

Responses of Vincent Briccetti
Nominee to be District Judge for the Southern District of New York
to the Written Questions of Senator Charles E. Grassley

- 1. At your hearing, Senator Blumenthal asked you about the Federal Sentencing Guidelines. You said, “I’ve always thought the Guidelines were good in the sense that they were guidelines and that they would tend to reduce the disparity amongst the sentences for similarly situated defendants, no matter which judge imposed that sentence, or where in the country that sentence was imposed. Under *Booker*, that goal is definitely still in effect.” You also said you were “greatly defer” to the Guideline range.**

In 2002, you said the Federal Sentencing Guidelines “pigeonhole” all or most cases.

- a. In your opinion, how do the Guidelines “pigeonhole” cases? Please provide examples of the types of cases where this is true.**

Response: The Sentencing Guidelines are, as the Supreme Court said in *Gall v. United States*, the “product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions.” Each sentencing range represents the considered judgment of the United States Sentencing Commission, which studies sentencing practices nationwide, as to the appropriate range for every federal criminal offense and every defendant, taking into account numerous specific offense characteristics as well as the defendant’s criminal history. That was true prior to *Booker*, and it is still true today. However, prior to *Booker*, once a sentencing court calculated the applicable sentencing range, the court was mandated to impose a sentence within that range, with very limited exceptions. It was in that sense that I said the Guidelines “pigeonhole” a majority of cases. I went on to suggest it would be better to keep the Guidelines in place -- because they did represent the considered judgment of experts and because they did further the laudable purpose of reducing unwarranted sentencing disparities among similarly-situated defendants -- but to make them advisory rather than mandatory. In that way, sentencing judges would still have to consider and defer to the Guidelines, but they would retain some measure of discretion to fashion an individualized sentence. This is what the Supreme Court, in *Booker*, decided to do when it upheld the constitutionality of the Guidelines, but made them advisory rather than mandatory. If confirmed as a district judge, I would be bound by and would therefore follow this precedent, as well as any other related precedent of the Supreme Court or the Court of Appeals for the Second Circuit.

- b. Do you still believe that they do so?**

Response: Please see my response to Question 1(a).

- c. **Under what circumstances do you believe it is appropriate for a district court judge to depart downward from the sentencing guidelines?**

Response: Under the Sentencing Reform Act and governing case law, a district court judge must first calculate the applicable sentencing range, and consider as well any applicable policy statements in the Guidelines. The law also requires the judge to consider any applicable upward or downward departures as set forth in the Sentencing Guidelines. Finally, the law requires the judge to consider all of the sentencing factors set forth in 18 U.S.C. § 3553(a). If confirmed, I would follow the law in all of the foregoing respects. Because, as the Supreme Court has stated, the Guidelines are the “product of careful study based on extensive empirical evidence,” and also because one of the central purposes of the Guidelines is to reduce unwarranted sentencing disparities among similarly-situated defendants, I would give great deference to the applicable sentencing range. A judge may depart downward from the applicable sentencing range only when permitted to do so by an applicable downward departure provision of the Guidelines as applied to the facts of a particular case.

2. **In 2008, President Obama said,**

“We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”

Do you agree with the President’s statement?

Response: I believe that judges must not allow empathy or their personal feelings about a case or the participants in a case to affect the decisions they make. Judges must base their decisions on a fair and impartial application of the law to the facts.

3. **Have you ever expressed an opinion regarding whether the death penalty constitutes cruel and unusual punishment under the Constitution? If so, what opinion did you express?**

Response: To the best of my recollection, I have not expressed a public opinion as to whether the death penalty constitutes cruel and unusual punishment under the Constitution. The Supreme Court has clearly held that the death penalty does not constitute cruel and unusual punishment (except under narrow circumstances such as those addressed in *Kennedy v. Louisiana*, *Roper v. Simmons*, and *Atkins v. Virginia*) and I would follow that precedent.

4. **What is your personal view regarding whether the death penalty is constitutional?**

Response: If confirmed as a district judge, my personal view regarding whether the death penalty is constitutional would be irrelevant. The Supreme Court has held that the death penalty is constitutional and I would follow that precedent.

5. Do you believe that the death penalty is an acceptable form of punishment?

Response: Yes. Congress has enacted statutes that provide for the imposition of the death penalty upon conviction of certain federal crimes, and the Supreme Court has upheld the constitutionality of the death penalty. I would follow the law regarding the imposition of the death penalty as directed by statute and in accordance with the binding precedent of the Supreme Court and the Court of Appeals for the Second Circuit.

6. Do you hold any personal views that would preclude you from enforcing the death penalty?

Response: No.

7. Do you believe that when Congress enacts a law that is contrary to the Constitution or takes action not authorized by some enumerated power therein, a court must either invalidate the Congressional action or, where appropriate, limit its application on an “as applied” basis?

Response: Yes.

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

Response: The most important attribute of a judge is to have a strong commitment to the due administration of justice, meaning that he or she must possess the integrity to apply the law to the facts, carefully and thoughtfully and with fairness and impartiality, while treating all participants in the process with courtesy and respect. I believe I possess that attribute.

9. 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: The most important elements of judicial temperament are that a judge be consistently fair, respectful, courteous, impartial, patient, evenhanded, objective, and decisive. I believe I meet that standard.

10. 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.

- 11. 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 faced with a case of first impression for which there was no controlling precedent, I would carefully and thoroughly review any analogous Supreme Court or Circuit Court rulings. I would also review all constitutional and statutory provisions that might bear on the issue. I would also exercise my authority narrowly and with restraint, and would decide only those issues that necessarily require resolution.

- 12. 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: Recognizing that, as a district judge, I would be bound by the precedents of the higher courts, I would apply the decision of the Supreme Court or the Court of Appeals.

- 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: I would set reasonable and firm deadlines for pretrial discovery and motions, and I would enforce those deadlines. I would decide pretrial motions expeditiously. I would encourage settlement and the use of mediation. I would rely on magistrate judges to handle some aspects of the cases assigned to me, consistent with their statutory authority. I would set firm trial dates, and I would preside over trials as efficiently as possible. I would also endeavor to learn about and use the best practices of fellow judges in my district to manage the caseload effectively.

- 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: Yes. Judges have an important role in controlling the pace and conduct of litigation because a critical aspect of the due administration of justice is making sure that disputes are resolved promptly and without undue expense. Please see my response to Question 13 with respect to the specific steps I would take to control my docket if confirmed.

- 15. 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 when Congress has exceeded its constitutional authority or enacted a statute in contravention of a constitutional provision. In this regard, I would follow the

precedents of the higher courts, including the Supreme Court and the Court of Appeals for the Second Circuit.

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

Response: I prepared my responses after receiving these questions on February 23, 2011. I then reviewed my responses with representatives of the Department of Justice, after which I finalized my responses. I then authorized their transmittal to the Committee.

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

Response: Yes.