

**Responses of Catharina Haynes
Nominee to the U.S. Court of Appeals for the Fifth Circuit
to the Written Questions of Senator Benjamin L. Cardin**

(1) In response to Question 15 (e) of the Committee Questionnaire, you stated that “as a state district judge in Texas, I wrote orders (a few with explanations), jury charges and findings of fact / conclusions of law, but I did not write ‘unpublished opinions’ or ‘published opinions.’

As a U.S. Circuit Judge on the Court of Appeals, a major responsibility you will have is writing substantive judicial opinions. What experience do you have in writing substantive judicial opinions?

As a state district judge in Dallas, it was not the practice in my court to prepare opinions on each decision, given the limited resources and volume of work we had. I did sometimes prepare writings explaining my rulings. Additionally, sometimes I signed findings of fact and conclusions of law proffered by the attorneys, but most of the time I wrote my own findings of fact and conclusions of law, which involved a discussion of law and facts.

In addition to my eight years of experience as a judge, I have more than thirteen years as a practicing attorney writing motions, briefs and legal memoranda, as well as continuing education papers and articles. I have extensive experience preparing written analyses of the law and facts of a case for clients, courts and educational purposes. I believe these experiences prepare me well for the task of writing appellate opinions, if the Senate confirms me.

(2) In response to Question 18 (c), you stated that “my entire practice as a lawyer is and has been litigation-based.” You indicated that the percentage of your practice in civil proceedings was 100%, and your percentage of your practice in criminal proceedings was 0%. In response to Question 14, you stated that “as judge of the 191st [Judicial District Court of Dallas County, Texas] I heard civil cases.”

As a U.S. Circuit Judge on the Court of Appeals, you will be called upon to decide a large number of criminal law cases. What experience do you have in handling criminal cases?

As a state district judge presiding over civil cases, I have had to learn and apply criminal law concepts. For example, I presided over cases under Chapter 59 of the Texas Code of Criminal Procedure involving the forfeiture of contraband. These cases required analyzing whether the charged offense met the standards of this chapter, as well as other criminal law concepts, such as a showing of probable cause for seizing the alleged contraband. I also had cases that presented Fifth Amendment issues as a result of parallel criminal and civil actions. I presided over cases filed by prisoners which touched upon criminal law issues, such as the Eighth Amendment. I also attended

continuing judicial education seminars in which criminal law updates and issues were discussed. My court also occasionally heard criminal contempt cases.

Some statutes have both civil and criminal aspects, such as the Racketeer Influenced and Corrupt Organizations Act (RICO) and federal securities statutes. In handling the civil side of such cases, I became familiar with the elements and analyses of these statutes on the criminal side.

Whether or not I have had previous experience with an issue, if confirmed, I would carefully review the record, the briefing and all applicable authorities in reaching my decision. That is the approach I took as a state district judge.

(3) Do you have any experience in working on constitutional law cases? If so, please provide a brief summary of your work on these issues.

As a judge, I presided over cases where issues were raised under the First Amendment, Fourth Amendment, Fifth Amendment, Eighth Amendment and Fourteenth Amendment of the United States Constitution. In response to Question 2, I addressed the Fourth, Fifth and Eighth Amendment issues. The Fourteenth Amendment is implicated in all questions involving due process, such as whether proper notice was given in a default judgment case and whether jurisdiction could be exercised over a defendant who is a resident of another jurisdiction; these kinds of issues arose regularly. With respect to the First Amendment, I handled a number of issues such as church governance, free speech in libel cases and free speech in cases involving erotic dancing businesses.

As a lawyer, I have also addressed constitutional issues as they arose in cases I have handled.

(4) What significant pieces of legal or scholarly writing have you composed that may assist you in your role as a federal judge, if you are confirmed?

I have provided the Committee with copies of my continuing education legal writings and articles through the date of my Senate Questionnaire. I have co-authored a chapter on Federal Civil Procedure (Chapter 17, "Posttrial Motions," *Federal Civil Procedure and Evidence During Trial, 5th Circuit* (Published by Lawyers Cooperative, but not circulated)), and I have written several papers on insurance law, legal ethics and professionalism, judicial ethics and procedure. I wrote an article on the jury charge and a law review comment on the psychotherapist-client testimonial privilege. If confirmed, I would draw upon these works as well as my extensive experience in writing legal analyses as a lawyer and a judge.