

## FOREWORD

It is an honor to be invited to prepare this Foreword. I appreciate the service Texas Tech University School of Law School does for the community in providing this Fifth Circuit Survey. Just a few months ago, my colleague Judge Southwick and I were privileged to speak at Tech about the workings of our court. The passion and enthusiasm of the faculty and students were palpable and inspiring. Having married a “Lubbock boy,” it was nice to “come home.” Although I am the most junior judge on the court, I am well into my third year of service. The breadth and depth of cases we encounter is astonishing, as this Survey no doubt reflects.

About one-third of our docket is composed of “direct criminal appeals.” These cases generally involve defendants charged with federal crimes who appeal their conviction, sentence, or both. Another third of our docket is comprised of “prisoner cases,” a term which encompasses habeas cases (from both state and federal convictions), as well as lawsuits addressing prison conditions and related issues. The final third encompasses all other civil actions, including diversity cases from the three states in our circuit (Texas, Louisiana, and Mississippi), as well as federal question cases such as tax, bankruptcy, immigration, and other agency appeals.

During the last “court year” (July 2009–June 2010), we disposed of more than 7,000 appeals, making us among the busiest circuits in the country. With Judges Barksdale and Wiener taking senior status in August of 2009 and September of 2010 respectively, we currently have fifteen active judges. However, Judges Barksdale and Wiener join four other senior judges who actively participate in adjudicating cases for our court. We benefit greatly from the service of these “active” senior judges. As I write this Foreword, President Obama’s nomination of Justice James Graves to fill Judge Barksdale’s seat is pending before the Senate for consideration; no nomination has yet been made for the other open position.

The work of a circuit judge involves much reading, writing, and thinking; we have much less “courtroom action” than district court judges, though each of us hears oral arguments in three-judge panels and en banc during seven to ten sittings a year. Of the cases screened for oral argument (about half of the total appeals), a little more than a quarter of them were sent to oral argument in the last court year. Thus, while hearing oral arguments continues to be an important part of our court’s docket, lawyers filing briefs in our court should write with the expectation that their brief is the final word we will hear before deciding their case.

The work of an individual circuit judge involves more than authoring and joining in (or dissenting from) opinions. The court has an active motion docket that must be addressed. All petitions for hearing or rehearing en banc require each active judge who is not recused to review and consider whether to request a vote on the petition. Our court clerk keeps a statistic of “matters per active judge” to encompass the many varied matters that need our attention. In the last court year, that statistic was 1,642 per active judge.

Of the 3,210 opinions the court authored in the last year, 400 were published and the remainder unpublished. Court Rule 47.5 clarifies which cases should be published, leaving the remainder unpublished. With the proliferation of electronic databases, of course, we recognize that unpublished opinions are widely available to lawyers and litigants, and that same rule explains the precedential effect of such decisions. Speaking of electronic matters, we have now implemented mandatory electronic filing. So far, the system appears to be working well, and we appreciate the lawyers’ and litigants’ patience as the process is perfected.

Chief Judge Jones continues to lead us with skill and dedication, and we greatly appreciate her service. She is ably assisted by an impressive group of court employees, many of whom have served the court system for decades. We are fortunate that so many good people are willing to dedicate their lives to serving the public through their hard work for the courts.

As 2011 approaches, I look forward to continuing to work with my colleagues to provide justice for all. I wish all of your students success and satisfaction in the high calling of the legal profession.

Catharina Haynes  
United States Circuit Judge  
December 1, 2010