Responses of Catharina Haynes
Nominee to the U. S. Court of Appeals for the Fifth Circuit
to the Written Questions of Senator Dianne Feinstein

1. In your response to the Committee questionnaire you wrote that 100 percent of your practice has been in civil proceedings. And while seeking re-election as a state court judge in 2006 you stated in a questionnaire, "I have never handled a criminal case." You are nominated to the court of last resort for almost all criminal defendants throughout Texas, Louisiana, and Mississippi.

- ***Please explain in detail the extent to which you have handled cases during your legal career involving the interpretation of each of the following:***
  - ***The Equal Protection Clause of the Fourteenth Amendment;***
  - ***The Due Process Clauses of the Fifth and Fourteenth Amendments;***
  - ***The Fourth Amendment protection against unreasonable searches and seizures;***
  - ***The Eighth Amendment prohibition of cruel and unusual punishment; and***
  - ***Federal criminal statutes.***
- ***If confirmed, what would you do to prepare yourself for handling criminal appeals?***

As a judge, every case that came before me involved consideration of due process, although it was not a contested issue in every case. This issue arose particularly in default judgment cases and in cases where a nonresident defendant challenged personal jurisdiction through the Texas procedure of a "special appearance" (which is the equivalent of a Federal Rule of Civil Procedure 12b(2) motion).

The precedent of *Batson v. Kentucky*, 476 U.S. 79 (1986) and progeny, which involves equal protection issues, applies in state courts as well as in federal courts, and I have applied that precedent in my court. Indeed, the first week I was a judge, a *Batson* challenge was raised in jury selection in the case of *Tasby v. Robinson*, Cause No. 97-7221.

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, which implicates Fourth Amendment concerns.

Occasionally, I had prisoner lawsuits that alleged cruel and unusual treatment in the jail or prison. One such case that I presided over as a judge was *Wallace v. Dallas County*, Cause No. 98-07602-J. In that case, the prisoner fell in the jail and alleged that he was mistreated in violation of the Eighth Amendment after the fall. The jury found against him.

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

Enterprise Drilling and Manufacturing Co., Inc. v. Western Petroleum Services, Inc.; In the United States District Court for the Southern District of Texas, Victoria Division; Civil Action No. V-88-025 (alleged civil RICO)

B.J. Gierhart v. H.E. Chiles; In the United States District Court for the Southern District of Texas, Corpus Christi Division; Civil Action No. C-90-245 (alleged civil RICO)

G. M. Rowe v. Western Petroleum Services, Inc.; In the United States District Court of Texas for the Southern District of Texas; Victoria Division; Civil Action No. V-88-51 (alleged civil RICO)

Travis Askew et al. v. H.E. Chiles; In the United States District Court for the Southern District of Texas, Houston Division; Civil Action No. H-90-3003, *aff'd*, No. 91-2219 (5th Cir. 1991), *cert. denied*, No. 91-647 (1992) (alleged civil RICO)

Merrimac v. Buckwalter, In the United States District Court for the Northern District of Texas, Dallas Division; Civil Action No. CA3-89-976-F (alleged securities fraud)

Additionally, I worked on some cases where parallel civil/criminal proceedings arose. As a result, I became familiar with the pertinent criminal statutes in those cases. Examples of such cases handled as a lawyer include:

In re Fort Worth Gold & Diamond Exchange, Inc. dba Fort Worth Gold & Silver Exchange; In the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division; Case No. 491-45261-MT-7 (I represented a creditor in this bankruptcy; principals of the debtor were indicted for and pled guilty to bankruptcy fraud.)

Lincoln National Health and Casualty Ins. Co. v. Clark, Cause No. 92-2404-C, In the 68th District Court of Dallas County, Texas (I represented an insurance company that alleged fraud in the application by Mr. Clark as part of a scheme to obtain excess disability and health policies; Mr. Clark was indicted and pled guilty to mail fraud in connection with the scheme.)

Last year, I was specially requested by the Judge of the 95th District Court of Dallas County, with the concurrence of the parties' counsel, to act as a mediator in a case alleging claims under 42 U.S.C. 1983 for deprivation of due process in connection with the firing of deputy constables by the newly-elected constable. *Estate of Stanley Gaines et al. v. County of Dallas*, Cause No. 01-4784-D; In the 95th District Court of Dallas County, Texas.

In addition to a strong academic record, I believe that I have a strong record of handling complex cases as a lawyer and a judge that prepares me to address issues that may arise that I have not previously handled. I believe that I also have a strong and demonstrated commitment to continuing education -- I am a Fellow of the College of the State Bar of Texas, which recognizes outstanding achievement in continuing legal education. I have continually met the continuing education requirements for membership in that organization since joining in 1990. I also attended extra courses, not required by any law or rule, to obtain a Certificate of Special Competence in Civil Jurisprudence from the Texas Center for the Judiciary in 2005. If confirmed, I would continue to attend continuing education courses in a variety of topics, including criminal law. I would also continue the extensive reading I already do of advance sheets (containing summaries of recent court decisions) and relevant legal articles.

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.

2. Please name the current Supreme Court Justice whose approach to judging you believe is most similar to your own, and explain in detail the reasons for your answer.

I admire all current Supreme Court Justices, and there is no one specific Justice whose approach is most similar to my own. I am sure that each Supreme Court Justice takes his or her oath seriously and applies the law in accordance with his or her understanding of the applicable statutes and precedents, in view of the Constitution. My approach has always been one of judicial restraint, careful preparation and careful review of the law in light of the facts I find or as found by a jury. As a lawyer and a judge, I have had the privilege or appearing before, working alongside and having my decisions reviewed by many different judges and justices. I tried to take the best from each of these judges and justices and apply that learning to my conduct as a judge when I was on the state bench. I would do so again on the federal bench, if confirmed.