

Responses of George Levi Russell, III
Nominee to be United States District Judge for the District of Maryland
to the Written Questions of Senator Chuck Grassley

- 1. In your questionnaire, you indicated that you have ruled that at least three criminal defendants have received ineffective assistance of counsel. Can you describe the process of how you decide when a defendant has received ineffective assistance of counsel? If confirmed as a United States District Judge, what standard would you use to review such claims?**

Response: When deciding if a defendant has received ineffective assistance of counsel, I apply the relevant case law precedent. The basic standard for ineffective assistance of counsel was established in the case of Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, counsel is deemed to have provided ineffective assistance of counsel if his performance "fell below an objective standard of reasonableness" and "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 688, 694. If confirmed, I would use the same standard as further interpreted by subsequent precedents of the Supreme Court and the Fourth Circuit.

- 2. Please describe your judicial philosophy.**

Response: My judicial philosophy is to allow the lawyers to try their case and to decide the case or controversy before the court based on the facts and the law as determined by the decisions of the United States Supreme Court and Court of Appeals.

- 3. In 1996, you were represented the FDA in an employee termination case where the plaintiff claimed that she was fired because of her religion. You successfully argued that she was not discriminated against based on religion. As a federal judge, how would you make decisions when confronted with religious liberty issues?**

Response: At the time of the litigation I was an Assistant United States Attorney representing the government. The case involved allegations of adverse employment action taken against the employee based upon her religion. At the conclusion of the case it was established that there were legitimate non-discriminatory reasons for the action taken against the employee. I have not had the occasion to work on religious liberty issues since that case. If confirmed as a district judge, I would neutrally and faithfully apply the relevant statutes, constitutional provisions, and precedent in all cases involving religious liberties, including employment discrimination cases.

- 4. What is your understanding of the current state of the law with regard to the interplay between the establishment and free exercise clause of the First Amendment?**

Response: I have not had the opportunity to work on establishment and free exercise clause cases during my career as a judge and attorney. If confronted with such cases as a district judge, I would carefully research and apply the Supreme Court and Fourth Circuit case law in these very important areas.

5. **Given that you received a partial “Not Qualified” rating from the ABA’s Standing Committee on the Federal Judiciary, I wanted to give you an opportunity to outline your qualifications and experience. Would you please explain to the Committee why you believe you are qualified to sit as a United States District Judge?**

Response: I believe I am qualified to sit as a United States district judge based upon my twenty years experience as a judge and a lawyer. I have served as a judge in the Circuit Court for Baltimore City for the past five years, handling cases in all four dockets: criminal, civil, family, and juvenile. When I practiced law for fourteen years before being a judge, I received diverse legal experience in both civil and criminal litigation, most of which has been in the United States District Court for the District of Maryland. I have also served as a law clerk to a state appellate court judge.

In the area of civil litigation, I have defended businesses in commercial disputes; defended the government, as an Assistant United States Attorney, in medical malpractice, intentional torts, discrimination and personal injury cases; instituted litigation to collect on overdue student loans and rent court actions; represented plaintiffs in class action products liability cases; and represented plaintiffs in lawsuits arising from medical malpractice and personal injury cases. In the area of criminal litigation, as an Assistant United States Attorney I have prosecuted numerous individuals for committing violent crimes and violations of the narcotics and firearm laws. I have also initiated and supervised wiretap investigations in order to prosecute persons supplying the narcotics to low-end dealers in the State of Maryland. Having seen the practice of law through many prisms, I am able to prepare, organize, and resolve issues in cases quickly, but with care.

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

Response: I believe that the most important attributes of a judge are fidelity to the law, independence, integrity, fairness, good judgment, an appropriate temperament, and a commitment to treating all those before him with dignity and respect. I believe that I possess these attributes.

7. **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 that having an appropriate judicial temperament is critical to a judge's ability to administer justice faithfully and to the public's confidence in the judicial system. It is especially important that a judge be consistently fair, respectful,

courteous, patient, humble, open-minded, evenhanded and decisive. I believe that if confirmed as a district court judge, my conduct will meet that standard.

8. **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.

9. **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 confirmed and faced with a case of first impression, I would start with the text of the provisions at issue. If the plain language and structure of the text did not yield a clear answer I would look to the precedents of the Supreme Court and the Court of Appeals for the Fourth Circuit interpreting analogous provisions, as well as precedent from other federal courts, for guidance.

10. **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, I would faithfully apply any relevant Supreme Court or Fourth Circuit precedent, regardless of my personal judgment or views of the precedent.

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

Response: It is appropriate for a federal court to declare a statute enacted by Congress unconstitutional if it violates a provision clearly set out in the U.S. Constitution, or if Congress has exceeded its constitutional authority. In considering a constitutional challenge to a statute, a district judge must apply any applicable precedent of the Supreme Court and the Court of Appeals.

12. **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 would set reasonable and timely scheduling orders, adhere to the Speedy Trial Act, promptly resolve pending motions, and continually monitor

case aging reports. I would also utilize alternative dispute resolution tools such as mediation and settlement conferences.

- 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 judges play a vital role in controlling the pace and conduct of litigation. I would set reasonable and timely scheduling orders in every case. I believe that one of the most important aspects of keeping cases moving is the prompt resolution of pending motions before the court. Litigants often cannot advance the discovery process, settlement negotiations, or trial preparation without rulings from the court on numerous pretrial issues.

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

Response: I received the written questions on Thursday, February 3, 2012. I prepared my responses over the following several days and reviewed my responses with representatives of the Department of Justice. I finalized my responses and authorized their transmittal to the Committee.

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

Response: Yes.