Responses of Catharina Haynes
Nominee to the U.S. Court of Appeals for the Fifth Circuit
the the Written Questions of Senator Edward M. Kennedy

1. **You've said that you do not write opinions, but that you sign orders, "a few with explanations." How do you decide which orders will include explanations?**

As a state district judge in Dallas, it was not the practice in my court to prepare written opinions on each decision, given the limited resources and volume of work we had. I did sometimes prepare writings explaining my rulings which were orders with explanations; infrequently, letter explanations were sent. 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. Out of more than ten thousand orders and judgments, I have located three orders signed by me I did not previously recall that had used the title "opinion," but they are in the nature of orders with explanation. Two were for administrative appeals and the other was from 1999, upon a special request for additional rulings. They are being provided in response to Question 2.

Most of the time, I ruled from the bench, and I gave oral explanations and reasoning, as appropriate, for those rulings at the time. Orders with explanations or letters with legal reasoning occurred most often in cases where it was necessary to take the matter under advisement, and I issued a ruling after the hearing.

2. **Please provide an estimate of the percentage of cases you've decided as a judge that involve the following issues, and please provide the Committee with copies of any orders that you signed "with explanations" in such cases:**

   a. **federal constitutional issues;**
   b. **civil rights;**
   c. **the rights of consumers;**
   d. **workers' rights.**

When I was a judge, the Dallas County District Clerk did not keep statistics regarding the categories of cases described. Based upon my memory and experience, the largest number of cases in the 191st District Court during my time there were personal injury and malpractice cases. The second largest number of cases were consumer and business cases. Given the overall volume of cases, this translates into a very significant number of cases of these types. I am also Board Certified in Consumer and Commercial Law by the Texas Board of Legal Specialization, a designation held by fewer than 100 attorneys. With respect to workers' rights, my court heard workers' compensation cases, wrongful discharge cases and employment cases, as well as administrative appeals that sometimes implicated these issues. These cases were a smaller percentage of my docket than the personal injury and consumer/business cases. Cases in state court sometimes present federal constitutional issues; in addition, concepts such as due process inhere in every case. Cases brought alleging a question for decision under other provisions of the federal constitution or civil rights legislation were a smaller percentage of cases than the other categories described. I am submitting orders with explanation and letters in the categories requested. Letters generally are not maintained in the minute books assembled by the deputy clerks for the court, so I am providing the best copies available to me.

3. Please identify any cases in which you issued an order for judgment n.o.v. and describe in detail the issues in the cases and the reasons for your decision.

I have great respect for the jury system. A judge must carefully analyze the law and the evidence with respect to a jury verdict, but she must be careful not to overturn it lightly. I cannot think of a single case in which I entered an opposed judgment n.o.v. on the entire case. There may have been cases where evidence did not support one cause of action or element of damages but did support another, and I entered judgment accordingly.

4. Other than in cases involving default judgments, have you ordered monetary awards for plaintiffs in civil rights cases? How many?

As a judge, I have tried approximately three hundred cases, of which about one-third were bench trials. One of those bench trials involved a case touching upon civil rights. In the case of *Garza v. Dallas Independent School District*, Cause No. 01-8448-J, Latino plaintiffs sued the Dallas Independent School District (DISD) in connection with alleged violations of the Texas Open Meetings Act during its deliberations over the redistricting of voting boundaries for the voting districts within the DISD. I awarded attorneys fees to the prevailing plaintiffs; no other monetary damages were sought at the time of trial. I do not recall a case of this type in my court in which the jury awarded monetary damages.

5. The Fifth Circuit often has the last word in cases involving issues of constitutional law.

a. During your practice as an attorney, how many cases have you litigated involving constitutional issues? Please identify these cases and describe in detail the constitutional issues involved in each case.

b. How many cases have you decided as a state trial judge involving constitutional issues? Please identify these cases and describe in detail the constitutional issues involved in each case.

As a lawyer and a judge, I have handled cases where constitutional law questions of varying types were presented. I do not have any statistics that would provide an accurate count or method of locating such cases. As a judge, due process concerns under the Fourteenth Amendment inhered in every case I handled, particularly in cases involving default judgments (of which there were hundreds). In each case, I carefully scrutinized the record to determine whether proper notice was given to the defendant as required by the United States and Texas constitutions. As a result of this careful scrutiny, only one default judgment I entered was reversed. In some instances, such as whether the Federal Arbitration Act applies to an arbitration clause at issue, I had to review precedent under the Commerce Clause.

I presided over hundreds of forfeiture cases under the Code of Criminal Procedure. In each case, the State was required to show that there was probable cause for the seizure of the item in question, implicating Fourth Amendment concerns. An example of such a case that I tried is *State of Texas v. $3617*, Cause No. 98-6258-L (tried for the 193rd District Court of Dallas County).

Other examples of cases involving constitutional law issues presented to my court are as follows:

Haywood-Jordan-McCowan v. Fair, Cause No. 98-2102 (Due Process).

Watson v. Fleck, Cause No. 03-11643 (Due Process)

Home and Hearth, Inc. v. Assoc. Design Professionals, Cause No. 00-2208 (Due Process)

Trinity Industries Leasing v. American Energy, Inc., Cause No. 97-6498 (Due Process)

JRW Aviation, Inc. v. The Jones Co., Cause No. 03-11272 (Due Process)

Northwest Investments v. City of Dallas, Cause No. 01-1357 (First Amendment)

City of Dallas v. MDII, Cause No. 01-4540 (First Amendment)

Reedy v. Crayton Webb, Cause No. 00-2968 (First Amendment)

Reagan v. Blair, Cause No. 99-9157 (First Amendment)

Apostolic Assembly of the Faith in Christ Jesus, Inc. v. Salvador Rodarte, Cause No. 05-6264 (First Amendment and constitutional limitations on court's ability to hear cases regarding church governance)

Prime Lending v. Goodrich, Cause No. 03-12450 (Fifth Amendment)

Wallace v. Dallas County, Cause No. 98-7602 (Eighth Amendment)

As an attorney, constitutional issues have arisen in various cases I have handled. The most recent example is a case in which I am one of the attorneys representing a defendant (Verizon Communications, Inc.) after judgment was entered. *Thomas v. Curtis and Verizon Communications, Inc.*, Cause No. 06-16428, County Court at Law No. 2 of Dallas County. We filed a special appearance challenging the constitutionality under the Due Process Clause of the United States Constitution of the judgment entered against this entity (which is not the Verizon entity doing business in Texas). The challenge was based upon this entity's lack of minimum contacts with the State of Texas.

6. Your work in private practice has primarily involved the defense of insurance companies and other corporate entities. Please identify anything in your professional record that demonstrates that you would apply the law fairly in cases in which individuals bring claims against such defendants.

I believe that I have a strong record of fairness as a judge of a state trial court for eight years, during which I tried hundreds of cases and heard thousands of motions. In making rulings, I did not consider whether it would benefit one side or the other. I looked only to the applicable law in light of the facts. The result of this approach is that I ruled both for and against individuals in lawsuits against corporations, governmental entities and insurance companies. A few examples of rulings in favor of an individual against a corporation, governmental entity or insurance company which were appealed are as follows (the case number provided is for the appeal to the Fifth District Court of Appeals at Dallas):

Great American v. Martin, Case No. 05-00-01333-CV (8/6/02, no pet.): The case involved a suit by an insurance agent against her insurance company. I granted summary judgment on the case except for the allegations of fraud. The jury found for the plaintiff, and I signed a judgment on the jury verdict for over $11 million. The Court of Appeals reversed finding that as a matter of law, under the facts of this case, fraud was not an available cause of action.

Mary Kay v. Woolf, (Case No. 05-03-01099-CV), 146 S.W.3d 813 (Tex. App. – Dallas 2004, no pet.): A sales director for Mary Kay sued for employment discrimination under a California statute, alleging that adverse employment actions were taken against her after she was diagnosed with cancer and became pregnant. I signed a judgment in favor of the plaintiff on the jury verdict for over $1.2 million. (The jury found liability for punitive damages, but they also answered affirmatively to a defense to punitive damages under California law, so I did not award punitive damages.) The Court of Appeals reversed, holding that the plaintiff was not an employee of Mary Kay as a matter of law.

Cigna v. Pybas, Case No. 05-03-00517-CV (2/12/04) (vacated after appellate opinion, pursuant to settlement): This case involved a suit by the family of an HMO patient who alleged that his death was prematurely hastened by the negligence and malice of the HMO. The case was tried to a jury which found the HMO liable for actual and punitive damages in the decedent's death. I signed a judgment on the jury verdict for over $3 million in actual damages and $10 million in punitive damages. The Court of Appeals affirmed the judgment, except for the punitive damages. Although the Court of

Appeals agreed that the HMO had acted with malice (the legal standard for punitive damages in Texas), it concluded that the malice was insufficiently linked to the harm suffered by the decedent to support an award of punitive damages.

State Farm v. Hamilton, No. 05-06-01032-CV (judgment entered 7/5/06; appeal pending). The Hamiltons sued State Farm for damages allegedly resulting from the improper handling of their insurance claim on their homeowner's policy. The case was tried to a jury, and I signed a judgment on the jury verdict for repair damages, mental anguish, attorneys' fees, costs and interest. State Farm has appealed, and a decision is pending.

Dallas County v. Alejo, Case No. 05-06-00214-CV (4/25/07): This case involved a mentally ill woman who was incarcerated in the Dallas County jail and died after ingesting so many coffee grinds that she experienced acute caffeine toxicity. Dallas County filed a plea to the jurisdiction, asserting that sovereign immunity barred the claim. Such a plea is an early pleading and challenges whether the allegations state a claim within jurisdiction. Sovereign immunity is waived in Texas if the claim involves the use of tangible personal property. I denied the County's plea to the jurisdiction, finding that the claim involved the use of tangible personal property. On appeal, portions of my rulings were affirmed, but, the Court of Appeals also held that the Plaintiff failed to prove that the jailed decedent obtained the coffee grinds from Dallas County personnel, and thus found that the plea to the jurisdiction should have been granted. The Court of Appeals recently denied the motion for rehearing in that case.

Tewelde and Irving Holdings, Inc. v. Brown, Case No. 05-06-01654-CV (judgment entered 9/8/06; appeal pending): Brown was injured in an accident with Irving Holdings' taxi, driven by Tewelde. The jury found that both parties to the accident contributed to the accident, but they did not find the plaintiff more than 50% responsible. I entered judgment on the jury verdict for plaintiff, reducing it for the plaintiffs' comparative negligence. Defendants took the position that further reductions should be taken under a new Texas statute limiting recovery of medical expenses to the amount actually paid or incurred by or on behalf of the plaintiff. The question was whether this cap should be applied before or after the reduction for contributory negligence. I ruled in favor of the plaintiff on this issue, and the defendants have appealed. The appeal is pending.

City of Dallas v. Nathan, Case No. 05-01-00618-CV (9/21/01, no pet.): Plaintiff sued when her five-year old son died at a city pool. The City filed a plea to the jurisdiction based upon sovereign immunity, which I granted in part, but I denied it as to the claim of premises defect. Sovereign immunity is waived for premises defect claims. The Court of Appeals reversed, holding that the allegations did not state a premises defect claim such that sovereign immunity was not waived.

The American Bar Association provides ratings of federal judicial nominees. They base their ratings on three criteria: integrity, professional competence and judicial temperament. I am honored that I received the ABA's highest rating of "Well Qualified."

7. **Have you ever represented a worker, consumer or other individual against a corporate defendant? If so, please identify such cases and describe in detail your role in the case and the claims involved.**

As a lawyer, I have represented individuals sued by corporations, and I have represented individuals suing other individuals. With respect to a case where I represented an individual plaintiff against a corporate defendant, I can recall the case of *Gary Granzow v. Trinity Gas Corp.*, In the United States District Court for the Northern District of Texas, San Angelo Division; Civil Action No. 6:95-CV-012-C. I was lead counsel for my client, Mr. Granzow, who sued Trinity Gas Corporation for breach of contract, fraud and deceptive trade practices.

8. **In connection with your nomination, have you been asked about your views on constitutional issues, workers' rights, or reproductive rights? If so, please explain in detail.**

Only in the Senate hearing and questions for the record process.

9. **Did you publicly express any position on the nomination of former White House Counsel Harriet Miers to the Supreme Court?**

No.

10. **Did you have any communication or other contact with any religious leader or any public figure regarding Ms. Miers' Supreme Court nomination? If so, please describe in detail the nature and subject of those contacts, including with whom you had contact and when.**

I have never contacted or been contacted by any religious leader or public figure regarding Ms. Miers' nomination. While her nomination was pending, I was contacted by a member of the American Bar Association Committee that evaluates federal judicial nominees. I advised the member that I was not sufficiently familiar with Ms. Miers' qualifications and background to provide any information to the Committee.