

*In Bankruptcy Court*

# Effective Courtroom Advocacy<sup>^</sup>

Marty Brimmage

Jeff Tillotson

Victor Vital

**Part One:**  
**Some Basic Principles**

Go in Knowing the Rules.



Preparation, Preparation, Preparation



# Manage Your Time Carefully



## Part Two:

## Advocacy Pointers

I can be  
persuaded by a  
logical argument



# The Advocate's Credibility



# Stay on Message



**KEEP  
CALM  
AND  
STAY ON  
MESSAGE**



# The Virtue of Minimalism

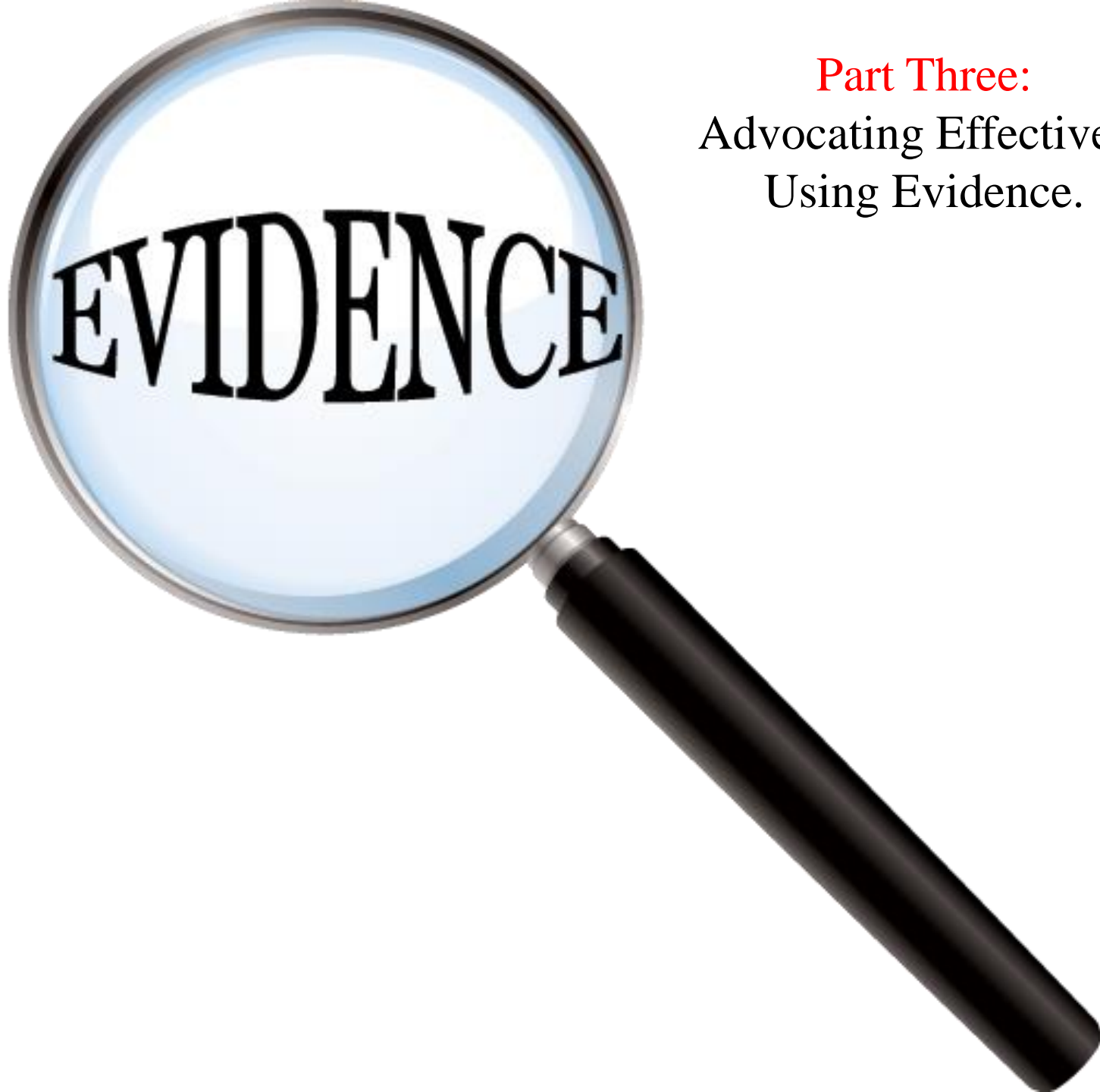


# The Virtue of Inherence



Develop positive rapport with all





## Part Three:

Advocating Effectively  
Using Evidence.

Simple, credible themes



# Use Evidence to Persuade (Rather than Induce Sleep)



# Use Documents Effectively



**Part Four:**  
Advanced Tips





# DEATH BY POWERPOINT

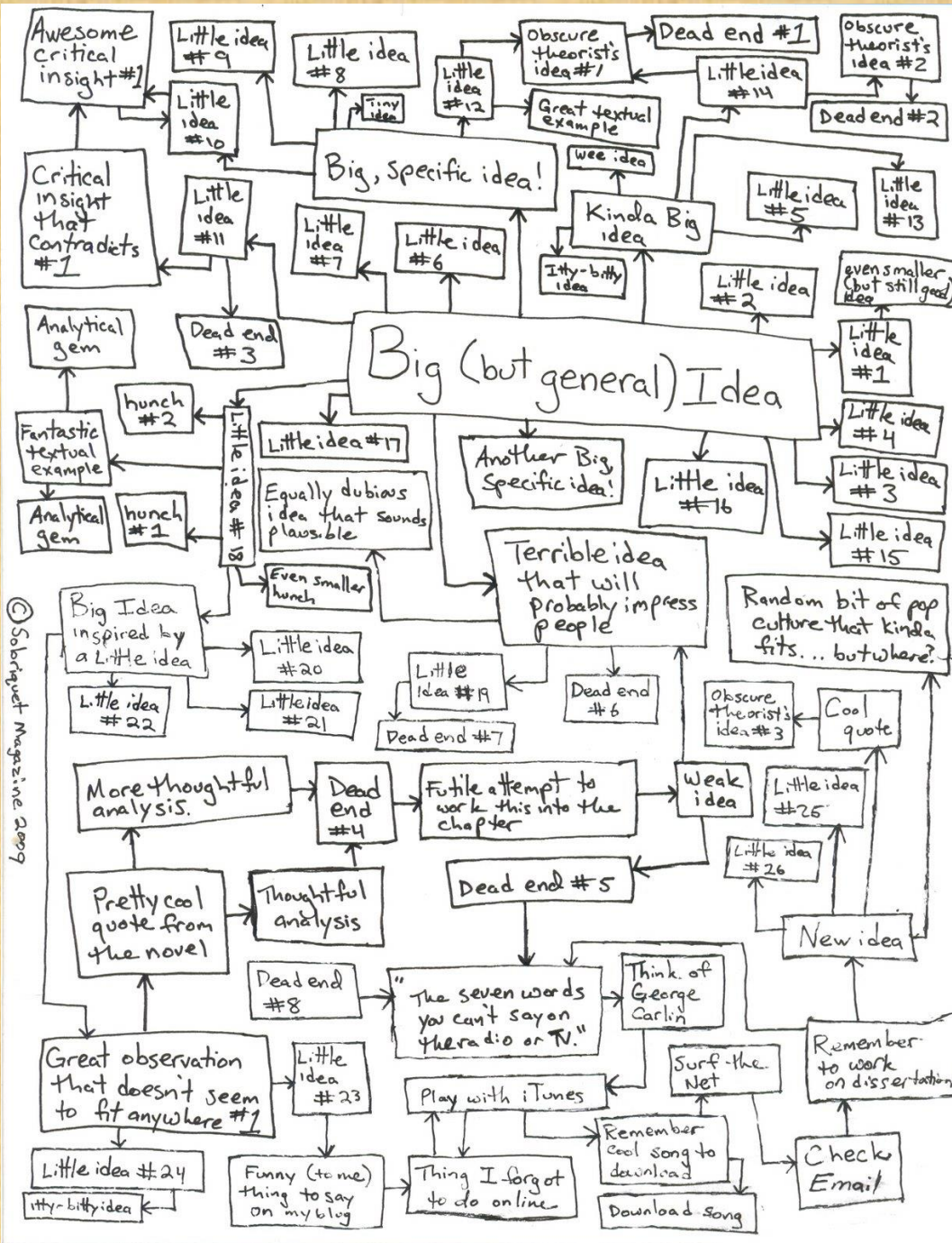
CRIME SCENE DO NOT CROSS CRIME

BLAH BLAH BLAH

- BLAH BLAH BLAH
    - BLAH BLAH BLAH
    - BLAH BLAH BLAH
  - BLAH BLAH BLAH
    - BLAH BLAH BLAH
    - BLAH BLAH BLAH
- SLIDE 75

TOM  
FISH  
BURNÉ

Use  
demonstratives  
and charts  
*with care*



Never let 'em see you sweat





## **Marty L. Brimmage Jr.**

Partner

[mbrimmage@akingump.com](mailto:mbrimmage@akingump.com)

[Add to address book](#)

Dallas

T +1 214.969.2885

F +1 214.969.4343

New York

T +1 212.872.7494

F +1 212.872.1002

Marty L. Brimmage Jr. has a national reputation for being a go-to trial lawyer with a proven track record of results regardless of the forum – bankruptcy court, state court, federal court, appellate court, and arbitration proceedings. He has led trial teams in a variety of complex commercial disputes and bankruptcy-related matters across the country with recent emphasis on energy and mining disputes as well as cutting edge Chapter 11 bankruptcy issues.

### **Practice & Background**

Licensed in both Texas and New York, Mr. Brimmage represents commercial plaintiffs and defendants in a wide variety of commercial disputes as well as debtors, creditors, hedge funds, bondholders, committees, and other investors in a full range of contested matters and adversary proceedings in complex Chapter 11 cases. Mr. Brimmage is particularly adept at developing litigation and trial strategies to achieve the results necessary to meet the client's legal and business objectives. Mr. Brimmage is a frequent speaker on a variety of litigation and bankruptcy related topics.

### **Representative Matters**

#### **Representative Results in Trials, Arbitrations, and Appellate Arguments**

- Mr. Brimmage's lead trial, arbitration, and appellate experience include:
- Federal Court Trials:
  - after a jury trial, successfully defended securities fraud claims alleging in excess of \$20 million
  - after trial, successfully represented a national retail franchisor in termination of franchise agreements and securing appropriate injunctive relief to protect the franchisor's intellectual and proprietary property
  - obtained a complete dismissal of all claims asserted against four telecommunications companies in a suit before the Southern District of New York

alleging seven contract and business tort claims related to a dealer agreement and claiming \$120 million in damages

- successfully opposed injunctive relief regarding a natural gas compressor station
- obtained an early defense summary judgment for a national retailer on multiple business tort and contract claims for alleged damages in excess of \$40 million
- Bankruptcy Court Evidentiary Hearings:
  - successfully obtained DIP priming facility after a several day evidentiary trial
  - successfully obtained favorable cash collateral order after several day contested hearing
  - defeated confirmation after a weeklong hearing and obtained an order for relief from the automatic stay for the major secured lender
  - served as lead trial counsel in a three-week contested confirmation hearing that successfully obtained plan confirmation of a multi billion-dollar plan of reorganization
  - successfully represented the debtor in a contested cash collateral hearing with multiple millions of dollars at issue
  - successfully represented a reorganized debtor in a contested hearing regarding a series of multi million dollar fee disputes
- State Court Jury Trials:
  - after a two-week trial representing defendants in an oil and gas royalty dispute, obtained a complete defense verdict and an award of attorneys' fees
  - after a two-week trial, successfully obtained a complete jury verdict and judgment in favor of plaintiffs on breach-of-contract and business torts claims
  - served as lead counsel representing a plaintiff national cable provider in a two-week trial regarding various business tort claims
- State Court Bench Trials:
  - served as lead trial counsel in a three-week trial prosecuting and defending against various contract, business tort, and breach-of-fiduciary-duty claims and counterclaims
  - served as lead defense counsel a in three-week trial regarding various contract and business tort claims with damages alleged in excess of \$30 million
- Arbitration Proceedings:

- after a two-week hearing, obtained an award granting all of plaintiffs' claims involving a commercial property, including attorneys' fees, and denying all of defendants' claims
- served as lead trial counsel for a three-week hearing regarding various breach-of-contract claims
- Fifth Circuit Court of Appeals:
  - presented oral argument and obtained a reversal of district court and affirmation of bankruptcy court in a bankruptcy-contested matter involving claims for fee enhancements
  - presented oral argument and obtained a reversal of district court and affirmation of bankruptcy court's award of sanctions in excess of \$2 million
  - obtained affirmation of the district and bankruptcy court rulings successfully defending against claims and damages of in excess of \$70 million
  - in a case of first impression, obtained a reversal of district court and affirmation of bankruptcy court that a non-insider creditor's claims can be recharacterized as equity
- Second Circuit Court of Appeals:
  - presented oral argument on behalf of the reorganized debtor and obtained affirmation of the district and bankruptcy court rulings in support of claims asserted by the bankruptcy estate
  - obtained affirmation of district court regarding ruling to refuse to remand back to state court and to transfer venue
  - obtained affirmation of district court regarding post confirmation claims disputes.
- Eleventh Circuit Court of Appeals
  - obtained affirmation of bankruptcy court and district court refusal to issue a stay of the bankruptcy court's ruling pending appeal
  - obtained denial of writ of mandamus

### **Other Representative Bankruptcy Litigation Matters**

- In addition to those listed above, Mr. Brimmage's bankruptcy litigation experience includes:
- Southern and Eastern Districts of New York:
  - represented a plan administrator in prosecuting post confirmation claims

- represented a trustee in a contested matter regarding claims against prepetition estate professionals
  - represented the reorganized debtor and obtained a post confirmation arrest warrant against the judgment debtor
  - represented the defendant in an adversary proceeding filed by the debtor asserting in excess of \$40 million in damages
  - represented a plan administrator in defending against post confirmation claims asserted against the estate.
- Eastern, Southern, Northern, and Western Districts of Texas:
  - successfully represented the debtor in a contested chapter 15 proceeding
  - represented the plan administrator in defending against post petition claims asserted against the estate and its professionals
  - represented the plan administrator in obtaining post confirmation judgments for violations of a plan injunction
  - represented creditors in a variety of disputes with debtors
  - represented debtors and creditors in contested cash collateral disputes and other contested matters
  - represented various parties in contested fee disputes
  - represented plaintiffs and defendants in fraudulent-transfer actions.
- District of Delaware:
  - represented the debtor in litigation regarding prepetition claims asserted against the estate
  - represented creditors' committee in dispute over final cash collateral order
- Central and Southern Districts of California:
  - represented a major secured lender in various contested matters against multiple debtors
  - represented the trustee in the claims litigation process.
- Northern District of Alabama
  - represented an informal group of first lien creditors in a variety of hotly contested Chapter 11 disputes

## **Other Representative Matters**

- Mr. Brimmage's non-trial victories and case accomplishments include:
- Federal and State Courts:
  - represented a national rail carrier in obtaining a summary judgment defending against an effort to rescind a multimillion-dollar transaction
  - obtained plaintiff's summary judgment for full damages and attorneys' fees for an oil and gas drilling services company
  - obtained and collected judgment for a plaintiff oil and gas company against the defendant seller of oil and gas drilling rigs
  - successfully obtained a summary judgment for a plaintiff commercial development landowner on declaratory judgment claims and claims to quiet title against a national home builder and the lis pendens it filed regarding a contract for the purchase and development of approximately 200 acres
  - obtained a complete summary judgment for a defendant commercial landlord against a commercial tenant on various business tort and contract claims alleging millions of dollars in damages
  - obtained a defense summary judgment for defendant independent oil and gas company on contract claims and liens placed on the defendant's property
  - obtained defense summary judgment for a national services company in a shareholder derivative action alleging various business tort and contract claims
- Texas Courts of Appeal:
  - successfully obtained a reversal of trial court judgment and obtained award of all of client's attorneys' fees
  - successfully upheld a trial court summary judgment in favor of defendants

## **Community Involvement**

- Mr. Brimmage is involved in a wide range of activities including public education and youth sports as well as various bar association activities, including:
  - member of the American Bar Association, Commercial and Business Litigation Section
  - member of the American Bar Association, Bankruptcy and Insolvency Litigation Section
  - member of the American Bar Association, Real Estate Litigation Section



- member of the American Bar Association, Business Torts Litigation Section

#### **Awards & Accolades**

- Super Lawyer for Business Litigation (2010-2016)



“He is recommended for his ability to handle complex multiparty litigations. ‘He is truly gifted - probably the most naturally gifted guy I've ever gone against,’ remarks one admiring peer.”

**Chambers and Partners 2016**

### **PROFILE (a/k/a “Self Promotion”)**

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Jeff is a well known and well regarded commercial litigator. He is best known as the lawyer who deposed and then exposed cyclist Lance Armstrong in a ground-breaking case in which Jeff obtained a \$10 million award against Mr. Armstrong on behalf of his client SCA Promotions, Inc. The case was later profiled in several major documentary films and in the full length feature film, “The Program.” Other high profile wins include obtaining a defense verdict for Visa USA after a month long jury trial in which the plaintiff sought \$1 billion in damages in one of the first internet defamation cases ever tried (the victory was honored as the Defense Win of the Year by the National Law Journal); successfully obtaining a take nothing verdict on behalf of Florida Power & Light (NextEra Energy) after a three week trial against TXU in a dispute over Texas’ burgeoning wind energy sector; successfully representing Media 8, the small company that made the very big movie “Monster” (with Charlize Theron) in a dispute with Blockbuster over the amount of royalties it was owed (the case resolved on very favorable terms during the third week of trial); successfully defending music icon George Michael in a high profile lawsuit over his album “Outside” and his subsequent publicity appearances on “The Tonight Show,” “Late Night with Dave Letterman” and other shows (a trial court win was later affirmed by the Ninth Circuit Court of Appeals because, well, you gotta have “Faith”); successfully defending credit card company First USA in a series of class action lawsuits, including prevailing in trial in Oregon state court (the case was later profiled on ABC’s “Nightline”); successfully defending CitiFinancial in a class action lawsuit over its lending practices (successfully resolved during the fourth week of a jury trial in Pennsylvania and the case was later profiled in The New York Times).

### **RESUME (Not listing graduation dates is on purpose)**

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J.D., University of Texas School of Law (with honors)

B.S.F.S., Georgetown University of Foreign Service and the London School of Economics

### **HONORS (a/k/a “Stuff”)**

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Honored as a "Leader in His Field" in Chambers & Partners.

Recognized as a "Texas Super Lawyer" since 2013.

DFW Top 100 Lawyers, Texas Super Lawyers

Listed with Best Lawyers® in America

Recognized as a "Litigation Star" by Benchmark Litigation: The Definitive Guide to America’s Leading Litigation Firms & Attorneys,

The Advocates: Litigators You Don't Want to Face in Court, D CEO Magazine 2008

Leading Lawyers in America, Lawdragon

40 Outstanding Texas Lawyers Under 40, Texas Lawyer 2001

## Victor D. Vital

### Partner

victor.vital@btlaw.com  
214-258-4124  
2100 McKinney Avenue  
Suite 1250  
Dallas, TX 75201-6908

Victor D. Vital, a litigation partner in Barnes & Thornburg's Dallas office, is recognized as a Top 100 *Super Lawyer* in Texas. Clients turn to Mr. Vital to handle difficult, high-profile and high-stakes disputes of all types. Mr. Vital's courtroom breadth includes trial matters involving major crimes, white collar criminal cases, high-stakes business and commercial disputes, and a wide variety of other complex or multiparty disputes in a variety of forums such as civil, probate and bankruptcy courts. Because of his tenacity and keen oral advocacy skills, Mr. Vital is well-suited for tough courtroom cases and battles of all types.

Having tried more than 100 cases in two decades of trial practice, Mr. Vital is well-versed in difficult and complex courtroom matters. He also is experienced in representing an array of clients—including high net worth individuals, officers and directors, franchise and distribution clients, banking clients, corporate-finance clients, healthcare and pharmaceutical clients, sports and entertainment clients and persons involved in government—in high-stakes cases and matters. He was inducted into the *Texas Lawyer Verdicts Hall of Fame* for securing the largest employment verdict in Texas in 2012 for a corporate plaintiff in a complicated non-compete/trade secrets matter. In April 2016, Mr. Vital secured a jury verdict exceeding \$20 million (including \$16 million in punitive damages) in a partnership dispute involving claims of fraud and breach of fiduciary duty. Mr. Vital's versatility in handling many types of difficult courtroom matters has led to him being a frequent author and lecturer on trial issues, a talented teacher of trial-practice techniques, and frequently sought by the media to comment on major trials and cases.

Mr. Vital has previously been a partner in national and international law firms and has prosecuted cases in a prominent district attorney's office.

Active in the Dallas Bar Association (DBA), Mr. Vital is former secretary-treasurer of the board. Mr. Vital currently serves in numerous capacities within and for the DBA, including serving as a current member of the Board of Directors and as board advisor for the Judiciary Committee and the Corporate Counsel Section. Having served last year as the co-lead chair of the Bench Bar Conference Committee, Mr. Vital currently serves on the Golf Tournament Committee. In the month of January 2016, he completed his co-chairmanship of the DBA's 2015-16 Equal Access to Justice Campaign, leading a campaign that raised over \$1,000,000 in support of the Dallas Volunteer Attorney Program. Mr. Vital is active in the bar beyond the DBA, serving as the vice-chair and chair of the Evaluation Committee of the Committee for Qualified Judiciary in Dallas, Texas and as a member of the distinguished American Law Institute, the American Bar Association, The Fellows of the American Bar Foundation, and The Trial Law Institute. Finally, he is a fellow of the Dallas Bar Foundation and Texas Bar Foundation, and he is a senior fellow of the Litigation Counsel of America.

Mr. Vital has been recognized by *Best Lawyers in America*, *Chambers USA* and *Super Lawyers Magazine* (in which he is recognized as one of the Top 100 *Super Lawyers* in Texas). He received the *Dallas Business Journal's* "Minority



### Bar Admissions

Texas

### Other Court Admissions

U.S. Court of Appeals for the 5th Circuit

U.S. District Court for the Southern District of New York

U.S. District Court for the Eastern District of Texas

U.S. District Court for the Northern District of Texas

U.S. District Court for the Southern District of Texas

U.S. District Court for the Western District of Texas

U.S. District Court for the Northern District of Illinois

### Education

Texas Southern University  
Thurgood Marshall School  
of Law (J.D., 1995),  
*summa cum laude*

Oakwood University  
(B.S.W., 1992), *magna  
cum laude*

Business Leader Award” in 2015 and was included in the National Association of Distinguished Counsel’s “Nation’s Top Attorneys (Top One Percent)” in 2015. In 2013, the Litigation Counsel of America awarded him with the “Peter Perlman Service Award.”

In the community, Mr. Vital is the chair of the Dallas Education Foundation. He also serves as vice chair of the Dallas Housing Authority Board of Commissioners. Mr. Vital also is a member of Rotary International, Leadership Dallas 2014 Class and the Mayor’s Business/Arts Initiative Arts Action Team.

Mr. Vital earned his J.D., *summa cum laude*, from the Texas Southern University Thurgood Marshall School of Law in 1995 and his B.S.W., *magna cum laude*, from Oakwood University in 1992.

In addition to being admitted to practice in the state of Texas, Mr. Vital is admitted to practice before the U.S. Court of Appeals for the 5th Circuit, U.S. District Court for the Southern District of New York, the U.S. District Courts for the Eastern, Northern, Southern and Western Districts of Texas, and the U.S. District Court for the Northern District of Illinois.