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PUBLISHER, LAWYER IN TRADEMARK FIGHT OVER “ENTREPRENEUR” DERIVATIVES

by MARY ALICE ROBBINS

When Austin attorney Daniel R. Castro received Entrepreneur Media Inc.’s cease-and-desist letter threatening to sue him, first he got mad — then he beat EMI to the courthouse.

EMI wants Castro to withdraw an application he filed with the U.S. Patent and Trademark Office (USPTO) to register his Entrepreneur.Ology trademark and to stop using his entrepreneurology.com domain, according to the letter.

“I’m going to fight this tooth and nail,” says Castro, a Castro & Baker partner who speaks, writes and provides

training on entrepreneurship.

Castro represents himself in *Castro v. Entrepreneur Media Inc.*, which he filed in the U.S. District Court for the Western District of Texas in Austin. U.S. District Judge Lee Yeakel presides over the suit.

In his Sept. 28 first amended complaint, Castro alleges that “EMI’s pattern of threats and lawsuits against anyone who uses any variation of the common noun ‘entrepreneur’ is an attempt to create a monopoly and a barrier . . . into the market that provides magazines, books, articles, websites, blogs, tradeshow, workshops, seminars, boot camps, and keynote presentations on the

topic of entrepreneurs and entrepreneurship.”

He writes in the complaint that he is the author of “Critical Choices That Change Lives,” is working on a second book with the working title “Anatomy of the Entrepreneur’s Brain,” and plans to launch a “Boot Camp for Entrepreneurs.”

Latham & Watkins partner Perry Viscounty of Costa Mesa, Calif., EMI’s attorney, says Castro’s services are very similar to EMI’s. According to an e-mail from Viscounty, California-based EMI publishes *Entrepreneur* magazine as well as books and business guides, and offers computer

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In Harriet They Trust

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

by MIRIAM ROZEN

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

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

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

“I don’t think three is sufficient,” she says, referring to U.S. Supreme

DANNY HURLEY

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ROLE REVERSAL

How Attorney-Moms and Stay-at-Home Dads Make Their Arrangements Work

by JOHN COUNCIL

The brutal hours and travel demands of a legal career do little for a lawyer’s family life. But one of the perks of the profession is that many attorneys earn large salaries, so their spouses can afford to stay at home and raise the children. Sometimes, the partner in charge of the household happens to be the husband.

Over the past two decades, stay-at-home dads have become more common. According to the U.S. Census Bureau, there were 158,000 stay-at-home fathers in 2009.

Texas Lawyer spoke with three couples who reversed their traditional roles. But it has its challenges: One stay-at-home dad was shunned by mothers he encountered at a park; an attorney-mom winced when her children first asked for daddy when they needed help; and another lawyer-mother’s guilt led her to stay up until midnight stitching a Halloween costume for her daughter.

Yet these three couples say the arrangement has worked out to their families’ benefit.

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Locke Lord Bissell & Liddell partner Harriet Miers.

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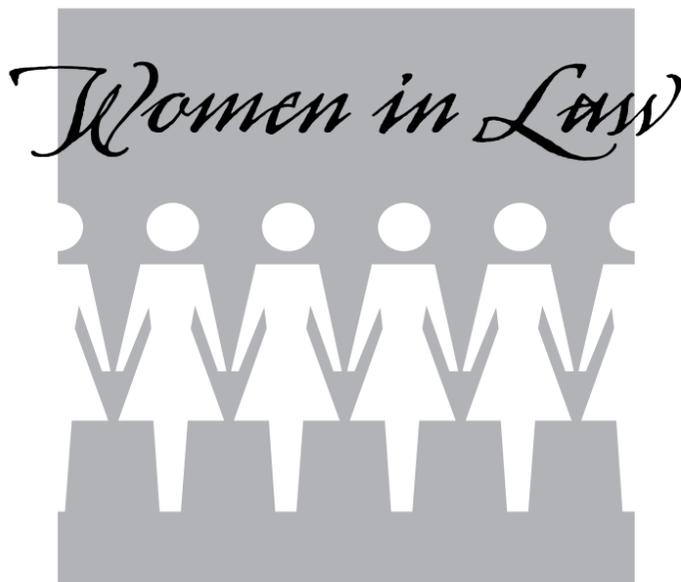
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Is there any truth behind the myth of the cranky woman lawyer?

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Special Report



WHEN BUSINESSES HIRE LAWYERS, GENDER MATTERS

by DAWN ESTES and MELANIE OKON

Does sex matter? Now that we have your attention, perhaps we should ask the question in a more appropriate fashion. Does gender matter — or should it matter — in choosing the right lawyer to represent a business?

The answer, as far as we've been able to determine, is yes, it does matter. In our view, the better man for the job often is a woman — not always, but often.

Before we get too far down this path, some background on our potential bias is appropriate. Ours is one of the few certified women-owned business law firms in Texas. Two brave and brilliant male lawyers work with us, but the women's restroom on our floor of the building gets used a heck of a lot more than the men's.

When assembling a team to handle a legal matter or take a case to trial, a client obviously should begin with the expectation that all the lawyers under consideration — men and women — are excellent at what they do. Beyond that basic requirement, we believe some traits typically associated with women provide

attorneys an advantage in some circumstances.

• *"I have an idea that the phrase 'weaker sex' was coined by some woman to disarm some man she was preparing to overwhelm."* — Ogden Nash

Sometimes it is important not to look like The Man. Everyone loves a David and Goliath story. That is why people commonly refer to large oil and gas companies as Big Oil. Other large corporations face similar labels. Many defendants come into court at a disadvantage merely because of their name recognition, size and net worth.

Arming themselves with women lawyers can help big companies disarm juries and remove some of the automatic bias. Think about it. When a man walks into the courtroom to defend a big company jurors perceive as The Man, it only strengthens that perception. But when a woman walks into the courtroom to defend the same business, the perception dissipates, and the company's image is softened and humanized.

Moreover, juries often view women lawyers as underdogs when they are pitted against male lawyers, thus turning the parable on its head. The company somehow becomes David while the plaintiff becomes Goliath.

But the softness should be a perception only, not a reality. Like Muhammad Ali, a great woman lawyer may float like a butterfly, but she also must sting like a bee.

Hiring women lawyers to defend against sexual harassment claims lodged by female plaintiffs is a widely recognized strategy. Likewise, the particular defendant (as opposed to the particular plaintiff) can dictate who a company should hire.

• *“Women are in league with each other, a secret conspiracy of hearts and pheromones.” — Camille Paglia*

A 2009 survey by the Minority Corporate Counsel Association showed that roughly one in five *Fortune* 500 general counsel was a woman. Likewise, women comprise a significant portion of in-house lawyers below the GC level. With those numbers, it’s just common sense to consider women for the legal team.

Collaboration is critical for large corporate clients. Outside and inside counsel work together to merge their skill sets to create the best legal outcomes for the client. Due to women lawyers’ collaborative nature, they are ideally suited to work with in-house counsel as an integral team. (Remember, we are the ones who are not afraid to ask for directions. We can even accept directional input from someone other than the sexy-voiced GPS lady in the car.)

Arming themselves with women lawyers can help big companies disarm juries and remove some of the automatic bias.

Unfortunately, we continue to hear stories about outside counsel who fail to consult younger inside counsel (often women) about critical strategic litigation decisions before forging ahead in the name of the client. Often, the outside lawyer does not even realize he has done this.

Litigation decisions usually have broader implications in the business world, and inside counsel possess critical information that outside counsel do not. When outside counsel fail to collaborate with inside counsel, critical information is left on the cutting-room floor.

• *“Women like silent men. They think they’re listening.” — Marcel Achard*

Women are great listeners. They are able to listen without feeling obligated to know every answer to every question immediately, and they do not feel obligated to fix everything instantaneously. (This might come from being constantly asked mom questions such as, “What happens if I put the cat in the bathtub?” or “Why do you have so much extra skin on your elbows?”) Especially in emotionally charged cases, that sort of attitude creates advantages. Sometimes being heard and respected is as important to opposing parties as the ultimate deal terms or settlement payment.

Women also have the ability to take in lots of information regarding options quickly and move the analysis forward

to a decision. Thoughtful and swift consideration of possible outcomes ultimately drives a better result than a less-informed, snap decision.

What we suggest — acknowledging and respecting differences — is not radical but more often the norm. Many businesses today emphasize diversity, recognizing that consumers, taxpayers and juries include women and minorities, and diverse legal representation makes good business sense. Others organizations are required, by law or contract, to make sure a certain number of women or minorities get to do some of the work.

Fortunately, most of us with opposable thumbs have moved past the tired stereotypes of woman versus man. But, in a legal battle where the fate of the company itself may be on the line, lawyers owe it to their clients to find and exploit every possible advantage. Sometimes, that may mean a man isn’t the best man for the job. **■ ■ ■**



Dawn Estes (left) and Melanie Okon are part of the women-owned firm Taber Estes Thorne & Carr, which has its principal office in Dallas. They are full-time trial lawyers, moms and wives and part-time taxi drivers, short-order cooks, party planners and nurses. Their husbands rock. Their kids are amazing. Their e-mail addresses are destes@taberestes.com and mokon@taberestes.com.



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LAW FIRM CLIQUES: HIGH SCHOOL WITH NICER CLOTHES

by KATHLEEN J. WU

As any mother or father of a tween or teenager knows, parents want more than anything to spare their children the horrors of adolescence: the insecurity, the bad skin, the raging hormones and, most of all, the social terrorism of high school cliques.

If only parents could put their kids into a deep sleep and whisk them magically through the years between 12 and 18 (give or take, depending on their precociousness or lack thereof), thereby sparing them from having to walk by the cool kids and feel self-conscious about their weight, sexuality or, worst of all, off-brand shoes.

But that's not possible, and cliques aren't just for those under 18. Lawyers can't avoid the fact that, even as adults in the rarified world of elite firms, the social stratification that provoked so much anxiety in high school is still very much a part of life. So lawyers who are moms don't just need to worry about their kids. It's often important for women to understand their current playground.

True, all lawyers have, by definition, graduated from law school, so it's a fairly self-selecting, homogenous bunch. There aren't many stoners — unless you count Lunesta, Xanax and Ambien — and one would have a hard time finding any gang members. But jocks, cheerleaders, nerds, bullies and drama geeks — firms have them all. They just wear nicer clothes now.



To see them in their native habitat, let's take a campus tour at Bigshot & Snooty, the most selective fictional firm in the country. The tour guide is Newby Associate, a typical overachieving law school grad who's looking to fit in, stand out and generally excel at her first job in the real world.

But, before she gets too comfortable, she needs to get the lay of the land. She doesn't want to buddy up with the lawyer everyone secretly hates or find herself allied with the firm bully, the partner who considers it his job to make every associate who works for him cry.

And, to be honest, she wants to find out who the popular kids are. Newby was a bit of a geek in high school. Now that she's matured a few years and has a better wardrobe, she figures she has a shot at being one of the cool kids. After all, aren't firms filled with brainiacs just like her?

Yes, more or less. But it turns out that brainiacs can be just as socially exclusive and cliquish as everyone else. To make matters worse for the socially insecure, some of those cute jocks and gorgeous blonde cheerleaders also had the brains and discipline to make it through college and law school and end up at Bigshot & Snooty. It turns out that being attractive and physically fit is a plus in employment matters.

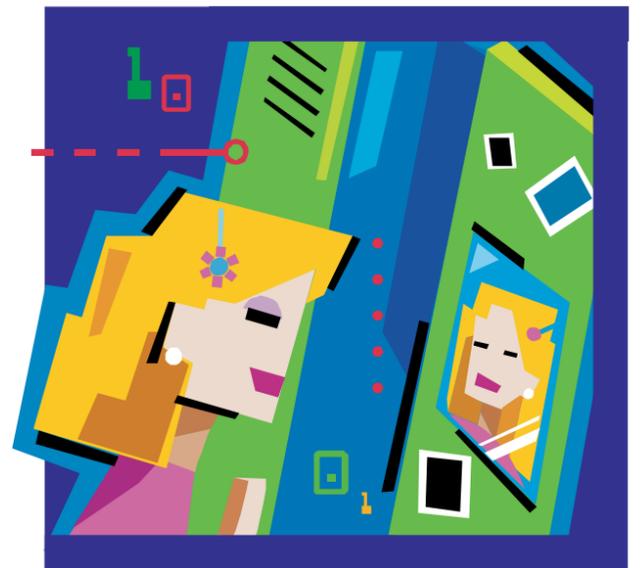
The popular kids have a knack for finding each other. They're the ones who do Starbucks runs together, hang out after work and take cool group vacations. They somehow find the time to lunch together every day, regardless of how much work they have. Instead of lording over the school cafeteria, though, the popular kids at Bigshot & Snooty take over trendy restaurants.

Newby will find that former jocks and former cheerleaders still hold some sway at Bigshot & Snooty, but so does another group: the geeks who came into their own. They took the brains and discipline that got them great grades in high school, sifted out some of the social awkwardness that turned off the opposite sex, added a decent salary and a nice car and, *voilà*, instant confidence.

At Bigshot & Snooty, confidence plus competence equals clients. And, for lawyers, clients are the social capital that keeps on giving.

But there's a twist here at Bigshot & Snooty called The Business Cycle. In bull markets, the corporate lawyers tend to be the popular kids, and in bear markets, the bankruptcy lawyers get their turn. Litigators are a bit of a crapshoot, although the swagger that Bigshot & Snooty's best litigators display can serve them well in any market.

There also are the geeks (tax lawyers) who didn't come into their own but who have nevertheless made themselves indispensable to the firm's clientele and the teacher's pets (the associates who not only jump at the chance to work over the



weekend but also make sure their colleagues hear all about it).

The drama kids are still around, and they get to indulge the theater bug at their local bar association's annual show and at Bigshot & Snooty's ill-advised karaoke night. But they also get plenty of opportunities during the workday. Every time they have too much work, have to come in over the weekend or are annoyed in any way, they let the drama flow.

Adult Homecoming

Newby may have thought she was past having to stress about finding a date to homecoming, but she forgot about Bigshot & Snooty's firm parties. These are typically high-dollar shindigs at a posh hotel or restaurant in the right ZIP code, and her choice of date can earn her points or cause her to be written off as socially hopeless. The big difference between homecoming and Bigshot & Snooty's parties, of course, is that instead of smuggling booze into the party, the lawyers proudly hold their drink in one hand and their taxi vouchers in the other.

Not that Newby is allowed to get drunk. As a first-year associate, she needs to limit her alcohol consumption, lest she end up making out with a colleague (or colleagues) in the coat closet. Bigshot & Snooty's gossip mill is at least as vicious as the one at Newby's old high school, and she doesn't want to give it any additional fodder.

Here's the good news about Bigshot & Snooty (and the firm world in general): The parallels to high school only go so far. Yes, it can be catty, vicious and cliquish on occasion. But, for better or worse, the real world lasts longer than four years, so the humiliations of 2003 are long forgotten by 2010. Social capital is won and lost and won again, over and over. Redemption and second acts always are possible.

The beauty of being an adult is having the perspective to brush off social slights and learn that the quality of one's work — more than anything else — is the key to getting ahead. Nice clothes, being in the right clique and having the right date to the firm party don't add up to much if the work doesn't stand on its own.

So Newby can rest easy in the knowledge that her obsessive attention to detail and maniacal work ethic may not have won her many dates in high school, but they're a potent recipe for success at Bigshot & Snooty. ■■■



Kathleen J. Wu is a partner in Andrews Kurth in Dallas. Her practice areas include real estate, finance and business transactions.

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WHAT'S BEHIND THE MYTH OF THE CRANKY WOMAN LAWYER?

by THE ASSISTANT-AT-LAW

A popular Rudyard Kipling poem declares, "[T]he female of the species is more deadly than the male." This maxim sums up the attitude many legal assistants hold toward women lawyers. Yet, while I have known unpleasant female attorneys, they do not seem to represent any greater proportion of the legal profession than do their obnoxious male counterparts. What, then, is the basis for the cranky woman lawyer stereotype?

A friend went to work for a female attorney who had been through at least three secretaries in three years. One might have assumed the lawyer had trouble retaining staff because of her disposition, but my friend had a good relationship with her

from the start. The attorney was friendly and considerate, gave generous holiday and birthday gifts, and always apologized for late evening work.

My own experience working for a female attorney was similar. The assistant who previously worked for my lawyer had disliked her intensely, and the feeling was mutual. Yet she became one of my favorite bosses.

I believe the difference between my experience with my former boss and that of her previous assistant was one of personality compatibility. The lawyer and I thought alike. Our strengths were complementary, and we had similar temperaments. We could relate to one another as friends. She saw some of her own traits mirrored in me.



Because of her positive feelings toward me, she was in a good mood in my presence. She sensed that I understood exactly what she needed done, and this gave her faith that I would not let her down.

Women attorneys can seem more difficult than males because of the different way women's brains work. A woman is wired to seek symbiotic relationships with the people around her, especially other women. Evolutionary psychology finds the origin of this tendency in prehistory, when the women of a village or clan worked together to grow or gather food, and child-rearing was a collective effort.

Men, on the other hand, tend not to conflate work and personal relationships. They cooperate to get the job done and then move on. They benefit from work friendships, but it does not trouble them deeply if such friendships do not form. But for a woman, the failure to build a warm rapport with the co-worker she depends upon most can have a chilling effect on her overall demeanor.

Those prehistoric women did more than just cheerfully cooperate to ensure the clan's survival. Their alliances bristled with conflict because they competed with one another for the available men and the best resources for their children.

Women lawyers and women legal assistants feel the tug of this ancient competitiveness. A woman lawyer's competitive streak may cause her to view her less-well-educated assistant as inferior. She might also subconsciously react to the assistant as a territorial threat.

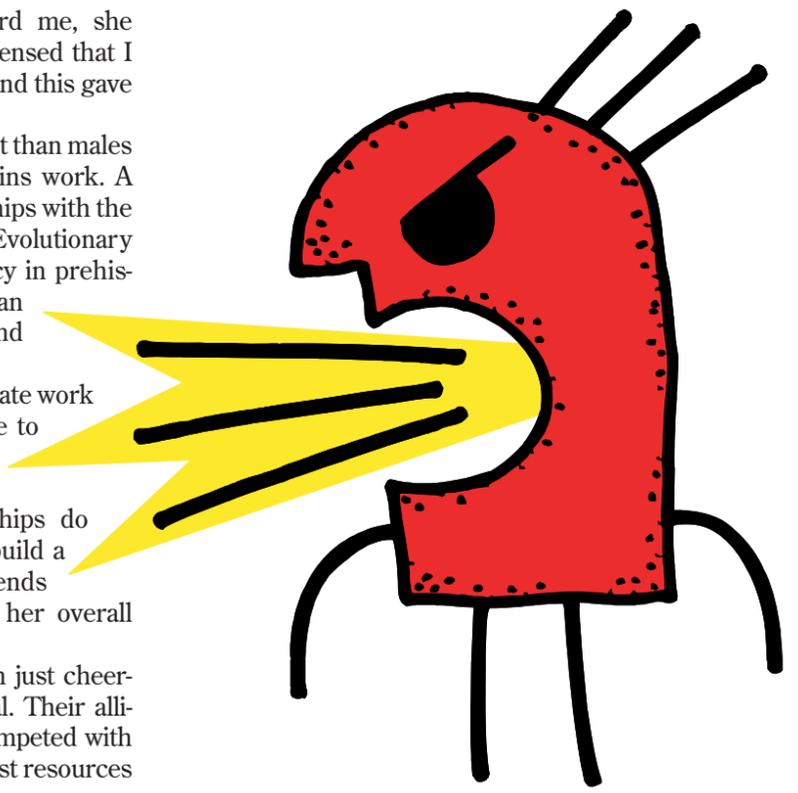
A female assistant who feels she has fallen short of her potential might in turn be jealous of her female boss' position. Where there is no camaraderie to counteract this negativity, it can be toxic to the working relationship.

This competitive dynamic may also help explain the double standard in which a cranky male lawyer scarcely merits a remark, while a woman who behaves the same way is derided as just another nasty woman lawyer. Male bosses do not arouse the same type of resentment in female assistants because a woman's competitive drive is directed primarily at other women.

It does not help that women and men hold women to higher standards of civility. Also, women — lawyers and assistants — whose desire for symbiotic relationships with other women at work are thwarted may be more disappointed than they are when males in the workplace seem distant or rude.

What to Do?

The responsibility for building a sound working relationship between a woman lawyer and a woman assistant rests mainly with the assistant. The assistant must earn the lawyer's trust, and this requires a keen sensitivity to the lawyer's particular needs and apprehensions. It also calls for setting one's own ego aside and demonstrating unqualified loyalty.



But the attorney must give the assistant a chance. Understand that not every woman wants to be a lawyer, and channel competitive energies toward other attorneys instead of the assistant. Make expectations clear. Set firm, realistic priorities. Provide detailed positive and negative feedback, so the assistant can assess her own performance and learn to improve. Try to appreciate the assistant as a person.

The legal profession should accept that it can be more difficult to match an assistant to a female lawyer than to a male lawyer.

A year after I left my job working for the woman attorney, one of my former co-workers e-mailed to say everyone at the firm wanted me back. The new assistant did her best but could not seem to please my old boss. The lawyer's resulting displeasure manifested itself as a never-ending bad mood that upset those around her. This made me sad. Both women were good people, but mismatched personalities and a lack of understanding had loosed an avalanche of misery.

Perhaps Kipling was right about the ferocity of the female bears and cobras featured in his poem. But his pronouncement need not hold true of lawyers. The legal profession should accept that it can be more difficult to match an assistant to a female lawyer than to a male lawyer. It may be that some lawyers would do best with an assistant of the opposite sex, so as to obviate same-sex competition. I knew one male secretary who worked happily with a female lawyer whose two previous female assistants had disliked her. But until there are enough male assistants to support the growing numbers of female attorneys, we women simply will have to work on developing mutual respect and trust. We can do it: We are, after all, the fairer sex. **END**

The Assistant-at-Law has worked for law firms large and small, in various capacities, for more than 15 years. Currently, she is a legal secretary for a Texas-based international firm.

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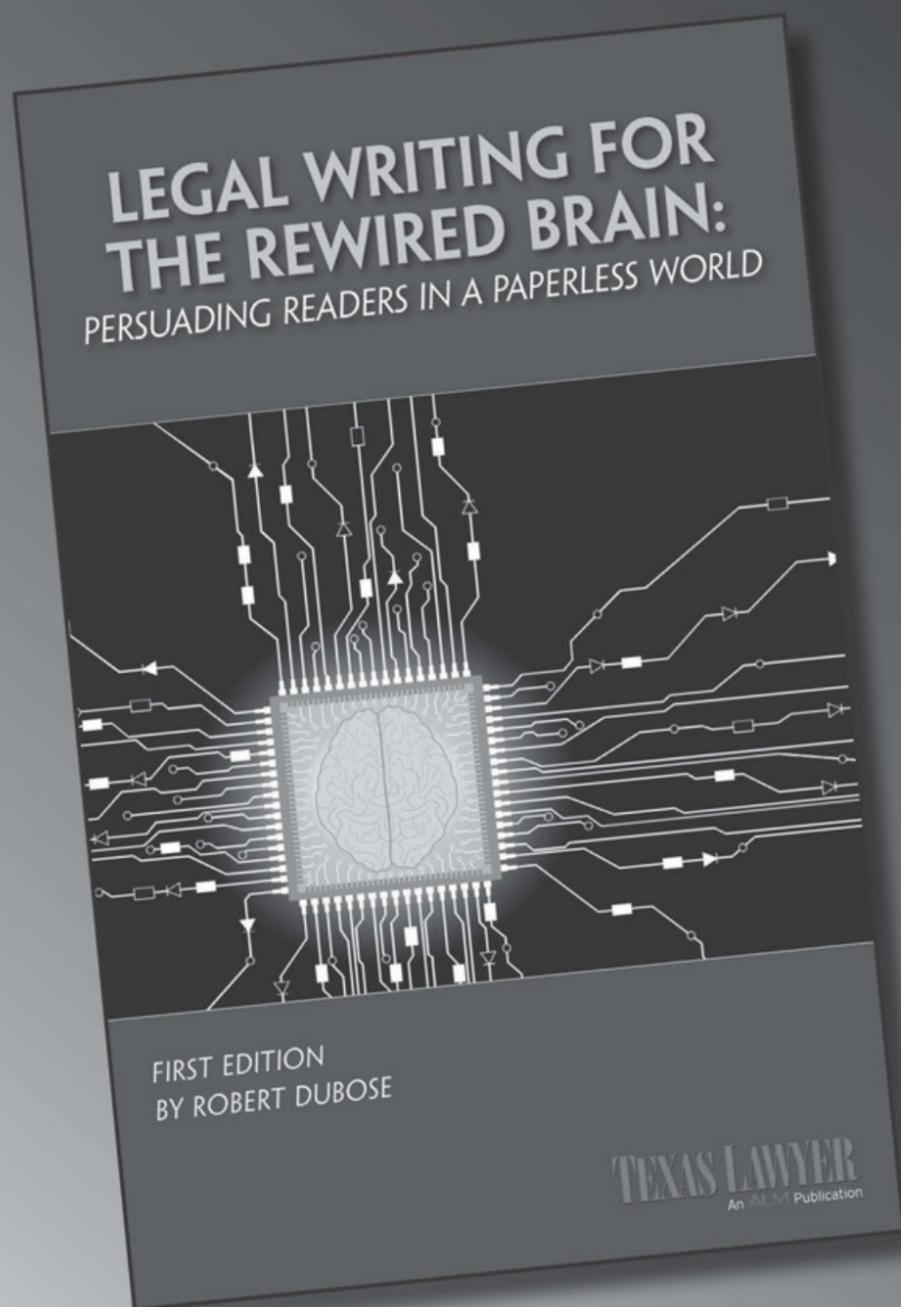
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ABOUT THE AUTHOR

Robert Dubose is a partner with the appellate law firm of Alexander Dubose & Townsend LLP. Since 1998 he has been an adjunct professor at the University of Houston Law Center where he has taught courses including *Insurance Appeals* and *Appellate Advocacy*. He is a frequent speaker and writer and won the 2009 Hellen A. Cassidy Award for highest-rated presentation at the State Bar of Texas Civil Appellate Practice Course. Mr. Dubose graduated from Rice University (B.A.) and Harvard Law School (J.D.) and is Board Certified by the Texas Board of Legal Specialization in Civil Appellate Law.

MIERS' DEVOTION TO DUTY, HONOR, CLIENTS BENEFITS HER TEXAS FIRM

◀ continued from page 1

Court Justices Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan. "I feel very strongly that the courts need to be places where there is good representation of the public at large."

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

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

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

At the White House from 2001 to 2007, Miers served as staff secretary, then as general counsel and finally as deputy chief of staff. In 2007, she became a partner in Texas-based Locke Liddell & Sapp, which merged with Chicago's Lord Bissell & Brook later that same year to become Locke Lord Bissell & Liddell. Miers, who was the managing partner of Locke Liddell in Dallas before joining the administration of President George W. Bush, now splits her time between Locke Lord's Dallas and Washington, D.C., offices.

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

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

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

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

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

"Harriet's experience at the White House, combined with her storied career before going to D.C., made her extremely valuable and uniquely positioned to advise our clients. After serving as White House counsel, a job in which she represented arguably the most powerful client in the world — the president of the United States — at one of the most critical times in our history, analyzing and resolving complex issues was an everyday occur-



"Remarkably, the political process doesn't seem to have affected her much. . . . She has good legal instincts. She has always been the grown-up in the room," Matt Orwig says of Harriet Miers.

rence for her. That level of experience that very few people in this country have gives clients a great deal of comfort that their legal matters rest in strong, capable hands and that they've hired someone who won't blink under the most un-imaginable pressures and who also will handle their issues with her now famous dignity and grace," Clements writes in an e-mail.

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

"She is a really great thinker who has an excellent understanding of the hurdles that have to be overcome to have people understand. I just marvel at the way she thinks through problems. She slices and dices. She is so smart. You look at someone like that, and then you also recognize she is a lovely person, too, and you're sort of taken back," Cosgriff says.

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

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

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

Even lawyers at rival firms who have battled Miers in court admire her legal skills and Washington ties. In 2008, a bipartisan group of 20 former U.S. attorneys including Matt Orwig — U.S. attorney for the Eastern District of Texas from 2001 to 2007 — filed an amici brief siding with the Democratic-controlled U.S. House of Representatives in its federal suit against Miers and another top Bush administration official. The suit



Nina Cortell (above) met Harriet Miers for the first time in 1974 and remembers lunching with her at a downtown Dallas club that barred women from the main dining area.

arose because Miers and the other official asserted executive privilege, refusing to testify before a House Judiciary Committee panel and to provide documents about whether the administration's firings of eight U.S. attorneys in 2006 were politically motivated.

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

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

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

The Nomination

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

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

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

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

In a letter dated Oct. 27, 2005 — sent just 24 days after her nomination — Miers asked the president to withdraw her nomination. “I am concerned that the confirmation process presents a burden for the White House and our staff that is not in the best interest of the country,” she wrote.

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

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

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

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

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

“It would have crushed most people,” Hughes says, but “a month or so afterward Harriet was able to smile and go back to work.”

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

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

Miers’ Mettle

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

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

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

“[T]here seemed to be an assumption that women



William Stephen Boyd recalls one of his first moves after starting as general counsel of Baylor Health Care System in 2007: Hire Harriet Miers and her firm.

were better suited in the corporate arena. I believe that corporate work was considered more genteel than the combative world of litigation. Of course, we know this was false because corporate work can be quite combative at times. . . . I believe that in litigation lawyers try to minimize risks. For a trivial example, at least back then, trial lawyers dressed conservatively so as not to offend anyone’s sensibilities. Because women in the courtroom were unique, their reception by judges or juries was not a given. Over time, though, everyone just seemed to accept that gender was like many qualities or factors that make up a lawyer’s overall persona,” Miers writes in an e-mail.

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

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

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

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

Like Cortell, Susan L. Karamanian, associate dean for international and comparative legal studies and a professor at George Washington University Law School, identifies herself as a Miers mentee. Karamanian and Miers serve as trustees for the Center for American and International Law, a Plano-based nonprofit that runs educational programs for lawyers and law enforcement officials worldwide. They met when Karamanian worked as a summer associate at Miers’ firm in 1983.

“It was very good training for me just to watch how she conducts a meeting,” Karamanian says, noting how Miers was calm, even-handed but always in control. And Miers created networking opportunities by taking



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

Karamanian to client meetings and professional gatherings outside the firm. “She never wore it on her sleeve. She just set an example for me, showing me these are the steps that you need to take to develop yourself,” Karamanian recalls.

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

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

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

For her part, Miers says, “If you are not putting the team first, you are taking a short view that in the long run will not be the right one. You have to arrive at an acceptable and fair result that requires individuals to put their own immediate self-interest behind the interest of the team.”

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

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

So what’s next? Perhaps a run for public office someday, Miers says, adding, “never say never.”

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How LAWYER-MOMS AND STAY-AT-HOME DADS MAKE LIFE WORK

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It may not be for everyone, but the end result is eight healthy, happy and well-adjusted children. And that is worth more than all of the money in the world, they say.

Here are their stories:

Ana Ward and Bruce Evans

Like a good lawyer, Ana Ward negotiated a child-rearing agreement with Bruce Evans before they married.

Ward knew she was going to have a demanding career that would make raising children difficult. Day care was not a good option for her. Plus members of both of their families had been through divorces, she says. So they headed to premarital counseling to resolve what is often the biggest issue for couples before they wed.

"We decided to get married, and I didn't want children, and he did. And we knew that was going to be a difficult issue, so we went into counseling to see if we could work it out," Ward says. "And, in working it out, if I would agree to have children, he would agree to stay home.

"It was his proposal," Ana says of the child-rearing agreement. "He wanted to get married irrespective of having kids."

"That's the way it was," says Bruce, who was working as a strength and conditioning coach at the University of Texas in Austin when he married Ana, a UT School of Law student. "I'll quit here and raise the kids," he recalls saying.

So that's what they did. After Ana earned her J.D. in 1996, they moved from Austin to Dallas, where Ana took a job as an associate with the Dallas office of Sidley Austin.

While Ana was in downtown Dallas preparing and processing patent applications, Bruce was taking care of then-toddler Viviana. It was a bit lonely for a former coach used to training gung-ho athletes, Bruce says.

"All of a sudden I was with this one 18-month-old

child," Bruce says. "With an 18-month-old, what are you going to do? We went to the park. And it was all new to me."

But Bruce, at 6-foot-8 and 270 pounds, wasn't embraced by the mothers when he took Viviana to the park most afternoons.

"He was actually shunned by mothers that stayed at home. They wouldn't talk to him at the playground or do play dates with him," Ana says. "One of my favorite stories is he'd talk about how he'd go to the other side of the playground [away from the aloof mothers]. So I got him a Kate Spade handbag. And he would turn the handbag around so the label would show, hoping it would spur conversation."

The designer handbag spurred something totally different at the park, Ana and Bruce say.

"I had the Kate Spade bag and the changing pad," he says. Then he and Viviana went to the car to get something, leaving the bag behind on a bench. When he returned, it was gone. "It was my diaper bag! I was flabbergasted! Somebody was coveting my bag!"

When Ana accepted a job as senior vice president and general counsel of Asuragen Inc., she and her family moved from suburban North Dallas back to Austin. In their South Austin neighborhood, Bruce found there were stay-at-home



From left to right: Isabella Evans, Bruce Evans, Ana Ward and Viviana Evans.

dads just like him.

"There are lots of dads who stay home — musicians and professors who have flexible schedules. It's nice for him," Ana says of the family's neighborhood.

The couple have two daughters: Viviana, 14, and Isabella, 10.

Ana says the parenting arrangement has been great for their family and her career. "There have been a lot of things I've been able to do because I don't have to worry about who's on at home," she says.

"If you can afford it in any way, do it. It's the most rewarding thing in my life," Bruce says of the decision.

A Top TX Verdict of 2009

Cindy Olson Bourland handles trial and appellate cases, focusing on contract, unfair competition and Internet advertising disputes, in addition to general business and partnership disputes. Ms. Bourland was named a Texas Super Lawyer in 2007, 2008, 2009, and 2010, and is a former "Austin Under 40" Winner in Law and Austin Outstanding Young Lawyer. She attended the University of Texas School of Law and Southwestern University. She formerly served as President of the Austin Young Lawyers Association and as an adjunct professor at the University of Texas School of Law. She is a Fellow of numerous bar foundations, and a member of MENSA. A fifth generation Texan, she grew up on a ranch and enjoys traveling, horseback riding, and raising swans.

Ms. Bourland's 2009 case, *College Network, Inc. v. Moore Educational Publishers, Inc.*, concerned application of the Lanham Act to keyword advertising via Internet search engines. The case also involved business torts, including defamation and business disparagement. Ms. Bourland secured a verdict of \$1,057,862 for her client and a finding that the purchase of a trademark as a keyword search term is not infringement under the Lanham Act. The verdict was appealed to the Fifth Circuit Court of Appeals, and Ms. Bourland handled all aspects of the appeal, including oral argument. The Fifth Circuit recently upheld the outcome and the verdict secured by Ms. Bourland for her client. Ms. Bourland handles trial and appellate cases in all Texas state and federal courts, as well as arbitration and mediation. As a small law firm, Ms. Bourland strives to offer high quality legal services at a more cost-effective rate than large law firms. Ms. Bourland handles cases on hourly, contingency, and hybrid fee structure arrangements.



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"I'd never look back. It's a similar reaction to the mothers that didn't want to accept me — that was their problem, not mine."

Shannon and Brian Schmoyer

As high school sweethearts, Shannon and Brian Schmoyer grew into adulthood and their marriage together. So it wasn't a big deal when they decided 17 years ago to make what was an unusual decision: Brian would be a stay-at-home dad. They grew into that, too.

It was 1994 and Brian, an environmental engineer, was having trouble getting time off from work to pick up 9-month-old Haley from day care. That duty was a near impossibility for Shannon, too, who was logging long hours in the Dallas office of Haynes and Boone as a second-year associate at the time.

"We just kind of woke up one day and said, 'You know, this just makes sense,'" Shannon says of the couple's decision to have Brian quit his job and stay at home with Haley. Shannon remembers Brian's boss' reaction when he explained why he was resigning.

"His boss kind of told him, 'When you get tired [of] playing house, call me, and we'll put you back to work,'" Shannon says. "We kind of laughed about it. I was probably more insulted than he was. I think it takes somebody who is confident in themselves to take a different path."

Brian says, "I think the mind-set was that you're going to go out of your mind within a few months of dealing with a newborn. And you'll get tired of it. But then came the second and the third child. To be honest with you, when I made the decision, I didn't know how many kids we were going to have. I didn't know I'd be here now."

Brian took to his new responsibilities well, Shannon says. She discovered that she had to adjust to the role reversal more than Brian did.

"A lot of times when I woke in the middle of the night, [the children] would call for daddy instead of mommy. And, at first when they were little bitty, I struggled with that. I thought, 'Am I being a good mom?' But, really, after a while, it's not such a bad gig. And you see that your children are

establishing such a good bond with their father, and a lot of kids don't get that," Shannon says.

When people asked what Brian did for a living, "I would always say he 'is an environmental engineer, but he's staying home with our kids right now,'" Shannon says. "But at a cocktail party, Brian would immediately say, 'I stay home with our kids.' And I think Brian's comfort with it made other people comfortable with it."

The Schmoyers now live in San Antonio, where Shannon started her own labor and employment firm, Schmoyer Reinhard. She says she wouldn't have the great practice she has today if it weren't for Brian.

"When I left in the morning knowing that he was going to be with our kids all day, it was such a sense of comfort. And it also helped with me to excel at my career because I wasn't worried about, 'Oh my gosh, my kid is sick at day care.'"

Brian wouldn't change a thing, either.

"The extra time you get to spend with your kids, it's something you're never going to regret," Brian says. "Though, I'm sure they are sick of my cooking, that's for sure."

The Schmoyers have three children: Haley, 17; Colton, 14; and Brooke, 9.

When Colton was in fifth grade and had to write an essay about what he wanted to be when grew up, it hit Shannon how much it meant to their kids that Brian was at home with them.



From left to right: Brooke and Haley Schmoyer (front row) and Brian, Shannon and Colton Schmoyer (back row).

In the essay Colton wrote: "I want to be a dad," Shannon says. "It still makes me tear up when I think about it."

Kim and Rob Bowers

For Kim and Rob Bowers, the decision 15 years ago to have Rob stay home and raise their children was based on economics.

"My salary was higher than his. His salary was covering the day-care costs and 401(k). Our daughter was miserable in day care, and Rob wasn't particularly jazzed about his job. So it was simple decision," Kim says.

Rob, who has an M.B.A., was working in the operations group at a company while Kim was an associate with the mergers and acquisitions section of Fort Worth's Kelly Hart & Hallman. But after putting their first child, Grace, in day

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care for three years, they decided they didn't want to do that with their second child, Caroline.

"I think everyone struggles with the right decision to make. And when we looked at it long term, my financial prospects were stronger than his," Kim says. "When we started dating and when we got married, I don't think either of us expected that outcome."

Rob's company was going through some corporate downsizing, so in 1995 he jumped at the chance to be a stay-at-home dad.

"It was kind of weird at first because I'd go to the grocery store in the middle of the day. I used to be in a tie when I did that," Rob says. "I called it the wrinkled T-shirt club. You can go anytime of the day and basically wear any kind of clothes. . . ."

"I can remember when I was working; trying to get the kids in the car and get them dropped off at day care was just crazy," Rob says. "And when I quit, if it took an hour for them to crawl into the car, I had that hour to spend. Life moved at a different pace, and it became much less stressful."

But while Rob enjoyed his new role, Kim was dealing with guilt. She explains that she and Rob grew up in traditional families where their fathers were the main breadwinners and their mothers were the caregivers.

Even before Rob began staying home, Kim felt guilty working so much. "Our mothers made all of our clothes, our Halloween costumes. And I wasn't able to provide that. And the guilt initially was pretty darn strong," Kim says. "And when Grace was 1, I decided that I needed to make her a Halloween costume. And I stayed up until 12 at night making a Halloween costume. And she was 18 months old and couldn't have cared less. But as a new mother that was important. And it was my mom that let me off the hook. They would come down to visit, and I would tell her I felt guilty. And my mom said, 'Kim, you work 50 hours a week. You're doing all that you can do.' . . ."

"My parents were thrilled to death," Kim says referring to the atypical parenting arrangement. "Rob is a great dad. And his parents looked and wondered but then they realized how great Rob was as a dad. He's from Texas, and there's a little bit of an expectation from Texas males. But he is much better with the kids," Kim says.

The couple's experience is similar to the Schmoeyers', who are their longtime friends and neighbors.

"The kids are much better in a laid-back home than if I were at home. And I think the same thing could be said of Shannon and Brian. Dads are a little more easygoing," Kim says.

The Bowers family eventually moved to San Antonio, so Kim could take a job as executive vice president and general counsel at Valero Energy Corp. They have three children: Grace, 17; Caroline, 14; and Broden, 10.

A big part of Rob's job is simply having fun with his kids. He volunteers at the computer lab at their school, coaches a neighborhood swim club and serves as an assistant soccer coach.

"I'm not afraid to do silly things with the kids, so it's a pretty playful situation," Rob says. "Sometimes you think you should be doing more. But when things get crazy I think, 'Man, I don't know how I'd have a real job.'"

When the Bowers children grow up and move out, Rob expects to go back to work, but it won't be to pick up a paycheck, he says.

"Kim's at the top tax bracket. If I re-entered the work



Clockwise from top left: Rob, Broden, Caroline, Grace and Kim Bowers.

force, it would need to be something enjoyable, since we wouldn't need to depend on it for the income. I know that sounds weird. And I'm not trying to be boastful," Rob says. "The last job I had was 15 years ago making \$40,000 a year. And if you even doubled that . . . is it really worth going back to work? I can definitely see myself being more involved in the community and doing nonprofit work — anything like that."

Every year, Rob sits on a discussion panel at Trinity University for a class called "Sociology of Sex Roles."

"He and two other [stay-at-home] dads are featured speakers every year," Kim says. "And it's always been husbands of lawyers, which is funny." **TLB**

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