

Responses of Jacqueline H. Nguyen
Nominee to be United States Circuit Judge for the Ninth Circuit
to the Written Questions of Senator Chuck Grassley

- 1. You have frequently mentioned there are only about five Asian-Pacific American judges in California, and that you and one other judge are the only two of those who are female. In one speech, you commented that the lack of minority judges “contributes to profoundly different perceptions of justice” and “mistrust of the court system in minority communities.”**

- a. Would you elaborate on these comments? What did you mean by different perceptions of justice?**

Response: Some members of the public, particularly in minority communities, have the perception that justice is not fairly or evenly administered. My comments were meant to convey my belief that a judiciary that better reflects the diverse make-up of our society will enhance the public’s trust and faith in our system of justice.

- b. Do you believe a lack of diversity on a given court system contributes to a mistrust of it by minority members of the community?**

Response: I believe that the mistrust of our court system by some minority members of the community stems from many causes. I did not attempt or intend to discuss these complex root causes in the speeches that I have delivered. My point was simply that, regardless of the root causes of the mistrust, a judiciary that better reflects society will serve to enhance the public’s trust and faith in our system of justice.

- 2. You have also stated that you should not be understood to be saying that a minority defendant should appear only before a minority judge. However, despite your belief that minority defendants should not come before minority judges for fear of getting special treatment, there was an instance in your Senate Questionnaire where you answered as having taken a specific Vietnamese defendant’s race and “circumstances” into account. Here, you seem to be saying one thing and then doing another.**

- a. Can you please clarify your position?**

Response: At no time in my judicial career have I ever given any litigant special treatment due to his or her race, nor do I believe it is appropriate to do so. In criminal cases, determining the appropriate sentence involves consideration of the circumstances, including the nature and circumstances of the offense, the history and characteristics of the defendant, and myriad other considerations. I consider the appropriate factors in each case.

I believe this question refers to a case that I discussed in a keynote speech I delivered to the Vietnamese American Bar Association of DC on March 18, 2010. This case involved a Vietnamese defendant charged with theft offenses. She fled Vietnam by

boat and, after being adrift at sea for days, was raped and brutalized by pirates. The mere fact that the defendant happened to be of Vietnamese descent played no part in my decision as to the appropriate sentence. I did, however, take into account the nature and circumstances of her offenses, and her history and characteristics. Both the prosecution and the defense agreed on a negotiated plea agreement that took into account these factors. I agreed that the negotiated sentence was appropriate, and sentenced the defendant accordingly after she pleaded guilty.

- b. What was the consequence of taking the defendant's race and circumstances into account? Did it result in a legal outcome different than there would have been for a non-Vietnamese defendant?**

Response: I did not take the defendant's race into account. The outcome of the disposition would not be different for a non-Vietnamese defendant under the same circumstances.

- 3. In the case *People v. Cardona and Lario*, you granted the defendant's motion to suppress because the evidence obtained was not preceded by a warrant. You found that public employees had a reasonable expectation of privacy in their offices that was violated by placement of video cameras. While this case was affirmed on appeal, the question of whether public employees have a reasonable expectation of privacy in their offices remains somewhat unsettled under the precedents of the Supreme Court. In the Court's plurality opinion, Justice O'Connor concluded that the question of whether a public employee has a reasonable expectation of privacy in his or her office should be determined on a case-by-case basis. Should a case of this nature come before you on the Ninth Circuit, what standard would you apply to determine its outcome?**

Response: If confirmed, I would carefully review the precedent in the Court of Appeals for the Ninth Circuit and the United States Supreme Court, and the facts of the case before me. If there is no precedent on point, I would look to the most closely analogous cases within the circuit and the Supreme Court, and would also review cases from other circuits for guidance.

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

Response: The most important attribute of a judge is the commitment to adhere to the law and impartially apply it in each case. I believe that my judicial record shows that I possess this attribute.

- 5. 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: Above all, a judge should be fair and impartial. A judge should also be patient, diligent, and respectful to all who appear before the court. I believe that my judicial record shows that I meet this standard.

- 6. 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.

- 7. 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 the case involves statutory interpretation, I would start with the plain reading of the statute. If the statute is unambiguous, I would apply the statute as written. If the statute is ambiguous, I would look to legislative history to determine legislative intent. I would consider the most closely analogous precedent in the circuit and the Supreme Court for guidance. If the case involves constitutional interpretation, I would start with the text of the constitutional provision and consider the most closely analogous precedent in the circuit and the Supreme Court.

- 8. 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 best judgment of the merits?**

Response: If confirmed, I would apply precedent even if I personally believe that it was wrongly decided.

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

Response: Statutes are presumed to be constitutional. A federal court can declare a statute unconstitutional if it violates a clear constitutional provision or Congress clearly exceeded its authority as set forth in the Constitution in enacting the statute.

- 10. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?**

Response: An appellate court should overturn precedent within the circuit only through the en banc process. En banc review should be rare and, as set forth in Fed. R. App. P. 35, it is justified only if the matter “involves a question of exceptional importance” or review “is necessary to secure or maintain uniformity of the court’s decisions[.]”

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

Response: I reviewed the questions and drafted my answers in the late afternoon on November 9, 2011. I reviewed my answers with an attorney from the Department of Justice and asked that my answers be submitted to the Committee.

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

Response: Yes.