

Responses of Frank Paul Geraci, Jr.
Nominee to be United States District Judge for the Western District of New York
to the Written Questions of Senator Chuck Grassley

1. **In *People v. Reynolds*, you were faced with a case of first impression concerning whether New York’s constitutional protection against “unreasonable search and seizures” prohibited pretextual traffic stops. You held that the stop violates the defendant’s rights if the “primary purpose” of the “traffic check was no more than a pretext for conducting a criminal investigation unrelated to any observed traffic infraction.” The New York State Court of Appeals overturned your holding relying in part on a unanimous U.S. Supreme Court decision that held “subjective intentions play no role in ordinary, probable-cause...analysis.”**
 - a. **One would presume that a unanimous decision by the Supreme Court of the United States would be highly persuasive on the meaning of an identical state provision. What weight did you give the Supreme Court decision? What principles guided you in reaching your decision in *Reynolds*?**

Response: In *People v. Reynolds*, I was sitting as an appellate court for a decision from the City Court of Rochester. I affirmed the lower court’s determination that the evidence uncovered during a traffic stop had to be suppressed because the stop was a pretext for conducting a criminal investigation unrelated to the observed traffic infraction. At the time, the four appellate departments in New York State were split on whether or not to apply the objective standard of *Whren v. United States* under New York State constitutional law. The Fourth Department, which includes Monroe County, had previously ruled that pretextual stops violated the state constitution. The Court of Appeals, New York State’s highest court, resolved the conflict when it decided *People v. Robinson*, holding that *Whren v. United States* would be applied to the New York State constitution. I did give the Supreme Court decision in *Whren v. United States* great weight, but felt bound to follow the Fourth Department precedent.

- b. **If you are confirmed as a federal judge, what sources would you turn to for persuasive authority in a case of first impression?**

Response: If confirmed as a federal judge, assuming no precedent in the Second Circuit or United States Supreme Court, I would resolve cases of first impression by looking to the clear and ordinary meaning of the statutory language, analogous precedent in other circuits, and the legislative intent.

- c. **What is your view on the proper approach for interpreting constitutional and statutory text?**

Response: The interpretation of constitutional and statutory text involves the court looking at the clear meaning of the statutory language, legislative intent and precedent from the Circuit Court or the United States Supreme Court.

d. What do you see as the role of legislative history in interpreting a statute?

Response: Legislative history can be helpful in a court's analysis of a statute if the text of the statute is unclear and the intent of the legislature is clearly and unambiguously articulated.

2. You have shown support for “alternative solutions” to incarceration. In one case you ordered a defendant found guilty of possessing a sawed-off shotgun to pay for an anti-violence billboard message, rather than serve time in jail.

a. What facts in this case lead you to believe your order was more appropriate than a jail sentence?

Response: In the case referred to, the defendant was a small business owner with no prior criminal record convicted of a Class A Misdemeanor. The defendant admitted possession of the weapon at his business for protection. There was no allegation of any illegal use or intended use of the weapon. The alternative sentence involved having the business owner pay all costs for the display of an anti-violence billboard in a high crime neighborhood. This allowed the defendant to acknowledge responsibility for his illegal possession and send a message to the entire community that illegal possession of weapons often leads to acts of violence.

b. Do you agree that incarceration has a role to play in deterring criminal behavior?

Response: Clearly incarceration has a significant role in deterring criminal behavior. Throughout my judicial career I have not hesitated to impose long periods of incarceration where appropriate under the relevant law and the facts of the particular case.

3. Since *United States v. Booker*, the Federal Sentencing Guidelines have been advisory rather than mandatory. If confirmed, how much deference would you afford the Guidelines?

Response: Although in *United States v. Booker*, the Federal Sentencing Guidelines have been deemed to be advisory rather than mandatory, the guidelines must be given significant deference because they help create consistency and fairness in assuring that similar cases will be treated in the same manner. Upward or downward departure from the guidelines must be supported by articulable facts, not on whim or speculation.

a. Under what circumstances would you be willing to depart from the Guidelines?

Response: Aggravating or mitigating factors, supported by the facts in the individual case, must be sufficiently articulated before a court should depart from the Guidelines. This is the principle I will follow in determining whether or not to depart from the Federal Sentencing Guidelines.

b. Under what circumstances do you believe it is appropriate for a district court judge to depart downward from the Sentencing Guidelines?

Response: A downward departure from the Sentencing Guidelines would be appropriate if the defendant provided significant cooperation to the government. Improper provocation by the victim, diminished capacity of a defendant or a defendant's voluntary disclosure of their involvement in an offense are other examples of factors that could justify a downward departure.

4. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?

Response: The sentence that a defendant receives for a particular crime should never depend solely upon the judge presiding. The facts of the case, the applicable law and the appropriate guidelines must dictate the ultimate disposition.

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

Response: A judge must have the ability to be a good, impartial listener and treat all parties before the court with dignity and respect. I believe that during my twenty years as a judge I have demonstrated the ability to be thoughtful, deliberate, decisive and impartial.

6. 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: A judge must be patient, calm and respectful. I believe that I have exhibited these qualities while serving as a judge during the past twenty years.

7. 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: Under our system of law, a judge is bound by precedent. I am committed to following the precedent of all higher courts. A judge's personal opinion has no role in judicial decision making.

8. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on 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: In deciding cases of first impression, the court must first look to the clear language of the statute. If the language is not clear, legislative intent may be considered. Assuming no precedent in the Second Circuit or the United States Supreme Court, a review of other relevant circuit court decisions would be appropriate.

9. **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: A court is bound to follow the decisions of the Supreme Court or the Court of Appeals. Disagreement with the decisions of those courts does not justify ignoring precedent.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: If an act of Congress exceeds the authority specifically granted to it by the Constitution, the court has the authority and obligation to find it unconstitutional.

11. **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: In order to appropriately manage large caseloads the court must be willing to utilize all tools available to it including, referral of appropriate matters to the Magistrate Judges, use of new technology for case management, referral of matters to alternative dispute resolution and being active in supervising all cases from the time of filing with the court.

12. **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: In order to control the court's docket the judge must actively engage the parties early in the proceedings, develop scheduling orders, remain firm on requiring parties to meet reasonable deadlines and be willing to discuss narrowing or resolving issues in the litigation. The court must also be active in seeking settlements.

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

Response: I received these questions on July 5, 2012 and immediately prepared my response. On July 6, 2012, I forwarded my response to representatives of the United State Department of Justice in order for them to forward this response to the Judiciary Committee of the United States Senate.

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

Response: Yes.