

**Responses of Catharina Haynes
Nominee to the U.S. Court of Appeals for the Fifth Circuit
to the Written Questions of Chairman Patrick Leahy**

1. Republican Presidents have appointed 12 of the 16 active judges to the Fifth Circuit, the court to which you have been nominated. This imbalance is partly due to Republican efforts to stall President Clinton's outstanding nominees to this court such as Judge Jorge Rangel of Texas, Enrique Moreno of Texas and Alston Johnson of Louisiana. Under my Chairmanship, this Committee has been much fairer to President Bush's nominees to the Fifth Circuit, giving all 6 hearings and all of the previous 5 votes, confirming 2 last year. Given that the Fifth Circuit is now stacked overwhelmingly with Republican-appointed judges, and that the seat to which you are nominated is the last vacancy, what balance will you bring to this court?

I am the child of immigrants who are from two different parts of the world, having met as foreign exchange students one summer in America. From the very beginning of my life, I have had the opportunity to witness the interaction of two cultures in the midst of a third culture, as well as the challenges and opportunities presented by that union. As a teenager, my father lived through the Nazi occupation of The Netherlands. He shared many stories of that experience with me, which gave me a great appreciation for the freedoms we have in the United States. Through the course of my life, I have traveled widely and met many people from many different parts of the world. These experiences have given me a diverse perspective on the world, different peoples and different cultures. I have brought that insight, understanding and perspective to my practice as a lawyer and my work as a judge.

In addition to my personal background, as a judge I have presided over cases involving people from all backgrounds and walks of life. I have had thousands of lawyers, witnesses and jurors in my court from diverse backgrounds. I believe that I have a strong reputation as a fair judge to all. Dallas County is very diverse. In my capacity as either a candidate for office or a public official, I have had the opportunity to attend many events throughout Dallas County involving people with a wide variety of backgrounds and interests. I also hosted visitors from other countries, including a delegation of Russian women lawyers, in my courtroom to learn about the American legal system.

Mediation is a very common dispute resolution mechanism in Dallas. In creating a list of mediators to appoint as a judge, I reached out to the entire legal community. I contacted several diverse bar associations, such as the Hispanic Bar Association, to seek applications from qualified mediators. I participated in several Minority Attorney Business Development Initiative seminars in an effort to encourage a diverse pool of mediators to apply for appointments from my court.

I also became concerned about the lack of information for pro se litigants. I worked with the Dallas Association of Young Lawyers to create a brochure entitled "Representing Yourself -- What You Need to Know." In contested cases in my court in

which there was a pro se litigant, I included a copy of this brochure with every scheduling order (both to the pro se litigant and to counsel for any represented parties). I believe that this brochure was widely used and available at the courts during the time I was there.

Over the last five years, I have taught Pre-GED at the Vickery Meadow Learning Center (VMLC), and over the last three years, I also have served on its Board. VMLC is dedicated to English literacy and empowerment for adults for whom English is not their first language. It also educates their young children. The Vickery Meadow area is a three-mile area of approximately 36,000 people, many of whom are low income and many of whom are immigrants or refugees from around the world. In my class alone, I have taught students from Latin America, Nigeria, Sudan, Ethiopia, and Iraq, to name a few. This enriching experience has further broadened my perspective on the world. Through our church, my husband and I have volunteered at Youth Believing in Change, a faith-based organization for at-risk youth.

Through my work at VMLC, I learned of the need for legal services in the Vickery Meadow area. When I returned to private practice last year, I set out to try to address this problem. I learned that the existing structure for pro bono services, a collaboration between Legal Aid of North West Texas (LANWT) and the Dallas Bar Association through the Dallas Volunteer Attorney Program (DVAP), was insufficient to meet the needs of the potential clients in this area. Over this past year, therefore, I worked with members of the Dallas Bar Pro Bono Activities Committee, DVAP, LANWT, Catholic Charities of Dallas, Inc. Immigration and Legal Services, Human Rights Initiative of North Texas, and Central Dallas Ministries - Legal Action Works to collaborate on the Vickery Meadow Legal Clinic. Additionally, members of the National Council of Jewish Women volunteered as greeters. The clinic serves as an intake clinic that then directs cases to the appropriate collaborating agency; the Committee then finds volunteer attorneys to take the cases as appropriate. We held the first clinic on January 31, and it was a success. We are planning three more clinics for later this year. It is hoped that this program will grow to allow for more clinics, serving more clients.

For these efforts, I have been advised that I will receive the Distinguished Advocate for Catholic Charities of Dallas, Inc. Immigration and Legal Services award. I am honored to have received several other awards over the last 12 years recognizing my volunteer efforts as a lawyer and a judge, including the Dallas Bar Association's Outstanding Committee Chair Award, the DAYL Foundation's Award of Excellence, the Dallas Women Lawyers' Louise B. Raggio Award and Florida Tech Alumni Association's Outstanding Achievement Award.

As stated in the Code of Judicial Conduct, partisan concerns cannot play any role in a judge's decisions. I followed that rule diligently as a state district judge, and I would do so again as a Judge of the Court of Appeals, if confirmed.

I believe that my diverse background and experiences, coupled with my many years of experience in dealing with people from all walks of life, has prepared me well to serve on the Fifth Circuit, if confirmed.

2. Two weeks ago, on February 7, President Bush held a highly political and partisan event to make the claim Democrats were holding up judicial and executive nominees. In fact, the Senate confirmed 40 nominees to lifetime judicial appointments last year, more than the Republican-led Senate had for this President the previous three and more than were confirmed in 1996, 1997, 1999, and 2000, when a Republican-led Senate was considering President Clinton's nominations. The Judiciary Committee also reported 25 nominees to important executive positions last year in an effort to restock the leadership of the Department of Justice after so many resignations following the U.S. Attorney firing scandal. Progress on executive and judicial nominations has continued this year. Nonetheless, you participated in this political exercise even though your hearing had already been announced.

A. Do you still believe that the Senate has unfairly held up your nomination?

B. Do you feel it is appropriate for nominees to participate in partisan events designed to use the nominations process for political gain?

I was invited to the White House at the request of the President for breakfast and remarks regarding nominations. I have great respect for the office of President, and I attended. I very much appreciate the scheduling of my hearing last month, particularly during a recess week.

3. Given your lack of criminal law experience, what experiences will you draw upon and what steps will you take to prepare yourself to handle the complex criminal appeals that will come before you as a federal appellate court judge?

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.

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 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.

4. As discussed at your hearing, last term, the U.S. Supreme Court heard two cases involving the use of race as a factor in student assignments to public schools. In the consolidated opinion of *Parents Involved in Community Schools v. Seattle School District No 1, et al.*, a 5-4 decision, the Court struck down school assignment plans from school districts in Seattle, Washington and Louisville, Kentucky that used race to achieve diversity in public education.

A. Although Justice Kennedy provided the crucial fifth vote to strike down the school plans at issue, he wrote a concurring opinion accepting that achieving diversity and overcoming racial isolation in public schools are compelling interests. Do you agree with Justice Kennedy that achieving diversity and overcoming racial isolation are compelling interests?

If I were confirmed and a case were presented to me regarding school plans involving race, I would apply all relevant precedents. Under *Marks v. United States*, 430 U.S. 188 (1977), where five justices do not join in one complete opinion, the opinion of the Court is that which provides the narrowest ground for the holding.

B. Do you agree that the landmark decision in *Brown v. Board of Education* remains good law? What do you believe are its role and importance are today?

Just a few years ago, the Dallas Bar Association held a year long series of celebrations and commemorations of the 50th Anniversary of this landmark opinion. I was excited to attend some of these events and to remember the rich history of that opinion. I have a deep passion for education, which began in my childhood. My

immigrant parents came to this country with very little in monetary terms, but a great deal in the form of education (a Ph.D. in Physics and a Masters in Chemistry for my father and mother, respectively). They taught me from a very young age that education provides a framework for personal satisfaction and professional success. I share my passion for education with people of limited means by teaching Pre-GED courses at the Vickery Meadow Learning Center. Education for all is crucial to the strength of our country.

A majority of the U.S. Supreme Court has not stated that *Brown* has been overruled. I would follow the precedent of the U.S. Supreme Court, if confirmed.

5. The Mississippi Supreme Court recently upheld Republican Governor Haley Barbour's decision not to hold a special election to replace Senator Lott until the November 4 General Election, thereby allowing his interim appointment of Republican Roger Wicker to remain in effect until then. This decision overturned a lower court decision that the special election had to be held within 90 days, as called for by the Mississippi law governing the filling of Senate vacancies.

The Supreme Court's decision appeared to twist the plain meaning of words in the statute such as "year" to reach its result and find ambiguity where the law was clear on its face, ignoring the formula set forth by the legislature in the statute requiring a special election within 90 days because Senator Lott retired last year, after Mississippi's state elections. In fact, in Judge Early's concurrence, he explicitly substituted his own policy judgment for that of the legislature, basing his decision on a determination that it would be too expensive to have a special election when they already have a general election planned, stating "reason and economy must prevail."

When Strom Thurmond was on this Committee, he liked to ask judicial nominees about the value of judicial restraint. Judicial restraint does not seem to support the result of the Mississippi Supreme Court. Do you believe that judges should rule based on the plain meaning of laws and the language of statutes? Do you agree regardless of the political interests at stake in a particular outcome?

As stated in the Code of Conduct for United States Judges and the Code of Judicial Conduct applicable to Texas judges, a judge is required to apply the law faithfully without regard to "partisan interests, public clamor or the fear of criticism." In the eight years I served on the state district bench, I always conducted myself in accordance with these precepts, and I would do so again, if confirmed.

As a state district judge, I had many opportunities to construe statutes. In doing so, I always started with the language of the statute itself. I looked at whether any binding precedents construing that statute or the same language in another statute existed and, if so, I followed those precedents. If not, I looked for persuasive reasoning in precedents from courts that were not directly binding. In the absence of precedential

authority, I applied the plain language of the statute in light of the principles for code construction announced in cases and statutes.

6. The U.S. Court of Appeals for the Fifth Circuit rules frequently on death penalty cases and has often been reversed on such cases by the United States Supreme Court, even in its recent very conservative composition. For instance, in 2005, in *Miller-El v. Dretke*, a case in which prosecutors used peremptory challenges to strike 10 of 11 African-American jurors in a capital case, the Court stated in a 6-3 reversal that the Fifth Circuit's decision to uphold the death sentence "blinks reality." One year earlier, in *Tennard v. Dretke*, which involved the potential execution of a man with an I.Q. of 67, the Court stated that "[t]he Fifth Circuit's test has no foundation in the decisions of this Court." This past term, the Fifth Circuit was overruled by the Supreme Court in four capital punishment cases.

In light of so many instances of the Supreme Court overruling the Fifth Circuit's narrow death penalty jurisprudence, what assurances can you give this Committee that as a Fifth Circuit judge you would not seek to narrow the rights of capital defendants?

My record demonstrates that, as a judge, I took every case very seriously, and I would do so on the Fifth Circuit, if confirmed. Given what is at stake, I would take a capital case involving the death penalty extremely seriously. For the government to take a life is a very serious matter, necessitating careful review and deliberation. I do not have any preconceived notions about this subject -- if confirmed, I would review each case anew without presuming the correctness of the decision below. I would study each case carefully, review the record and relevant precedents, then make a decision based solely upon the Constitution, applicable law and relevant precedents as applied to the facts.

7. We are at a pivotal moment in American history for the preservation of the careful balance of powers between the branches of our government, faced with a President making sweeping claims to nearly unchecked executive powers. Both Congress and the courts must act as a check on abuses of power. Congressional oversight serves as a check on the Executive, in cases like Iran-Contra or the recent warrantless spying on American citizens. It can also serve as a self-check on abuses of Congressional power. When Congress looks into ethical violations or corruption, including inquiring into lobbyist Jack Abramoff's influence on members of Congress, we make sure that we exercise our own power properly. Do you agree that Congressional oversight is an important means for creating accountability in all branches of government?

Our system of checks and balances has stood the test of time because it effectively ensures that no one person or branch holds all governmental power. The legislature is an important branch in our government, and it is an important check and balance on the other branches. All branches of government should be diligent in their tasks and respectful of the other branches.