

Responses of Edward M. Chen
Nominee to be United States District Judge for the Northern District of California
to the Written Questions of Senator Charles Grassley

1. In 2003, two years after you became a Magistrate Judge, you said the following in an article published in the *California Law Review*.

“diversity enhances the quality of decision-making. In addition to analyzing and applying the law, judges have to make determinations that draw not so much upon legal acumen, but on an understanding of people and of human experiences. Such experiences inform assumptions that affect legal decisions. At trial and in evidentiary hearings, judges have to assess the credibility of witnesses. A witness’ testimony may seem more credible if it is consistent with the judge’s knowledge or experience, and, conversely, less credible if it remains outside the judge’s experience. . . .

Simply put, a judge’s life experiences affect the willingness to credit testimony or understand the human impact of legal rules upon which the judge must decide. These determinations require a judge to draw upon something that is not found in the case reports that line the walls of our chambers. Rather judges draw upon the breadth and depth of their own life experience, upon the knowledge and understanding of people, and of human nature. And inevitably, one’s ethnic and racial background contributes to those life experiences.”

You made similar statements in speeches delivered on March 22, 2002, April 11, 2002, and May 16, 2002. Do you stand by this statement?

Response: The quoted statements were accurate, but the full context of these statements is not included. In the paragraphs preceding my discussion of judicial decision-making, I articulated other reasons why diversity on the bench is valuable. I stated, “A diverse judiciary signals the public acknowledgement of historically excluded communities and sends an invaluable message of inclusion. It enhances courts’ credibility among affected communities who would otherwise feel they have no voice within the institution. It helps dispel traditional stereotypes that Asian Pacific Americans and other minorities are not sufficiently intelligent, articulate, or decisive to be judges. And it assures students and young lawyers from historically underrepresented communities that they need not limit their aspirations.” With respect to the quoted statement on credibility assessments, I provided as specific examples the problems of interpreting *e.g.*, pauses by a prospective juror before responding to a question on voir dire or failure of a witness to look the questioner in the eye where there may be cross-cultural differences or factors other than the lack of veracity.

2. **Despite your statements that “inevitably, one’s ethnic and racial background contributes to those life experiences” and a “judge’s life experiences affect the willingness to credit testimony or understand the human impact of legal rules upon**

which a judge must decide,” you wrote in response to a written question from Senator Sessions: “I do not believe that the quality of decision-making is affected by one’s gender or race. An individual’s race or gender should not drive one’s decisions as a judge.” Please explain how these two positions can be squared with one another.

Response: My response to the written question from Senator Sessions reflected what I felt was the ideal way in which decisions should be made and what judges should strive to attain. That ideal is not inconsistent with the observations I made in the article which were intended to be empirical in nature, not aspirational. As I stated in my response to Senator Sessions’ Written Question # 1.b., “The quoted statement was not intended as a reflection of any judicial philosophy. It was intended as an empirical (albeit not scientific) observation that the nature and breadth of a judge’s life experience can affect his or her perceptions and hence decision-making process. Thus, diversity facilitates an interchange of ideas, experiences, and perspectives among judges -- much the way it does in a classroom, private business, or other public institution. That observation does not change my fundamental philosophy that a judge, particularly at the district court level, must apply the law as determined by binding authorities (the Supreme Court and the applicable Court of Appeals) to the facts free from personal philosophies and preferences. To do otherwise corrodes the integrity of the courts and ultimately the rule of law itself.” I further stated in my response to Senator Sessions’ Written Question #1.d. that I have made a conscious effort to check any personal feelings or intuitive reactions not grounded on the evidence, and have applied the law as I best understand it to the facts based on objective criteria.

3. In written questions, Senator Sessions asked you to describe the role of a judge. You said: “The role of a judge is to be fair, neutral, and evenhanded in applying the law and finding facts (when called to do so) without regard to personal preferences.”

a. Do you agree that when a judge makes a finding as to a witness’ credibility, he or she is making a factual finding?

Response: Yes.

b. Assuming you agree that a witness’ credibility is a factual finding, and that if confirmed you would make such findings “without regard to personal preference,” please explain the role a judge’s life experiences properly play in “credit[ing] testimony”?

Response: Determining credibility should not be based on “personal preferences.” However, it is not necessarily improper to rely on experience and knowledge in making factual determinations such as credibility. For instance, my business background has on occasion facilitated my assessment of testimony and evidence regarding financial statements or complex business transactions. My science background has enabled me to better understand testimony on certain technical matters. Life experiences and understanding can facilitate a more

accurate assessment of credibility without being based on mere “personal preference.”

4. **If, as you have said, “a witness’ testimony may seem more credible if it is consistent with the judge’s knowledge or experience, and, conversely, less credible if it remains outside the judge’s experience,” can you explain how a party whose testimony is “outside” of your experience would not be disadvantaged in your courtroom?**

Response: I would listen carefully to the entirety of that testimony and fully consider corroborative and conflicting evidence in assessing credibility.

5. **In a written question, Senator Sessions asked: “what role do you believe that empathy should play in a judge’s consideration of a case?” You answered:**

Empathy should not drive the outcome of the judge’s decision-making. Empathy can, however, make the judge sensitive to the litigants. Understanding the human needs and interests which underlie each case can serve as an important reminder that every case is important and can and will impact human lives. Empathy can also help insure that the judge treats all the parties with dignity and respect.

- a. **Give your statement that “empathy, can, however, make the judge sensitive to the litigants,” is it fair to say that you would be more “sensitive” to the sympathetic party than the unsympathetic party in a particular dispute?**

Response: No. The point of my answer to Senator Sessions’ question is that if empathy is to play any role, it should be to make the judge sensitive to all litigants. As I explained in my response to Senator Sessions’ Written Question #13.d., “It is never proper for judges to indulge their own subjective sense of empathy in determining what the law means. With respect to my own experience, I have ruled in favor of parties who were unsympathetic but nonetheless had the law and facts on their side. Likewise, I have detained individuals who appeared earnest but nonetheless posed a risk of flight or danger to community and thus had to be held without bail. I have mediated numerous individual cases where I believe the settlement did not properly reflect the value of the case (both too high and too low), but felt constrained in my role as a neutral.”

- b. **Do you believe that the unsympathetic party would be at a disadvantage in relation to the sympathetic party in your courtroom?**

Response: No. I have made a conscious effort in every case to listen carefully to each side and to render decision based solely on the evidence and the applicable law. As noted above, I have ruled in favor of parties who were unsympathetic but nonetheless had the law and facts on their side.

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

Response: The most important attribute of a judge is faithfulness to the rule of law and commitment to the fair, neutral, and evenhanded application of the law to the facts. Nearly 10 years ago, I took an oath to administer justice without respect to persons and do equal right to the poor and to the rich. I have done my best to uphold that commitment and believe I have done so.

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: The most important elements of judicial temperament include respecting all parties coming before the court, displaying patience in listening fully to all sides before reaching a judgment, and approaching with humility the exercise of the court's power over litigants while being mindful of the proper and limited role of the courts, particularly the district court, in resolving disputes. As a federal magistrate judge for nearly ten years, I have adjudicated thousands of motions and hundreds of cases and mediated hundreds more. In doing so, I have dealt with a wide range of behavior by attorneys, represented clients, and pro se litigants. In every case, I have tried to treat each participant with respect and patience. I believe my track record demonstrates I have the appropriate temperament of a judge.

8. 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 matter concerns the application of a statute, my task would be to determine the intent of Congress. I would first look to the express language and structure of the statute. If it is clear, generally the text would govern. If there is ambiguity, I would survey the decisional law interpreting the statute to see if there is any binding precedent or decisions which are close, if not precisely, on point. If necessary, I would utilize the conventional tools of statutory construction (which include canons of statutory interpretation, interpretive regulations, and evidence of legislative purpose). In matters of constitutional law, if the text of the Constitution is not clear, I would look to the precedents of the Supreme Court, the Ninth Circuit, other circuit courts and district courts (in that order) to discern the applicable principles and doctrine.

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

Response: A federal court should not declare a statute enacted by Congress unconstitutional unless required by applicable precedent. Except in narrow circumstances, statutes enacted by Congress enjoy a presumption of constitutionality. If Congress exceeds its authority under the Constitution, a federal court would be obligated to find the statute unconstitutional.

10. 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: As a magistrate judge in the U.S. District Court for the Northern District of California which has one of the highest caseloads in the nation, I have been given substantial responsibility. I have over 100 cases over which (based on the parties' consent) I have full jurisdiction to adjudicate through final disposition, including motions to dismiss, motions for summary judgment and trial. I also have at any given time scores of cases in which I have been assigned to adjudicate all discovery and other disputes. I also have responsibility over criminal matters assigned to magistrate judges and serve as the settlement judge in 70 or more cases each year. I have implemented a system within chambers to insure that motions and cases are managed efficiently and timely. I utilize externs from both local and national law schools to assist in chambers. I actively manage cases assigned to me. In consent cases, consistent with our local rules, I hold a case management conference within 90 days of filing. I usually set a schedule at that conference for completion of discovery and deadlines for motion and trial. I hold follow up status conferences every 90-120 days to insure the case is moving at the appropriate pace. I also make sure the parties elect some form of alternative dispute resolution (such as mediation or judicial settlement conference) in a timely fashion and typically phase discovery to facilitate settlement discussions. The median time for disposition of my civil cases is currently 157 days, one of the shortest in the district.

11. 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 have an important role in controlling the pace and conduct of litigation. Our district served as a pilot program for advent of active case management in the federal courts nearly 20 years ago. As noted in my answer to Question #10 above, I have tried to carry on that tradition by being an active case manager, setting dates and periodic status conferences with the parties to insure the pace of litigation is maintained in an orderly and expeditious fashion. As a law clerk to U.S. District Judge Charles Renfrew, I learned that the most important rule of civil procedure is Federal Rule of Civil Procedure 1 which expresses the purpose of the rules is insure a "just, speedy, and inexpensive determination of every action and proceeding."

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

Response: I drafted my answers to the questions. They were reviewed by the Department of Justice.

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

Response: Yes.