



**CLOSING THE COURTHOUSE DOORS:
Harriet Miers and Locke Liddell & Sapp**

prepared by Court Watch

a project of the Texas Watch Foundation
www.txwfoundation.org

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Introduction

On October 3, President Bush nominated White House counsel Harriet Miers to the U.S. Supreme Court. In describing her qualifications, President Bush said, “Harriet was the first woman to be hired at one of Dallas’ top law firms, the first woman to become president of that firm, the first woman to lead a large law firm in the state of Texas.”¹

That law firm, Locke Liddell & Sapp, is widely recognized in Texas for shielding corporations from liability and closing the courts to injured plaintiffs. The firm is counsel to the self-styled “Texans for Lawsuit Reform,” a pro-defendant political lobbying group that is openly hostile to courts and the jury system. In its legal practice and political activism, Locke Liddell & Sapp has distinguished itself as an unabashed defender of corporate wrongdoers and insurance interests.

Harriet Miers spent her entire legal career in private practice at Locke Liddell and its predecessor Locke Purnell, rising to the level of co-managing partner before leaving Texas in 2001.² During this time, Locke Liddell was engaged in a long-term effort to significantly alter the legal landscape in Texas through political lobbying and affiliations with corporate special interests.

While much has been written with regard to Ms. Miers’ views on various social issues, little is known about her underlying judicial philosophy and respect for the courts and juries. In this report, we attempt to shed light on her firm’s aggressive campaign to shield wrongdoers from accountability. We raise a number of important questions that we believe Ms. Miers should be required to answer before she is allowed to sit for life on the highest court in the land.

In the following pages, we focus on Locke Liddell’s pro-defendant practices and its politicization of the law. In Section I, we describe its lobbying victories in the Texas Legislature and its ideological partnership with “Texans for Lawsuit Reform.” We are particularly interested in its focused lobbying campaigns to protect wrongdoers from liability by weakening Texas’ judicial system. In Section II, we describe the firm’s anti-consumer legal practice before the Texas Supreme Court. As we explain, Locke Liddell’s participation as counsel in cases before the Supreme Court is related to its broader agenda.

In last year’s term, 25 of the 80 cases before the U.S. Supreme Court related to business issues.³ Because hot-button social issues receive a great deal of attention, it is easy to lose sight of the fact that the business of the Supreme Court is, largely, business. Harriet Miers’

lifelong advocacy on behalf of corporations raises disturbing questions. If confirmed, will she be able to decide cases neutrally, or will her anti-consumer biases pre-determine the results of her decisions? Is she pre-disposed to rule in favor of business interests over individual consumers?

We do not seek to issue a blanket indictment of the defense bar or the crucial role they play in our system of justice. However, as an attorney, Ms. Miers devoted her professional life to a law firm hostile to the judicial system. It is indeed a strange irony, then, that she has been nominated to the U.S. Supreme Court, the pinnacle of our judicial system. If confirmed, will she respect the judiciary and recognize her duty to interpret the law neutrally?

Whether Harriet Miers is qualified to replace Sandra Day O'Connor on the U.S. Supreme Court is a question for the U.S. Senate to decide, but her professional relationship with Locke Liddell provides disturbing insights into the type of justice she will likely be.

SECTION I

Litigation through Legislation: Locke Liddell's Aggressive Lobby Practice

*"In June 2003, immediately following the conclusion of the regular session, Locke Liddell & Sapp was ranked No. 1 of 12 law firm lobbying practices in Texas Lawyer's 2003 Lobbying Scorecard based on lobby billings reported to the Texas Ethics Commission. We also are annually one of the largest political contributors in Texas. Our relationships with government officials go deeply into the Austin, Dallas, Houston, and New Orleans political communities, and extend directly to Washington D.C."*⁴

-- excerpt from Locke Liddell's website

In today's competitive legal environment, law firms have increasingly added lobbying practices as part of their litigation strategy. Locke Liddell is no exception, and, in fact, according to *Capitol Inside's* Texas Lobby Power Rankings, it was the top Texas lobbying law firm in 2004.⁵

Locke Liddell's lobbying practice is exceptional, however, for its focus on shielding corporations from liability and weakening the courts. The tactic employed by Locke Liddell amounts to litigation through legislation. Instead of trusting independent judges and citizen juries to weigh evidence on a case-by-case basis, Locke Liddell prefers to alter the rules of the game by influencing lawmakers. This practice signals a decidedly distrustful view of our courts.

The head of Locke Liddell's public law (read: lobbying) section has spoken about the firm's philosophy: "Oftentimes, legal issues and strategies must be incorporated with public law strategies to ensure success in business."⁶

It is Locke Liddell's determined anti-court agenda that raises questions with respect to Harriet Miers' qualifications. In her capacity as a co-managing partner and principal, Ms. Miers was, after all, in the position to direct Locke Liddell's lobbying practices. Does she share her firm's cynical view of our judiciary?

Lobbying for Corporate Wrongdoers

During the 2003 Texas legislative session, moneyed special interests dominated the debate. Locke Liddell was the principal player in a radical effort that successfully rolled back citizens' legal rights.

While Harriet Miers had left Texas to serve the president in Washington, by 2003 the firm's success in enacting sweeping legal changes was borne out of an effort that stretches back to the time Ms. Miers was leading Locke Liddell.

As a result of Locke Liddell's political success in 2003, the legal landscape was fundamentally altered in Texas, benefiting deep-pocketed insurance companies at the expense of Texas families. This was the result of a decades-long attack on Texas courts by corporate wrongdoers and insurance companies that began when Harriet Miers was leading Locke Liddell.

House Bill 4, the comprehensive, 133-page piece of legislation that passed the Texas Legislature in 2003, was a wish list for special interests seeking to avoid responsibility, eliminating many fundamental, long-held legal rights for individuals. Among its many provisions, the legislation:

- Effectively stripped medical malpractice victims of their ability to gain access to our courts, disproportionately harming the young and the elderly;
- Allowed wrongdoers to escape accountability by pointing the finger at third parties, including unknown criminals, bankrupt entities, and persons beyond a court's jurisdiction; and
- Placed burdensome limits on the ability of individuals to collectively seek justice in an efficient and expeditious manner, protecting large corporate wrongdoers.

Locke Liddell was the law firm primarily responsible for the drafting of HB 4.⁷

HB 4 was the culmination of a long-term legislative strategy to weaken access to the courts for individuals and families.⁸ In addition to HB 4 and numerous other anti-consumer pieces of legislation, the firm was instrumental in killing legislation that would have held manufacturers of dangerously defective products responsible when they fail to inform the public about potential safety hazards.⁹ Additionally, Locke Liddell was the primary proponent of legislation that has eliminated access to our courts for thousands of workers who were knowingly exposed to harmful asbestos by their employers.¹⁰ Their success in closing the courts to deserving individuals has made Locke Liddell the go-to law firm for corporate special interests in Texas.

It is no accident that Harriet Miers herself has been a forceful advocate of efforts to roll back individuals' legal rights:

- Ms. Miers has been linked with the American Tort Reform Association, a Washington-based special interest group that is backed by large corporations, insurance carriers, and various trade associations.¹¹
- She is a professional and personal friend of Texas Supreme Court Justice Nathan Hecht, formerly a lawyer at her firm, who is the philosophical leader of the anti-consumer judicial movement in Texas.¹²
- She has been endorsed by the U.S. Chamber of Commerce, a powerful lobby with a financial interest in stripping families of their legal rights.¹³
- She was the director of the "Committee for a Qualified Judiciary," a political action committee devoted to electing anti-consumer judges.¹⁴

Ms. Miers has consistently positioned herself on the side of corporate special interests and against Texas citizens. That fact by itself is troubling. Just as troubling, she led a firm that was hostile to trial courts and the jury system.

Texans for Lawsuit Reform and Locke Liddell : An Alliance for Special Interests

Locke Liddell's pro-corporate/anti-courts agenda in the Texas Legislature was heavily financed by its ideological partner, the self-styled "Texans for Lawsuit Reform," for whom

Locke Liddell has served as counsel since 1999, during which time Harriet Miers was leading the firm as co-managing partner.

Founded in 1994, TLR is a coalition of special interests subsidized by a few wealthy corporate interests, including corporate polluters, liquor store operators, insurance companies, and homebuilders. According to a 2001 report by the non-profit watchdog organization Texans for Public Justice, 80 percent of TLR's PAC was funded by just 24 donors who are involved in industries with "heavy legal liabilities."¹⁵

A who's who at TLR is revealing:

- Richard Weekley, a co-founder of TLR, is a Houston real estate developer whose company, Weekley Homes, was projected to gross \$1.1 billion in 2004.¹⁶ Weekley Homes has been cited for faulty construction and safety violations by at least two states.¹⁷
- Leo Linbeck, Jr., TLR's former chairman, is a principal at the Linbeck Construction Corporation, whose projects in the past five years have generated \$1.2 billion in revenues.¹⁸
- Richard Trabulsi, Jr., co-founder and president of TLR, owns Richard's Liquors and Fine Wines, a Houston chain that actively lobbies for legislation limiting the liability of alcohol providers.¹⁹ (In Section II, we will discuss TLR's participation in a closely-watched case argued before the Texas Supreme Court involving an alcohol provider's liability.)

The top funders of TLR's PAC confirm TLR's status as a front for corporate interests. In the 2002 election cycle, close to half of TLR's PAC money was raised by just five individuals. Richard Weekley himself donated \$126,000. Bob Perry, whose construction company, Perry Homes, generated \$585 million in revenues in 2004,²⁰ donated \$90,000 (Mr. Perry is a major contributor to state and federal political campaigns). Harlan Crow, son of Dallas real-estate magnate, Trammell Crow, donated \$150,000.²¹

Despite its populist rhetoric, TLR is controlled by powerful corporate interests who work hand in glove with Locke Liddell. Together, the firm and its client have led the way in enacting pro-defendant legal changes in Texas that tilt the scales of justice to their advantage. Instead of strengthening our jury system, as they would have the public believe, their actions have severely undermined it.

SECTION II

Legislation through Litigation: Setting Policy at the Court

Locke Liddell's participation as appellate counsel in cases before the Texas Supreme Court constitutes the other half of its pro-corporate agenda. That Locke Liddell, with its 400 attorneys, is a frequent advocate before the Court is not unusual. What is unusual is the high-profile nature of the cases it participates in and the positions it takes before the Texas Supreme Court. In recent years, Locke Liddell has played an active role as co-counsel in a string of landmark cases that weaken legal protections for individuals.

Below, we highlight two recent cases litigated in the Texas Supreme Court. In both, Locke Liddell participated as co-counsel and argued for positions that would curtail the rights of plaintiffs in Texas courts.

While these cases were litigated subsequent to Ms. Miers' tenure at Locke Liddell, the firm's appellate practice and approach to appellate law began to take shape under her leadership.

***F.F.P. Operating Partners, L.P. v. Dueñez*²²**

In *F.F.P. Operating Partners, L.P. v. Dueñez*, Robert Ruiz consumed a case-and-a-half of beer and then purchased a twelve-pack from a store owned by F.F.P. After leaving the store, he collided head-on with the Dueñez family's car, causing permanent brain damage to nine-year-old Ashley Dueñez. A jury returned a verdict against F.F.P. for violating Texas' Dram Shop Act. An appeals court and the Texas Supreme Court affirmed the trial court's judgment.

F.F.P. Operating Partners involved the proper interpretation of Texas' Dram Shop Act, which holds alcohol providers liable when they serve alcohol to intoxicated individuals. Consequently, it was a high-stakes case for the state's alcohol providers like TLR's Richard Trabulsi. According to the Act, the "liability of [alcohol] providers" is "for the actions of their employees, customers, members, or guests who are or become intoxicated."²³ Interpreting that language, the Texas Supreme Court held that F.F.P. was responsible for Ruiz's liability.

As co-counsel, Locke Liddell argued that Texas' proportionate responsibility statute, a central plank of tort reform advocates, included Dram Shop Act claims, despite the clear mandate of the Act. It was a cavalier attempt to ignore the strict language of a statute and shield alcohol providers from liability; a ruling favorable to F.F.P. would have saved alcohol providers arguably millions.

After the case was decided, F.F.P. Operating Partners filed a motion for rehearing with the Court. Predicting that the Court's decision would jeopardize its pro-defendant agenda in the Texas Legislature, Texans for Lawsuit Reform filed an amicus curiae brief in support of the motion.²⁴ On April 8, 2005, the Court granted the motion, leaving little doubt as to the Court's intention to overturn its previous ruling.

It is notable that Justice Nathan Hecht, the leader of Texas' anti-consumer judicial movement and a close confidant of Harriet Miers, joined a dissent agreeing with Locke Liddell's position.

Romero v. KPH Consolidation, Inc.²⁵

In *Romero v. KPH Consolidation, Inc.*, a hospital credentialed a doctor with a documented history of drug abuse and negligence in caring for patients. After Ricardo Romero was permanently injured as a result of the doctor's negligence, Romero's wife sued, and a jury returned a verdict against the hospital for maliciously credentialing the doctor. A court of appeals reversed, finding no evidence of malicious credentialing. The Texas Supreme Court affirmed, holding that the peer-review privilege protected the confidential communications of the hospital's credentialing committee.

The financial stakes in *Romero*, as in *F.F.P. Operating Partners*, were significant. As the amici, forty-eight hospitals, wrote, "Each of these hospitals has a credentialed medical staff, and thus each is exposed to potential liability on claims of improper credentialing."²⁶

Locke Liddell served as co-counsel in *Romero*, defending a position that in the future will shield hospitals in Texas from liability in malicious credentialing claims. By arguing that the hospital was protected by the peer-review privilege, Locke Liddell argued, in effect, that malicious credentialing claims were bound to fail. After all, if a defendant hospital is protected by the privilege, discovering evidence of that defendant's culpability will be impossible. It was a strange argument because the peer-review privilege was intended to improve the quality of patient care, not protect hospitals from liability.

Locke Liddell's defense practices follow a recognizable pattern. They help negligent corporations escape the reach of the law and leave injured plaintiffs without a remedy. As a co-managing partner, Harriet Miers undoubtedly championed and guided Locke Liddell's defense practices. That begs the question: if confirmed to the U.S. Supreme Court, will she unfairly side with the interests of her former clients? Will she be a judicial activist on behalf of business interests?

Conclusion: Unanswered Questions About Harriet Miers

Ms. Miers' stewardship of Locke Liddell during a time when the firm was laying the groundwork for its aggressive lobby efforts and anti-consumer judicial strategy, as well as its support of so-called tort "reforms," raises serious questions about her judicial temperament and philosophy.

There are fundamental questions about her faith in the courts and her bias towards corporate interests that she must answer before being allowed to sit on the highest court in our land. We raise just a few of those questions here:

- **Ms. Meirs, do you trust citizen juries to make sound decisions? If so, then why do you support efforts to roll back the power of juries?**
- **What's your view of the right to a trial by jury in the Seventh Amendment? Should it be read broadly? Is it important to keep our courts open? Don't so-called tort reforms, such as the ones authored by your firm over the years, close the door to many deserving claimants?**
- **Many businesses force consumers into arbitration if they have a dispute. Do you prefer arbitration – a private form of dispute resolution that occurs outside of the court system – over civil lawsuits? Or should individuals who have been harmed by a wrongdoer be able to gain access to our courts?**
- **As someone who has shown antipathy toward our judicial system through your associations, why do you want to serve as a jurist on our nation's highest court?**

We intentionally leave these questions open in hopes that Ms. Miers will answer them. Her responses will help to illuminate her philosophy with respect to the role our courts play in conflicts between corporate wrongdoers and individual consumers.

As we mentioned at the outset, it is not for us to decide whether Ms. Miers is qualified to serve on the Supreme Court – that is a decision for the U.S. Senate. However, before she is allowed to rise to a lifetime appointment on our nation's highest court, the American people deserve a clear understanding of her experience, biases, and judicial temperament.

About Court Watch

Court Watch is a project of the Texas Watch Foundation, a nonpartisan research organization located in Austin, Texas, dedicated to protecting the consumer rights of Texans. Since 1997, Court Watch has published an annual report on the Texas Supreme Court, describing the Court's major decisions and its jurisprudence.

For additional copies of this report or to learn more about Court Watch and the Texas Watch Foundation, visit www.txwfoundation.org.

Endnotes

¹*President Nominates Harriet Miers as Supreme Court Justice* (The White House), Oct. 3, 2005; see <http://www.whitehouse.gov/news/releases/2005/10/20051003.html>.

²Before she left to serve in the White House in 2001, Ms. Miers was at the center of Locke Liddell. In 1996, she was elected president of Locke Purnell Rain & Harrell, the Dallas predecessor to Locke Liddell. After Locke Purnell merged with a Houston firm in 1998, she became co-managing partner of Locke Liddell. *Harriet E. Miers Profile*, WASHINGTON POST, Oct. 3, 2005; see <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/03/AR2005100300305.html>.

³Johnathan D. Glater, *As a Private Lawyer, Miers Left Little for the Public Record*, N.Y. TIMES, Oct. 7, 2005; see <http://www.nytimes.com/2005/10/10/politics/politicsspecial1/10miers.html>.

⁴See http://www.lockeliddell.com/public/index.asp?page_id=273.

⁵Mike Hailey, *Second Annual Texas Lobby Power Rankings*, CAPITOL INSIDE, Jan. 23, 2004; see <http://www.capitolinside.com/lobby-power2004.htm>.

⁶Robert D. Miller, *Firms Embracing Public Law, Lobbying Services*, AUSTIN BUS. J., May 21, 2004; see <http://www.bizjournals.com/austin/stories/2004/05/24/focus3.html>; see also http://www.lockeliddell.com/Apps/Contact/Web/ViewContact.asp?Contact_Type_ID=1&Contact_ID=330.

⁷*Our Team*, ADVOCATE (Texans for Lawsuit Reform), June 2003; see <http://www.tortreform.com/archives/advocate.03c.pdf>.

⁸Locke Purnell, the predecessor firm to Locke Liddell, was a major backer of so-called tort reform in Texas. James Ridgeway, *What's the Deal with Harriet Miers?*, THE VILLAGE VOICE, Oct. 3, 2005; see <http://villagevoice.com/news/0540.webmondo3.68426.2.html>.

⁹*Democracy Works If We Do*, ADVOCATE (Texans for Lawsuit Reform), Fall 2001; see <http://www.tortreform.com/archives/trnews1.pdf>.

¹⁰*Texas Asbestos and Silica Litigation Reform Becomes Law!*, ADVOCATE (Texans for Lawsuit Reform), June 2005; see <http://www.tortreform.com/archives/advocate.05b.pdf>. A copy of the bill is available at <http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=79&SESS=R&CHAMBER=S&BILLTYPE=B&BILLSUFFIX=00015&VERSION=5&TYPE=B>.

¹¹*ATRA Annual Meeting Brings Together Key Legal Reform Leaders* (American Justice Partnership), Apr. 5, 2005; see http://www.legalreforminthenews.com/News%20Releases/ATRA_meeting_4_5_05.html.

¹²Michael Grunwald, Jo Becker & John Pomfret, *Strong Grounding in the Church Could Be a Clue to Miers's Priorities*, WASHINGTON POST, Oct. 5, 2005; see <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/04/AR2005100401765.html>.

¹³*Chamber Praises Miers as Good Pick for Supreme Court* (U.S. Chamber of Commerce), Oct. 3, 2005; see <http://www.uschamber.com/press/releases/2005/october/05-157.htm>. See also Thomas Korosec, *Business Leaders Say They're Ready to Back Miers*, HOUSTON CHRON., Oct. 17, 2005; see <http://www.chron.com/cs/CDA/ssistory.mpl/nation/3399052>. See also Daniel Fisher, *She's Good for Business*, FORBES, Oct. 4, 2005; see http://www.forbes.com/work/2005/10/04/supreme-court-miers-business-cz_df_1004miers.html.

¹⁴Lorraine Woellert, *Forget Roe and the Framers. Let's Talk Business*, WASHINGTON POST, Oct. 16, 2005; see <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/15/AR2005101500101.html>.

¹⁵*Texans for Lawsuit Reform: How the Texas Tort Tycoons Spent Millions in the 2000 Elections* (Texans for Public Justice), Nov. 2001; see <http://www.tpj.org/docs/2001/11/reports/tlr/tlr.pdf>.

¹⁶ See <http://www.tortreform.com/bios.asp?BioID=1>.

¹⁷ *Commissioner of Labor of State of North Carolina v. Weekley Homes*, 609 S.E.2d 407 (N.C. App. 2005); *Trendmaker Development Co. v. Jones*, 2004 WL 1699886 (Tex.App.—Beaumont 2004); *Weekley Homes, Inc. v. Jennings*, 936 S.W.2d 16 (Tex.App.—San Antonio 1996); *In re Weekley Homes*, 985 S.W.2d 111 (Tex.App.—San Antonio 1998).

¹⁸ See <http://www.tortreform.com/bios.asp?BioID=6>; see also *Texans for Lawsuit Reform: How the Texas Tort Tycoons Spent Millions in the 2000 Elections*.

¹⁹ See <http://www.tortreform.com/bios.asp?BioID=5>.

²⁰ *Chronicle 100: Houston's Leading Companies*, HOUSTON CHRON.; see <http://www.chron.com/content/chronicle/special/05/100/charts/private.html>.

²¹ See *Texans for Lawsuit Reform: How the Texas Tort Tycoons Spent Millions in the 2000 Elections*.

²² No. 02-0381, 2004 WL 1966008 (Tex. Sept. 3, 2004).

²³ TEX. ALCO. BEV. CODE § 2.03(a).

²⁴ *TLR Calls on Court to Uphold Intent of Key Reforms*, ADVOCATE (Texans for Lawsuit Reform), January 2005; see <http://www.tortreform.com/archives/advocate.05a.pdf>.

²⁵ 166 S.W.3d 212 (Tex. 2005).

²⁶ Brief of Amici Curiae at 1, *Romero v. KPH Consolidation*, 166 S.W.3d 212 (Tex. 2005) (03-0497).