



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-18-00106-CV

THE CITY OF SAN FRANCISCO, DENNIS J. HERRERA IN HIS OFFICIAL
CAPACITY AS CITY ATTORNEY FOR THE CITY OF SAN FRANCISCO, AND
EDWARD REISKIN IN HIS OFFICIAL CAPACITY AS DIRECTOR OF
TRANSPORTATION FOR THE SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY, Appellants

v.

EXXON MOBIL CORPORATION, Appellee

THE CITY OF OAKLAND, MATTHEW F. PAWA, BARBARA J. PARKER, AND
SABRINA B. LANDRETH, Appellants

v.

EXXON MOBIL CORPORATION, Appellee

COUNTY OF SAN MATEO, COUNTY OF MARIN, CITY OF IMPERIAL BEACH,
CITY OF SANTA CRUZ, COUNTY OF SANTA CRUZ, JOHN BEIERS, SERGE
DEDINA, JENNIFER LYON, BRIAN WASHINGTON, DANA MCRAE,
ANTHONY CONDOTTI, JOHN MALTBIE, ANDY HALL, MATTHEW HYMEL,
CARLOS PALACIOS, AND MARTÍN BERNAL, Appellants

v.

EXXON MOBIL CORPORATION, Appellee

On Appeal from the 96th District Court
Tarrant County, Texas
Trial Court No. 096-297222-18

Concurring Memorandum Opinion by Chief Justice Sudderth

CONCURRING MEMORANDUM OPINION

Judge Learned Hand, a friend and admirer of Justice Oliver Wendell Holmes Jr., once recounted a parting conversation shared between the two:

I remember once I was with [Justice Holmes]; it was a Saturday when the Court was to confer. It was before we had a motor car, and we jogged along in an old coupé. When we got down to the Capitol, I wanted to provoke a response, so as he walked off, I said to him: "Well, sir, goodbye. Do justice!" He turned quite sharply and he said: "Come here. Come here." I answered: "Oh, I know, I know." He replied: "That is not my job. My job is to play the game according to the rules."

Michael Herz, *"Do Justice!": Variations of a Thrice-Told Tale*, 82 Va. L. Rev. 111, 111 (1996).

Doing one's job and abiding by the rules is not always a comfortable path. As Justice Holmes confessed, "I loathed most of the things in favor of which I decided." See David M. Levitan, *The Effect of the Appointment of a Supreme Court Justice*, 28 U. Tol. L. Rev. 37, 49 n.66 (1996).

As intermediate appellate court justices, we are, on occasion, somberly reminded that our job is not to mete out justice, but to apply the law. For me, this is one such occasion.

I urge the Texas Supreme Court to reconsider the minimum-contacts standard that binds us.

/s/ Bonnie Sudderth
Bonnie Sudderth
Chief Justice

Delivered: June 18, 2020