

Responses of Gina M. Groh
Nominee to be United States District Judge for the Northern District of West Virginia
to the Written Questions of Senator Charles Grassley

- 1. At your hearing, you said that if confirmed you would give deference to the Sentencing Guidelines, and you appeared to recognize that sentencing disparity for similarly situated defendants is problematic. Under what circumstances would you be inclined to depart from the Guidelines?**

Response: If confirmed, I would consider a departure as provided in the Sentencing Guidelines and as indicated by applicable Supreme Court and Fourth Circuit precedent.

- 2. I understand the State of West Virginia does not have the death penalty. As a federal district court judge, however, you may have to preside over a death penalty case. Do you have any doubts about your ability to uphold and enforce the federal death penalty statute?**

Response: I have no doubts about my ability to uphold and enforce the federal death penalty statute.

- 3. Do you believe that the death penalty is an acceptable form of punishment?**

Response: The federal death penalty is an appropriate form of punishment under the circumstances prescribed by the Supreme Court and I would enforce it when applicable.

- 4. In *Roper v. Simmons*, the Supreme Court relied on foreign law in holding that the execution of minors violated the Eighth Amendment. Do you think it is proper to look to foreign law to determine the meaning of the Eighth Amendment to the United States Constitution?**

Response: I believe the U.S. Constitution, including the Eighth Amendment, should not be interpreted through foreign law. I would not look to foreign law to determine the meaning of the Constitution, except as directed by the Supreme Court.

- 5. In a campaign advertisement, you said: “as one of only three female circuit judges in our state, I bring a unique perspective and energy to the bench.”**

- a. In your personal view, how does or should the gender of a judge affect the decision making process?**

Response: The gender of a judge should not affect her decision making process. My statement in the campaign literature was based on the fact that as a young, professional woman effectively balancing my career and family, I possessed the stamina, diligence and organizational skills necessary to manage a busy docket.

- b. If a judge permits his or her own personal experiences to influence decisions, do you believe the judge is living up to the responsibility to remain fair and neutral?**

Response: No. A judge must not allow her personal opinions or experiences to influence her decisions. Rather, her decisions should be based solely on the facts in evidence and the application of legal precedent.

- c. During her confirmation hearings, Justice Sotomayor rejected President Obama's so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor? Please explain.**

Response: Yes, I agree that judges should apply the law to facts, not their feelings. This is the impartiality standard required of judges and that is the standard that I have followed as a state court judge.

- 6. Do you believe it is ever appropriate for a Judge to consult foreign law, when determining the meaning of the United States Constitution?**

Response: No. I do not believe judges should ever consult foreign law when determining the meaning of the United States Constitution, except as directed by the Supreme Court.

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

Response: The most important attribute of a judge is fairness. A judge must treat all parties equally with regard to the amount of respect given to them and in the decisions she renders. A judge must attentively and carefully consider all of the evidence and arguments with an open mind and, thereafter, impartially decide a case solely upon the application of legal precedent to the facts. This is what I currently do as a state court judge.

- 8. 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 even-tempered, courteous, patient and humble. She must treat all individuals respectfully and require that they treat each other the same. She must also conduct herself in a manner befitting the judiciary inside and outside of the courtroom. Most importantly, a judge must not be guided by passion, but rather, must be guided by the law. My temperament as a state court judge demonstrates that I strive to conduct myself according to my view of the appropriate judicial temperament.

- 9. 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: I am fully committed to following the precedents of higher courts faithfully, giving them full force and effect, regardless of my personal views. A judge cannot be guided in her legal decisions by passion, personal opinion or any opinion that is contrary to legal precedent.

10. 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: In cases of first impression, I would first look to the plain and ordinary meaning of the statute or Constitution. If necessary, I would research the legislative history of a statute. I would also look to prior rulings of the U.S. Supreme Court and the Fourth Circuit Court of Appeals in cases that had similar fact patterns or issues. If there were none, I would research if there were rulings from other federal courts in similar cases to obtain some guidance.

11. 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 legal precedent established in the decision, regardless of my personal opinions.

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

Response: If Congress exceeded its authority under the Constitution, it is appropriate for a federal court to declare a statute enacted by Congress unconstitutional.

13. 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: If confirmed, my staff and I would first meet with the judge handling the docket and the clerk of court and review the court's calendar and case management system so I understood the status of the docket. Thereafter, I would continue to review the case management system on a regular basis to make sure nothing was overlooked and the cases were moving forward according to applicable timelines and as expeditiously as possible. In addition, I would set firm, yet reasonable deadlines and render timely decisions. I would also encourage mediation where cost effective. Finally, I would prepare for court ahead of time by reviewing the electronic case files and pending motions and by researching anticipated legal issues so that I could make the most effective use of in-court time.

14. 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 judges have a role in controlling the pace and conduct of litigation through effective case management and docket control. Therefore, I would follow the case management strategy outlined in the preceding question number thirteen. I believe that a judge's role in controlling the pace and conduct of litigation is to ensure that all matters reach final disposition as soon as practicable, in order for the parties to achieve finality in the most time efficient and cost effective manner.

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

Response: I carefully reviewed the questions submitted. After reflection, I answered them and forwarded my written responses to the Department of Justice for review and submission to the Senate Judiciary Committee.

16. Do these answers reflect your true and personal views?

Response: Yes.