

# TEXAS LAWYER

October 25, 2010

An **ALM** Publication

## In Harriet They Trust

*Miers' Devotion to Duty,  
Honor and Clients Benefits  
Her Texas Firm*

*Lawyer*, Miers instead turns the conversation away from herself to make an argument for more women judges.

"I don't think three is sufficient," she says, referring to U.S. Supreme Court Justices Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan. "I feel very strongly that the courts need to be places where there is good representation of the public at large."

Her response is typical Miers, who regularly deflects attention despite her long list of achievements and historic firsts: Before joining the White House staff in 2001, Miers had represented clients including George W. Bush, Microsoft Corp., The Walt Disney Co. and Manufacturers Hanover Trust Co. She also chaired the Texas Lottery Commission, became the first woman to lead a large Dallas firm, and served as the first woman president of the Dallas Bar Association and the State Bar of Texas.

She is known for her sense of loyalty and duty to her firm and her clients. But, to some, that fall-on-her sword dedication overshadows Miers' accomplishments, making it appear that she overlooks her own interests.

"I have always tried to work hard, advance causes that would have good long-term effect, and always keep the goal (whatever it might be at the time) in mind. . . . I have tried always to earn the trust and confidence of clients or organizations in stewarding their representation or in serving their interests," she writes in an e-mail.

At the White House from 2001 to 2007, Miers served as staff secretary, then as general counsel and finally as deputy chief



Locke Lord Bissell & Liddell partner Harriet Miers.

DANNY HURLEY

by MIRIAM ROZEN

**T**alk to Harriet Miers about the history made at the U.S. Supreme Court on Oct. 4 — the day the high court launched its term for the first time with three women justices — and there is no shoulda, woulda, coulda in her.

She does not bring up the drubbing she took in 2005 after then-President George W. Bush nominated her to the court or her subsequent withdrawal of that nomination amidst a national hue and cry. And she does not point out that it is she who might have become the third female justice on the U.S. Supreme Court.

In an exclusive interview with *Texas*

of staff. In 2007, she became a partner in Texas-based Locke Liddell & Sapp, which merged with Chicago's Lord Bissell & Brook later that same year to become Locke Lord Bissell & Liddell. Miers, who was the managing partner of Locke Liddell in Dallas before joining the administration of President George W. Bush, now splits her time between Locke Lord's Dallas and Washington, D.C., offices.

Locke Lord chairwoman Jerry K. Clements says she used the rehiring of Miers as a way to clinch the merger with Lord Bissell in 2007. Miers was a successful selling point for the Lord Bissell partners, Clements says.

During the Lord Bissell-Locke Lord merger, "I wanted to be able to call upon Harriet because of her key role in spearheading the 1999 combination between Locke Purnell Rain Harrell and Liddell Sapp Zivley Hill & LaBoon" to form Locke Liddell & Sapp, says Clements. "I felt Harriet could speak to our new potential partners at Lord Bissell & Brook about how 'two plus two can equal six' better than anyone because she had done it. The timing of her return to the firm was perfect since we were in the middle of our combination discussions. Plus, she was quite the celebrity when she rejoined us in 2007 and our new colleagues were anxious and excited to meet this powerful and accomplished woman who they knew from TV and the press. Needless to say, she impressed them and we got our deal done," Clements writes in an e-mail.

Since leaving the White House, Miers — born and raised in Dallas — has re-emerged in Texas as a formidable, go-to lawyer with Washington connections. She handles less litigation than she did in her pre-White House days, instead spending more time advising other lawyers at the firm and lobbying on behalf of the government of Pakistan and Medco Health Solutions Inc.

The addition of Miers and the merger that formed Locke Lord have been good for business. Its lobbying revenues grew from \$2.7 million in 2008 to \$3.1 million in 2009, according to the Center for Responsive Politics.



**Locke Lord chairwoman Jerry K. Clements (above) says she used the rehiring of Harriet Miers as a way to clinch Locke Liddell's merger with Lord Bissell in 2007.**

Clements says Miers "has brought to the table a gravitas."

"Harriet's experience at the White House, combined with her storied career before going to D.C., made her extremely valuable and uniquely positioned to advise our clients. After serving as White House counsel, a job in which she represented arguably the most powerful client in the world — the president of the United States — at one of the most critical times in our history, analyzing and resolving complex issues was an everyday occurrence for her. That level of experience that very few people in this country have gives clients a great deal of comfort that their legal matters rest in strong, capable hands and that they've hired someone who won't blink under the most un-imaginable pressures and who also will handle their issues with her now famous dignity and grace," Clements writes in an e-mail.

Barbara Cosgriff, senior vice president of public policy at Medco, a New Jersey-based pharmacy benefits management company, says Miers ranks as "the key Republican" on the Locke Lord lobbying team.

"She is a really great thinker who has an excellent understanding of the hurdles that have to be overcome to have people understand. I just marvel at the way she thinks through problems. She slices and dices. She is so smart. You look at someone

like that, and then you also recognize she is a lovely person, too, and you're sort of taken back," Cosgriff says.

William Stephen Boyd recalls one of his first moves after starting as general counsel of Dallas-based Baylor Health Care System in 2007: Hire Miers and her firm to assist him with legal work. He knew Miers had successfully represented clients in the 1990s such as Microsoft and Disney while serving as managing partner of her firm.

"I always thought her to be one of the premier lawyers in Dallas. It was a natural progression for me to call her," says Boyd, who was managing partner of the Texas offices of Hunton & Williams before moving to Baylor Health Care in 2007.

For her part, Miers believes her White House experience helps her clients. "One of the tendencies of people, and I find this very normal — I would have the same tendency had I not been [in the White House] — is that they say, 'Let's call someone at the highest level and ask that they pull the right string.' . . . The government doesn't really work that way. The client is better served working through the levels designed to work. Going over people's heads is very misguided. . . . You go up through the system. It doesn't mean you won't go up to the top but after you've done the best you can at a lower level."

Even lawyers at rival firms who have battled Miers in court admire her legal skills and Washington ties. In 2008, a bipartisan group of 20 former U.S. attorneys including Matt Orwig — U.S. attorney for the Eastern District of Texas from 2001 to 2007 — filed an amici brief siding with the Democratic-controlled U.S. House of Representatives in its federal suit against Miers and another top Bush administration official. The suit arose because Miers and the other official asserted executive privilege, refusing to testify before a House Judiciary Committee panel and to provide documents about whether the administration's firings of eight U.S. attorneys in 2006 were politically motivated.

Miers and the other official eventually agreed to appear before the House and the litigation was dismissed. On June 15, 2009, Miers testified before the panel.

Orwig says Miers' testimony showed she had provided appropriate legal counsel to the president, even though he wishes she had been more outspoken against the firings.

Orwig, now managing partner of the Dallas office of SNR Denton, says despite the firings controversy, he respects Miers' abilities. "The transparent formula for her success? She keeps confidences, she gives good counsel and she doesn't let her ego get involved," he says. And Miers' professional reputation never hinged exclusively on her ties to Bush. "She was a solid lawyer before the White House, and she is a solid lawyer after. Remarkably, the political process doesn't seem to have affected her much. . . . She has good legal instincts. She has always been the grown-up in the room."

## The Nomination

While the U.S. attorney firings made national news, the event that originally thrust Miers into the spotlight occurred on Oct. 3, 2005, when Bush stood with Miers in the Oval Office and nominated her to the U.S. Supreme Court.

Within days, Republicans raised concerns about her thin record in the abortion privacy debate and her lack of judicial and conservative credentials. And since Miers' own party had taken aim at her, Democrats just sat back and watched. The press chimed in, ridiculing her lack of Ivy League education, among other things. As a graduate of Dallas' Southern Methodist University School of Law, her legal pedigree was questioned.

In his recently published memoir "Courage and Consequence: My Life as a Conservative in the Fight," Karl Rove, now a Fox News commentator, writes of Miers' nomination, "[W]hat made sense to us didn't to our allies. . . . [F]or many of them the Supreme Court is an intellectual crown jewel, and Miers lacked the proper credentials."

The confirmation process promised to be a battle royal. Members of the Senate Judiciary Committee had asked for documents related to advice Miers, as White House counsel, had given the president.

In a letter dated Oct. 27, 2005 — sent just

24 days after her nomination — Miers asked the president to withdraw her nomination. "I am concerned that the confirmation process presents a burden for the White House and our staff that is not in the best interest of the country," she wrote.

Asked why she withdrew her nomination, Miers writes in an e-mail, "Our country was at war, in many respects a first-of-its-kind war. I had come to realize that my confirmation process would be time-consuming, protracted and not helpful to the interests I held most dear. I knew that confidential documents and information related to my service in the White House protected from disclosure by executive privilege would be sought in the confirmation process. I made the judgment that protection of the prerogatives of the Executive Branch and the continued pursuit of my confirmation were in tension. I decided that seeking my confirmation should yield, and that I should submit my withdrawal to the president."

Miers adds, "I will always feel it was a privilege to be nominated to the U.S. Supreme Court, particularly when I think about where I started."

Miers' father died when she was in college. Initially, she believed his death required her to drop out and get a job. But work-study programs and scholarships helped her earn an undergraduate degree in math and her J.D. from SMU. "Certainly, in those days, just getting an education was the goal, and no one conceived I would someday be nominated for the Supreme Court," Miers writes.

"I understood people had a particular profile that they would like to see for a court nominee. Everyone gets to say what they want to say about a nominee. . . . My experience had many aspects that were wonderful," she says in an interview.

Indeed, Miers appears to bear few if any scars from her White House political battles, friends and colleagues say. Karen Hughes served as Bush's counselor, as his informal adviser and as undersecretary of state for public diplomacy. She says Miers' treatment during her nomination was "one of the worst things" she saw in Washington.

"It would have crushed most people," Hughes says, but "a month or so afterward

Harriet was able to smile and go back to work."

U.S. District Judge Ed Kinkeade of the Northern District of Texas, a Bush appointee who is Miers' long-time friend and a former client, describes the reaction to Miers' nomination as "abominable" and argues it reflected a bias against Texans. But Miers, largely because of her religious faith, remains no worse as a result, he says.

"She doesn't whine about it. I think she doesn't for a reason. She wants to be remembered for what she has done, and she wants that to just be a part of history. She dusted herself off, picked herself up and went right back to work, knowing this [episode] was out there," Kinkeade says.

## Miers' Mettle

Miers' no-nonsense, stand-on-your-own-two-feet resilience is understandable given the road she traveled as a woman lawyer who started her career in the 1970s.

In her SMU law school graduating class, she was the only woman among 13 female graduates to land a job at a big firm, she says. In 1972, after she clerked for a federal judge in Dallas, she became an associate with what was then Locke, Purnell, Boren, Laney & Neely. When she joined the firm — the same year Gloria Steinem founded *Ms.* magazine and Congress fought over the Equal Rights Amendment — Miers had no other job offers because most firms in Dallas did not want to hire women, she says.

At Locke, Purnell she began work on the corporate transactional side, since the partners didn't think a woman lawyer would do well representing clients in the courtroom — even though she had clerked for a federal trial judge. But six months after she started, that clerkship resulted in a partner asking Miers to assist with a trial. From then on, she says, she handled only litigation.

"[T]here seemed to be an assumption that women were better suited in the corporate arena. I believe that corporate work was considered more genteel than the combative world of litigation. Of course, we know this was false because corporate work can be quite combative at times. . . . I believe that in litigation lawyers try to minimize risks.

For a trivial example, at least back then, trial lawyers dressed conservatively so as not to offend anyone's sensibilities. Because women in the courtroom were unique, their reception by judges or juries was not a given. Over time, though, everyone just seemed to accept that gender was like many qualities or factors that make up a lawyer's overall persona," Miers writes in an e-mail.

In those early years, she remembers partners' wives expressing concern to their husbands about their business travel with a female colleague, Miers says in an interview. She says a male client told a male partner that Miers was "too questioning" and the client wasn't convinced she was on his side.

Only 20 to 30 women, who met monthly for networking lunches, worked as lawyers in Dallas in the early '70s, Miers recalls. She says she was a member of the Dallas Association of Young Lawyers (DAYL) but decided not to attend meetings when they were held at male-oriented establishments. Yet in 1978, the same year she made partner, DAYL awarded Miers its Outstanding Young Lawyer of the Year Award, making her the first woman to receive the honor.

Her string of firsts continued. In 1985, she became the first woman Dallas Bar Association president; in 1992-1993 she served as the first woman State Bar of Texas president; and in 1996 her law partners elected her to serve as the firm's first woman president. She held the leadership post until she left for the White House.

Haynes and Boone partner Nina Cortell of Dallas met Miers for the first time in 1974. Cortell remembers lunching with her at a downtown club that barred women from the main dining area. "We were allowed to go to the buffet, but we had to eat in a separate room," Cortell says. "It was important to see someone of Miers' character and talent already part of the legal Dallas community," Cortell remembers.

Like Cortell, Susan L. Karamanian, associate dean for international and comparative legal studies and a professor at George Washington University Law School, identifies herself as a Miers mentee. Karamanian

and Miers serve as trustees for the Center for American and International Law, a Plano-based nonprofit that runs educational programs for lawyers and law enforcement officials worldwide. They met when Karamanian worked as a summer associate at Miers' firm in 1983.

"It was very good training for me just to watch how she conducts a meeting," Karamanian says, noting how Miers was calm, even-handed but always in control. And Miers created networking opportunities by taking Karamanian to client meetings and professional gatherings outside the firm. "She never wore it on her sleeve. She just set an example for me, showing me these are the steps that you need to take to develop yourself," Karamanian recalls.

K&L Gates partner Cynthia Ohlenforst of Dallas recalls meeting Miers in 1980 when Ohlenforst was a student at SMU law school. "She had an enthusiasm and sparkle about her that made her interesting. I was looking forward to loving the practice and delighted to meet someone who also did. She was candid and encouraging yet there was a stark awareness of the challenges that women faced but also a determination to succeed," Ohlenforst says.

Although helpful and mild-mannered, Miers is 100 percent capable of confrontation when necessary. That's why Locke Lord chairwoman Clements says she asked Miers to serve on the firm's conflicts committee in 2007 during the merger of Lord Bissell and Locke Liddell, a time likely to raise significant conflicts of interest among the two firms' clients. When there is a conflict of interest between clients, a partner sometimes needs to sacrifice a client relationship for the benefit of another partner's ties to a client.

Marc Watts, a partner in Locke Lord's Houston office, says serving on the conflicts committee is a tough assignment, but Miers shows up at the meetings and "she has not backed away at all."

For her part, Miers says, "If you are not putting the team first, you are taking a short view that in the long run will not be the right

one. You have to arrive at an acceptable and fair result that requires individuals to put their own immediate self-interest behind the interest of the team."

Miers, who is not married, says conflicts between family and work life for women lawyers also can be difficult. However, she notes that she did not prioritize her career over having a family; that's just the way things worked out. "I really felt like if family came along, I would fit it in," she says.

At 65, Miers' practice is going strong. (Clements says she is "the ultimate Energizer bunny.") Miers spends her spare time taking care of her elderly mother. She serves on the Dallas Symphony Orchestra board of governors and as secretary of the George W. Bush Foundation. And she is happy.

So what's next? Perhaps a run for public office someday, Miers says, adding, "never say never." 