

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

NOMINEE FOR THE SUPREME COURT OF THE UNITED STATES

GENERAL (PUBLIC)

1. **Name**: Full name (include any former names used).

Harriet Ellan Miers

2. **Position**: State the position for which you have been nominated.

Associate Justice of the Supreme Court of the United States

3. **Address**: List current office address. If state of residence differs from your place of employment, please list the state where you currently reside.

The White House
Washington, D.C. 20502

I currently reside in Virginia, but also maintain a home in Texas.

4. **Birthplace**: State date and place of birth.

August 10, 1945
Dallas, Texas

5. **Marital Status**: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

Single

6. **Education**: List in reverse chronological order, with most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Southern Methodist University School of Law, 1967–1970, JD, May 24, 1970
Southern Methodist University, 1963-1967, BS in Mathematics, May 21, 1967

7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, elected official

or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description, or the name and address of the institution or organization and your title and responsibilities, where appropriate.

February 2005-Present: Counsel to the President, The White House, Washington, D.C. 20502.

July 2003-February 2005: Deputy Chief of Staff for Policy, The White House, Washington, D.C. 20502.

January 2001-June 2003: Staff Secretary, The White House, Washington, D.C. 20502.

1972-2001: Managing Partner / Partner, Locke Liddell & Sapp, LLP (previously President / Shareholder, Locke Purnell Rain Harrell and previously Shareholder, Locke, Purnell, Boren, Laney & Neely, 2200 Ross Avenue, Suite 2200, Dallas, TX 78701.

Spring 1984: Trial Advocacy Instructor, Southern Methodist University School of Law, 3300 University Blvd., Carr Collins Building, Room 130, Dallas, TX 75205.

1970-1972: Law Clerk, U.S. District Court for the Northern District of Texas, Judge Joe Estes, 1100 Commerce, Room 1452, Dallas, TX 75242.

May 1969-August 1969: Law Clerk, Belli Ashe Ellison Choulos & Lieff, no longer exists, San Francisco, CA.

1964-1969: Computer Center Helper, Southern Methodist University, Computer Center, 3300 University Blvd., Carr Collins Building, Room 130, Dallas, TX 75205.

Sometime between 1963 - 1972: Computer Center Helper, Southwestern Medical School, 5323 Harry Hines Blvd., Dallas, TX 75390.

Other Former Business Activities

1998 (approx)-Present: Harriet Miers P.C., 5115 Royal Crest Drive, Dallas, TX 75229.

Mid-1980's: HM Investments, 5115 Royal Crest Drive, Dallas, TX 75229.

Mid-1980's: HEM Investments, 5115 Royal Crest Drive, Dallas, TX 75229.

Late 1990s: Member, Board of Directors, Attorneys' Liability Assurance Society, 311 South Wacker Drive, Suite 5700, Chicago, IL 60606.

January 1993-1997: Member, Board of Directors, Capstead Mortgage Corporation, One Lincoln Park, 8401 North Central Expressway, Suite 800, Dallas, TX 75225.

Dates not available: Member, Board of Directors, Comerica Bank (Texas Division), a financial services company, 1601 Elm Street, Dallas, TX 75201.

Dates not available: Member, Board of Directors, Tyler Cabot Mortgage Securities Fund. Contact information is not available.

Dates not available: Chair, Greater Dallas Chamber Local Governmental Affairs Committee and Executive Committee, 700 North Pearl Street, Suite 1200, Dallas, TX 75201.

Former Community Leadership

2000: Chair, Women's Leadership Council, United Way, 1800 North Lamar, Dallas, TX 75202.

1998-2001: Member, Board of Directors, Dallas 2012 Committee. Organization no longer exists.

1999: Vice-Chair, City of Dallas Ethics Review Task Force. Contact information is not available.

1992-1994; 1997-1999: Member, Board of Directors, Dallas Citizens Council, 901 Main Street, Suite 6212, Dallas, TX 75202-3753.

June 1989-March 2001: Executive Committee, Southern Methodist University School of Law, 3300 University Boulevard, Carr Collins Building, Room 130, Dallas, TX 75205.

1987: Chair, Advisory Committee, Girls, Inc. of Dallas, 2040 Empire Central Drive, Dallas, TX 75235.

1985-2001: Board of Trustees, Vice Chair, Executive Planning Committee, Center for American and International Law (Southwestern Legal Foundation) 5201 Democracy Drive, Plano, TX 75024.

1983-Present: Board of Consultants Member (1983-1987 Board of Directors, 1987-1989 Associate Board Member, 1993-Present, Board of Consultants Member), Pioneer Bible Translators, 7500 W. Camp Wisdom Road, Dallas, TX 75236.

1974: Board Member, Dallas Legal Services, 1515 Main Street, Dallas, TX 75201.

Dates not available: Board Member, Young Women's Christian Association, 1015 18th Street NW, Suite 1100, Washington, D.C., 20036.

Dates not available: Board Member, Child Care Dallas, 8585 N. Stemmons Freeway, Suite 500 South, Dallas, TX 75247.

Dates not available: Board Member, Community Council of Greater Dallas, 1349 Empire Central, Suite 400, Dallas, TX 75247.

Dates not available: Board Member, Goodwill Industries of Dallas, 3020 N. Westmoreland, Dallas, TX 75212.

Dates not available: Board Member, EXODUS Ministry, Inc., 4630 Munger Avenue, #110, Dallas, TX 75204.

Dates not available: Chair, Higher Education Task Force, Goals for Dallas. Contact information is not available.

Dates not available: Board Member, Volunteer Center Resource Clearinghouse. Contact information is not available.

Dates not available: Dallas Athletic Club, 4111 La Prada, Dallas, TX 75228.

Former Government Leadership

May 1995-March 2000: Chair, Texas Lottery Commission, 611 E. 6th Street, Austin, TX 78701.

February 1993-November 1995: Chair (1994), Judicial Nomination Committee, City of Dallas, 1500 Marilla Street, Dallas, TX 75201.

June 1989-November 1991: Member-at-Large, Dallas City Council, 1500 Marilla Street, Dallas, TX 75201.

October 1989-November 1991: Ad Hoc Public Housing Committee. Contact information is not available.

June 1989-November 1991: Trustee, Dallas Police and Fire Pension Board, 2301 North Akard Street, Suite 200, Dallas, TX 75201.

1989-1991: Director, North Texas Commission, 8445 Freeport Parkway, Irving, TX 75063.

1989-1991: Chair, Railtran Advisory Committee. Contact information is not available.

Dates unknown: Chair, Committee to Review City Budget Process, Contact information is not available.

I have made my best efforts to include all organizations of which I was a member. However, I may have been a member of other organizations for which I no longer have records.

8. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received. Please list, by approximate date, Selective Service classifications you have held, and state briefly the reasons for any classification other than I-A.

Not applicable.

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors or awards, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement you have received.

Honorary Doctorate, Pepperdine University School of Law
Outstanding Alumni Award, Southern Methodist University School of Law
Outstanding Alumni Award, Southern Methodist University
Woman of the Year, Today's Dallas Woman
Women of Excellence Award, Women's Enterprise Magazine
Louise D. Raggio Award, Dallas Women's Lawyers Association
Anti-Defamation League, Jurisprudence Award
1996 Merrill Hartman Award, Legal Services of North Texas
Sarah T. Hughes Award, Women in the Law Section, State Bar of Texas
1992 Human Relations Award, American Jewish Committee
1992 Justinian Award for Community Service
DAYL Outstanding Young Lawyer of Dallas
National Award for Leadership and Commitment, Girls Club
2005 Sandra Day O'Connor Award, Texas Center for Legal Ethics and Professionalism
Southern Methodist Law School: Comments Editor of the Southwestern Law Journal (now SMU Law Review), Barristers, Moot Court Board
Southern Methodist University "M" Award, Mortar Board, Kirkos

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels 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. Also, if any such association, committee or conference of which you were or are a member issued any reports, memoranda or policy statements prepared or produced with your participation, please furnish the committee with four (4) copies of these materials, if they are available to you. Please also provide four (4) copies of any resolutions on which you voted, the corresponding votes and minutes, as well as any speeches or statements you made with regard to policy decisions or positions taken by the association, committee or conference that you participated in. "Participation" includes, but is not limited to, membership in any working group of any such association, committee or conference which produced a report, memorandum or policy statement even where you did not contribute to it.

American Bar Association 1976-Present
1980-1981 Chair, Young Lawyers Division Committee on Antitrust Law
1985-1988 Co-Chair, Business Torts Litigation Committee, Section of Litigation
1987-1990 Member, Consortium on Legal Services to the Public

1989-1998	Member, Board of Editors, ABA Journal (Chair, 1998)
1992-1997	Member, House of Delegates, representing State Bar of Texas
1993-1994	Member, House of Delegates, Special Committee on Hearings
1993-1995	Member, Standing Committee on Bar Activities and Services
1993-1997	ABA Membership Chair for State of Texas (Co-Chair, 1997-1999)
1993-1995	Member, Special Committee on Governance
1994-1996;	Chair, House of Delegates Committee on Rules and Calendar
1999-2000	
1995-1996	Member, Standing Committee on Association Communications, representing ABA Journal Board of Editors
1995-1998	Member, Standing Committee on Election Law
1996-1998	Chair, House of Delegates Committee on Credentials & Admissions
1997-1999	Member, House of Delegates Representing Dallas Bar Association
1998-1999	Chair, House of Delegates Select Committee
1998-1999	Member, Standing Committee on Legal Aid and Indigent Defendants
1999-2001	Member, Council of the Board of Governors Fund for Justice & Education
1999-2001	Member, House of Delegates as State Delegate for Texas
1999-2001	Member, Nominating Committee (as a state delegate)
1999-2000	Member, Standing Committee on Legal Aid and Indigent Defendants
2000-2001	Member, Board of Governors Committee on Research About the Future of the Legal Profession, as the representative of the Commission on Multi-jurisdictional Practice
2000-2001	Chair, Commission on Multijurisdictional Practice
2000-2001	Chair, House of Delegates Committee on Technology and Communications
2002-2003	Federal Government Liaison, Litigation Section

I withdrew from most American Bar Association activities in 2001 upon appointment to the White House.

State Bar of Texas

1991-1994 President-Elect, President, and Immediate Past President
Date unknown: Director, Fact Finding Committee
Date unknown: Chair, Goals and Implementation Committee
Date unknown: Vice Chair, State Bar Antitrust Section Council
Date unknown: Chair and Vice Chair, Legal Services to the Poor in Civil Matters
Date unknown: Member, Administration of Justice Committee
Date unknown: Member, Directors Orientation Committee
Date unknown: Member, General Counsel Advisory Committee
Date unknown: Member, State Bar Litigation Section Council
Date unknown: Councilmember, Women in the Law Section

Dallas Bar Association (joined in 1971)

1984-1987 President-Elect, President, and Immediate Past President
Date unknown: Chair of the Board
Date unknown: Vice Chair of the Board

Date unknown: Vice President, Activities and Administrative

Date unknown: Secretary

Date unknown: Member, Evaluation Committee, Committee for a Qualified Judiciary

Date unknown: Life Fellow, American Bar Foundation

Date unknown: Life Fellow, Texas Bar Foundation

Date unknown: Charter Fellow, Lifetime Member, Dallas Bar Foundation

I have made my best efforts to include all organizations of which I was a member. However, I may have been a member of other organizations for which I no longer have records.

11. **Bar and Court Admission:**

- a. List the date(s) you took the examination and date you passed for all states where you sat for a bar examination. List any state in which you applied for reciprocal admission without taking the bar examination and the date of such admission or refusal of such admission.

State Bar of Texas Examination administered in July 1970.

Admitted to the State Bar of Texas on September 18, 1970.

Reciprocal Admission to the District of Columbia Bar on April 4, 1997.

Earlier this year, I received notice that my dues for the District of Columbia Bar were delinquent and as a result my ability to practice law in D.C. had been suspended. I immediately sent the dues in to remedy the delinquency. The non-payment was not intentioned, and I corrected the situation upon receiving the letter.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of the United States, April 19, 1982.

United States Court of Appeals for the Fifth Circuit, October 1, 1981 – January 23, 2003. In January 2003, after the Fifth Circuit instituted new fee rules, I did not re-apply for admission because I was not practicing law in the private sector.

United States District Court for the Eastern District of Texas, February 12, 1996.

United States District Court for the Northern District of Texas, August 1, 1971.

United States District Court for the Southern District of Texas, October 27, 1989.

United States District Court for the Western District of Texas, April 6, 1987.

12. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have participated since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications. Please describe briefly the nature and objectives of each such organization, the nature of your participation in each such organization, and identify an officer or other person from whom more detailed information may be obtained.

Former Business Activities

1998 (approx.)-Present: Harriet Miers P.C., a corporation that is no longer active within partnership at Locke Liddell and Sapp, LLP, 5115 Royal Crest Drive, Dallas, TX 75229.

Late 1990's: Member, Board of Directors, Attorneys' Liability Assurance Society, a mutual insurance company owned by the law firms it insures. Contact: Chairman of the Board, Richard Levy, (441) 292-9989.

January 1993-1997: Director, Capstead Mortgage Corporation, a real estate investment company. Contact: Paul Low, Chairman, (214) 874-2323.

Mid-1980's: HM Investments, partnership to hold oil and gas interests, 5115 Royal Crest Drive, Dallas, TX 75229.

Mid-1980's: HEM Investments, an investment vehicle, 5115 Royal Crest Drive, Dallas, TX 75229.

Dates not available: Member, Board of Directors, Comerica Bank, Texas, Contact: President & CEO, Texas Division, Charles Gummer, (214) 589-1400.

Dates not available: Member, Board of Directors, Tyler Cabot Mortgage Securities Fund, an investment company. Contact information is not available.

Community Leadership

2000: Chair, Women's Leadership Council, United Way, a philanthropic non-profit organization. Contact: Maribess Miller, Chairwoman, (214) 978-0000.

Fall 1998-January 2001: Member, Board of Directors, Dallas 2012 Committee, a non-profit organization that represented Dallas in a bid to host the 2012 Olympic Games. Organization no longer exists. Contact: Tom Luce, Former Chairman of the Board (currently with the U.S. Department of Education), (202) 260-7392.

1996-2000: Member, Martindale Hubbell Lexis Nexis Advisory Board, a legal directory company. Contact: Ed Biggalow, Human Resources, (800) 526-4902.

1993-2005: Member, Petroleum Club, a social and business club. Contact: (214) 871-1500.

1992-1994; 1997-1999: Member, Board of Directors, Dallas Citizens Council, a group of local business leaders. Contact: Elaine Agather, (214) 871-1500.

1987: Member, Progressive Voters League, a local political organization. Organization no longer exists.

1987: Chair, Advisory Committee, Girls, Inc. of Dallas, a national non-profit youth organization. Contact: Cecilia Boone, Dallas Chair, (214) 654-4530.

1987: Mayor's Task Force on Crime, an organization that made recommendations to city leadership on police reforms. Contact: (214) 670-4054.

1985-2001: Board of Trustees, Vice Chair, Executive Planning Committee, Center for American and International Law (formerly known as the Southwestern Legal Foundation), an international nonprofit educational institution. Contact: Mark Smith, (972) 244-3400.

1983-Present: Board of Consultants Member (1983-1987 Board of Directors, 1987-1989 Associate Board Member, 1993-Present, Board of Consultants Member), an organization that works to translate the Bible into languages into which it has not yet been translated. Contact: Randal Smith, (972) 708-7460.

1974: Board Member, Dallas Legal Services, an organization that provides legal representation to the poor. Contact: Herese Cook, (214) 748-1234.

Dates not available: Board Member, Young Women's Christian Association, a women's group that provides services to the community such as domestic violence prevention programs. Contact information is not available.

Dates not available: Board Member, Child Care Dallas, a state-funded, partially subsidized child care program. Contact: Susan Hoff, President, (214) 630-7911.

Dates not available: Chair, Greater Dallas Chamber Local Governmental Affairs Committee and Executive Committee, an association of local businesses with an interest in public policy. Contact: Jo Trizila, Director of Media Relations, (214) 746-6600.

Dates not available: Board Member, Community Council of Greater Dallas, a nonprofit organization. Contact: Martha Blaine, Executive Director, (214) 871-5065.

Dates not available: Board Member, Goodwill Industries of Dallas, a non-profit organization that provides job training and employment services to people with barriers to employment. Contact: Rod Ginther, (214) 638-2800.

Dates not available: Board Member, EXODUS Ministry, Inc., a Christian organization that assists ex-offenders and families. Contact: Glenn Able, (214) 827-3772.

Dates not available: Chair, Higher Education Task Force, Goals for Dallas, a local organization focused on education reform. Contact information is not available. Contact: John Lewis, Former Executive Director, (214) 841-9501.

Dates not available: Board Member, Volunteer Center Resource Clearinghouse, a local volunteer opportunity center. Contact: (214) 370-4100.

June 1989-March 2001: Southern Methodist University School of Law, Executive Committee, a group that meets twice a year to discuss all aspects of the law school, including admissions and finances. Contact: Dean John Attanasio, (214) 768-2621.

Dates not available: Member, Charter 100, an organization of Dallas business women and civic leaders. Contact information not available.

Dates not available: Member, Advisory Committee, Dallas Independent School District's Magnet School of Government and Law, a public magnet school. Contact: Robert Geisler, (972) 925-5950.

Dates not available: Member, Meals on Wheels Task Force, a non-profit organization that provides meals for the elderly. Contact information is not available.

Dates not available: Member, Dallas Women's Foundation, Contact: Julie Bleicher, President, (214) 965-9977.

Dates not available: Member, Advisory Committee, Women's Center of Dallas, a local non-profit association dedicated to assisting women. Contact information not available.

Dates not available: Dallas Forum. Contact information not available.

Dates not available: Dallas Athletic Club, 4111 La Prada, Dallas, TX 75228,
Contact: (972) 279-6517.

Former Government Leadership

1999: Vice-Chair, City of Dallas Ethics Review Task Force, appointed by a city council member to review the city's ethics guidelines. Contact information not available.

May 1995-March 2000: Chair, Texas Lottery Commission, a commission responsible for the management and sale of lottery products. Contact: Gary Grief, Acting Director, (512) 344-5160.

February 1993-November 1995: Chair (1994), Judicial Nomination Committee, a Dallas City Council commission that makes recommendations for municipal judge nominations. Contact: Marshall J. Doke, Jr., Chair, (214) 999-4733.

June 1989-November 1991: Trustee, Dallas Police and Fire Pension Board, responsible for the administration of the police and fire pension system. Contact: Lt. Gerald Brown, (214) 638-3863.

December 1991-end date unavailable: City Attorney Search Committee, the Committee was formed by Dallas City Council to look for the most qualified candidates to serve as attorney for city of Dallas. Contact Judge Sam Lindsey, (214) 753-2365.

October 1989-November 1991: Ad Hoc Public Housing Committee (appointed by the Mayor). Contact information is not available.

June 1989-November 1991: Member-At-Large, Dallas City Council, an elected legislative body that works with the Mayor in service to the City of Dallas. Contact: (214) 670-4054.

August 1987-August 1988: Community Development Advisory Committee (appointed by the Mayor). Contact information is not available.

1989-1991: Chair, Railtran Advisory Committee, local transportation advisory committee. Contact information is not available.

Dates not available: Director, North Texas Commission, a regional non-profit economic development consortium. Contact: Dan S. Petty, President & CEO, (972) 621-0400.

Dates unknown: Chair, Committee to Review City Budget Process. Contact information is not available.

I have made my best efforts to include all organizations of which I was a member. However, I may have been a member of other organizations for which I no longer have records.

In any instance in which I have not provided dates, my records do not indicate that information, and I have been unable to verify the dates of membership or service.

- b. If any of these organizations of which you were or are a member or in which you participated issued any reports, memoranda or policy statements prepared or produced with your participation, please furnish the committee with four (4) copies of these materials, if they are available to you. Please also provide four (4) copies of any resolutions on which you voted, the corresponding votes and minutes, as well as any speeches or statements you made with regard to policy decisions or positions taken by the association, committee or conference that you participated in. "Participation" includes, but is not limited to, membership in any working group of any such association, committee or conference which produced a report, memorandum or policy statement even where you did not contribute to it. If any of these materials are not available to you, please give the name and address of the organization that issued the report, memoranda or policy statement, the date of the document, and a summary of its subject matter.

I have not maintained personal records for the vast majority of organizations with which I have been affiliated. Where I have been able to secure records responsive to this request, they are attached.

- c. Please indicate whether any of these organizations currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of these organizations had membership requirements or policies that were discriminatory during or prior to my membership.

13. Published Writings, Testimony and Speeches:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

"Recommended Reading: Issues for the Multijurisdictional Lawyer where pro hac vice Admission Does Not Apply," *Arkansas L. Notes* 131, 2001.

“When Two Become One: Steps to a Successful Firm Merger,” *Texas Law* 67, June 26, 2000.

“ABA Study of Multistate Practice on Fast Track,” 36 *Tennessee Bar Journal* 6, 2000.

“Commission on Multijurisdictional Practice,” 11 *Professional Lawyer* 20, 2000.

Continuing Legal Education Materials: “Texas Life Insurance Update,” ALI/ABA Conference on Life Insurance Litigation, Course Number SD65, 1999. (Available on Lexis, but no Lexis citation or document number).

“Science, Business, or Art? (President's Opinion),” 56 *Texas Bar Journal* 446, 1993.

“As if the Funds were our Own... (President's Opinion),” 56 *Texas Bar Journal* 330, 1993.

“What We Have Here Is a Failure to Communicate,” 56 *Texas Bar Journal* 210, 1993.

“Our Number One Priority (President's Opinion),” 56 *Texas Bar Journal* 106, 1993.

“Focusing on the Positive (President's Opinion),” 56 *Texas Bar Journal* 6, 1993.

“Don't Blame the Legal System for Fort Worth Rampage,” *Texas Law* 10, July 27, 1992.

“Time to Think (President's Opinion),” 55 *Texas Bar Journal* 1112, 1992.

“Parts of the Whole Working Together (President's Opinion),” 55 *Texas Bar Journal* 1012, 1992.

“Inclusion, Education and Mentoring (President's Opinion),” 55 *Texas Bar Journal* 910, 1992.

“Justice for All - All for Justice (President's Opinion),” 55 *Texas Bar Journal* 780, 1992.

“The Real Issue... (mandatory pro bono) (President's Opinion),” 55 *Texas Bar Journal* 664, 1992.

“Legacies of a Lawyer (President's Opinion),” 55 *Texas Bar Journal* 548, 1992.

“Not Just An Ordinary Saturday,” *Dallas Morning News* at 33A, May 1, 1986.

“Farewell (President's Report),” *Dallas Bar Headnotes* 4, Dec. 16, 1985.

President’s Report, *Dallas Bar Headnotes*, Nov. 25, 1985.

President’s Report, *Dallas Bar Headnotes*, Nov. 11, 1985.

President’s Report, *Dallas Bar Headnotes*, Oct. 28, 1985.

“The Dallas Bar is Committed to Supporting the Public Defenders Program (President's Report),” *Dallas Bar Headnotes* 4, Oct. 21, 1985.

President’s Report, *Dallas Bar Headnotes*, Oct. 14, 1985.

President’s Report, *Dallas Bar Headnotes*, Sept. 29, 1985.

“Pro Bono the Arts (President's Report),” *Dallas Bar Headnotes* 4, Sept. 16, 1985.

President’s Report, *Dallas Bar Headnotes*, Sept. 9, 1985.

President’s Report, *Dallas Bar Headnotes*, Aug. 27, 1985.

“Belo II Update (President's Report),” *Dallas Bar Headnotes* 4, Aug. 19, 1985.

“The Choice to Serve (President's Report),” *Dallas Bar Headnotes* 4, July 15, 1985.

“Courthouse Update,” President’s Report, *Dallas Bar Headnotes*, July 8, 1985.

“A Life of Service: A Legacy of Concern (President's Report),” *Dallas Bar Headnotes* 4, June 17, 1985.

President’s Report, *Dallas Bar Headnotes*, June 10, 1985.

President’s Report, *Dallas Bar Headnotes*, June 3, 1985.

President’s Report, *Dallas Bar Headnotes*, May 27, 1985.

“Professionalism Includes a Sense of Responsibility to the Legal System and the Society in which We Live (President's Report),” *Dallas Bar Headnotes* 4, May 20, 1985.

President’s Report, *Dallas Bar Headnotes*, May 13, 1985.

President's Report, *Dallas Bar Headnotes*, May 6, 1985.

President's Report, *Dallas Bar Headnotes*, April 29, 1985.

"Open Letter to District Attorney Henry Wade," (President's Report), *Dallas Bar Headnotes*, April 22, 1985.

"The Dallas Bar Will Remain Committed to Fulfilling its Responsibilities as Stewards of the Justice System" (President's Report), *Dallas Bar Headnotes* 4, April 15, 1985.

President's Report, *Dallas Bar Headnotes*, April 8, 1985.

President's Report, *Dallas Bar Headnotes*, April 1, 1985.

"Bond Election Update (President's Report)," *Dallas Bar Headnotes*, March 25, 1985.

"Big D is for DAYL (President's Report)," *Dallas Bar Headnotes* 4, March 18, 1985.

President's Report, *Dallas Bar Headnotes*, March 11, 1985.

President's Report, *Dallas Bar Headnotes*, Feb. 25, 1985

"One of the Most Significant Contributions to the Dallas Community by the Dallas Bar (President's Report)," *Dallas Bar Headnotes* 4, Feb. 18, 1985.

President's Report, *Dallas Bar Headnotes*, Feb. 11, 1985

President's Report, *Dallas Bar Headnotes*, Feb. 4, 1985

President's Report, *Dallas Bar Headnotes*, January 28, 1985

"A Decade Later (President's Report)," *Dallas Bar Headnotes* 4, January 21, 1985.

President's Report, *Dallas Bar Headnotes*, January 14, 1985.

"Lawyers Help Feature Dallas (President's Report)," *Dallas Bar Headnotes* 4, Aug. 20, 1984.

"Note, Mental Suffering - Texas Stands Firm - No 'New' Tort," 22 *Southwestern Law Journal* 669, 1968.

“Dallas Bar Loses Past President and A Great Friend,” *Dallas Bar Headnotes*, Undated.

- b. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Records relating to my service on the Texas Lottery Commission and the Dallas City Council have been provided to the Committee. These records contain documents that are responsive. I have attached additional response materials.

- c. Please list all speeches, talks, or presentations by you which relate in whole or in part to issues of law or public policy. For each one, please give the name and address of the group before which the speech was given, the date of the speech, and a summary of its subject matter. For each of these, please supply four (4) copies of your prepared remarks or any outline or notes from which you spoke. If a recording or transcript is available, please supply four (4) copies of those as well. If press reports about the speech, talk, or presentation are available to you, please supply them.

The following list of speeches includes those I was able to locate after a diligent review of my records. I am confident that there are additional speeches, particularly prior to my appointment as Counsel to the President, to which I no longer have access or for which I did not prepare formal remarks. Although there may be press reports about these and other speeches that I have given, such reports are not all readily available to me. Any press reports I have located in my personal records regarding these or other speeches are included in my response to question 13d.

Dates on the copies of the speeches provided with this questionnaire may reflect the dates on which those speeches were written or modified, rather than the dates on which they were delivered. Also, the speeches submitted with this questionnaire are the copies of my remarks that I currently have on file. It is possible that the actual remarks I gave on any particular occasion differed from the versions of the speeches that I now have on record.

U.S. Office of Government Ethics Annual Conference, 1201 New York Avenue, NW, Suite 500, Washington, D.C. 20005, September 20, 2005, on the important role of ethics in the Federal government.

Women's Equality Day Introduction, August 24, 2005, Washington, D.C., introducing featured speaker Diane Stuart.

Wiley, Rein & Fielding, LLC, 1776 K Street, NW, Washington, D.C., 20006, July 11, 2005, professional advice to young lawyers and Summer Associates.

White House Intern Speaker Series, June 15, 2005, Washington, D.C., on life as the Staff Secretary, the Deputy Chief of Staff for Policy, and the Counsel to the President.

15th Annual Lawyers Have Heart 10K Race Kick-Off, June 11, 2005, Washington, D.C., an introduction to start the race.

The Heritage Foundation, 214 Massachusetts Ave., Washington, D.C. 20002, June 9, 2005, on protecting the powers of the Executive Branch.

Texas Supreme Court Historical Society Annual Hemphill Dinner, Post Office Box 12673, Austin, TX 78711-2673, June 3, 2005, on the history of the Office of Counsel to the President.

North Dallas Chamber of Commerce, 10707 Preston Road, Dallas, TX 75230, June 2, 2005, on President Bush's agenda for economic opportunity.

Pepperdine University School of Law Commencement, 24255 Pacific Coast Highway, Malibu, CA 90263, May 20, 2005, on using a law degree to make a positive impact in society.

Business and Professional Women's Leadership Summit 2nd Annual Summit, May 16, 2005 on the prominent women in President Bush's Administration.

The Texas Center for Legal Ethics and Professionalism Annual Sandra Day O'Connor Award for Professional Excellence Luncheon, Post Office Box 12487, Austin, TX 78711 May 13, 2005, acknowledgements for receiving the award.

Office of Personnel Management Schedule C Employee Briefing, 1900 E Street NW, Washington, D.C. 20415, May 11, 2005, on Life as the Staff Secretary, the Deputy Chief of Staff for Policy, and the Counsel to the President.

Federal Bar Association, 2215 M Street, NW, Washington, D.C. 20037, April 30, 2005, on life as Counsel to the President.

DC Lawyers Chapter of the Federalist Society, 1015 18th Street, NW, Suite 425, Washington, D.C. 20036, April 29, 2005, on the judicial nomination and confirmation process.

American Bar Association, 321 North Clark Street, Chicago, IL 60610, April 28, 2005, on the judicial nomination and confirmation process and the President's agenda for tort reform.

Republican National Lawyers Association, Post Office Box 18965, Washington, D.C., 20036, April 22, 2005, on the judicial nomination and confirmation process.

American Tort Reform Association, 1101 Connecticut Avenue, NW, Suite 400 Washington, D.C. 20036, April 5, 2005, on President Bush's commitment to tort reform.

White House Judicial Coalition Meeting, March 18, 2005, Washington, D.C., on the Administration's commitment to nominating first-rate judges.

Harvard Law School Republicans, 1563 Massachusetts Ave., Cambridge, MA 02138, March 10, 2005 on life as Counsel to the President.

Young President's Organization, 451 S. Decker Drive, Irving, TX 75062, February 28, 2005, Washington, D.C., on life as Counsel to the President and the President's reform agenda.

Remarks to Department of Labor Employees, 200 Constitution Ave., NW, Washington, D.C. 20210, January 12, 2005, on how the White House works and President Bush's agenda for the second term.

Office of Personnel Management Senior Executive Service New Employees Briefing, 1900 E Street NW, Washington, D.C. 20415, June 16, 2004, on ensuring the government is responsive to the needs and goals of the nation.

T. John Ward Investiture, September 24, 1999, on the swearing-in of T. John Ward to the U.S. District Court for the Eastern District of Texas.

Oral Remarks: Texas Life Insurance Update, May 1999, on defense litigation.

Draft Statement of Harriet E. Miers, Chair, Texas Lottery Commission, to the House Appropriations Committee, General Government Subcommittee, February 16, 1999, on the Texas Lottery Commission budget.

Public Trust and Confidence in the Justice System, 1999, on public perception of the judicial system.

The Practice of Law in the Next Century and Its Globalization, post-1998, on the future of the legal profession.

Introduction of Martha Barnett, 1998, on welcoming Martha Barnett.

Richard L. Huber, Chairman, President and Chief Executive Officer, Aetna Inc., post-1997, an introduction of Richard Huber.

Tort reform in Texas, post-1997, on tort reform in the State of Texas.

Uncertain whether delivered – Proposed talking points approximately 1997 or 1998, on the Texas Lottery Commission.

Partial Transcript - Law Day, May 2, 1997, on the importance of the law in society.

After You've Made It, Then What Or Do You Ever Really Make It?, post-1995 and pre-1999, on working toward and achieving one's goals.

Remarks for Justice Baker, 1996, on the introduction of James A. Baker as the newest Justice of the Supreme Court of Texas.

Anti-Defamation League Presentation, 12800 Hillcrest Road, #219, Dallas, TX 75230, 1996, on eradicating bigotry and welcoming individuals to the ADL luncheon.

Speech to the Dallas Women Lawyers, 1996, on receiving the Louise Raggio Award.

Successful Techniques of Settlement Negotiations, State Bar of Texas, Texas Law Center, Post Office Box 12487, Austin, TX 78711, approximately 1996, on improving one's negotiation skills.

The Justice System – Crisis Or Growing Pains, post-1995, on improvements to the judicial system.

Partial Transcript - The Justice System in Crisis, post-1995, on public perception of the judicial system.

Legal Nurse Consultants, post-1993, on the challenges and similarities of the law and the legal nurse consultants.

Executive Women of Dallas, approximately 1993, on public perception of the judicial system and political leadership.

Women and Courage, July 1993, on the progress women have made in the State of Texas, political leadership, and how Texas can improve.

Speech to Stewart Title Women's Quarterly, 1980 Post Oak Boulevard, Suite 800 Houston, TX 77056, between 1992-1998, on female leadership.

State Bar of Texas Remarks on a Referendum, Texas Law Center, Post Office Box 12487, Austin, TX 78711, approximately 1992 or 1993, on requesting support for a referendum.

New Lawyers Induction, approximately 1992 or 1993, on the professional expectations for lawyers.

Speech to Law Review, post-1992, advice to future lawyers.

Swearing-In Ceremony for Judge Lee Rosenthal, 1992.

Justinian Award Luncheon, Dallas Lawyers Auxiliary, 2101 Ross Avenue, Dallas, TX 75201, 1992, on receiving the Justinian Award.

American Jewish Committee Presentation, 12720 Hillcrest Rd, Dallas, TX, 1992, on leadership.

Conference of Bar Counsel, 1991, on judicial issues to be addressed by the Bar.

Partial Transcript - Speech to the McKinney Bar, 1991, on qualifications for the State Bar's presidency.

Speech to Ad Terry's Group, January 1991, on issues of concern to the city of Dallas.

Speech for Mary Kay Cosmetics, Post Office Box 799045, Dallas, TX 75379-9045, approximately 1990 or 1991, on economic opportunities in the city of Dallas.

Partial Transcript - Future Economic Development and Revitalization of Dallas, approximately 1990 or 1991, on the future of Dallas' economic development.

Partial Transcript - Women and the Law, approximately 1990, on the progress of women in the State of Texas.

Eulogy for Judge Joe Ewing Estes, 1989.

Materials Prepared for CLE Presentation - Punitive Damages in Civil Cases: Bad Faith and Other Insurer/Insured Relationships, January 1987, litigation update on punitive damages in civil cases.

Oral Presentation, post-1985, on defense litigation.

Dallas Bar Inaugural, 2101 Ross Avenue, Dallas Texas, 75201, January 19, 1985, on the expectations of the Dallas Bar Association.

Judge Patrick Higginbotham, post-1982, on honoring Judge Higginbotham and his life's accomplishments.

Commencement Address at Texas Tech University School of Law, 1802 Hartford Avenue, Lubbock, TX 79409, date unknown, on the professional expectations of lawyers.

Materials Prepared for CLE Presentation - The Use of Pretrial Procedures to Marshall Evidence in Business Litigation, date unknown, on explaining the mechanisms by which evidence may be gathered and prepared for use at trial.

- d. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

“Ask The White House,” www.whitehouse.gov, October 29, 2004.

“Ask The White House,” www.whitehouse.gov, October 14, 2004.

“Ask The White House,” www.whitehouse.gov, September 10, 2004.

“Ask The White House,” www.whitehouse.gov, August 11, 2004.

“Women of Excellence,” *Women’s Enterprise*, May 1997.

“Harriet Miers Extends String of Firsts with Locke Purnell Post,” *Texas Lawyer*, November 16, 1996.

“Miers first woman to lead major law firm in Texas,” *The Dallas Morning News*, March 6, 1996.

“Opening Court Access to the Poor,” *Texas Bar Journal*, April 1993.

“First Woman State Bar President: Harriet Miers,” *55 Texas Bar Journal* 584, 1992.

Biographical Information, *Dallas Women Lawyers Association*, 1991.

Interview with Candidates For President-elect of State Bar of Texas, *54 Texas Bar Journal* 344, 1991.

“Harriet Miers: Reflection of a Lawyer-Politician,” *The Dallas Morning News*, July 28, 1991.

“State Bar Activities: Interview,” *Texas Bar Journal*, April 1991.

“City Council hopefuls spar at forum,” *The Dallas Morning News*, May 17, 1989.

“2nd-place Runoff Candidates Prepare for uphill battles,” *The Dallas Morning News*, May 15, 1989.

“Dallas’ First Lady of the Law,” *Dallas Times Herald*, July 12, 1985.

“Harriet Miers Makes Legal History,” *The Woman’s News*, January 1985.

“Harriet Miers: Making Legal History,” *The Brief*, Summer 1984.

“Dallas Bar Elects First Woman Leader,” *The Dallas Morning News*, November 5, 1983.

“Dallas Poor Lose Out in Finding Legal Aid,” *The Dallas Morning News*, August 11, 1983.

“Face to Face with Harriet E. Miers,” *Texas Women Lawyers*, Date Unknown.

“SMU Graduate Takes Office as President of State Bar of Texas,” Source Unknown, Date Unknown.

“Dallas’ Top Lawyers,” Source Unknown, Date Unknown.

“A Leader, Bar None,” *Dallas Times Herald*, date unknown.

“Getting To Know Our Leaders: A Questionnaire,” *The City Magazine of Dallas*, date unknown.

To the best of my knowledge, this list contains all responsive documents that are either in my personal records or are readily available to me.

14. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Dates unknown: Chair, Committee to Review City Budget Process. Additional information is not available.

1970-1972: Law Clerk to Judge Joe Estes, U.S. District Court for the Northern District of Texas. Appointed by Judge Joe Estes.

August 1987-August 1988: Member of the Community Development Advisory Committee. Appointed by Dallas Mayor Annette Strauss.

1987: Mayor’s Task Force on Crime. Appointed by Dallas Mayor Annette Strauss.

1989-1991: Chair, Railtran Advisory Committee.

June 1989-November 1991: Trustee, Dallas Police and Fire Pension Board.

June 1989-November 1991: Member-at-Large of the Dallas City Council.
Elected.

October 1989-November 1991: Member of Ad Hoc Public Housing Committee.
Appointed by Dallas Mayor Annette Strauss.

February 1993-November 1995: Chair (1994), Judicial Nomination Committee,
City of Dallas.

May 1995-March 2000: Chair, Texas Lottery Commission. Appointed by then-
Governor George W. Bush.

1999: Vice-Chair, City of Dallas Ethics Review Task Force, appointed by City
Councilmember Mary Poss to review the city's ethics guidelines.

January 2001-June 2003: Staff Secretary, The White House. Appointed by
President George W. Bush.

July 2003-February 2005: Deputy Chief of Staff for Policy, The White House.
Appointed by President George W. Bush.

February 2005-Present: Counsel to the President, The White House. Appointed
by President George W. Bush.

- b. If, in connection with any public office you have held, there were any reports, memoranda, or policy statements prepared or produced with your participation, please supply four (4) copies of these materials. Please also provide four (4) copies of any resolutions, motions, legislation, nominations, or other matters on which you voted as an elected official, the corresponding votes and minutes, as well as any speeches or statements you made with regard to policy decisions or positions taken. "Participation" includes, but is not limited to, membership in any subcommittee, working group or other such group, which produced a report, memorandum or policy statement even where you did not contribute to it. If any of these materials are not available to you, please give the name of the document, the date of the document, a summary of its subject matter, and where it can be found.

The Committee has been provided with available records from my tenure on the Dallas City Council and the Texas Lottery Commission.

- c. List all memberships and offices held in and services rendered, whether compensated or not, to any political party, election committee, or transition team.

Please supply four (4) copies of any memoranda analyzing issues of law or public policy that you wrote on behalf of or in connection with a presidential transition team.

Treasurer, 1994 Nathan Hecht Judicial Campaign
General Counsel, George W. Bush Committee
General Counsel, 1994 Transition for Governor George W. Bush
General Counsel, 1994 Inaugural of Governor George W. Bush
Chair, Lawyers for Bush 2000
Presidential Transition, 2000-2001, Worked with the Transition Team concerning the Department of Justice.

I also provided legal services to the Presidential Election Committee in 2000.

While in private practice, I provided informal advice and counsel in connection with state judicial campaigns in Texas.

This information is as complete as I can provide at this time.

- d. If in connection with any public office, you have ever filed a financial disclosure form or ethics form or any similar form, please supply four (4) copies of each one.

See attached financial disclosure forms.

15. **Legal Career:** Please answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. 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;

I served as a law clerk to Chief Judge Joe Estes of the U.S. District Court for the Northern District of Texas from 1970-1972.

- ii. whether you practiced alone, and if so, the addresses and dates;

No.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Associate (1972-1978), then Shareholder (1978-1998), and then Partner (1998-January 2001) of the same firm for 28 years: Locke, Purnell, Boren, Laney & Neely, after merger Locke Purnell Rain Harrell, after merger Locke Liddell & Sapp

Locke Liddell & Sapp, LLP
2200 Ross Avenue
Suite 2200
Dallas, Texas 75201-6776

Staff Secretary (January 2001 – June 2003), then Deputy Chief of Staff for Policy (June 2003 – February 2005), and then Counsel to the President (February 2005 – Present)

The White House
Washington, D.C. 20502

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

My law practice has included both public and private service.

First, in public service, I have served since 2001 in various White House positions, most recently as Counsel to the President. The Counsel to the President is the chief legal advisor to the President and the White House. I, and my office, provide advice on a broad range of matters implicating constitutional, statutory and regulatory law, including the constitutionality of proposed regulations and statutes, constitutional prerogatives of the executive branch, legal policy, international law and treaty obligations, ethics, national security, executive appointments, and judicial nominations. I also served as Deputy Chief of Staff for Policy and Staff Secretary to the President. In these positions, I provided and managed recommendations and advice on public policy and legal issues to the President and other White House officials.

Also in public service, I have served as an elected member of the Dallas City Council (1989-1991) and as the Chair of the Texas State Lottery Commission (1995-2000). Although I did not serve strictly as a lawyer, in both of these positions I drew heavily on my legal background and contributed to the governing laws of Dallas and the State of Texas respectively.

In private practice, from 1972 until 2001, I was an associate and then a partner with Locke Liddell & Sapp, LLP, and its predecessor firms. My practice is best described as a general litigation and counseling practice. In my years in private practice I provided a broad range of corporate and individual clients with counseling, transactional assistance, and litigation services.

I began my career as an associate in the corporate section of the firm, but soon shifted to commercial litigation. Over the years, I have handled litigation

matters including antitrust, class action, contracts, family, First Amendment, immigration, intellectual property, products liability, real estate, mortgage lending, and securities law. My clients have ranged from multi-billion dollar international corporations to individuals. Many of my clients, both individuals and corporations, required a range of services, including litigation, transactional issues, and general legal counseling.

I have litigated matters in the Texas state courts and in the Federal courts, predominantly those in Texas and the United States Court of Appeals for the Fifth Circuit. My appearances in court included arguing motions, conducting full evidentiary hearings and trials, and briefing and arguing appeals. Given the nature of a modern corporate litigation practice, however, many cases were resolved without actual litigation or without a trial, and therefore are not reported.

I believe strongly in attorneys volunteering their time and giving back to their communities. While in private practice, I made the time to provide legal services pro bono, including work of a non-trial nature, such as contracts, family law, and wills. I pursued two such cases, one on behalf of a prisoner, and the other on behalf of a social security claimant, all the way to the Supreme Court of the United States, which denied certiorari.

In addition to my practice, throughout my career, I have served in numerous leadership capacities in the Dallas Bar Association, State Bar of Texas, and the American Bar Association. In these positions I worked to improve the practice of law and the legal system generally.

Immediately after law school, from 1970 to 1972, I was a law clerk to Judge Joe Estes, U.S. District Court for the Northern District of Texas. I conducted research and advised Judge Estes on the diverse issues that come before the Federal district courts, both criminal and civil.

- ii. your typical former clients and the areas, if any, in which you have specialized.

I have represented a broad range of clients, including individuals, partnerships, small and large corporations, and state and local government entities. For example, my clients included: Microsoft Corporation, Disney Enterprises, Inc., SunGard Data Systems, Inc., Schering Plough Corporation, C. R. Bard, Inc., Lomas Financial Corporation and individuals related to the corporation, Texas Automobile Dealers Association, Security Life of Denver, Chase Manhattan Bank, General Cable Corporation, Barrick Gold, Interstate Insurance, the Dallas Court of Appeals, Computer*Thought Corporation, Etronics, Inc., Federal National Mortgage Corporation, PNC Mortgage Corporation, Sears Mortgage Corporation, Polk & Patton Energy, Teachers Insurance & Annuity Association, A. H. Belo Corporation, Shintech Incorporated, Trinity Industries, TXI Industries, and Smith County, Texas.

- c. Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

I maintained an active litigation practice throughout my career in the private sector. During some periods, appearances in court would be frequent, and in some periods, appearances in court would be occasional, depending on the nature of the matters at hand.

- i. Indicate the percentage of these appearances in:
1. Federal courts;
 2. state courts of record;
 3. other courts.

While it is difficult to approximate these percentages, I had cases in both the Federal courts and State courts. My work was not trial intensive due to its nature, but I tried cases and argued appeals in both Federal and State courts.

- ii. Indicate the percentage of these appearances in:
1. civil proceedings;
 2. criminal proceedings.

Almost all civil.

- d. 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. For any appellate cases, state whether you made oral arguments, and supply four (4) copies of any briefs that were filed for those cases.

- i. What percentage of these trials were:
1. jury;
 2. non-jury.

While it is difficult to approximate these percentages, I have identified eight cases that were tried to verdict. I was lead counsel or sole counsel in four, lead local counsel in one, and associate counsel in three.

I recall arguing the following appellate cases: Jones v. Bush, 244 F.3d 144 (5th Cir. 2000), cert. denied, 531 U.S. 1062 (2001); Disney Enterprises, Inc. v. Esprit Finance, Inc., 981 S.W.2d 25 (Tex.App.-San Antonio, 1998); Microsoft Corp. v. Manning, 914 S.W.2d 602 (Tex.App.-Texarkana 1995); Thanksgiving Tower Partners, et al. v. Anros Thanksgiving Partners, 64 F.3d 227 (5th Cir. 1995); Perry v. Stewart Title Co., 756 F.2d 1197 (5th Cir. 1985); In re Grand Jury Proceedings, Misc. No. 1331, 712 F.2d 973 (5th Cir. 1983); Southwest Securities, Inc. v. Sungard Data Systems, Inc., 2000 WL 1196338 (Tex.App.-Dallas 2000). I

may have argued at the appellate level in other cases that I cannot recall and for which I have no records.

- e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice. Give a detailed summary of the substance of each case, outlining briefly the factual and legal issues involved, 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, and provide the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I represented clients in three cases in which certiorari to the Supreme Court of the United States was sought.

1. ***Jones v. Bush*, 122 F. Supp. 2d 713 (N. D. Tex. 2000), relief denied, 244 F.3d 144 (5th Cir. 2000) (unpublished), cert. denied, 531 U.S. 1062 (2001).**

I served as lead counsel for then-Governor George W. Bush in this case involving the 2000 presidential election. The litigation concerned a clause of the Twelfth Amendment to the Constitution that provides: “The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves.” U.S. Const. amend. XII. This clause bars a member of the Electoral College from voting for inhabitants of the same state as him or herself for both President and Vice-President. Texas voters brought suit in the United States District Court for the Northern District of Texas, arguing that George Bush and Richard Cheney were both inhabitants of Texas, which barred Texas Electors from voting for both candidates. The plaintiffs sought a preliminary injunction to prevent the Texas Electors from casting their votes for both then-Governor Bush and Mr. Cheney.

The case turned primarily on two legal issues: first, whether the plaintiffs had standing under Article III of the Constitution to pursue their action, and second, whether Mr. Cheney was an inhabitant of Texas or Wyoming. As counsel for then-Governor Bush, I defended the action on his behalf in the district court, filing, along with counsel for Mr. Cheney, a Motion to Dismiss and a Brief and Appendix in Opposition to the Application for Preliminary Injunction. In these filings, I argued on behalf of then-Governor Bush that the plaintiffs lacked constitutional standing to sue under the relevant clause of the Twelfth Amendment, and in the alternative that Mr. Cheney was an inhabitant of Wyoming rather than Texas within the meaning of the Twelfth Amendment. The district court granted the motion to dismiss on the basis that the plaintiffs lacked standing; it also denied the plaintiffs’ application for a preliminary injunction, holding that the plaintiffs had failed to show a substantial likelihood of success on their contention that Mr. Cheney was an inhabitant of Texas. *Jones*, 122 F. Supp. 2d at 715.

The plaintiffs appealed to the U.S. Court of Appeals for the Fifth Circuit. I, together with counsel for Mr. Cheney, filed the brief on behalf of appellees. The brief defended the district court's holdings regarding standing and Mr. Cheney's inhabitance. The day after the brief was filed, and the same day as the oral argument, the Fifth Circuit denied the appellants all requested relief. *See* 244 F.3d 144 (5th Cir. 2000) (unpublished). When appellants petitioned the Supreme Court to review the case, respondents waived response to the petition, which petition the Court denied. *See* 531 U.S. 1062 (2001).

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Roger B. Cowie

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E. Lee Parsley

E. Lee Parsley, P.C.

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For Richard B. Cheney:

Robin P. Hartmann

Stacy L. Brainin

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(214) 651-5000

For Elton Bomer, Texas Secretary of State:

Stacy L. Brainin

Haynes & Boone LLP

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For the Texas Electors:

Hon. John Cornyn

(Former Attorney General, State of Texas)

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2. *Popeko v. United States*, 513 F.2d 771 (5th Cir. 1975), cert. denied, 423 U.S. 917 (1975)

I served as the court-appointed attorney for Alex A. Popeko in the appeal of his habeas claim. Mr. Popeko was convicted in 1960 on two counts of causing to be transported in interstate commerce falsely made, forged and counterfeited securities, in violation of 18 U.S.C. § 2314, and one count of conspiracy to commit the latter offense, in violation of 18 U.S.C. § 371. He was sentenced to two consecutive 10-year terms of

imprisonment, one per substantive count, and to a 5-year term of imprisonment on the conspiracy count, concurrent with the sentence on the second substantive count. On direct appeal, the Fifth Circuit affirmed. *Popeko v. United States*, 294 F.2d 168 (5th Cir. 1961). In 1962, Mr. Popeko filed a motion for correction of an illegal sentence under Fed. R. Crim. P. 35. The district court denied the motion, and the Fifth Circuit again affirmed in a brief opinion. *Popeko v. United States*, 309 F.2d 752 (5th Cir. 1962) (*per curiam*).

Over a decade later, in 1973, Mr. Popeko filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. He contended that, although the two forged the checks in question were separately cashed at different banks in San Antonio, the interstate transportation of the checks did not occur until the San Antonio Branch of the Federal Reserve Bank forwarded them in the same envelope across state lines to the Detroit Branch of the Federal Reserve Bank. Consequently, he argued, he had committed only one crime justifying only one 10-year sentence. The district court rejected this argument, holding that, because Mr. Popeko had negotiated the checks separately, he had committed two crimes justifying two convictions and 10-year sentences, even though the checks were later transported together in the same envelope.

I represented Mr. Popeko in the Fifth Circuit on appeal of the denial of his § 2255 motion. The Fifth Circuit affirmed. 513 F.2d 771 (5th Cir. 1975). It held that it had already rejected Mr. Popeko's "single offense" argument in its 1962 decision respecting his Rule 35 motion; although the 1962 decision had not explicitly addressed the argument, it had necessarily rejected the contention, and the court was bound by that previous decision. *Id.* at 773. The court then noted that its position on the "single offense" issue accorded with that of the Eighth Circuit in *Amer v. United States*, 367 F.2d 803 (8th Cir. 1966), but was at odds with that of the Ninth Circuit in *Gilinsky v. United States*, 368 F.2d 487 (9th Cir. 1966).

I again represented Mr. Popeko in his petition to the Supreme Court for a writ of certiorari. In that petition, I argued on behalf of Mr. Popeko that the Supreme Court should review the case to resolve the split between the Federal appellate courts that the Fifth Circuit had noted. Such divisions are one of the primary reasons why the Supreme Court agrees to review particular cases. *See* Supreme Court Rule 10(a) (a consideration for granting review is that "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter"). The petition also urged that the Fifth Circuit's holding on the "single offense" issue conflicted with Supreme Court precedents.

The United States filed a memorandum in opposition, arguing principally that the Fifth Circuit was correct to decline to reconsider Mr. Popeko's claim, given that it had previously decided the claim against him in the Rule 35 appeal. Mem. for the United States in Opp. 2-3. The United States acknowledged the circuit split (and, in fact, noting that the Seventh Circuit had joined the Fifth and Eighth Circuits, *see United States v. Dilts*, 501 F.2d 531 (7th Cir. 1974)), but argued, among other things, that "[i]t is not certain that, in view of the decisions in three other circuits to the contrary, the Ninth Circuit now would adhere to its ruling in *Gilinsky*." *Id.* at 3 n.2.

The Supreme Court denied the petition for certiorari. 423 U.S. 917 (1975).

Opposing Counsel:

For the United States:

Jeremiah Handy (deceased)
Former Assistant U.S. Attorney

Hon. Robert H. Bork (at certiorari stage, as Solicitor General)
American Enterprise Institute
1150 17th Street, N.W.
Washington, D.C. 20036

3. *Ware v. Schweiker*, 651 F.2d 408 (5th Cir. 1981), cert. denied, 455 U.S. 912 (1982)

I represented Caroline Ware, an indigent mother with a ninth grade education who had worked as a nurse's aide to support six children, in this litigation concerning Social Security disability benefits and Social Security supplemental income.

Ms. Ware applied for benefits without the assistance of an attorney. Her claim was initially denied; she then requested a hearing. At the hearing before an administrative law judge (ALJ), Ms. Ware proceeded without an attorney. The ALJ denied all benefits, concluding that the medical evidence did not indicate that Ms. Ware had an impairment severe enough to preclude her from her usual work activity. That decision became the final decision of the Secretary of Health and Human Services, Richard S. Schweiker.

At the appellate stage, I represented Ms. Ware pro bono on a referral from the Dallas Legal Services Corporation. After the district court, accepting the recommendation of a magistrate judge, rejected Ms. Ware's petition for review of the ALJ's decision, I filed an appeal to the Fifth Circuit on Ms. Ware's behalf, arguing that the ALJ improperly failed to consider Ms. Ware's subjective complaints of pain as required by case law, that Ms. Ware was prejudiced by her earlier lack of counsel, that the ALJ failed to warn Ms. Ware that she bore the burden of proof and to explain to her the value of counsel, and that the ALJ failed to develop fully all relevant facts, a problem worsened by the absence of counsel. The Fifth Circuit affirmed. 651 F.2d 408 (5th Cir. 1981). It held that the ALJ had indeed erred in failing to consider Ms. Ware's subjective complaints of pain, but that, on the record as a whole, "no further findings could be made that would alter the ALJ's determination." *Id.* at 412. It further held that the previous absence of counsel did not prejudice Ms. Ware, *id.* at 413, and that there was no reason to think that the development of additional evidence would have helped Ms. Ware, *id.* at 414. Ms. Ware petitioned for rehearing, which the Fifth Circuit denied.

With the assistance of co-counsel, I represented Ms. Ware before the Supreme Court in her petition for certiorari. The petition again contended that the ALJ failed to consider Ms. Ware's subjective complaints of pain, and that the ALJ failed to advise Ms. Ware regarding her burden of proof and the value of counsel; consequently, the petition argued, the case should be remanded to the ALJ. The government waived its right to respond, and the Court denied the petition, 455 U.S. 912 (1982).

Counsel:

Co-counsel for Ms. Ware:
Hon. Elizabeth Lang-Miers
Justice
5th District Court of Appeals
600 Commerce Street, Suite 200
Dallas, TX 75202
(214) 712-3400

For Schweiker:
Martha Joe Stroud
Current address unknown.

Rex E. Lee (at certiorari stage, as Solicitor General) (deceased)

16. **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.

If any of these cases has already been described in 15(D) above, it need not be repeated here. In addition, list all litigated matters in which you were involved, if not covered in 15(D) above or in the first part of this question.

1. ***Microsoft Corp. v. Manning*, 914 S.W.2d 602 (Tex. App.—Texarkana 1995, pet. dismissed).**

I served as lead local counsel for Microsoft and was the principal client contact. This case was an appeal from a state-court ruling that had granted the plaintiffs' motion

for class certification. The putative class of software purchasers sued Microsoft alleging breach of express warranty, breach of implied warranty, unjust enrichment, and violations of the Magnuson-Moss Warranty--Federal Trade Commission Improvement Act, and Washington Consumer Protection Act. The case turned on the interplay between state and Federal class action laws, and also raised Federal constitutional issues involving the proper application of the Due Process Clause and the Full Faith and Credit Clause. Other issues included the speculative nature of the damages where no actual loss of data was shown and whether or not reliance-based causes of action could be certified as a class action in light of the multitude of individual fact issues arising from each class member's circumstances. Microsoft contended that the trial court's class certification violated Microsoft's due process rights under the state and Federal constitutions and the Full Faith and Credit Clause of the United States Constitution. Specifically, Microsoft argued that the trial court violated the Constitution by applying Texas law to plaintiffs outside Texas whose own states' laws did not recognize such a legal theory. However, the trial court held that the class certification did not violate constitutional due process or the Full Faith and Credit Clause. Microsoft lost its appeal to the intermediate appellate court. On behalf of Microsoft, I filed a Petition for Writ of Mandamus with the Texas Supreme Court, oral argument was granted and briefs were filed. After Microsoft filed its brief with the Texas Supreme Court, the district court, on its own motion, vacated its class certification ruling, stating expressly that it did so after finding Microsoft's Supreme Court brief persuasive. (Subsequently, the Texas Supreme Court affirmed Microsoft's position in this case by holding that reliance-based causes of action are not suitable for class certification. *See Henry Schein, Inc. v. Stromboe*, 102 S.W.3d 675 (Tex. 2002)). Thereafter, the plaintiff non-suited the case.

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Courts and Presiding Judges: The Honorable Bonnie Leggat, 71st Judicial District Court, Harrison County, Texas; The Honorable William J. Cornelius, Court of Appeals of Texas, Sixth District, Texarkana, Texas; The Honorable Charles Bleil, Court of Appeals of Texas, Sixth District, Texarkana, Texas; The Honorable Ben Z. Grant, Court of Appeals of Texas, Sixth District, Texarkana, Texas.

2. ***Jones v. Bush*, 122 F. Supp. 2d 713 (N.D. Tex), *aff'd mem.*, 244 F.3d 134 (5th Cir. 2000), *cert. denied*, 531 U.S. 1062 (2001).**

I was lead counsel, and along with co-counsel, successfully represented then-Governor Bush of Texas, who was a defendant in this Twelfth Amendment case. Texas voters brought suit to preclude Texas electoral college delegates from voting for George Bush and Richard Cheney for President and Vice President of United States, on the grounds that the Twelfth Amendment barred electors from voting for presidential and vice presidential candidates who were inhabitants of the same state, Texas. This is one of the very few modern cases to litigate issues under the Habitation Clause of the Twelfth Amendment. The district court dismissed this case for lack of standing. The Fifth Circuit affirmed that dismissal. The U.S. Supreme Court denied plaintiffs' petition for Writ of Certiorari.

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Courts and Presiding Judges: The Honorable Sidney A. Fitzwater, United States District Court for the Northern District of Texas; The Honorable Patrick E. Higginbotham, United States Court of Appeals for the Fifth Circuit; The Honorable Jacques L. Wiener, United States Court of Appeals for the Fifth Circuit; The Honorable Rhesa H. Barksdale, United States Court of Appeals for the Fifth Circuit.

3. *Disney Enterprises, Inc. v. Esprit Finance, Inc.*, 981 S.W.2d 25 (Tex. App.—San Antonio 1998, pet. dismiss’d w.o.j.). (“Disney”) at the trial and appeal.

I served as lead counsel for Disney Enterprises (“Disney”). The key question was whether the Texas courts could exert personal jurisdiction over a wholly-owned Disney subsidiary incorporated in Delaware. This question raised several potential constitutional issues. First, the Due Process Clause of the Fourteenth Amendment requires that there be sufficient “minimum contacts” between the subsidiary and Texas to justify forcing the subsidiary to respond to a lawsuit in the Texas courts. Resolution of this issue relied in turn on a number of factual and legal issues under agency and contract law. Second, in order for jurisdiction to lie properly under the Federal Constitution, requiring Disney to submit to the Texas courts had to comply with “fair play and substantial justice.” While Disney lost the personal jurisdiction issue in the trial court, the San Antonio Court of Appeals decided in favor of Disney in an interlocutory appeal, which I argued. Although plaintiffs filed for certiorari in the Texas Supreme Court, the court declined to hear the case on jurisdictional grounds.

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Courts and Presiding Judges: The Honorable Antonio Zardenetta. 111th Judicial District Court. Webb County, Texas; The Honorable Catherine Stone, 4th Court of Appeals, District of Texas, San Antonio; The Honorable Paul W. Green, 4th Court of Appeals, District of Texas, San Antonio; The Honorable Karen Angelini, 4th Court of Appeals, District of Texas, San Antonio.

4. *Pollner v. Former Directors and Officers of The Lomas Financial Corporation/Lomas Mortgage USA, Case No. 97-08756-G, (134th Judicial District, Dallas County, Texas).*

I served as lead counsel for The Lomas Financial Corporation/Lomas Mortgage USA (“Lomas”) and over thirty individuals named as defendants, who ranged from the CEO to an administrative assistant. In 1997, the Litigation Trustee of The Lomas Financial Corporation/Lomas Mortgage USA Joint Litigation Trust (“Pollner”) filed a Directors’ and Officers’ Liability Case against former officers and directors of Lomas. This case raised issues requiring an extensive analysis of Delaware corporations law, including the relationship and duties owed between officers and directors of a corporation and the corporation. Among other things, the case raised the questions whether interest swap transactions violated the Delaware “business judgment rule,” and whether the actions of Lomas’s officers and directors supported a finding of corporate waste. It also raised several issues regarding the proper interpretation of and application of multiple layers of insurance coverage to the claims asserted against the defendants. While pursuing the litigation, the plaintiff utilized separate settlement counsel to pursue settlement negotiations. In addition to the ongoing litigation, I served as lead counsel for Lomas in the settlement negotiations. Ultimately a global settlement was reached prior to trial, after several mediations and months of negotiations.

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Court and Presiding Judge: The Honorable Anne Ashby, 134th District Court, Dallas County, Texas.

5. *Westinghouse Electric Corporation v. Rio Algom Ltd., et al.*, Case no. 76-C-3830, 1980 WL 1973 (N.D. Ill. 1980).

I, along with co-counsel, represented Pioneer Nuclear, a subsidiary of Pioneer Corporation, and a defendant in this case for a five-year period. Pioneer was engaged in the business of mining, milling, and selling uranium in the United States. Pioneer Corporation was a publicly held corporation that was primarily engaged in oil and gas exploration, development, production, distribution, and sales. It was the gas public utility for Amarillo, Texas and a large part of the panhandle of Texas. The primary place of business of Pioneer Nuclear and Pioneer Corporation was Amarillo. Westinghouse sued 29 domestic and foreign producers of uranium, including Pioneer Nuclear. It alleged that the defendants unlawfully combined and conspired to restrain free competition in the distribution, sale, and importation of uranium in the United States for the purpose of increasing the market price of uranium, in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. §1, and Section 73 of the Wilson Tariff Act, 15 U.S.C. §8.

This complex case, with potential damages approximated at \$9 billion, involved nearly every producer of nuclear energy in the country at that time and defense counsel from across the nation. A significant issue for Pioneer was whether the United States District Court for the Northern District of Illinois had personal jurisdiction over it, raising issues under the Due Process Clause of the Fourteenth Amendment. Among other issues that were raised in the course of discovery were activities and conduct that allegedly constituted Pioneer Nuclear's involvement in the purported unlawful antitrust conspiracy; activities and conduct of domestic codefendants and trade organizations; activities and conduct of foreign defendants in alleged international cartel; as well as an analysis of free market factors explaining an increase in the price of uranium and the definition of the relevant market. I engaged in settlement negotiations on behalf of Pioneer and settled on the basis that all claims against Pioneer Nuclear were dismissed without it paying any money or providing any other consideration to Westinghouse.

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Court and Presiding Judge: The Honorable Prentice H. Marshall, United States District
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6. *Southwest Securities, Inc. v. SunGard Financial Systems Inc.*, No. 05-98-01216-CV, 2000 WL 1196338 (Tex. App.—Dallas, Aug. 23, 2000), and *SunGard Data Systems, Inc. v. Southwest Securities Inc.*, No. 05-99-00472-CV (Tex. App.—Dallas, Oct. 19, 2000).

This matter arose out of several employment agreements and a contract for commercial services. I represented the defendant, SunGard Financial Systems (“SunGard”), participating at the trial, and arguing the appeal.

The case arose after SunGard offered to invest in a brokerage clearing business to be started by two former employees of Barre & Co, which had merged into Southwest. Barre had contracted with SunGard Financial Systems for data services, and had agreed not to hire any of Barre’s employees for two years. When Barre announced its intention to merge with Southwest, two of its employees approached SunGard to discuss working

for, or providing services to, SunGard. When SunGard developed plans to invest in their business, Southwest filed suit. Southwest alleged multiple causes of action including breach of contract and tortious interference claims, and sought \$20 million in actual damages, as well as punitive damages, injunctive relief, and fees. Southwest's damages claims were based in part on the fact that many of its clients would have left to use the new business in which SunGard would invest. SunGard counterclaimed, alleging breach of contract and tortious interference with business relations, among other claims, and also sought damages and fees. The trial court directed verdicts for SunGard on all of Southwest's claims except its breach of contract claim. The jury subsequently found that SunGard had breached the agreement, but that Southwest had suffered no damages. The trial court awarded SunGard \$46,247 in damages and interest on its breach of contract counter-claim, and awarded it \$1,550,000 in attorney's fees. I, along with co-counsel, argued the appeal. The appellate court affirmed the district court's judgment in part, and reversed the district court's directed verdict for SunGard on Southwest's breach of contract claim, which required reconsideration of the attorney's fees. After the case was remanded for another trial on the remaining issues, the parties agreed to a "walk-away" settlement.

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Courts and Presiding Judges: The Honorable Michael O'Neill, 193rd Judicial District Court, Dallas County; The Honorable Mark Whittington, 5th Court of Appeals, District of Texas, Dallas; The Honorable Carolyn Wright, 5th Court of Appeals, District of Texas, Dallas; The Honorable David Bridges, 5th Court of Appeals, District of Texas, Dallas.

7. *Perry v. Stewart Title Co., et al*, 756 F.2d 1197 (5th Cir. 1985).

I served as co-counsel for Fannie Mae ("FNMA") in this mortgage-lending case that was tried to a jury and appealed to the U.S. Court of Appeals for the Fifth Circuit. I

was the lead trial counsel on behalf of FNMA, and argued and briefed the case in the Fifth Circuit. After purchasing their home, the plaintiffs discovered that the local utility had an easement over which the builder had placed the garage and driveway. The plaintiffs attempted to rescind the contract for the purchase of the home. The plaintiff asserted more than 70 claims, including breach of contract, breach of warranty, statutory and common law fraud, negligence, deceptive trade practices, usury, loan disclosure violations, truth in lending violations, and unfair debt collection practices.

When FNMA threatened to foreclose on the plaintiffs' property after they failed to pay the mortgage, the plaintiffs brought FNMA into the lawsuit as a party-defendant. FNMA removed the case to Federal court and counterclaimed for the proceeds of the sale of the property. In addition to requiring a review of general real property issues such as the relationship of deeds, easements, and title insurance policies, this case required the parties to litigate important issues under Federal law, including several issues of statutory construction. These included whether the Fair Debt Collection Practices Act ("FDCPA") applies to the consumer's creditors, FNMA, and mortgage servicing companies and the proper interpretation of the phrase "debt collector" as used in the FDCPA. We litigated whether the Truth in Lending Act applied to FNMA because FNMA was not a creditor of the plaintiff's at the time a disclosure under the Act was made and whether the disclosure statements provided to the plaintiffs at the time of their closing complied with the Truth in Lending Act. Numerous state law issues were also raised, including requirements for a purchaser of real property to rescind a land-sale contract; the calculation of "principal" and "interest" for purposes of evaluating a claimed violation of Texas usury laws; the definition of the term "debt collector" as used in the Texas Debt Collection Act ("TDCA"); and whether there was a breach of warranty (requiring an analysis of Texas law regarding the passing of title and related warranties from purchasers to sellers).

At the end of the trial, the district court granted a directed verdict in favor of FNMA, while some claims against other defendants went to the jury. The district court subsequently granted a motion for a judgment notwithstanding the verdict on other parties' claims. The Fifth Circuit affirmed the district court's decision on most claims, except that the district court reversed the directed verdict on the plaintiffs' claims for violations of the TDCA. The Fifth Circuit remanded the case for a trial on those TDCA claims. On rehearing, the Fifth Circuit left the decision of whether FNMA could recover attorneys' fees to the district court for consideration on remand, after the TDCA issues were resolved. The matter was then resolved in a mutually beneficial matter.

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Courts and Presiding Judges: The Honorable Robert O'Connor, Jr., United States District Court for the Southern District of Texas; The Honorable Jerre S. Williams, United States Court of Appeals for the Fifth Circuit; The Honorable Samuel D. Johnson, United States Court of Appeals for the Fifth Circuit; The Honorable Charles Clark United States Court of Appeals for the Fifth Circuit.

8. *Most Reverend Charles V. Graham, his predecessors (including the Most Reverend Thomas Tschope), and successors, as Bishop of the Roman Catholic Diocese of Dallas v. Interstate Fire & Casualty Co.*

I was lead counsel for Interstate Fire & Casualty Company (an excess insurance carrier) in this suit that the Catholic Church in Dallas filed seeking to obtain indemnification from liability and defense costs from its insurers. The Catholic Church was seeking coverage after a jury returned a \$101.6 million verdict against the Church based upon eleven separate incidents of sexual abuse and child molestation by Father Kos, who had been an active member of the Diocese of Dallas. (Father Kos was also indicted and convicted for his acts). The jury had found that Father Kos committed his acts while acting in the course and scope of his employment. The jury also found, among other things, the Diocese committed fraud and intentionally concealed facts relating to Father Kos. Interstate Fire & Casualty, as well as the other insurers, denied coverage because Father Kos's actions were intentional acts that were not covered by the Catholic Church's insurance policies.

There were numerous issues raised in this litigation, including whether sexual abuse and child molestation are intentional acts that are not covered by insurance and whether the insurance companies had a duty to defend the Diocese in the lawsuits filed against it. The case also involved questions of whether Texas public policy precluded insurance coverage for acts of sexual abuse and child molestation. The case settled prior to trial.

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Court: 134th Judicial District Court in Dallas County.

9. *Lomas Mortgage USA, Inc. and Maria Zacharjasz and Jan Zacharjasz , Individually and on behalf of all others similarly situated v. The Lomas and Nettleton Company, Civil Action No. 87-4303, 1988 WL 54066 (E.D. Pa. 1988); (1989) WL 41414 (E.D. Pa. 1989).*

I was the lead counsel for The Lomas and Nettleton Company ("Lomas"). In this case, the Federal Trade Commission ("FTC") alleged that Lomas had engaged in unfair or deceptive acts or practices, in violation of the Federal Trade Commission Act, by failing to deliver locked-in rates to potential mortgagors. Separately, private plaintiffs sought to bring a class action against Lomas and recover punitive damages, alleging a myriad of claims, involving RICO, fraud, misrepresentation, negligence, intentional wrongdoing, breach of fiduciary duty, and breach of an implied covenant of good faith and fair dealing. Lomas admitted that it had failed to fulfill many sixty-day lock-in agreements to provide a specified rate of interest, but contended, among other things, that neither a class action nor RICO claims were appropriate.

Although Lomas faced significant exposure, the case was settled after favorable rulings by the Federal district court. The court found that a class action was appropriate only for potential plaintiffs within the Commonwealth of Pennsylvania and dismissed the RICO and express contract claims. The FTC matter was resolved with a consent decree and a redress program that was acceptable to Lomas.

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Court and Presiding Judge: The Honorable Clarence C. Newcomer, U.S. District Court for the Eastern District of Pennsylvania.

10. *George R. Truitt, Trustee for Hunt International Resources Corporation v. Manufacturers Hanover Trust Company, et al*, (Civ. Action No. 3-91-13d-D (N.D. Texas)).

I served as lead counsel for Manufacturers Hanover Trust Company (“MHTC”) and appeared in court for pretrial proceedings. This case involved a complicated fraudulent transfer arising out of the Chapter 7 bankruptcy of Hunt International Resources Corporation (“HIRCO”). The Trustee alleged that certain payments received by “MHTC” on a \$37,000,000.00 loan (“Planet Loan”) it made to Planet Investment Company (“Planet”), the parent company of HIRCO, were constructive fraudulent transfers under the Bankruptcy Code and/or Texas and Delaware state law. The proceeds of the Planet Loan allowed Planet to redeem certain preferred stock of HIRCO and purchase the publicly traded common stock of HIRCO in a leveraged buyout. Allegedly, the funds were actually used by Planet to repay a loan extended by Nelson Bunker Hunt and William Herbert Hunt, the beneficiaries of the trusts that owned the Planet stock. The HIRCO Trustee alleged that payments made on the Planet Loan came from funds owned by HIRCO, that HIRCO received no consideration for the upstream transfers of funds, and that payments made to MHTC subsequent to September 30, 1981, were made at a time when HIRCO was insolvent. The post-September 30, 1981 payments totaled in excess of \$10.6 million. The HIRCO Trustee sought the recovery of that sum, plus interest, from MHTC and certain officers and directors of HIRCO. MHTC contended that HIRCO had received fair consideration for the transfers, including approximately \$13,000,000.00 from the original Planet Loan proceeds and cash contributed by Herbert and Bunker Hunt, the release of approximately 3,000,000 ounces of silver held as collateral for the Planet Loan, the issuance of standby letters of credit, and the release of certain affiliate guarantees. Additionally, MHTC contended that HIRCO was solvent at the time of each transfer.

After approximately four years of contested pre-trial proceedings, the case was settled on the eve of trial favorably for MHTC. The various pre-trial issues litigated involved the right to a jury trial in bankruptcy court under Supreme Court precedent (*Granfinanciera, S.A. v. Nordberg*, 109 S.Ct. 2782 (1989)); the appropriate grounds for withdrawal of the reference of jurisdiction from the bankruptcy court to the Federal district court; HIRCO’s solvency; whether the contributions of capital to HIRCO by affiliates, releases of collateral by MHTC, and financial accommodations provided to HIRCO’s affiliates constituted fair consideration under Federal and state fraudulent conveyance law; judicial estoppel arising from pleading admissions by a party, alter ego; the appropriate credit for co-defendant settlements; expert witness qualifications; and the legal basis, if any, for an award of interest or attorney’s fees in a fraudulent transfer action.

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Courts and Presiding Judges: The Honorable Robert C. McGuire, United States Bankruptcy Court for the Northern District of Texas, Dallas Division; the Honorable Joe A. Kendall, United States District Court for the Northern District of Texas.

17. **Constitutional Issues:** Please describe in detail any cases or matters you addressed as an attorney or public official which involved constitutional questions. For each case or matter, please describe in detail the constitutional issue you dealt with, the context in which you dealt with it, and the substance of any positions you took related to that issue. Please identify and provide copies of: any briefs you have drafted or filed, transcripts or other records of any oral arguments you have made, and memoranda, speeches or other materials you have written relating in any way to such issues, as well as any other materials that reflect your familiarity with, views on, or questions regarding such issues.

As Counsel to the President, I am regularly faced with issues involving constitutional questions. I am called upon to advise the President and White House officials on presidential prerogatives, the separation of powers, Executive authority, and the constitutionality of proposed regulations and statutes.

While in private practice, I handled cases involving constitutional questions, some of which are described in more detail in response to questions 15 and 16. I represented Disney Enterprises on several occasions in litigation brought in Texas that involved issues of personal jurisdiction, including *Disney Enterprises, Inc. v. Esprit Finance, Inc.* In that case, like others in which I represented Disney, I argued that, under the Due Process Clause of the Fourteenth Amendment, there were not sufficient “minimum contacts” between Disney and Texas to justify forcing the company to respond to a lawsuit in the Texas courts. I have handled many cases involving issues of personal jurisdiction under the United States Constitution. For instance, in *Westinghouse Electric Corporation v. Rio Algom Limited*, described in detail in response to question 16, a significant issue was whether the United States District Court for the Northern District of Illinois had personal jurisdiction over my client, Pioneer Nuclear, consistent with the Due Process Clause of the Fourteenth Amendment. We argued that Pioneer had insufficient contacts with Illinois to be subject to personal jurisdiction there, the court ultimately disagreed.

Microsoft Corp. v. Manning, described more fully in question 16, involved the interplay between state and Federal class action laws, and also raised Federal constitutional issues involving the proper application of the Due Process Clause and the Full Faith and Credit Clause. On behalf of Microsoft, I argued that the trial court’s class certification violated Microsoft’s due process rights under the state and Federal constitutions and the Full Faith and Credit Clause of the United States Constitution. The trial court decertification of the class was in part based upon the briefing filed on behalf of Microsoft. Thereafter, the plaintiffs dismissed the case altogether.

I handled one of the only modern cases to address the Habitation Clause of the Twelfth Amendment, which states: “The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves.” *Jones v. Bush*, 122 F. Supp. 2d 713 (N. D. Tex. 2000), *relief denied*, 244 F.3d 144 (5th Cir. 2000) (unpublished), *cert. denied*, 531 U.S. 1062 (2001). This clause bars a member of the Electoral College from voting for inhabitants of the elector’s state for both President and Vice-President. I argued on behalf of then-Governor Bush that the plaintiffs lacked constitutional standing to sue under the relevant clause of the Twelfth Amendment, and in the alternative that Mr. Cheney was an inhabitant of Wyoming rather than Texas within the meaning of the Twelfth Amendment.

In *George R. Truitt, Trustee for Hunt International Resources Corporation v. Manufacturers Hanover Trust Company*, described in detail above, among the issues litigated pre-trial was the scope of the Seventh Amendment right to a jury trial in suits at common law as discussed in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989).

In addition to litigated matters, I represented a media client for many years. My representation encompassed many First Amendment issues that were never litigated, including libel. For instance, I would often consult on prepublication review of articles and issues related to reporters’ sources of information.

While I was an at-large member of the Dallas City Council, I dealt with issues that involved constitutional questions. For instance, when addressing a lawsuit under Section 2 of the Voting Rights Act, the council had to be sure to comply with the proportional representation requirement of the Equal Protection Clause. Likewise, everyday city council issues potentially implicate constitutional rights, including zoning decisions, voting redistricting, eminent domain, and police activities. As a member of the Texas State Lottery Commission, I was responsible for overseeing the operations of one of the nation's largest lotteries. Among the many issues before the commission were questions arising under the Federal Indian Gaming Regulatory Act, which implicates tribal sovereign immunity.

From 1970-1972, I served as law clerk to United States District Court Judge Joe E. Estes. Judge Estes routinely heard cases implicating constitutional issues, and I assisted in researching and drafting opinions and orders.

18. **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 fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s).

My legal experience is broad ranging, representing individuals and corporations in cases that cut across areas of local, state, and Federal law. For example, I have been called to a deathbed to make sure the individual had a valid, enforceable will; I have represented parents in contentious custody battles; I have represented a woman facing deportation to a country where she and her son would be ostracized; I have represented a well-reputed individual accused of securities fraud; and I have represented an array of corporate interests.

In commercial litigation, many matters are resolved by negotiation prior to suit, settlement before trial or are disposed of by the court on summary judgment. These results and outcomes are as important to the clients as jury verdicts. Many of the matters in my practice have been resolved in this fashion and I have described some in response to Question 16.

Much of my legal experience dealt with contracts and similar everyday matters. Sometimes, because of jurisdictional issues, concepts of due process would loom large. In representing a media client, I was involved in First Amendment matters concerning libel allegations, prepublication review, and sourcing issues.

In addition to my practice of law, my experience includes running and holding public office. As an at-large city councilmember, I dealt with city issues from supporting the police and firemen to paving issues. I also was called upon by the Mayor to be the Council's principal representative in responding to a suit in which a Dallas Federal judge found that the city had discriminated in Federally funded housing. Additionally, the city faced a legal challenge under Section 2 of the Voting Rights Act.

My experience on the City Council helps me understand the interplay between serving on a policy making board and serving as a judge. An example, of this distinction can be seen in a vote of the council to ban flag burning. The Council was free to state its policy position, we were against flag burning. The Supreme Court's role was to determine whether our Constitution allows such a ban. The City Council was anxious to encourage minority and women-owned businesses, but our processes had to conform to equal protection requirements, as well.

My City Council service and working in economic development activities afforded me with special insight into the importance of a stable, respected, and fair judiciary in which the public can have confidence. A factor in persuading companies to consider relocation or location in Texas was the state of our judiciary. Allegations of "justice for sale" or inflated jury verdicts impaired efforts to attract employers to our State. Companies making location decisions look for a fair, balanced court system.

My experience in leadership positions with the Dallas Bar and the State Bar of Texas is detailed to some extent in articles I wrote at the time. Lawyer advertising, regulation of lawyers by the Federal Trade Commission, the importance of pro bono work, and education about the legal system and the courts were just some of the topics with which the bar associations were involved. My work with these professional associations provided me with valuable experience in dealing with the challenges facing our justice system. My involvement with the American Bar Association was similarly valuable. Serving as a member of the Board of the ABA Journal for six years and then as Chair of the Board provided me with a wealth of experience with the issues that face the profession and our courts, such as the importance of an independent judiciary and proper funding for the judiciary. Likewise, serving on committees such as the Election Law Committee provided an understanding of the balance between the appropriate regulation of electioneering and the protection of free speech as guaranteed in the First Amendment.

In addition to the professional work I have done, I have had the opportunity to work in the community with a variety of organizations. That work has included easing the transition for inmates into the community, helping ensure that young people receive education about our legal system, working with organizations to assist underprivileged children, working with Goodwill, and lending my time and efforts to a number of other charitable organizations.

I have also had the opportunity to serve in the White House in three separate positions. This experience has given me a thorough view of how the Executive Branch functions. Likewise, in my current job, I have had an increased opportunity to work with

members of the Congress in connection with a number of issues, and that opportunity has given me a greater insight into the role of the Legislative Branch.

A critical role of my current job is to assist in the formulation of recommendations for individuals to fill judicial vacancies. I also participated in such activities as Deputy Chief of Staff. My work in this area confirmed my view that judges must limit their role to interpreting and applying the law, leaving policymaking and legislating to others.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

I taught trial advocacy at Southern Methodist University School of Law, and taught National Institution of Trial Advocacy courses held at SMU during summer upon request. I have been unable to locate any syllabi. In addition, I have participated in panel discussions and given talks for continuing legal education.

20. **Party to Civil Legal or Administrative Proceedings:** State whether you, or any business of which you are or were an officer or any partnership, trust or other business entity with which you are or were involved, have ever been a party or otherwise involved as a party in any civil, legal or administrative proceedings. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest.

In my individual capacity, I do not recall being a party to any civil, legal, or administrative proceedings. As is the case with any major law firm, my firm was a party to a number of law suits over my thirty years of practice. However, in none of these was I, or my work, the subject of complaint.

In one matter, documents related to a case on which I worked were sought. That matter was resolved by mutual consent. (Martin Pollner, et al v. Locke Purnell Rain Harrell," Cause No. A-98-528). Additionally, I was a witness in a gender discrimination suit against my firm, Locke, Purnell, Rain, & Harrell (the name at the time). I also served from time to time as a witness about attorneys fees claimed in lawsuits.

In addition, in various roles (such as the Lottery Commission, Dallas City Council Member, State Bar of Texas President, Dallas Bar President), I may have been named as a defendant in my official capacity in civil suits. I have no specific recollection of any such suits and they would have been handled without my involvement. I do not have any information about their disposition.

21. **Deferred Income/ Future Benefits**: List the 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.

22. **Potential Conflicts of Interest**: 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. Specifically, explain how you will resolve any conflicts that may arise by virtue of your service in the Bush Administration, as George W. Bush's personal lawyer, or as the lawyer for George W. Bush's Gubernatorial and Presidential campaigns. In addition, please explain how you will resolve any conflicts that may arise from your time engaged in the private practice of law.

I would resolve any potential conflict of interest by abiding by both the spirit and the letter of the law. I would comply with the Ethics Reform Act of 1989, 28 U. S. C. Section 455, the Code of Conduct for United States Judges, and other applicable requirements. These proscriptions would provide needed direction concerning the recusals necessary as a result of my government service or previous representations as a private lawyer.

23. **Outside Commitments During Court Service**: 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.

24. **Sources of Income**: 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.

25. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached statement of net worth.

26. **Pro Bono Work:** 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.

Throughout my career, I have performed pro bono work and encouraged pro bono work through the bar. In response to questions 15 and 16, I have detailed some of the litigated matters that I have handled pro bono in the Federal courts, including a habeas petition and a claim for disability benefits. Other examples include an immigration matter I handled for a woman and her son facing deportation, and a range of family matters, including a paternity suit, adoption, and estate planning. I also spent time attending clinic sessions and talking to individuals in need of services.

In addition to direct pro bono work, I advocated pro bono service as President of the Dallas Bar. It was a priority for me during my tenure as President, and I taped a video on pro bono services for presentation throughout the city. I also traveled around the State speaking with Editorial Boards along with the coordinator of Texas Lawyers Care, our State Bar arm for encouraging and facilitating pro bono work. I advocated the funding of appropriate legal services for the poor in our State legislature. I was awarded the Legal Services Corporation Merrill Hartman Award for my work in Dallas performing and advocating for pro bono services. At my firm, I encouraged pro bono work. Our attorneys volunteered to staff free legal clinics and handled death penalty cases. I also served on the ABA’s Consortium for Delivery of Legal Services, which encouraged pro bono services.

27. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). List all interviews or communications you had with anyone in the Executive Office of the President or the Justice Department regarding this nomination, or any other judicial nomination for which you were considered, the dates of such interviews or communications, and all persons present or participating in such interviews or communications.

When Justice Sandra Day O’Connor first announced her desire to retire, I was asked whether my name should be considered. I indicated at that time that I did not want to be considered. I participated in all interviews that ultimately resulted in the President’s selection of Judge John Roberts.

When Chief Justice William Rehnquist passed away, I participated in consideration of potential nominees to fill a second vacancy. At some point I understand that individuals at the White House began considering me as a potential nominee without advising me. During approximately the last two weeks before the announcement of the intent to nominate, I spoke with Deputy White

House Counsel William Kelley, Chief of Staff Andrew Card, and the President, and realized that my name was under consideration. I met with the President four times to discuss the possibility of my nomination: September 21, 28, 29, and October 2. I had a discussion with the President on the evening of October 2nd and had dinner with the President and Mrs. Bush. At that time he offered and I accepted the nomination. The dinner was arranged by the Chief of Staff.

- b. Has anyone involved in the process of selecting you as a judicial nominee (including, but not limited to anyone in the Executive Office of the President, the Justice Department, or the Senate and its staff) ever discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully. Please identify each communication you had prior to the announcement of your nomination with anyone in the Executive Office of the President, the Justice Department or the Senate or its staff referring or relating to your views on any case, issue or subject that could come before the Supreme Court of the United States, state who was present or participated in such communication, and describe briefly what transpired.

No.

- c. Did you make any representations to any individuals or interest groups as to how you might rule as a Justice if confirmed? Please describe and provide four (4) copies of all communications by the Bush Administration or individuals acting on behalf of the Administration to any individuals or interest groups with respect to how you would rule if confirmed.

No.

28. **Judicial Activism**: 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 the judiciary in our system of government is limited. While its role and its independence are essential to the proper functioning of our tripartite system of government, the courts cannot be the solution to society's ills, and the independence of the courts provides no license for them to be free-wheeling. And, of course, parties should not be able to establish social policy through court action, having failed to persuade the legislative branch or the executive branch of the wisdom and correctness of their preferred course. Courts are to be arbiters of disputes, not policy makers. As has been said many times, the role of the courts is to interpret law and not to make it. My own beliefs about these issues have been formed over many years, and find their roots in the beginning of my legal career.

Beginning during my two years as a Federal district court clerk, I was taught by the judge for whom I clerked, Judge Joe E. Estes, the importance of Federal courts' keeping to their limited role. His first task – and therefore mine in assisting him – in every case before him was to examine whether the case was properly in court. Was there a party with standing? Did subject matter jurisdiction exist? Was venue proper? These were all questions – and all related questions going to whether the court had subject matter jurisdiction – that he wanted answered before any others. If the answer was “no” to any of them, the case was dismissed promptly. These basic rules of Article III impose a clear responsibility on courts to maintain their limited role.

“Judicial activism” can result from a court's reaching beyond its intended jurisdiction to hear disputes that are not ripe, not brought by a party with standing, not brought in the proper court, or otherwise not properly before the court because of the case's subject matter. An additional element of judicial restraint is to be sure only to decide the case before the court, and not to reach out to decide unnecessary questions. The courts have the essential role of acting as the final arbiter of constitutional meaning, including drawing the appropriate lines between the competing branches of government. But that role is limited to circumstances in which the resolution of a contested case or controversy requires the courts to act.

As I entered private practice, I grew to appreciate even more the importance of predictability and stability in the law, and came to believe that those values are best served by a rigorous and focused approach to the law. For the legal system to be predictable, the words are vital – whether they are agreed upon by parties to a contract or are the product of legislative compromise. Many times in practice I found myself stressing to clients the importance of getting the words *exactly* right if their interests were to be protected in the future. Legal practice also taught me the importance of stability in the law. A lawyer must be able to advise her clients based upon the existing case law. Courts should give proper consideration to the text as agreed upon, the law as written, and applicable precedent. Then our system of justice can achieve appropriate stability,

clarity, and predictability. Those values cannot be effectively pursued unless the law and the facts determine the outcome of a case, rather than the identity of the judge before whom a case is brought. Time and again, I saw that principle in real world cases. The importance of the rule of law, as opposed to peculiarities of specific judges, was just as critical in small matters involving individuals as it was big litigation involving millions of dollars.

“Judicial activism” can occur when a judge ignores the principles of precedent and stare decisis. Humility and self-restraint require the judiciary to adhere to its limited role and recognize that where applicable precedent exists, courts are not free to ignore it. Mere disagreement with a result is insufficient to justify ignoring applicable precedent, but reconsideration under appropriate circumstances is also necessary. There are clear examples, like Brown v. Board of Education, where revisiting precedent is not only right, it is prudent. Any decision to revisit a precedent should follow only the most careful consideration of the factors that courts have deemed relevant to that question. Thus, whether the prior decision is wrong is only the beginning of the inquiry. The court must also consider other factors, such as whether the prior decision has proven unworkable, whether developments in the law have undermined the precedent, and whether legitimate reliance interests militate against overruling.

As my career progressed, I became an elected official charged with legislative power. In that role, I was able fully to appreciate the difference between the role of those who are to make the law and those who are to interpret it. On the Dallas City Council, we dealt frequently with the legal issues facing the City, and with the legal and constitutional implications of our actions. We set policy for the City by, among other devices, passing ordinances. We understood our role, and we expected the courts to understand theirs – part of which was to respect the policy-making prerogatives of the City Council. There was a vast difference between our vote as a policy matter to prevent the desecration of the American flag, and the job of the courts (including the Supreme Court) to rule whether such an ordinance was constitutional.

Finally, my time serving in the White House, particularly as Counsel to the President, has given me a fuller appreciation of the role of the separation of powers in maintaining our constitutional system. In that role, I have frequently dealt with matters concerning the nature and role of the Executive Power. And by necessity my work has required that I deal with the power of Congress in relation to the Executive. The remaining, and essential, component in our system is of course the power of the Judiciary. The Judicial Branch has its own role to play in the separation of powers. It is part of the system of checks and balances. In interpreting the law in the course of deciding contested cases and controversies, the Supreme Court holds the Executive and Legislative Branches to their respective constitutional roles.

Judicial review by the Supreme Court, including determining the meaning of the Constitution and declaring unconstitutional the actions of another branch of government, is a tremendous power exercised by judges who are not accountable to the electorate. Because their power is so great, and because it is largely unchecked, judges must be

vigilant in exercising their power in a humble, prudent, and limited way. The courts must always be ready to decide cases according to the Constitution and laws of the United States, and to do so fairly and without regard to the wealth or power of the litigants before them. But it is just as important for the courts to stand ready *not* to decide in instances that do not call for a decision.

My experience working for Judge Estes provided another valuable lesson. He decided every case according to the law and facts, and he did not worry about the potential for a negative reaction to his decisions. He felt no pressure to please anyone. His only lodestar was the law. The example of Judge Estes helped to instill in me an appreciation for the importance of judicial independence that has only grown stronger over time. Criticism of courts that overstep their role is justified. We must zealously guard, however, the independence of the courts. While legitimate criticism of judicial activism is healthy, even essential, we must be wary of unduly criticizing judges merely because we disagree with the result in a particular case. Judges are given life tenure and independence to shield them from the potential tyranny of the majority. While life tenure and independence should not be a license to usurp the rule of law in favor of a rule of man, they provide an essential structural protection to ensure that judges are able to make decisions based only on the fundamental vision of the Founders – the rule of law.