

Responses of Richard H. Honaker
Nominee to the U.S. District Court for the District of Wyoming
to the Written Questions of Senator Edward M. Kennedy

1. You were quoted in the *Daily Rocket Miner* newspaper as saying that the abortion issue is "not settled until it's settled right". When Senator Feinstein asked you about this statement at your confirmation hearing, you said that it “expressed [your] personal viewpoint that the abortion issue should be settled in a pro-life way.” As you know, however, whether or not *Roe v. Wade* is settled precedent is a constitutional issue, not just a political one. Your strong statement suggests an unwillingness to accept rulings of the nation’s highest court. Yet you have said that you would be able to set aside your strongly held beliefs in order to serve on the bench.

Response: The quote Senator Feinstein raised was from 1991 or earlier. As I explained in my confirmation hearing, “I, as a politician and as a state legislator, expressed my personal viewpoint that the abortion issue should be settled in a pro-life way.” That was my viewpoint at that time, when the issue seemed opened by the Supreme Court’s 1989 decision in *Webster*. After the Court’s 1992 decision in *Casey*, it seemed clear that the issue was closed. I have had nothing to do with the issue since that period of time.

As a state-level politician, while I did not always like the result of an election, I always accepted the result, content that democracy had been observed and the people had spoken. As a trial lawyer, while I have not always liked a jury’s verdict or a judge’s decision, I have long ago learned to accept those verdicts and decisions and to live with them, content that the judicial system had worked. My career demonstrates a lifelong commitment to the rule of law, and I am certainly willing to accept the rulings of the nation’s highest court.

a. How can you assure the public that, if confirmed, you will faithfully apply legal precedents?

Response: I have sworn to do so. Applying legal precedents is what I have done for 32 years as a lawyer, and I am absolutely committed to faithfully applying legal precedents as a judge. I respect our system of law, and recognize that a judge is fully subject to the rule of law.

I believe that it further testifies to my principled commitment to the rule of law and to equal justice under the law that I was elected by my peers to serve as president of the Wyoming State Bar and the Wyoming Trial Lawyers Association, that I serve on the national board of the American Board of Trial Advocates and am co-chair of its committee on judicial independence, and that I serve as vice-chair of the Board of Professional Responsibility, sitting in judgment on attorney ethics cases. In addition, I have received the unanimous “Well Qualified” rating

of the American Bar Association's Standing Committee on the Judiciary, and my nomination has received the bi-partisan support of Wyoming's legal community, and the support of Wyoming's federal judiciary.

b. Can you provide a concrete example of a time when you have advocated a legal position with which you did not agree?

Response: The time would be during my years as a public defender. I represented wrongfully accused citizens, but I also represented some individuals who seemed utterly devoid of any conscience. When I was the State Public Defender, I had to personally take on the cases that no public defender would touch. The worst cases were the sexual assault/murders of small children. I represented a teen-age defendant in Evanston, Wyoming charged with the first degree murder of a seven-year old girl, dumping her body in a river. And I represented a drifter in Douglas, Wyoming, who murdered a four-year old girl in a city park, and her grandfather found her. In both of these cases, and in others, it was my responsibility to thoroughly investigate and prepare the case, and to construct formidable defenses, bolstered by suppression motions. And in both cases, though I knew a jury could return a verdict of death, I accomplished my purpose of avoiding the death penalty for these defendants. In these cases, I always tried to find something redeeming in my client, because I had to communicate with them and have their confidence, and I always had to find evidence I could ethically present to a judge or jury that potentially could create a reasonable doubt.

2. In a 1992 speech you stated that "In the abortion debates, [I say] that abortion is the killing of an innocent, living human being, and it's wrong, and no one should have the right to do what is wrong...." You also have compared the abortion debate to the debate over slavery, suggesting that the Supreme Court's decision establishing the legal right to an abortion in *Roe v. Wade* was analogous to its infamous *Dred Scott* decision. You said, "[i]n these debates, one side [the anti-abortion or anti-slavery side] advances an absolute value. The other side advances an ethical choice based on varying situations.... But this nation was founded upon absolutes. It could not have been otherwise."

a. Do you still believe that *Roe v. Wade* is analogous to the *Dred Scott* decision?

Response: I do not. The decision of a woman not to bear a child is not analogous to the decision of one human being to enslave another and to pursue that "slave" across state lines. As a passionate young legislator, I was using rhetoric to advance a political position, and I regret having drawn that analogy at that time.

b. The clear implication of these statements is that *Roe v. Wade*, like the *Dred Scott* decision, was based on a flawed interpretation of the Constitution. Is that still your view?

Response: *Roe v. Wade* has been the law of the land for 35 years. It is settled law, and I accept it. *Roe* was strengthened by the *Casey* decision in 1992. Sixteen years later *Casey* is settled law, and I accept it.