

**Responses of Malachy Edward Mannion
Nominee to be United States District Judge for the Middle District of Pennsylvania
to the Written Questions of Senator Chuck Grassley**

- 1. As an Assistant United States Attorney, did you ever prosecute someone who was death penalty eligible?**

Response: No, as an Assistant United States Attorney I did not prosecute anyone who was death penalty eligible.

- a. If so, did you ever seek the death penalty?**

Response: Not Applicable

- b. Did you ever elected not to seek the death penalty for a defendant who was eligible? If so, please explain why you determined the death penalty was not appropriate in that instance.**

Response: No, as an Assistant United States Attorney I did not prosecute anyone who was death penalty eligible.

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

Response: Yes, the United States Supreme Court has determined the death penalty is constitutional except in certain limited circumstances. I would follow the binding precedents of the United States Supreme Court as well as the Third Circuit Court of Appeals in matters related to the death penalty.

- d. 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: No, unless required to do so by controlling United States Supreme Court or Third Circuit Court of Appeals precedent.

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

Response: The ability to apply the law impartially is the most important attribute of a judge. I believe I possess this attribute and have continually displayed it during my eleven years as a United States Magistrate Judge.

- 3. 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 a judge must be respectful, patient, impartial, courteous and diligent with respect to each litigant and attorney who comes before him or her. I consider all of these attributes to be of the utmost importance. I believe my reputation as a United States Magistrate Judge clearly demonstrates that I have met these standards.

- 4. 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

- 5. 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: I would first review the text of the statute, and then I would review the legislative history and the general statutory scheme within which the specific language is contained. I would next look to see if there were any analogous cases from the United States Supreme Court or the Third Circuit Court of Appeals. If I were unable to find sufficient analogous precedent in this review, I would look to other United States Circuit Courts and District Courts who may have decided analogous cases and examine their analysis and reasoning.

- 6. 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 best judgment of the merits to decide the case?**

Response: I am duty bound to apply the decisions of the United States Supreme Court and Third Circuit Court of Appeals. I would do so.

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

Response: Statutes enacted by Congress are presumptively constitutional. Interpretations of such statutes should be made to avoid an unconstitutional finding and only upon a plain and unequivocal showing that Congress has exceeded its constitutional authority or infringed upon a constitutional right should a statute be found to be unconstitutional.

- 8. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?**

Response: No, unless required to do so by controlling United States Supreme Court or Third Circuit Court of Appeals precedent.

9. 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 have effectively managed a large and complex caseload over the last eleven years as a United States Magistrate Judge. I have done this by becoming personally involved in my cases from their filing to their conclusion. In the Middle District of Pennsylvania, we require a joint case management plan be prepared, discussed and approved by the presiding judge. This allows the court, counsel and parties a realistic set of scheduling deadlines that control the movement of the case through litigation. I also make extensive use of our electronic case management system, its tracking tools and reports to actively supervise that movement. Finally, I have an assigned courtroom deputy who also has the responsibility of monitoring and reporting to me on the progress of each case.

10. 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: Judges definitely have a role in controlling the pace and conduct of litigation. In order to achieve the maximum benefit, this should be done in coordination with counsel for the parties whenever possible. In addition to the actions mentioned in response to Question #9 above, I have a specific discovery dispute process that requires counsel to set up a teleconference with the court prior to the filing of any discovery related motions. I have found this process successfully resolves about 90% of all discovery disputes without the time consuming need for written motions and briefs. I have also found that counsel appreciates the speed and clarity this process brings to the litigation. Finally, I have used periodic status conferences to appraise the pace and status of the case, and when necessary make appropriate adjustments in the case management plan to effectuate the speedy, fair and just conclusion of the case.

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

Response: I received these questions on July 5, 2012. I prepared my responses upon receipt and forwarded them to the Department of Justice. I spoke with a representative from the Department of Justice about my responses on July 6, 2012. At that time, I authorized the Department of Justice to submit my responses to these questions, as well as my answers to questions from Senator Klobuchar, to the Senate Judiciary Committee.

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

Response: Yes