as is germane to the appeal, resulted in a judgment for Wolff against St. Joseph. The malpractice, which was undisputed, was committed at Brackenridge Hospital in Austin by a medical resident provided by St. Joseph, a Houston hospital, pursuant to an agreement with Brackenridge. The crucial issue on appeal was whether, under its agreement with Brackenridge, St. Joseph could be held liable for the negligent acts of a resident provided by St. Joseph to Brackenridge. Our court stated: "We hold there is legally and factually sufficient evidence to support the jury's finding that St. Joseph and [Brackenridge] were engaged in a joint enterprise. As participants, both St. Joseph and [Brackenridge] are thereby responsible for the other's negligent acts." A divided supreme court, in a plurality opinion written by a court-of-appeals justice sitting with the supreme court by commission of the governor, reversed, holding that there was no evidence of a "community of pecuniary interest in [the common] purpose [of the enterprise], among its members." The court also held that there was no joint enterprise because "the complete absence of any evidence that St. Joseph and [Brackenridge] agreed to share profits is fatal to [Wolff's] joint venture theory." Six justices joined in the judgment, but only four in the court's opinion. All six of the justices who joined in the judgment held that the resident was a "borrowed servant," thus relieving St. Joseph of vicarious liability for his acts. The dissent took the position that "because St. Joseph contractually retained and actually exercised the right of control over [the resident's] work even when he was at Brackenridge, he could not have been [a borrowed servant]." The dissent further concluded that the resident "was in the course and scope of his employment with St. Joseph when he negligently injured Ms. Wolff."

3. *Loftin v. State*, 6 S.W.3d 796 (Tex. App.—Austin 1999), *rev'd*, 45 S.W.3d 648 (Tex. Crim. App. 2001). Our court reversed a trial-court criminal conviction, holding that because the evidence at trial could have supported a conviction for a lesser-included offense, the trial court erred in not so charging the jury. The defendant was convicted of the offense of assault on a public servant (a police officer). He had requested that the trial court charge the jury on the lesser-included offense of resisting arrest. We held that "[f]rom the evidence before it, the jury could have rationally believed that appellant intended to obstruct the arrest and the force he used was incident to that intent." A divided court of criminal appeals disagreed, holding that "[r]esisting arrest was not a rational alternative to assault on a public servant in the instant case." The dissent would have affirmed, stating that "[i]f the jury had disbelieved the evidence that appellant struck and caused bodily injury to [the officer], there remains other evidence that appellant resisted arrest by the use of force that did not cause bodily injury. This is some evidence that appellant was guilty *only* of resisting arrest. Appellant was entitled to the instruction of the lesser offense on this basis."

4. *Qwest Communications Inter'l Inc. v. AT&T Corp.*, 983 S.W.2d 885 (Tex. App.—Austin 1999), *rev'd sub. nom Qwest Communications Corp. v. AT&T Corp.*, 24 S.W.3d 334 (Tex. 2000) (per curiam). AT&T and a related company sued Qwest and a related company for damages to AT&T's fiber-optic cables. Immediately before a hearing on a temporary injunction that had been requested by AT&T, AT&T and Qwest reached an agreement, which they announced in open court, resolving the issues to be heard at the temporary-injunction hearing. When the agreement was reduced to writing, Qwest refused to sign it. After a hearing, the trial court concluded that the proposed written agreement correctly reflected what had been announced in open court and signed an order enforcing it. Qwest appealed. Our court held that the order enforcing the agreement was not an appealable interlocutory order under Texas law and dismissed the appeal for lack of jurisdiction. The supreme court, in a *per curiam* opinion, reversed, stating, "We hold that, in character and function, the trial court's order grants a temporary injunction and is appealable under Texas Civil Practice and Remedies Code section 51.014(a)(4)."

(3) Federal and State Constitutional Issues:

1. *Mauldin v. Texas State Bd. of Plumbing Exam'rs*, 94 S.W.3d 867 (Tex. App.—Austin 2002, no pet.). The case holds that the Board's requirement that an applicant for a plumber's license provide the person's social-security number does not violate the equal-protection clause of the Texas Constitution.

2. *State v. Ware*, 86 S.W.3d 817 (Tex. App.—Austin 2002, no pet.). The case considers the takings clauses of the Fifth Amendment to the United States Constitution and the Texas Constitution and holds that the "undivided-fee rule," as a method for determining damages, is inapplicable in condemnation cases where the condemnor already holds a portion of the estate being condemned.

3. *Rylander v. Palais Royal, Inc.*, 81 S.W.3d 909 (Tex. App.—Austin 2002, pet. denied). The case holds that the earned-surplus amendments to the Texas franchise-tax act are not unconstitutional under the equal-taxation and equal-protection-of-law clauses of the United States and Texas Constitutions. Further, the amendments do no conflict with state or federal retroactivity, takings, or due processes clauses of those constitutions.

4. *State v. Fudge*, 42 S.W.3d 226 (Tex. App.—Austin 2001, no pet.). The issue in this case is whether evidence was obtained by the police in violation of the defendant's rights, under the Fourth Amendment to the United States Constitution and the Texas Constitution. The case holds that a cab driver, who reported to a police officer in a face-to-face manner that he observed the defendant driving drunk, was inherently reliable, thus, based on that information alone, the officer had reasonable suspicion to perform an investigative stop of the vehicle the defendant was driving. Thus, the officer's investigation was not unreasonable.

5. *Shelton v. State*, 41 S.W.3d 208 (Tex. App. — Austin 2001, no pet.). The issue in this case involves a defendant's right to free association under the First Amendment to the United States Constitution. The case holds that, because during the punishment phase of defendant's trial, the trial court admitted several items of evidence relating to defendant's involvement with the Ku Klux Klan, unrelated to the offense with which defendant was charged, he was entitled to a new punishment hearing.

6. *Low-Income Women v. Bost*, 38 S.W.3d 689 (Tex. App.— Austin 2000) (Yeakel, J., dissenting), *rev'd sub nom. Bell v. Low-Income Women*, 46 Tex. Sup. Ct. J. 309, 2002 Tex.LEXIS 216 (December 31, 2002). Writing in dissent, I would have held that the equal-rights amendment to the Texas Constitution does not create an Assistance Program.

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

(1) Ran for state representative, District 37-B, Travis County, Texas in a special election to fill a vacancy in November 1977; lost then and in the 1978 primary election;

(2) Texas State Board of Canvassers of Elections; appointed by Governor William P. Clements, Jr. in 1987, served until 1989 when, partially at my suggestion, the Texas Legislature abolished the board through the sunset process.

(3) Ran for Travis County Republican Chairman in 1988; was defeated;

(4) Texas Commission of Licensing and Regulation; appointed by Governor William P. Clements, Jr. for six-year term beginning September 1, 1989; served as chairman from 1989-1993; reappointed by Governor George W. Bush for a six-year term beginning September 1, 1995; served as chairman from 1995 until February 27, 1998, when I resigned to become Chief Justice of the Texas Court of Appeals, Third District, having been so appointed by Governor George W. Bush;

(5) Ran for Travis County Republican Party Chairman in 1990; elected; served from 1990 to 1992; did not seek reelection;

(6) Running for Justice, Texas Court of Appeals, Third District, March 1998 Republican Primary; discontinued campaign when appointed Chief Justice of the Court by Governor George W. Bush on February 27, 1998;

(7) Ran for Chief Justice, Texas Court of Appeals, Third District, November 1998; was defeated by Marilyn Aboussie, a justice on the Court.

(8) Following defeat for Chief Justice, was appointed Justice, Texas Court of Appeals, Third District, by Governor George W. Bush on December 10, 1998;

(9) Ran for Justice, Texas Court of Appeals, Third District, March 2000 primary and November 2000 general election; elected to six-year term beginning January 1, 2001; currently serving;

(10) Texas Commission on Uniform State Laws; appointed by Governor Rick Perry in August 2001 to a term ending in 2006, thus becoming a member of the National Conference of Commissioners on Uniform State Laws;

(11) When Chief Justice Marilyn Aboussie announced that she was retiring at the end of 2002, I ran for Chief Justice, Texas Court of Appeals, Third District, in the March 2002 Republican Primary; was defeated.

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:

None.

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

None.

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:

(a) Fall 1968 through December 31, 1973; Mitchell, Gilbert & McLean (while I was there, the firm was also known as the Law Offices of Arthur Mitchell and Mitchell, Yeakel, Orr & Trickey), 315 Westgate Building, Austin, Texas 78701; first as law clerk while in law school and, after graduation, as an associate attorney.

(b) January 1, 1974, through August 15, 1982; Kammerman, Yeakel & Overstreet (while I was there, the firm was also known as Kammerman, Yeakel & Hineman and Kammerman, Yeakel, Hineman & Trickey), 221 West 6th Street, Suite 1420, Austin, Texas 78701; partner.

(c) August 16, 1982, through February 28, 1985; Stubbeman, McRae, Sealy, Laughlin & Browder, Inc., 221 West 6th Street, Suite 1800, Austin, Texas 78701; shareholder.

(d) March 1, 1985, through September 30, 1990; Giles & Yeakel, 7200 North MoPac Expressway, Austin, Texas 78731; partner.

(e) 1987 through 1989; Texas State Board of Canvassers

of Elections, State Capitol, Austin, Texas 78711; Board member.

(f) September 1, 1989, through February 27, 1998; Texas Commission of Licensing & Regulation, Ernest O. Thompson State Office Building, Austin, Texas 78701; Commission member and chairman.

(g) October 1, 1990, through February 27, 1998; Clark, Thomas & Winters, A Professional Corporation, 700 Lavaca Street, 12th Floor, Austin, Texas 78701; shareholder

(h) February 27, 1998 through the present; Texas Court of Appeals, Third District of Texas, Price Daniel Sr. Building, 209 West 14th Street, Room 101, Austin, Texas 78701; Chief Justice and Justice

(i) August 8, 2001 through the present; Texas Commission on Uniform State Laws, c/o Texas Legislative Council, State Capitol, Austin, Texas 78711; Commission member.

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 has always been that of a general practitioner, although its emphasis has changed from time to time over the years. With my first firm, from 1969 (when I graduated from law school) to 1974, I handled all types of cases as assigned to me by the firm. The cases on which I worked were both civil and criminal and involved trial and appellate work, both state and federal, and appearances before state agencies. The firm believed in letting you learn by doing, so I was, literally, in court from the day I received my law license. When I began my own firm in 1974, the practice remained pretty much the same, but began shift primarily to civil cases, with less emphasis on criminal. At this time, I also began to do a significant amount of work in the oil and gas area and more in the securities area. By the late 1970s, I was engaged almost exclusively in commercial litigation and transactions, including oil and gas and securities, and had developed a tax-exempt bond practice, representing primarily lending institutions who served as trustees for industrial development, housing, and other types of tax-exempt bonds. In the 1980s, my practice became more focused on civil commercial litigation and

appeals, as well as more administrative-agency hearings, and continued this way until 1998 when I was appointed to the court of appeals. I have practiced with small and large firms and have seen the strengths and weaknesses of both.

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

As has been described above, my law practice was varied and, thus, so were my clients. Although there have been periods in my practice when I represented corporate clients, over the years I have more often represented individuals and small businesses. Although I have neither designated a specialty nor sought board certification in any area, the common theme that runs throughout my practice has been commercial litigation—the trying of lawsuits involving disputes over agreements of one kind or another

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.

Frequently. This was steady over the course of my law practice.

2. What percentage of these appearances was in:

(a) federal courts:

Approximately 20%.

(b) state courts of record:

Approximately 60%.

(c) other courts.

i. Administrative Hearings: Approximately 10%
ii. Mediation/Arbitration: Approximately 10%.

3. What percentage of your litigation was:

(a) civil,

Approximately 95%.

(b) criminal.

Approximately 5%.

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.

I have not kept a count of the number of cases I have tried to verdict or settled, nor have I kept a record of when I was sole counsel, chief counsel or associate counsel. I can say, that except for the early days of my practice, I have generally been sole counsel. When with larger firms—Stubbeman, McRae and Clark, Thomas—I would sometimes be assisted by less-experienced attorneys. From time to time a referring attorney would serve as second-chair counsel in a trial. I estimate that over my career I tried 100 to 115 cases to verdict, either to a jury or to the bench.

5. What percentage of these trials was:

(a) jury:

Approximately 30%.

(b) non-jury.

Approximately 70%.

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.

(1) *Rowden Oil & Gas, Inc. v. Eland Energy, Inc.*, 111th Judicial District Court, Webb County, Texas. Trial Judge: Antonio A. Zardenetta; Appellate Judges—Fourth Court of Appeals: Justices Catherine Stone, Phillip Hardberger, & Paul W. Green; Co-counsel: C.B. Harrison, Jr., 13101 Preston Road, Suite 413, Dallas, Texas 75240, (972) 934-0147; C.M. Zaffirini, 1407 Washington Street, Laredo, Texas 78040, (956) 724-8355; Amanda Foote

Schmidt, 3406 Glenview Avenue, Austin, Texas 78703, (512) 371-7309; Counsel for other Parties: Robert D. Jenkins, 2370 Rice Boulevard, Suite 202, Houston, Texas 77005, (713) 526-7100; W. Wendell Hall 300 Convent Street, Suite 2200, San Antonio, Texas 78205, (210) 224-5575; V.E. Lanfear, 8620 North New Braunfels Avenue, Suite 215, San Antonio, Texas 78217, (210) 824-9230; Donato Ramos, P.O. Box 452009, Laredo, Texas 78045, (956) 722-9909.

(a) *Eland Energy, Inc. v. Rowden Oil & Gas, Inc.*, 914 S.W.2d 179 (Tex. App.—San Antonio 1995, writ denied).

(b) The case involved a dispute over the meaning of language in an oil-and-gas-lease assignment and related documents between subsequent claimants under the lease. Eland asserted that the assignment was a conditional assignment of the entire interest in lease, but with a covenant to assign undeveloped portions back, thus being an agreement subject to the Texas four-year statute of limitations, because the suit was one for breach of a contract to reconvey. Rowden argued that the suit was one to quiet title and thus not burdened by a statute of limitations.

(c) I represented Eland Energy, Inc.

(d) I prepared all pleadings in the case, divided discovery responsibilities between myself and co-counsel, served as lead counsel at all hearings before the trial court, primarily prepared, with assistance of co-counsel, the appellate brief, and argued the case before the court of appeals. I supervised the preparation of the application for writ of error to the Texas Supreme Court. The case was decided unfavorably to Eland by the trial and appellate courts.

(2) *Denton v. Texas Department of Public Safety Officers Association*, 200th Judicial District Court, Travis County, Texas; Trial Judge: Joe B. Dibrell, Jr.; Appellate Judges—Third Court of Appeals: Chief Justice Jimmy Carroll, Justices Mack Kidd & Bea Ann Smith; Appellate Judges—Supreme Court: Chief Justice Thomas A. Phillips, Justices Craig T. Enoch, Jack Hightower, Nathan L. Hecht, John C. Cornyn, & Rose Spector (majority opinion), Raul A. Gonzalez, Bob Gammage, & Priscilla Own (concurring opinion); Co-Counsel: Amanda Foote Schmidt, 3406 Glenview Avenue, Austin, Texas 78703, (512) 371-7309; Counsel for other Parties: Guy M. Hohmann, 100 Congress Avenue, Suite 1600, Austin, Texas 78701, (512) 472-5997; Susan J. Dasher, 1107 1/2 Nueces Street, Austin, Texas 78701, (512) 478-0834; Kim D. Brown, 1310 Ranch Road 620 South, Suite 204, Lakeway, Texas 78734, (512) 263-7450.

(a) *Texas Dep't of Pub. Safety Officers Ass'n v. Denton*, 897 S.W.2d 757 (Tex. 1995), *aff'g Denton v. Texas Dep't of Pub. Safety Officers Ass'n*, 862 S.W.2d 785 (Tex. App.—Austin 1993).

(b) Lane Denton was the executive director of the Texas Department of Public Safety Officers Association ("DPSOA"), which terminated him under suspicion of misappropriating DPSOA funds. Under investigation by the district attorney, Denton was subpoenaed to appear before a state grand jury examining DPSOA's allegations. The day he was to appear, he filed suit against DPSOA and others on several tort and contract grounds, all involving allegations of wrongful termination. During the pendency on Denton's suit, he was indicted by the grand jury for misappropriating funds of DPSOA. He refused to produce documents, answer questions at his deposition, or otherwise provide information, and sought to abate his civil suit on the basis that he would risk self incrimination in going forward. DPSOA moved to dismiss the suit on the basis of Denton's refusal to make discovery. The trial court granted the motion and dismissed Denton's action. The court of appeals reversed and reinstated the case. DPSOA petitioned the Texas Supreme Court for writ of error, which the court granted. In affirming the court of appeals, the supreme court, for the first time, set forth the test that should be followed by a trial court in determining an appropriate sanction for offensive use of a constitutional privilege in a civil action.

(c) I represented the Texas Department of Public Safety Officers Association and several of its officers, directors, and employees.

(d) I handled all aspects of the case, including the appeals, drafting defensive pleadings, engaging in discovery, and drafting and urging the motion to dismiss before the trial court. I prepared the brief and argued the case before the court of appeals and prepared the application for writ of error and argued the case before the supreme court. After the supreme court remanded the case to the trial court, the case was settled.

(3) *Compton v. Davis Oil Company*, United States District Court for the District of Wyoming; Trial Judge: Clarence A. Brimmer, Jr.; Co-counsel: Bruce A. Salzburg; 314 East 21st Street, Cheyenne, Wyoming 82003, (307) 634-2240; Counsel for other Parties: Thomas D. Roberts, P.O. Box 668, Cheyenne, Wyoming 82003-0668, (307) 772-2124.

(a) *Compton v. Davis Oil Co.*, 607 F.Supp. 1221 (D. Wyo. 1985).

(b) The Compton family and the Lewis family each claimed rights to the minerals under a tract of land in Campbell County, Wyoming. Their claims originated from a common source, Dave Lewis, who had acquired fee title to the property in 1926. At the time, Dave Lewis was not married. In 1930 Lewis conveyed the property to T.L. Platt, but reserved "all oil, minerals and gas." The deed to Platt was granted and executed by "Davis Lewis and Nettie Lewis, husband and wife, grantors." Dave Lewis died intestate in 1935. The property was never the subject of probate. Dave and Nettie had no children, although Nettie Lewis had been previously married to Lewis Blanchard Johnson and had a son while married to Johnson. The Compton

family were Nettie Lewis's heirs at law through Johnson. The Lewis family were Dave Lewis's heirs at law through his siblings. Direct evidence of neither a divorce between Nettie Lewis and Johnson nor a ceremonial marriage between Dave and Nettie Lewis was discovered. The dispositive issues in the case concerned proving both a divorce of Johnson and Nettie Lewis and a common-law marriage of Dave and Nettie Lewis by circumstantial evidence.

Beginning in 1954, Nettie Lewis executed several oil and gas leases of the minerals. Nettie Lewis died testate in 1961, devising the property to her son, Lyle. Lyle died in 1967. In the 1960s and 1970s, Lyle's daughter and granddaughters (the Comptons) executed several oil and gas leases and division orders. In the 1970s, the Lewis family also began executing oil and gas documents. This litigation by the Comptons resulted to quiet title to the mineral interest.

The United States District Court, in what could be termed a primer on how to circumstantially prove a divorce and subsequent marriage, carefully reviewed all of the evidence of all of the parties and arrived at the conclusion that the Comptons should prevail. The case's significance today is found in the guidance that it gives real estate and oil and gas attorneys in proving and quieting title to both surface and mineral estates.

(c) I represented the heirs of Nettie Lewis, the Compton family.

(d) I handled every aspect of the case. I filed the original suit in United States District Court in Cheyenne, Wyoming and removed a related case pending in state court in Gillette, Wyoming to federal court. I conducted and participated in all discovery. I drafted all pleadings and attended all pretrial hearings. I prepared all briefing. I tried the case on behalf of the Compton family and was successful in obtaining a judgment for them.

(4) *Weisz v. Spindletop Oil & Gas Company*, 101st Judicial District Court, Dallas County, Texas; Trial Judge: Craig T. Enoch; Appellate Judges—13th Court of Appeals: Justices Raul A. Gonzalez, Norman L. Utter, & Gerald T. Bissett; Counsel for other Parties: Jeffrey L. Wood, PMB 600, 18352 Dallas Parkway, Suite 136, Dallas, Texas 75287, (972) 248-8186.

(a) *Weisz v. Spindletop Oil & Gas Co.*, 664 S.W.2d 423 (Tex. App.—Corpus Christi 1983, no writ).

(b) Spindletop was a seller of fractional undivided interests in oil and gas properties to investors. Although such interests are securities, Spindletop had not registered them under the Texas state securities act, believing the interests to be exempt from such registration. In an earlier action, the State of Texas had sued Spindletop and

related companies and had obtained the appointment of a receiver over the company. Although the receiver was later discharged, the court held that the interests were not exempt from registration and that Spindletop had been the seller of unregistered securities. Weisz and others, purchasers of oil and gas interests from Spindletop, then sued Spindletop for recission of their agreements, costs, and attorney's fees. Spindletop moved for summary judgment on the basis that the suit was barred by the Texas three-year statute of limitations. Weisz conceded that the action had been brought more than three years after the last sale, but argued that the statute of limitations had been tolled during the pendency of the receivership.

(c) I represented Spindletop Oil & Gas Company.

(d) I handled all facets of the litigation, preparing all pleadings, conducting all discovery, arguing Spindletop's motion for summary judgment in the trial court, preparing Spindletop's appellate brief and arguing the case before the court of appeals. Spindletop prevailed in both the trial and appellate courts.

(5) *Hooks v. Texas Department of Water Resources*, 250th Judicial District Court, Travis County, Texas. Trial Judge: Hume Cofer; Appellate Judges --Third Court of Appeals: Chief Justice John C. Phillips, Justices Bob E. Shannon & Robert O. Smith; Appellate Judges--Supreme Court: Chief Justice Joe R. Greenhill, Justices Jack Pope, James G. Denton, Charles W. Barrow, Robert M. Campbell, Franklin S. Spears, C.L. Ray, & James P. Wallace; Appellate Judges--Third Court of Appeals (on remand from supreme court): Chief Justice John C. Phillips, Justices Bob E. Shannon, & John E. Powers; Counsel for other Parties: L.A. Greene, Jr., P.O. Box 66609, Houston, Texas 77266, (713) 529-7700; Pamela E. George, 1303 San Jacinto Street, Houston, Texas 77002, (713) 646-1882; James D. Marston, 44 East Avenue, Suite 304, Austin, Texas 78701, (512) 478-5161; Brian E. Berwick, Mail Code 015, P.O. Box 12548, Austin, Texas 78711, (512) 475-4005.

(a) *Hooks v. Texas Dep't of Water Res.*, 611 S.W.2d 417 (Tex. 1981), *rev'g* 602 S.W.2d 389 (Tex. App.—Austin 1980), *on remand* 645 S.W.2d 874 (Tex. App.—Austin 1983, writ ref'd n.r.e.).

(b) George H. Musterman, Inc. was granted a waste-discharge permit by the Texas Department of Water Resources that allowed it to discharge treated effluent from a wastewater treatment plant into Willow Creek in Houston, Texas. It was Musterman's plan to build a residential subdivision. Hooks, a downstream riparian landowner, contested the application before the Department and appealed the Department's order granting the permit to the trial court. The trial court upheld the Department's action. Hooks appealed to the court of appeals, which reversed the trial court's judgment and dismissed the appeal on the basis that Hooks lacked standing to contest the Department's order. The supreme court reversed the court of appeals, holding that Hooks, as a downstream riparian landowner affected by a decision of the

Department, had standing to contest the order and to appeal its being granted. The court remanded the case to the court of appeals, which affirmed the trial court's affirmation of the Department's grant of the permit.

(c) I represented George H. Musterman, Inc.

(d) I handled all matters for Musterman, beginning with Hooks's appeal from the Department to the trial court, including drafting pleadings and briefs in the trial and appellate courts and participating in the arguments before those courts. The case was ultimately decided in Musterman's favor.

(6) *Securities & Exchange Commission v. Southwest Coal & Energy Company*, United States District Court for the Western District of Louisiana, Shreveport Division; Trial Judge: Tom Stagg; Appellate Judges Fifth Circuit: Chief Justice James P. Coleman, Justices Thomas M. Reavley & Joseph W. Hatchett; Co-counsel: C.B. Harrison, Jr. 13101 Preston Road, Suite 413, Dallas, Texas 75240, (972) 934-0147; Counsel for other Parties: James A. Burnett, 1400 Youree Drive, Shreveport, Louisiana 71101, (318) 221-3131, David N. Reed, 901 Main Street, Suite 3700, Dallas, Texas 75202, (214) 744-3700; James Schropp (lawyers.com (Martindale Hubbell) lists one attorney by this name at: 1001 Pennsylvania Avenue NW, Suite 800, Washington, D.C. 20004-2505, (202) 639-7110); Paul Gonson (lawyers.com (Martindale Hubbell) lists one attorney by this name at: 1800 Massachusetts Avenue NW, 2d Floor, Washington, D.C. 20036-1800, (703) 532-4699); Theodore S. Bloch. (lawyers.com (Martindale Hubbell) had no listing for a Theodore Bloch; an internet "people search" revealed a Theodore Bloch, attorney, at 1900 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103-1440; (215) 851-8839) (Messrs. Schropp, Gonson, and Bloch were all with the United States Department of Justice at the time of this case. I have seen neither of them since the conclusion of the case and do not know if the addresses given here are for the same persons.)

(a) *SEC v. Southwest Coal & Energy Co.*, 624 F.2d 1312 (5th Cir. 1980), *rev'g in part, aff'g in part* 439 F. Supp. 820 (W.D. La. 1977).

(b) Southwest Coal & Energy Company ("Southwest") sold undivided fractional interests in oil and gas wells to investors. Such interests were securities as defined by the federal Securities Act of 1933 (the "33 Act"). However, the interests and their sales were exemption from registration through an exemption commonly known as "Schedule D." To claim the exemption, a seller was required to file an offering circular with the Securities and Exchange Commission, providing information about the seller and the proposed oil and gas venture. If the seller was subject to an injunction obtained by a securities regulatory body, state or federal, the exemption was unavailable. After filing several offering circulars with the SEC, Southwest was sued by the Texas State Securities Board for alleged violations of the Texas Securities Act. At the Board's request, a Texas state district court issued a temporary

injunction against Southwest and its officers and directors, enjoining them from future sales in Texas. Later, the SEC suspended Southwest's Schedule D exemptions. Because Southwest sold oil and gas interests in Louisiana *after* the issuance of the Texas state-court injunction, but *before* the SEC suspended the exemption, the SEC alleged that Southwest and certain of its officers and directors had violated the 33 Act. Although there were other issues in the case, the issue of importance was whether the issuance of the state-court injunction *ipso facto* destroyed the previously obtained federal-securities-law exemptions. The federal district court held that it did. The Fifth Circuit Court of Appeals reversed. This case established that a post-filing occurrence that would have rendered an exemption unavailable for subsequent offerings does not result in the dissolution of the previously acquired exemption. Thus, the sales that occurred between the issuance of the injunction, but before the SEC formally suspended the exemption, were not in violation of the 33 Act.

(c) I represented two individuals who were shareholders and directors of Southwest Coal & Energy Company and had been named by the SEC as defendants in this case.

(d) I represented the individuals from the time the SEC sued, handling all aspects of the case, including discovery and pleadings drafting. I tried the case to the trial court and prepared the brief and argued the case before the Fifth Circuit. The trial court decided issues concerning violations of the antifraud provisions of the 33 Act, as well as the above-described issue in favor of the SEC. He decided another antifraud allegation against the SEC. Both sides appealed. The final resolution by the Fifth Circuit affirmed all of the antifraud determinations of the trial court, but reversed the trial court's ruling on the exemption.

(7) *State of Texas v. EnnTex Oil & Gas Company*, 14th Judicial District Court, Dallas County, Texas; Trial Judge: Fred S. Harless; Appellate Judges--6th Court of Appeals: Chief Justice William J. Cornelius, Justices C.L. Ray & Stephen Oden; Counsel for other Parties: Bill Flanary, 1116 Lamar Avenue, Paris, Texas 75460, (903) 785-5521.

(a) *EnnTex Oil & Gas Co. v. State*, 560 S.W.2d 494 (Tex. Civ. App.—Texarkana 1977, writ ref'd n.r.e.), *appeal dism'd, lack of substantial federal question* 439 U.S. 961, 99 S.Ct. 445, 58 L.Ed.2d 419 (1978).

(b) EnnTex was a seller of fractional undivided interests in oil and gas leases. Such interests are securities under both state and federal law. However, the interests were exempt from federal registration by virtue of an exemption commonly referred to as "Schedule D." Schedule D provided that if a seller sold only a limited number of interests and provided information to the Securities and Exchange Commission and the investors by means of an offering sheet, the seller did not have to register the securities. Historically, the Texas State Securities Board had taken the position that

if the seller was located within Texas, but sold interests only to investors located without Texas, and had qualified federally pursuant to Schedule D, the interests were not subject to registration in Texas. In 1975 the Texas State Securities Commissioner changed the position and sued numerous companies, including EnnTex, for failing to register in Texas the interests that they were selling. EnnTex asserted that, as its sales activities were solely in interstate commerce, further regulation by Texas placed an unreasonable restraint on interstate commerce. The trial and appellate courts ruled in favor of the state, holding that Texas had an independent right to regulate securities sales and that such regulation would be upheld where "its effects on interstate commerce are incidental unless the burden imposed on such commerce is clearly excessive in relation to the putative benefits."

(c) I represented EnnTex Oil & Gas Company and several related entities and individuals.

(d) I was substituted as counsel after the state suit had been filed in the trial court. From that point forward, I handled all aspects of the litigation, conducting and participating in all discovery, drafting all pleadings and briefs in the trial court, appearing at all hearings, and acting as trial counsel. I prepared all appellate briefs, including the brief to the court of appeals, the application for writ of error to the Texas Supreme Court, and the jurisdictional statement to the United States Supreme Court. The disposition of the case was against EnnTex and in favor of the state.

(8) *Royer v. Ritter*, 58th Judicial District Court, Jefferson County, Texas; Trial Judge: Jack Brookshire; Appellate Judges—9th Court of Appeals: Chief Justice Martin Dies, Jr., Justices Homer E. Stephenson (concurring) & Quentin Keith (dissenting); Counsel for other Parties: V. Lane Nichols, P.O. Box 3827, Beaumont, Texas 77704, (409) 880-3715; Mary Jo Carroll (for *amicus curiae* on appeal) (deceased).

(a) *Royer v. Ritter*, 531 S.W.2d 448 (Tex. Civ. App.—Beaumont 1975, writ ref'd n.r.e.).

(b) Texas state law provided that liquor stores could remain open until 9:00 p.m. Although Texas law places most liquor regulation in the hands of the state, cities are given some regulatory powers. The City of Beaumont passed an ordinance that required liquor stores within the city limits of Beaumont to close at 8:00 p.m. Several liquor-store owners sued the mayor and city council members of Beaumont, seeking to have the ordinance declared void on the basis that the legislature had not delegated to Texas cities the power to regulate the hours of operation of liquor stores.

(c) I represented the liquor-store owners contesting the ordinance.

(d) I handled all aspects of the case, including the original filing of the suit in the

trial court and the drafting of pleadings and briefs and trying the case to the trial court. Following an unfavorable decision, I prepared and argued the case before the court of appeals. The court of appeals decided the case favorably to the liquor-store owners and struck down the ordinance.

(9) *Bloom v. Texas State Board of Examiners of Psychologists*, 167th Judicial District Court, Travis County, Texas; Trial Judge: Thomas D. Blackwell; Appellate Judges—Third Court of Appeals: Chief Justice John C. Phillips, Justices Trueman E. O'Quinn & Bob E. Shannon (dissenting); Appellate Judges—Texas Supreme Court: Justices Jack Pope, Zollie Steakley, Sears McGee, James G. Denton, & Price Daniel, Chief Justice Joe R. Greenhill, Justices Ruell Walker & Thomas M. Reavley (dissenting); Co-Counsel: Arthur Mitchell (deceased), Counsel for other Parties: J.C. Davis, 2905 Bowman Avenue, Austin, Texas 78703, (512) 478-4116; Pat Bailey (unknown; the State Bar of Texas has no listing for Mr. Bailey); Harvey C. Green (unknown; the State Bar of Texas has no listing for Mr. Green).

(a) *Bloom v. Texas State Bd. of Examrs. of Psychologists*, 492 S.W.2d 460 (Tex. 1973), *rev'g* 475 S.W.2d 374 (Tex. Civ. App.—Austin 1972).

(b) In the late 1960s, the Texas legislature passed a statute regulating the practice of psychology. At the time of the act's passage, Bloom was a practicing psychologist. The act contained a grandfather clause, allowing persons with a master degree in psychology and who had practiced psychology for at least eight years to obtain a license without an examination. The Texas State Board of Examiners of Psychologists denied Bloom's application for a license under the grandfather clause. The Board took the position that because the statute said the Board "may" license someone who met the grandfathering qualifications, the Board had discretion to deny the license on any other basis it saw fit. Bloom sued the Board, asserting that the Board had no discretion if the grandfather qualifications were satisfied, and sought a writ of mandamus directing the Board to issue him a license.

(c) I represented Wallace Bloom.

(d) I handled all aspects of Bloom's case. I prepared the trial pleadings and filed his suit in the trial court. I prepared all other pleadings, motions, and briefs in the trial court, and conducted all discovery. I prepared Bloom's brief on appeal to the court of appeals and argued his case before that court. I prepared his application for writ of error to the supreme court and brief to that court, and argued his case to the supreme court. I prepared his motion for rehearing to the supreme court. On motion for rehearing, the supreme court conditionally issued the writ of mandamus, holding that, as Bloom had satisfied the statutory requirements for a license, the Board must license him.

(10) *State of Arkansas v. Hill*, Circuit Court of Howard County, Arkansas; Trial Judge:

Bobby Steel; Appellate Judges – Arkansas Supreme Court: Justices George Rose Smith, Lyle Brown, John A. Fogleman, J. Fred Jones, Conley Byrd, & J. Frank Holt; Chief Justice Carleton Harris (dissenting); Co-Counsel: A.J. Mobley, 128 East Main Street, Russellville, Arkansas 72811, (501) 968-6253; William F. Smith, Jr., 122 South Commerce Street, Russellville, Arkansas 72811, (501) 968-4020; Counsel for other Parties: George E. Steel, 102 North Main Street, Nashville, Arkansas 71852, (870) 845-1870; Ray Thornton (unknown; the State Bar of Arkansas has no listing for Mr. Thornton); James A. Neal (unknown; the State Bar of Arkansas has no listing for Mr. Neal).

(a) *Hill v. State*, 487 S.W.2d 624 (Ark. 1972).

(b) Thomas Hill was indicted by a Howard County, Arkansas grand jury for the criminal offense of disposing of property subject to a lien. Hill had purchased a herd of cattle and financed the transaction through the Nashville (Arkansas) Production Credit Association in late 1969. It was undisputed that Hill had sold the cattle. As a defense, Hill asserted that he had the consent of the PCA to sell the cattle. At trial he requested that the trial court charge the jury that "consent may be express or implied from the conduct of the parties." The trial court refused the requested charge, and the jury convicted. On appeal the Supreme Court of Arkansas held that such an instruction must be given, if properly requested.

(c) I represented Thomas Hill.

(d) I consulted on pleadings and motions filed in the trial court and maintained the day-to-day contact with the client. I appeared at pretrial hearings. Arkansas counsel did the primary drafting work and was lead at the pretrial hearings. We shared responsibility during trial. I assisted in the brief on appeal. Hill's conviction was reversed and remanded to the trial court. Hill worked out a pay-out agreement with the PCA, and the case was never retried.

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.)**

In the late 1970s and early 1980s I acted as trustee's counsel to a number of Austin area lending institutions involved in tax-exempt bond offerings. I would review all documents on the trustee's behalf, whether prepared by bond counsel, user's counsel, or otherwise. I would prepare and sign trustee's counsel opinion letters and would attend and participate in the closings. During this same time period, one of my partners and I prepared and obtained registration for a public securities offering for a local bank holding company. Most recently,

as a member of the National Conference of Commissioners on Uniform State Laws. I served as a member of the drafting committee for revisions to the Uniform Securities Act.

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.

   None.

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

   The only areas that are likely to pose potential conflicts are stock ownership and organizational affiliations. I propose to provide the clerk's office with a schedule of companies in which I own stock and a list of the organizations to which I belong, in order that the clerk's office can assign cases in which those entities are parties to another judge. In addition, I will have my judicial assistant screen all pleadings against similar lists to ensure that no parties have been added that would create a conflict. If and when the stock market rebounds, I intend to dispose of some of the securities that I now hold in order to lessen the likelihood of conflict. In all such instances, I will follow the guidelines of the Code of Judicial Conduct.

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.

   No.

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

Yes:

(1) Surrogate Speaker for George H.W. Bush, 1988 & 1992 Presidential Campaigns;

(2) Surrogate Speaker for George W. Bush, 1994 Gubernatorial Campargn.

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	134,141	Notes payable to banks secured	
U.S. Government securities-add schedule	100	Notes payable to banks unsecured	
Listed securities-add schedule	[illegible]	Notes payable to brokers	
Unlisted securities-add schedule		Notes payable to others	
Accounts and notes receivable		Accounts and bills due	6,208
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule	414,564
Real estate owned-add schedule	1,024,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize	
Autos and other personal property	200,000	Jaguar Credit	20,849
Cash value-life insurance	60,909		
Other assets itemize:			
Clark, Thomas & Winters 401(k) Plan	122,979		
Employees Retirement System of Texas	32,375		
Gold Coins	34,075	Total liabilities	442,121
		Net Worth	1,574,844
Total Assets	2,016,965	Total liabilities and net worth	2,016,965
CONTINGENT LIABILITIES - None.		GENERAL INFORMATION	
As endorser, comaker or guarantor		Are any assets pledged? (Add schedule) No.	

On leases or contracts		Are you defendant in any suits or legal actions? No	
Legal Claims		Have you ever taken bankruptcy? No	
Provision for Federal Income Tax			
Other special debt			

FINANCIAL STATEMENT

SCHEDULES

A. U.S. Government Securities:

1. United States Savings Bond Series EE	$ 100.00

B. Listed Securities - Stocks:

1. Agere Systems Inc. Class A Common (2)	$ 3.24
2. Agere Systems Inc. Class B Common (105)	159.60
3. American Express Company (300)	10,698.00
4. Anheuser Busch Companies Inc. (400)	19,532.00
5. AOL Time-Warner Inc. (225)	2,639.25
6. AT&T (28.632)	493.67
7. Avaya Inc. (33)	69.30
8. Boeing Company (323.942)	8,714.04
9. Bristol Meyers Squibb Co. (200)	4,484.00
10. Cass Information Systems Inc. (105)	2,840.25
11. Charles Schwab Corporation (300.898)	2,253.73
12. ChevronTexaco Corporation (291.3177)	18,851.17
13. Citigroup Inc. (311.981)	10,669.75
14. Comcast Corporation (45)	1,289.25
15. DaimlerChrysler AG (100)	2,900.00
16. Dell Computer Corporation (2000)	56,280.00
17. ExxonMobil Corp. (217.618)	7,627.51
18. Ford Motor Company (473.797)	3,406.60
19. Hewlett-Packard Company (126)	2,066.40
20. Home Depot Inc. (150)	3,585.00
21. Intel Corp. (400)	7,224.00
22. J.P. Morgan Chase & Co. (374.4853)	8,448.39
23. Lehman Brothers Holdings Inc. (40)	2,346.00
24. Loral Space & Communications Ltd. (100)	31.00

25. Lucent Technologies (574.3166)	907.42
26. Microsoft Corporation (400)	$ 10,372.00
27. Pioneer Drilling Company (500)	1,610.00
28. Rogers Cantel Mobile Communications Inc. (100)	1,424.00
29. Royal Dutch Petroleum Company (400)	16,060.00
30. Southwest Airlines Inc. (5600)	76,440.00
31. Spindletop Oil & Gas Co. (3334)	1,333.60
32. Target Corp. (200)	5,880.00
33. Travelers Property Casualty Corp. Class A Common (13.036)	185.76
34. Travelers Property Casualty Corp. Class B Common (26.072)	375.18
35. Unocal Corp. (113.649)	2,910.55
36. Viacom Inc. Class B Common (109.066)	4,253.57
37. Verizon Communications (79.1249)	2,848.14
38. Visteon (33.523)	190.41
39. Walt Disney Company (313.410)	5,331.10
40. Wells Fargo & Co. (100)	4,685.00
41. WorldCallNet Inc. (1694)	.17
42. Zimmer Holdings Inc. (20)	979.40

C. Listed Securities – Mutual Funds & Money Markets:

1. AIM Global Science & Technology Fund Class A (1248.05)	$ 6,090.48
2. Fidelity Blue Chip Growth Fund (509.476)	16,231.91
3. Fidelity China Regional Fund (241.354)	2,510.08
4. Fidelity Municipal Money Market Fund (4028.44)	4,028.44
5. Fidelity U. S. Government Reserves Fund (5603.99)	5,603.99
6. Great Hall Investment Funds (13,810.63)	13,810.63
7. Vanguard Growth Index Fund (1500.1575+)	33,267.52
8. Vanguard Intermediate-Term Tax-Exempt Bond Fund (486.678)	6,657.76
9. Vanguard Prime Money Market Fund (6086.66)	6,086.66

D. Listed Securities – Bonds:

1. Lower Colorado River Authority Revenue Mini-Bond Series 1994	$ 500.00
2. Lower Colorado River Authority Revenue Mini-Bond Series 1995	1,000.00

E. Other:

1. Clark, Thomas & Winters 401(k) Plan (as of 12/31/2002)	
a. Franklin Real Estate Securities Fund	$ 14,174.64
b. Washington Mutual Investors Fund	29,792.11
c. Putnam New Opportunities Fund	46,105.73
d. Franklin Balance Sheet Investment Fund	32,906.81

2. Employees Retirement System of Texas (as of 8/31/2002)	$ 32,374.58
E. Real Estate Owned:	
1. Residence, Austin, Travis County, Texas	$ 975,000.00
2. Oil & Gas Working Interests, San Juan County, New Mexico	$ 49,000.00
G. Real Estate Mortgages Payable:	
1. Wells Fargo Home Mortgage, Inc.	$ 414,563.68

As of March 17, 2003 (unless otherwise noted)

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.

Although I have not done a large amount of *pro bono* work, what I have done has been steady throughout my practice, usually handling minor matters, such as divorce or licensing problems, for persons who were friends or referred to me by friends and who could not afford an attorney. I have also done *pro bono* work for my church. I generally made no attempt to keep records of these activities. However, two examples of cases that were out of the ordinary involved (1) an appeal from a denial of social-security benefits and (2) a civil-rights action against a Texas county on behalf of a jail inmate alleging an Eighth Amendment conditions-of-incarceration case. In the social-security case, a woman had suffered a double aneurysm in her brain, rendering her incapable of performing her normal job as a high-school teacher. She had applied for disability benefits, had been turned down, and sought my help. I appealed the decision, and tried it before a federal administrative law judge, who awarded the benefits. I did not charge a fee for my services and estimate that I expended approximately one hundred hours in the case as well as a small amount of out-of-pocket expenses. In the Eighth Amendment case, I was asked to represent an inmate of the state prison who had filed a *pro se* civil-rights action, which one of our United States Magistrate Judges felt may have established a *prima facie* case. Over a lengthy period of time, I repleaded the case, conducted discovery, visited with the client at his place of incarceration, which was a long distance from Austin, and, finally, represented him in a jury trial. Although the suit was unsuccessful, the client expressed his gratitude to both me and the court for being allowed to have his day in court. I did not charge a fee for my services and estimate that I expended approximately two hundred hours on the case as well as my firm's absorbing all out-of-pocket expenses, including the cost of depositions, which approximated $1000.

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?

No.

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, although I do not know if the committee recommended my nomination. Persons interested in becoming federal judges were requested to submit an application to Texas's two United States Senators on forms provided by them. I did so, and was later notified that I had been selected for an interview before the Senators' screening committee. I did so interview. Sixteen persons were interviewed for four benches in the Western District of Texas. I was later advised that the committee ranked the persons interviewed. The committee's rankings, along with comments of the committee members, were forwarded to the senators. The senators determined whom they would personally interview, in Washington, for the four positions. I was interviewed by the senators. I do not know where I fell in the rankings submitted to them by the screening committee. Following my recommendation to the president, I was interviewed by the White House, the FBI, and the Department of Justice, and completed numerous forms and questionnaires. I was nominated on May 1, 2003

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.

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.

The role of any court with any case is to decide only the particular controversy that is properly before it. In doing so, the court should decide the case on the most narrow basis that will resolve the controversy between the parties to the case. Courts that restrict themselves to this approach will seldom be criticized for being "activist courts." However, it is also the role of the federal judiciary to determine the constitutionality of acts of the Congress. Often, fulfilling this constitutional function subjects the courts to criticism. To lessen the criticism, the court should not only fashion its opinion narrowly, but explain its reasoning. The courts are the least democratic of our three great governmental institutions and should, where at all possible and consistent with the courts' constitutional and congressional mandates, refrain reaching solutions better left to the legislative and executive branches—the more democratic institutions.