

Responses of John A. Ross
Nominee to be United States District Judge for the Eastern District of Missouri
to the Written Questions of Senator Chuck Grassley

- 1. Under *United States v. Booker*, the Federal Sentencing Guidelines are advisory rather than mandatory. If confirmed, how much deference would you afford the Guidelines?**

Response: I would give great deference to the Federal Sentencing Guidelines. I believe uniformity and consistency are important considerations for a fair system of sentencing.

- 2. Under what circumstances would you be will to depart from the Guidelines?**

Response: I would consider the sentencing range set forth in the Sentencing Guidelines and any applicable provisions for upward or downward departures. I would then consider all of the sentencing factors in the Sentencing Reform Act (SRA), 18 U.S.C. § 3553(a). After those considerations, I would depart from the Guidelines only if such departure was supported by the facts of the case and the law.

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

Response: I believe the most important attribute of a judge is to be fair and impartial, by exhibiting a willingness to listen and an ability to keep an open mind, by treating all litigants respectfully, and by providing a full and fair opportunity to be heard. I believe 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 the appropriate temperament for a judge is to be patient and respectful while maintaining control of the proceedings to ensure the fair administration of justice. I believe 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: If confirmed as a District Judge, I would follow the precedents of the Supreme Court and the Eighth Circuit Court of Appeals.

- 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: In a case of first impression, I would look to analogous Supreme Court and Eighth Circuit cases. If there were no such cases, I would then look to other federal precedent. I would also review all relevant constitutional and statutory provisions that may address the issue. In matters of statutory interpretation, I would look to the plain language of the statute. If the statutory language is unclear, I would then consider the legislative history of the statute.

- 7. At your hearing, you were asked about the use of precedent and the role of courts in interpreting laws. You mentioned factors you would use. Is it ever appropriate for a judge to use foreign law in determining the meaning or application of U.S. law?**

Response: The only circumstance where it would be appropriate for a District Judge to use foreign law to determine the meaning or application of U.S. law is if specifically directed to do so by precedent of the Supreme Court or Court of Appeals.

- 8. Of what value is legislative report language or floor debate in attempting to determine legislative intent of statutory language?**

Response: While legislative report language or floor debate may have some value if a statute is ambiguous or vague, the determination of legislative intent is not generally necessary when the plain language of the statute is clear.

- 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: If confirmed as a District Judge, I would not substitute my opinion or judgment for the established case law.

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

Response: Under limited circumstances, it may be appropriate to declare a statute unconstitutional if it violates the plain language of the Constitution or if Congress has clearly exceeded its authority under the Constitution.

- 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: If confirmed, I intend to manage my caseload by early involvement with the parties to identify and resolve issues. After consulting the attorneys, I will set firm yet reasonable expectations for the parties and establish a clear schedule for discovery, motions and trial settings. I will enforce reasonable deadlines and promptly rule on

motions. I will monitor my caseload through regular status conferences. I will also encourage settlement and the use of mediation where appropriate.

- 12. At your hearing, you stated you “fully believe that everyone is entitled to a full and fair day in court.” While I respect the message I think you were trying to send, I want to ask you if this is an absolute assertion. Is there an appropriate use for summary judgment? Do those who file frivolous law suits deserve a full and fair day in court? What about prisoner post-conviction petitions?**

Response: A full and fair day in court may have a different meaning in different cases. There are certain cases, including some frivolous lawsuits and some prisoner post-conviction petitions, which can be finally resolved through pre-trial motions such as summary judgment.

- 13. 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 a judge has a significant role in controlling the pace and conduct of litigation. If confirmed as a District Judge, I would consult with the attorneys at a very early stage and, giving consideration to the complexity of the case, establish a schedule with clear deadlines. I would continue during the pendency of the case to work with the attorneys and monitor the progress of the case.

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

Response: I received the questions on May 11, 2011, and after careful consideration, I prepared my responses on May 12, 2011. I then reviewed my responses with representatives of the Department of Justice, finalized my responses, and authorized their transmittal to the Committee.

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

Response: Yes.