

From: "Friedrich, Dabney"
To: "Kavanaugh, Brett M."
Subject: FYI -- Here are all the (mostly draft) TPs all in one email
Sent: Wed, 5 Oct 2005 14:44:18 -0500

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Harriet Miers: A “Real” Lawyer

Allegation: Harriet Miers lacks the experience to serve as Associate Justice on the United States Supreme Court, because she has never been a judge, and did not attend an Ivy League law school.

Facts:

- Harriet Miers has 30 years of real-world legal experience that is lacking on the current Supreme Court. This trial level experience would add significant real-world understanding to a Supreme Court that has been accused of becoming an ivory-tower institution.
- The Supreme Court regulates all legal practice in the federal courts. It promulgates the Federal Rules of Civil Procedure, and also regularly rules on criminal and civil procedure, and the operations of trial courts, such as jury selection, jury charging, and evidentiary questions. It is therefore vitally important that the Supreme Court understand the operations of the lower courts, and the every day practice of law by most lawyers.
- Many recent appointees to the Supreme Court, while superbly qualified in the legal academy or in appellate practice, have had little if any trial or jury practice. Some practitioners argue that the Court does not always grasp how its rulings impact the every day practice of law.
- It is true that Harriet Miers does not come from the East Coast academic legal fraternity, however, such a background is not a prerequisite for appointment to the Supreme Court.
 - Indeed, prior Supreme Court practice has never been considered a requirement, or even preferred, for membership on the high court. Of the nine justices sitting last term, five never argued before the Supreme Court (Justices Rehnquist, Thomas, Kennedy, Breyer, and O'Connor). Nor for that matter had Justice Joseph Story, generally viewed as one of the nation's great constitutional scholars and historians, argued before the Court.
- Rather, Harriet Miers brings a wealth of litigation experience that she earned representing a broad spectrum of clients in trial and appellate proceedings. Her level of trial and litigation experience exceeds the experience level of a majority of sitting justices at the time of their nominations.
 - Miers has extensively counseled her clients on a diverse range of issues from complex commercial questions to family law and has litigated in state and federal trial and appellate courts, including argument in the United States Court of Appeals for the Fifth Circuit and numerous state courts.
 - Miers's clients ranged from Fortune 500 corporations such as Microsoft and the Walt Disney Company to individuals in need of pro bono representation.

Harriet Miers: Religion

Allegation: Harriet Miers is a fundamentalist Christian who attends a conservative evangelical church. Her views on abortion are consistent with her religious beliefs, and will inform her actions as a Justice.

Facts:

- Harriet Miers shares the President's judicial philosophy, that a justice must strictly interpret the Constitution and laws of the United States and not legislate from the bench. Miers understands that the role of a judge is not to make the law or impose her personal beliefs on it, but to apply the law fairly, neutrally, and without bias.
- A nominee's personal religious views are entirely inappropriate for consideration in determining qualification for appointment to the Supreme Court. Rejecting a nominee because they adhere to a particular religion is anathema to the American system.
 - Indeed, the Constitution specifically prohibits the imposition of any religious test as a qualification to any public office. (Art. VI, cl. 3).
 - It has long been recognized that Justice Louis Brandeis was opposed for elevation to the Court because he was Jewish. Such behavior should be well in America's past.
- Miers does have a long record of compassion and service to the less fortunate.
 - In Texas, she supported better legal representation for the poor and under-served. As president of the Dallas Bar, she called on her fellow lawyers to volunteer and staff free neighborhood clinics.
 - Her activities ranged from long hours of pro bono work as an attorney, to working with more than a dozen community groups and charities, including the Young Women's Christian Association, Childcare Dallas, Goodwill Industries, Exodus Ministries, Meals on Wheels, and the Legal Aid Society.

Harriet Miers: Survey for Lesbian/Gay Political Coalition of Dallas

Allegation: Harriet Miers has endorsed expressed positions favoring gay rights. “*Miers Backed Gay Civil Rights*,” Calvin Woodward, Oct. 3, 2005.

Facts:

- While running for city council, Harriet Miers expressed the widely held view that all citizens should be treated equally and that they shared the same civil rights protections. She did not comment on or advocate for special rights based on sexual orientation.
- In 1989, Miers ran for, and was elected to, a two-year term as an at-large candidate on the Dallas City Council. While running for office, Miers completed a questionnaire sent to candidates by the Political Action Committee of the Lesbian/Gay Political Coalition of Dallas (LGPC). Miers also accepted an invitation to a screening session with the LGPC, but expressly declined to seek the endorsement of the LGPC.
- The questionnaire inquired whether “gay men and lesbians should have the same civil rights as non-gay men and women,” to which Miers responded “Yes.”
 - Miers’s answer reflects the widely held belief that gay men and lesbians should not be legally disadvantaged because of their sexual orientation. They should not be deprived of existing civil rights protections – such as those for employment, education, and housing – because of their sexual orientation.
 - Miers’s answer in no way endorses special rights for gay men and lesbians, nor does it address specific current controversial issues such as gay marriage.
- In the same questionnaire, Miers stated that she would not support repealing the Texas sodomy statute.
- Miers did indicate support for “AIDS education and patient support services,” subject to needs and resources, and acknowledged AIDS is a “serious total community problem.” This answer reflected the need, at the time, to educate the public about AIDS, including means of avoiding infection such as monogamy and abstinence.
- Miers declined to endorse city ordinances that would prohibit discrimination in housing and public accommodations based on AIDS/HIV status and that would ban discrimination in employment based on, among other things, AIDS/HIV status.
- In response to a question whether “qualified gays or lesbians should be denied employment . . . by the City of Dallas solely because of sexual orientation,” Miers stated that “employers should be able to pick the best qualified person for any position to be filled considering all relevant factors.”
- As a Justice of the Supreme Court, Miers will strictly interpret the Constitution and laws of the United States according to the rule of law, not according to her personal views. She recognizes the proper role of judges and will not legislate from the bench.

Harriet Miers: Microsoft Class Action Litigation

- In *Microsoft Corp. v Manning, et al.*, No. 06-95-00058-CV (Texarkana), the trial court certified a class of plaintiffs of Microsoft data operating system consumers. The Texas Supreme Court set the case for argument, but the case was removed from the 1996-97 Term when the trial court decertified the class.
 - According to plaintiffs, Microsoft had failed to perform adequate testing on the disk operating system software and after it was released several consumers complained that the software was faulty and, in some cases, destroyed data.
 - Microsoft then released an update for the software, at a suggested retail price of \$9.95. Plaintiffs alleged that that Microsoft should have corrected the problem without charge and sought compensatory damages in the amount of the cost of the fix. Some plaintiffs sought compensation for lost data. Plaintiffs also sought class certification.
 - Microsoft argued that relatively few customers lost data and that those who did not lose data did not sustain any damages. Moreover, it argued that class certification would be inappropriate because, among other reasons, the claims of the plaintiffs would be impermissibly split.
 - The case garnered interest because it was a minimal-damages, high attorney fee situation.
- Microsoft lost in the state trial court and in the Sixth Court of Appeals, then filed a mandamus petition with the Texas Supreme Court.
- As Microsoft argued (per Harriet Miers) in a mandamus petition to the Texas Supreme Court, “If left undisturbed, the court of appeals’ opinion and the district court’s class certification order will encourage the proliferation of similarly abusive and improper class action litigation in Texas.”
- The Texas Supreme Court case was viewed as important in two respects: (1) to define the limits of entrepreneurial class action suits brought in Texas; and (2) as a test of whether the Texas Supreme Court was willing to use its mandamus power to rule on certification in class actions before the cases percolate up on final appeal.
 - The case was set for argument in the Texas Supreme Court on October 1, 1996, then abruptly removed from the calendar very shortly before the argument.
 - On September 13, 1996, the district court had withdrawn its class certification. Plaintiffs then moved the Texas Supreme Court to dismiss the mandamus action as moot, which the Texas Supreme Court granted.

Harriet Miers: Litigation Experience

Allegation: Harriet Miers lacks the experience to serve as Associate Justice on the United States Supreme Court.

Facts:

- Harriet Miers has accomplished virtually everything a lawyer can accomplish. She has earned the trust of Fortune 500 companies, underserved individuals, and the President of the United States alike; she has risen to the top of a major law firm; she has been a trailblazer and leading voice in the legal community; she has been elected to serve her community and selected for statewide office; and she has donated countless time to ensuring equal access to justice for all.
- Miers is an extremely experienced litigator who has represented a broad spectrum of clients in trial and appellate proceedings.
 - Harriet Miers's commercial litigation practice included complex antitrust litigation and counseling, securities litigation, intellectual property disputes, products liability, banking litigation, and real estate transactions.
 - Her experience is not limited to standard commercial litigation. Miers has also worked on family law matters on a pro bono and paid basis in addition to litigating immigration, grand jury secrecy, first amendment, ballot access, and election law issues.
 - In addition to extensive client counseling on matters ranging from complex commercial questions to family law, Miers has litigated in state and federal trial and appellate courts, including argument in the United States Court of Appeals for the Fifth Circuit and numerous state courts.
- Miers's clients ranged from Fortune 500 corporations such as Microsoft and the Walt Disney Company to individuals in need of pro bono representation.
 - Miers defended Microsoft Corporation against a \$100 million class action, litigating the case to the Texas Supreme Court. When Microsoft litigated in Washington, D.C., it looked to the nationally recognized law firm of Sullivan & Cromwell; when Microsoft litigated in Texas, it looked to Harriet Miers and Locke, Liddell & Sapp.
 - While providing counsel to major national corporations, Harriet Miers also found time to devote 125 hours in a single year to litigating an immigration case pro bono on behalf of Catholic Charities.
- Miers's appearances in the United States Court of Appeals for the Fifth Circuit are representative of her legal career.

- On the one hand, she represented a major business interest in real estate litigation worth millions of dollars.
- On the other hand, she represented, through Dallas Legal Services, a disabled woman who had been denied Social Security disability benefits.
- Miers's experience in litigating numerous cases to trial or judgment is unusual in today's legal market, where many cases settle or are dismissed before that stage. This trial level experience would add diversity of experience to the Supreme Court.

Harriet Miers: International Criminal Court and Gay Adoption

Allegation: Harriet Miers chaired an ABA committee that submitted a report recommending the enactment of laws which provide that sexual orientation shall not be a bar to adoption and that recommended the development and establishment of an International Criminal Court.

Facts:

- On October 28, 1998, the Select Committee of the ABA House of Delegates – chaired at the time by Harriet Miers – submitted a “Sneak Preview of the 1999 Los Angeles Midyear Meeting Agenda” to the entire House of Delegates.
- The document – available on the ABA’s website – itself makes clear that it is not a “report” created by the Select Committee, but is rather a compendium of items submitted by various ABA Sections as potential issues to be considered at the Los Angeles Midyear Meeting.
- As a list of potential meeting items submitted by other ABA organizations, the document does not purport to set out the recommendations of the Select Committee – or Harriet Miers – in any form.
- The list of potential meeting items is diverse and includes everything from problems faced by elderly inmates to accreditation of law schools.
- The document from the Select Committee neither endorses adoption by gays nor expresses any view on the propriety of an International Criminal Court.

Harriet Miers: Service as Staff Secretary to the President

Allegation: “The White House and Miers now will have to explain to the nation, and the Senate, why someone who came to Washington as President Bush’s ‘staff secretary’ is more competent to be on the High Court than all of those bright, eager federal appeals court judges we heard so much about in the run-up to this selection.” *Andrew Cohen, CBSNews.com, October 3, 2005.*

Facts:

- From 2001 to 2003, Harriet Miers served as Assistant to the President and Staff Secretary, one of the highest ranking and most trusted positions in the White House. Along with the Chief of Staff, White House Counsel, OMB Director, National Security Advisor, Domestic Policy Advisor, and Economic Policy Advisor, the Staff Secretary is among the President’s most immediate advisors.
- The Staff Secretary serves as “gatekeeper” to the President. The Staff Secretary ensures that the President receives full and balanced advice from his staff and that the staff carries out his decisions expeditiously, effectively, and in a disciplined manner.
- The Staff Secretary is responsible for coordinating the decision-making process regarding the President’s policy agenda.
 - The Staff Secretary serves as an “honest broker” for competing views of the President’s advisors, regardless of her personal policy preferences.
 - The Staff Secretary must ensure that the President gets the full range of well-thought-out, well-argued advice, from all possible perspectives.
- In addition, as Staff Secretary, Harriet Miers supervised more than 60 employees in four departments responsible for administering White House operations.

Harriet Miers: Cronyism

Allegation: Harriet Miers is unqualified to sit on the Supreme Court. She has been nominated solely because of her close connections to the Bush family. She should be opposed as an example of cronyism. "No One That I Know Of Would Have Put Harriet Miers On Any List For The Court. She Just Doesn't Have The Resume To Justify A Position." Jonathan Turley, George Washington University Law Professor: " (MSNBC's "News Live," 10/3/05).

Facts:

- Harriet Miers is superbly qualified to serve as Associate Justice of the Supreme Court.
- Of the past 35 justices appointed directly to the Supreme Court, 13 had no previous judicial experience. This includes Chief Justice Rehnquist, Justice Powell, Justice Douglas, Justice White, and Chief Justice Earl Warren. In addition, 10 of those justices were appointed from a position in the Executive Branch.
- Miers has a distinguished career of legal service. She has served at the highest levels of State and Federal government, and has long been active within the legal academy.
- Miers has served as Counsel to the President of the United States, one of the top legal jobs in the country, which requires legal acumen and discerning insight.
- In public service in Texas, Miers chaired the state lottery commission, and also served on the Dallas City Counsel. She also served as attorney for then-Governor Bush.
- Miers is a long time and well-recognized member of the national legal bar. Miers was active within the American Bar Association, chairing its Commission on multi-jurisdictional Practice. She was also a candidate to Chair the ABA House of Delegates, but withdrew in order to serve in the White House.
- Miers has not only served among bar leadership, but has also been a ground-breaker. She served as the first female President of both the Dallas Bar Association, and of the State Bar of Texas.
- Miers's qualifications have been recognized repeatedly, as she has been named among the Nation's top 100 most influential attorneys, and as one of the Nation's top 50 lawyers. Those who are most familiar with her work, her colleagues at her law firm, selected her to co-manage a firm of over 400 attorneys.

Harriet Miers: Exodus Ministries

Allegation: Harriet Miers is a member of a Christian group that ministers to homosexuals.

Facts:

- Harriet Miers has been a leader in Dallas, Texas-based Exodus Ministry, a non-denominational Christian organization established to assist ex-offenders in becoming productive members of society.
- Exodus Ministry of Dallas, Texas should not be confused with Exodus International, an Orlando, Florida-based organization that ministers to homosexuals.
- Exodus Ministry aims to decrease the number of ex-offenders who are homeless and unemployed in order to prevent them from committing further crimes and to establish a positive, self-sufficient lifestyle.
- Exodus Ministry also seeks to reunite ex-offenders with their families and to teach life-skills necessary for daily living through the provision of counseling and training services.

Harriet Miers: Fortas Comparison

Allegation: “The last time we saw something like this was before this when Lyndon Johnson selected his attorney that represented him in an election dispute. But Abe Fortas who taught at Yale Law School was one of the best appellate attorneys of his age. Harriet Miers doesn’t have that background.” Jonathan Turley, ABC.

Facts:

- The opposition to Abe Fortas’s elevation to be Chief Justice was not based on his previous service to President Johnson. Fortas’s nomination was opposed because he committed numerous ethical violations while serving as an Associate Justice.
 - As a sitting Justice, Fortas regularly attended White House staff meetings, and also briefed President Johnson on secret Supreme Court deliberations.
 - On behalf of President Johnson, Fortas pressured Senators who opposed the war in Vietnam.
 - Fortas’s nomination to be Chief Justice was withdrawn when the Senate Judiciary Committee revealed that he had received a privately funded stipend, equivalent to 40 percent of his salary as a Justice, to teach an American University summer course.
 - In 1969, a new scandal arose. Fortas had accepted a \$20,000 fee from a foundation controlled by Louis Wolfson. Wolfson was a financier who was under investigation for violating Federal securities laws. He was later convicted and spent time in prison. Wolfson was also a friend and former client of Fortas. When Chief Justice Earl Warren was informed of the Wolfson fee by Attorney General John N. Mitchell, he successfully urged Fortas to resign.
- Unlike Fortas, Miers has performed her government service to the highest ethical standards, and would join a long and distinguished list of individuals named to the Supreme Court without prior judicial experience, and who had previously served the President who nominated them.
 - Since 1933, 13 of the 34 Justices newly appointed to the Court had no prior judicial experience, and 10 of the 34 Justices were appointed directly from a position within the Administration.
 - These included the late Chief Justice William Rehnquist and the late Justice Byron White. Chief Justice Rehnquist was appointed in 1971 from his position as Assistant Attorney General. Justice White was appointed in 1962 from his position as Deputy Attorney General. Neither had prior judicial experience, and both served the President that nominated them.

Harriet Miers: Locke Liddell & Sapp Alleged Fraud

Allegation: Harriet Miers's Texas law firm paid millions to settle lawsuits after it assisted two clients to operate a ponzi scheme that swindled millions from its investors.

Facts:

- Locke Liddell & Sapp is a large regional law firm with over 400 attorneys in Texas, Louisiana, and Washington, D.C.
- The firm was sued by a class of individuals who had invested in a scheme operated by two of the firm's former clients, Russell Erxleben and Brian Stearns. Erxleben and Stearns were tried, convicted, and imprisoned for securities fraud.
- Locke Liddell was never accused of any criminal wrongdoing in this matter. Rather, they were sued by the victims of Erxleben's and Stearns's fraudulent schemes.
- The civil claim against Locke Liddell & Sapp centered on the allegation that the firm used its representation of George W. Bush to establish credibility with investors. The fact is, however, that it was the convicted swindlers, Erxleben and Stearns, and not Locke Liddell & Sapp, who continually used the firm's representation of George W. Bush to reassure investors.
- Locke Liddell & Sapp was never found by any court to have engaged in wrongdoing regarding the actions of Erxleben and Stearns.
- Almost every major law firm has been sued at some point by a disgruntled client, or been sued by someone who is financially harmed because of a client's actions. Locke Liddell & Sapp is no different in this regard.
- Businesses in the position of Locke Liddell & Sapp often decide to settle such allegations in order to forestall a lengthy trial so as to avoid significant litigation expenses, injury to their reputation, and to avoid disruption of ongoing services to current clients. Such settlements are routine in the field of commercial litigation, and in no way confirm the underlying allegations.

Harriet Miers: No Paper Trail

Allegation: “What commended her to the White House . . . is that she ‘has no paper trail.’ So far as one can see, this is Harriet Miers’ principal qualification for the U.S. Supreme Court.” Pat Buchanan, October 3, 2005.

Facts:

- Upon the announcement of her nomination, Harriet Miers made clear that she shares the qualities the President considers necessary for appointment to the Supreme Court. “It is the responsibility of every generation to be true to the founders’ vision of the proper role of the courts in our society. If confirmed, I recognize that I will have a tremendous responsibility to keep our judicial system strong, and to help ensure that the courts meet their obligations to strictly apply the laws and the Constitution.”
- Moreover, Harriet Miers has a substantial record upon which senators and the public can judge her. Miers has a long and distinguished record of public service, at both the state and national level. Her colleagues have recognized her for her outstanding abilities as a litigator and as a leader of the Bar. She brings a diversity of background and experience to the Supreme Court.
- As many Senators made clear during the hearings for Chief Justice John Roberts, it is inappropriate for a nominee to discuss their views on issues likely to come before the Supreme Court. Indeed, Justices Ginsberg and Breyer recently reaffirmed the propriety of this approach, which they followed at their confirmation hearings. [Tarah or someone from yesterday’s call was tracking this down – whether Breyer said too.]
- Rather, the proper focus of a Supreme Court nominee includes his or her professional record, demeanor, professionalism, ethics, and experience. Harriet Miers has precisely the type of record that is properly considered.
 - Miers has served as Counsel to the President of the United States, one of the top legal jobs in the country, which requires legal acumen and sound judgment.
 - In public service in Texas, Miers served with distinction on the state lottery commission and the Dallas City Council.
 - Miers is a long time and well-recognized member of the national legal bar. Miers was active within the American Bar Association, chairing its Commission on multi-jurisdictional Practice and serving as a member of the House of Delegates. She was also a candidate to Chair the ABA House of Delegates, but withdrew in order to serve in the White House.
 - Miers’s qualifications have been recognized repeatedly, as she has been named among the Nation’s top 100 most influential attorneys, and as one of the Nation’s

top 50 lawyers. Those who are most familiar with her work, her colleagues at her law firm, selected her to co-manage a firm of over 400 attorneys.

Harriet Miers: Donations to Democratic Candidates

Allegation: Harriet Miers cannot be trusted because she made political donations to democratic candidates for office. Specifically, in 1988, she made donations to Al Gore, Lloyd Bentsen, and the DNC.

Facts:

- In 1988, Harriet Miers contributed money to Al Gore's presidential campaign, Lloyd Bentsen's (D-TX) Senate campaign, and to the Democratic Party.
- Since 1988, Miers has donated to Republicans. This includes donations to Senators Phil Graham, Pete Sessions, and Kay Bailey Hutchison, in addition to the Republican Party and the Bush-Cheney campaigns.
- Through the 1980s, Texas remained a Southern Democrat state. At the time, many Texas Democrats were conservatives. Indeed, now-Republican Governor Rick Perry did not switch parties until 1989. Ultimately, many "Reagan Democrats" became Republicans.
- Miers's contribution to Al Gore came at a time when he ran as a conservative Democrat on defense and social issues. Indeed, in 1988, Al Gore was running as a pro-life Southern Democrat, competing with Mike Dukakis.
- Likewise, Senator Bentsen was viewed as a moderate Southern Democrat. Moreover, Senator Bentsen was Miers's home state senator. She gave to him before he joined the Dukakis ticket.
- Both the Gore and Bentsen contributions were made to primary campaigns. These contributions were made to help conservative Democrats receive the nomination of their party. They were not contributions made in a general election to help a Democrat defeat a Republican candidate.

Harriet Miers: Potential Requests for White House Documents

- Since 2001, Harriet Miers has served in three White House positions that involve giving **forthright, candid advice to the President**.
 - Between 2001 and 2003, Ms. Miers served as Staff Secretary to the President. The Staff Secretary is a senior advisor to the President. The Staff Secretary serves as the “gatekeeper” to the President, ensuring that the President receives full and balanced advice from his staff and that the President’s directives are communicated to his staff in an expeditious and effective manner.
 - In 2003, Ms. Miers became Deputy Chief of Staff to the President. This is the highest-ranking domestic policy position in the White House. In the policy chain of command to the President, Ms. Miers ranked above the Domestic Policy Advisor. In this role, she advised the President on the most important policy issues he faced.
 - Finally, since January of this year, Ms. Miers has served as Counsel to the President — **the President’s lawyer**.
- Effectiveness in any of these positions requires the holder of the office to give the President **candid, confidential advice about matters of the utmost sensitivity** — including saying “no” to other high-ranking Administration officials and answering the President’s most sensitive questions.
 - The effectiveness of these advisors — and therefore of the President himself — would be severely degraded if those sensitive internal deliberations were subject to disclosure during the President’s term of office.
 - This is true without regard to which party holds the Presidency: The effectiveness of *any* future President would be hampered by a policy of immediate disclosure of Presidential communications. To prevent that harm, this Administration has even gone to court to defend the Clinton Administration’s right to confidential presidential communications. *Judicial Watch v. Department of Justice*, 365 F.3d 1108 (D.C. Cir. 2004).
- The need for confidentiality in candid deliberations among the President and his senior advisors is well-established. It underlies the **presidential communications privilege**, which protects the President’s ability to secure the unvarnished advice of his advisors.
 - **The Supreme Court** has ruled that the presidential communications privilege is based on “the valid need for protection of communications between high Government officials and those who advise and assist them in the performance of their manifold duties” and is “**inextricably rooted in the separation of powers under the Constitution.**” *U.S. v. Nixon*, 418 U.S. 683, 705 (1974).

- The U.S. Court of Appeals for the D.C. Circuit has said that “**The President can invoke the privilege when asked to produce documents or other materials that reflect Presidential decision making and deliberations and that the President believes should remain confidential.**” *In re Sealed Case*, 121 F.3d 729, 744 (D.C. Cir. 1997).
- The privilege covers “communications made by presidential advisers in the course of preparing advice for the President, . . . even when these communications are not made directly to the President.” *In re Sealed Case*, 121 F.3d at 751-52.
- The presidential communications privilege is **widely recognized** as protecting the President’s right to the unvarnished advice of his senior advisors.
- **The President** himself has affirmed the importance of preserving the ability of White House officials to give candid, confidential advice: “It is important that we maintain executive privilege in the White House. That’s part of the deliberative process. That’s how I’m able to get good, sound opinions from people. . . . **And I just can’t tell you how important it is for us to guard executive privilege in order for there to be crisp decision-making in the White House.**” (Press conference, Oct. 4, 2005.)
- Similarly, **Senator Arlen Specter**, Chairman of the Senate Judiciary Committee, has emphasized the privileges that surround advice to the President: “It is more than executive privilege. . . . I’ll go over with her in some detail papers which she had generated to see what would be appropriate for disclosure. I really think there is very little to start with. And on first blush **it would be covered by privilege.**” (Press conference, Oct. 3, 2005.)
- Even **Senator Patrick Leahy**, ranking minority member of the Senate Judiciary Committee, has recognized that presidential communications are privileged: “Executive privilege is used by the President and the executive branch to shield presidential communications, advice, and national security information from disclosure in judicial proceedings, congressional investigations and other arenas. **While the proper scope of executive privilege is the subject of much debate, at a minimum, it covers presidential communications**, and may also protect the decision-making, or deliberative process, of the executive branch in general.” (Press release, Sept. 23, 1999.)
- The release of Reagan-era White House documents during the **confirmation process for Chief Justice John Roberts is irrelevant here** because it is governed by different legal rules and implicates entirely different concerns.
- Under the Presidential Records Act, documents from previous administrations, including the Reagan White House, are entrusted to the National Archives and Records Administration and begin to be considered for public release twelve years after the end of a President’s term. They are historical records, most of which become available to the public.

- The records of any current administration, though, are not produced to the Archives until after that administration is over and are not available for public review during the term of that administration. This policy protects *any* administration's ability to give and receive candid advice, regardless of the President's party affiliation.

Harriet Miers Biography

- Harriet Miers was born in Dallas, Texas on [b(6)]
- Ms. Miers received her bachelor's degree in Mathematics in 1967 and J.D. in 1970 from Southern Methodist University.
- Upon graduation, she clerked for U.S. District Judge Joe E. Estes from 1970 to 1972.
- In 1972, Ms. Miers became the first woman hired at Dallas's Locke Purnell Rain Harrell.
- In March 1996, her colleagues elected her the first female President of Locke, Purnell, Rain & Harrell, at that time a firm of about 200 lawyers. She became the first female to lead a Texas firm of that size.
- Locke, Purnell eventually merged with a Houston firm and became Locke Liddell & Sapp, LLP, where Ms. Miers became Co-Managing Partner and helped manage an over-400-lawyer firm.
- Ms. Miers had a very distinguished career as a trial litigator, representing such clients as Microsoft, Walt Disney Co. and SunGard Data Systems Inc.
- Throughout her career, she has been very active in the legal community and has blazed a trail for other women to follow.
 - In 1985, Ms. Miers was selected as the first woman to become President of the Dallas Bar Association.
 - In 1992, she became the first woman elected President of the State Bar of Texas. Ms. Miers served as the President of the State Bar of Texas from 1992 to 1993.
 - She played an active role in the American Bar Association. She was one of two candidates for the Number 2 position at the ABA, chair of the House of Delegates, before withdrawing her candidacy to move to Washington to serve in the White House. Ms. Miers also served as the chair of the ABA's Commission on Multijurisdictional Practice.
- On numerous occasions, the National Law Journal named her one of the Nation's 100 most powerful attorneys, and as one of the Nation's top 50 women lawyers.
- Ms. Miers also has been involved in local and statewide politics in Texas.
 - In 1989, she was elected to a two-year term as an at-large candidate on the Dallas City Council. She chose not to run for re-election when her term expired.
 - Ms. Miers also served as general counsel for the transition team of Governor-elect George W. Bush in 1994.

- From 1995 until 2000, Ms. Miers served as Chairwoman of the Texas Lottery Commission, a voluntary public service position she undertook while maintaining her legal practice and other responsibilities. When then-Governor Bush appointed Ms. Miers to a six-year term on the Texas Lottery Commission, it was mired in scandal, and she served as a driving force behind its cleanup.
- Ms. Miers came to Washington D.C. in 2001 and began a period of distinguished and dedicated service that continues today.
- She was appointed to be Assistant to the President and Staff Secretary on January 20, 2001.
- In 2003, Ms. Miers was promoted to be Assistant to the President and Deputy Chief of Staff.
- Ms. Miers has served as Counsel to the President since February, 2005.
- She is single and very close to her family: two brothers and her mother live in Dallas and a third brother lives in Houston.

Harriet Miers is Well Qualified to Serve on the United States Supreme Court

Ms. Miers's long and distinguished career as one of the foremost lawyers in the country makes her exceptionally well qualified to serve on the United States Supreme Court. As a Justice on the Supreme Court, she will strictly interpret the Constitution and laws of the United States, not legislate from the bench.

- With her distinguished career and extensive community involvement, Ms. Miers would bring a wealth of personal experience and diversity to the Supreme Court.
- Members from **both sides of the aisle** have recognized her professional achievements and qualifications and recommended her to the President as a nominee.
- Ms. Miers would join a **long and distinguished list of jurists named to the Supreme Court without prior judicial experience.**
 - 10 out of the 34 Justices appointed since 1933, including the late Chief Justice William Rehnquist and the late Justice Byron White, were appointed from positions within the President's Administration. The late Chief Justice William Rehnquist was appointed in 1971 from his position as Assistant Attorney General. The late Justice Byron White was appointed in 1962 from his position as Deputy Attorney General. Neither had prior judicial experience.
- **Ms. Miers has a long and distinguished professional career.**
 - Ms. Miers received her bachelor's degree in Mathematics in 1967 and J.D. in 1970 from Southern Methodist University. Upon graduation, she clerked for U.S. District Judge Joe E. Estes from 1970 to 1972.
 - Ms. Miers had a distinguished career as a trial litigator, representing such clients as Microsoft, Walt Disney Co. and SunGard Data Systems Inc. Moreover, when she left her law firm of Locke, Liddell & Sapp, Ms. Miers was serving as Co-Managing Partner of the over-400-lawyer firm.
 - Throughout her career, Ms. Miers has been committed to public service. In addition to her extensive involvement in the State Bar of Texas and the American Bar Association, Ms. Miers has been an elected official, a statewide officeholder, and a strong advocate of pro bono work.
 - In her time in the Administration, Ms. Miers has addressed numerous legal and policy questions at the highest levels of decision making, most recently serving as the Counsel to the President of the United States.
- Like Justice O'Connor, throughout her career, Ms. Miers has been a **female trailblazer.**
 - In 1972, Ms. Miers became the first woman hired at Dallas's Locke Purnell Rain Harrell. In March 1996, her colleagues elected her the first female President of Locke, Purnell, Rain &

Harrell, at that time a firm of about 200 lawyers. She was the first woman to lead a Texas firm of that size.

- In 1985, Ms. Miers was selected as the first woman to become President of the Dallas Bar Association.
- In 1992, she became the first woman elected President of the State Bar of Texas. Ms. Miers served as the President of the State Bar of Texas from 1992 to 1993.
- Ms. Miers recent career has been marked by her participation **at the highest levels of government**.
 - She was appointed Assistant to the President and Staff Secretary on January 20, 2001. As Staff Secretary, Ms. Miers acted as “the ultimate gatekeeper for what crosses the desk of the nation’s commander in chief.” In addition to this important role, Ms. Miers supervised more than 60 employees in four departments.
 - In 2003, Ms. Miers was named Assistant to the President and Deputy Chief of Staff. As part of the Office of the Chief of Staff, she was a top domestic policy advisor to the President.
 - Ms. Miers has served as Counsel to the President since February 2005. In this role, she has served as the top lawyer to the President and the White House, and in particular has been the principal advisor judicial nominations.
- Ms. Miers’s **professional accomplishments have been recognized time and time again**.
 - Ms. Miers made partner at her law firm in 1978; the next year, she was honored as the Outstanding Young Lawyer of Dallas by the Dallas Association of Young Lawyers.
 - On numerous occasions, the National Law Journal named her one of the Nation’s 100 most powerful attorneys, and as one of the Nation’s top 50 women lawyers.
 - She has received countless awards recognizing her distinguished career, including 1997 Woman of the Year, the 1996 Louise Raggio Award, the 1993 Sarah T. Hughes Award, and the 1992 Dallas Bar Association’s Justinian Award for Community Service. In 2005 she received the Sandra Day O’Connor award.
 - In 1996 alone, she was honored with the Anti-Defamation League’s Jurisprudence Award and the Legal Services of North Texas 1996 Merrill Hartman Award.
 - She also has been the recipient of a Women of Excellence Award, sponsored by Dallas’s Women’s Enterprise, for her work with the Dallas Bar Association and Dallas’s Girls Inc.
- Also like Justice O’Connor, Ms. Miers has been an **active participant in our nation’s political process**.

- In 1989, she was elected to a two-year term as an at-large candidate on the Dallas City Council. She chose not to run for re-election when her term expired.
- Ms. Miers served as general counsel for the transition team of Governor-elect George W. Bush in 1994.
- From 1995 until 2000, Ms. Miers served as Chairwoman of the Texas Lottery Commission, a voluntary public service position she undertook while maintaining her legal practice and other responsibilities. After then-Governor Bush appointed Ms. Miers to a six-year term on the Texas Lottery Commission, she served as a driving force behind its cleanup. In an editorial, The Dallas Morning News complimented her distinguished service and her success in ensuring the lottery's integrity.
- In addition to her trailblazing role in the Dallas Bar and Texas State Bar, Ms. Miers has been a **strong voice in the American Bar Association**, the leading professional organization for lawyers across the country, and the Texas State Bar.
 - She was one of two candidates for the No. 2 position at the ABA, chair of the House of Delegates, before withdrawing her candidacy to move to Washington to serve in the Bush Administration.
 - Ms. Miers also served as the chair of the ABA's Commission on Multi-jurisdictional Practice and was a member of the ABA Governance Committee.
 - She has also served as the Chair of the Board of Editors of the *ABA Bar Journal*.
 - Similarly, she has served as the chairwoman of the Legal Services to the Poor in Civil Matters Committee of the State Bar of Texas.
- Throughout her career, **Ms. Miers has successfully balanced her professional obligations and community involvement.**
 - For example, while she served as President of the State Bar of Texas, Ms. Miers also logged 125 pro bono hours handling an immigration and naturalization case for Catholic Charities of Dallas.
 - In addition to her service to the Bar and her pro bono commitments, Ms. Miers has served on the Executive Board for the Southern Methodist University School of Law and as a Trustee of the Southwestern Legal Foundation.
- Ms. Miers is single and very close to her family: two brothers and her mother live in Dallas, and a third brother lives in Houston.

