

**Senator Chuck Grassley
Questions for the Record**

Mark Hornak, U.S. District Judge for the Western District of Pennsylvania

- 1. Your practice has been labor and employment law for many years, and you come from a town with a somewhat notorious labor history. Collective bargaining has also been in the spotlight. Do you believe companies and individuals have a right to form labor contracts that they find mutually beneficial?**

Response: It has been my experience that issues regarding the formation of contracts, including employment contracts, are principally matters governed by state law. As a general matter, it is my understanding that companies and individuals may enter into employment contracts that they find mutually beneficial, subject to any specific limitations under applicable state law (for example, some states limit the ability of employers and employees to enter into enforceable non-competition provisions in such contracts), or specific limitations under applicable federal law (for example, the minimum wage and overtime provisions of the Fair Labor Standards Act, or situations in which an exclusive representative for collective bargaining as to wages, hours or terms or conditions of employment has been recognized under the National Labor Relations Act).

- 2. You have very little experience with criminal law. As you understand, federal district court judges must preside over a spectrum of criminal law issues. What assurances can you provide both the Committee and future litigants that your judgment on criminal matters will be informed and sound?**

Response: During my career, I have found it necessary to become familiar with the substantive provisions of a number of federal statutes that contain criminal law provisions in order to advise clients. Over the years, my practice has changed or expanded its focus from time to time to include a number of new or different areas of the law, such as general civil litigation, labor and employment law, construction law, the representation of authors and publishers, and the representation of government agencies. In order to assure this Committee and future litigants that my judgment on criminal law matters is both informed and sound, should I be confirmed as a district court judge, I would devote the same high level of energy and attention to that topic that I have devoted in the past when my legal practice has changed or expanded. I would also take full advantage of the initial and continuing educational programs offered by the Federal Judicial Center, and would call upon the more experienced judges of the court as a resource to make sure that I am fully informed and educated on all such issues that might come before me.

- 3. What is the most important attribute of a judge, and do you possess it?**

Response: I believe that the most important attribute of a judge is an unqualified commitment to promptly decide all matters before the court based solely on the applicable rule of law, and the specific facts of that matter, without regard to the identity of any party, or any personal beliefs of the judge. I believe that I possess that attribute.

4. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: I believe that a judge's temperament is central to the judicial process. I consider the following elements most important: a strong personal work ethic, a genuine willingness to listen to all sides in a matter and being open to being convinced by the legal arguments presented, a commitment to deciding the issues before the court in a timely manner, and respect for, and fairness to, all persons participating in the judicial process -- the parties, counsel, jurors, and court staff. I believe that I meet that standard.

5. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If there were no Supreme Court or Third Circuit cases on point, I would closely examine the language of any applicable statute to determine if it resolves the matter. If that is unavailing, I would then look to the decisions of courts of appeal outside of the Third Circuit, and of other district courts, that may have considered the issue. If they do not provide the necessary guidance on the question, I would then consider judicial decisions of the other federal courts, beginning with the Supreme Court, addressing closely analogous legal questions. I believe that the most important principle in deciding cases of first impression is to decide the specific issue involved as narrowly as is possible while nonetheless disposing of the legal question presented for decision.

7. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: I would apply the decisions of the Supreme Court or the Court of Appeals as decided by them, without regard to my own judgment of the merits of such decisions, or my best judgment of the merits of such decisions.

8. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: I would engage counsel for the parties early and often on case management matters, using reasonable but firm deadlines in scheduling orders, and then meeting with counsel at each important procedural juncture in the case. I would work to assure that each matter is proceeding to a just determination according to law, without unnecessary expense or delay. I would also maintain my prompt availability to counsel in order to immediately address any changed or new circumstances in a matter, and would work diligently to decide any matters before me in a timely manner.

9. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: I believe that judges do have that central role, and that the most important specific step that I would take would be on-going, direct and personal engagement in case management and the disposition of each matter on the docket, as is outlined above in response to Question #8. I believe that there is no substitute for such personal involvement and on-going judicial engagement.

10. **Please describe with particularity the process by which these questions were answered.**

Response: Upon receiving these questions, I carefully reviewed them, and personally prepared my answers to them. I then reviewed my answers with a representative of the Department of Justice, and authorized their transmittal to the Committee.

11. **Do these answers reflect your true and personal views?**

Response: Yes.