

**Response of Andrew P. Gordon
Nominee to be United States District Judge for the District of Nevada
to the Written Questions of Senator Chuck Grassley**

- 1. At your hearing, I asked you about a paper you had written some years ago. I specifically asked if your views had changed; you replied Yes, “Somewhat.” Can you be more specific on how your views have changed? For example:**

- a. Do prostitution laws “discriminate against women?”**

Response: I wrote the paper to which you are referring while I was a college student, and I have not researched the legal or policy issues regarding such laws, or devoted any significant attention to the paper itself, since writing it 28 years ago. Therefore, I do not know the current state of prostitution laws. However, to the extent that women are prosecuted for prostitution but their male customers are not prosecuted for patronizing them (or if no law prohibits such patronage), that could be considered discriminatory towards women. As stated above, however, I have not performed the research to determine whether such discrimination actually exists today.

- b. Is there any government interest in the private conduct between consenting adults?**

Response: It is up to Congress and state legislatures to determine which conduct to regulate, including private conduct between consenting adults. The job of the court is to faithfully apply those laws and the United States Constitution.

- c. Are there other conclusions you drew in your paper that you would clarify or revise – please explain in detail.**

Response: As stated above, I wrote the paper 28 years ago. It is likely that the paper contains some conclusions that I would not reach today, or that I would phrase differently. Because I have not studied these issues since writing the paper, I cannot identify which specific statements I would clarify or revise if I were to address the subject today. In any event, if I were confirmed as a district court judge and presented with a case involving prostitution or any other issue, my decision would be based solely on the law – any personal views I had would play no role.

- 2. Your college paper on prostitution has somewhat of a libertarian undercurrent. Similarly, we are seeing a small but growing trend along these lines in drug laws in some states. Recently, a few states and local jurisdictions have legalized marijuana.**

- a. If Nevada legalized marijuana, how would you approach a case where there was a conflict between the state law and federal drug laws?**

Response: First, pursuant to the supremacy clause, state statutes cannot trump federal statutes. I would look to the legal precedents on the supremacy clause from the Supreme Court and from within my Circuit Court of Appeals, then from within my district, and then from other circuit and district courts. Absent any precedent on point, I would look for cases analyzing analogous statutes.

b. Should state law have any influence on a judges' enforcement or upholding of the constitutionality of a federal statute?

Response: Pursuant to the supremacy clause, state statutes cannot trump federal statutes. State law generally does not play a role in interpretation of the Constitution. However, the Supreme Court has occasionally looked to state law in the Eighth Amendment context. If confirmed as a district judge, I would follow the precedents of the Supreme Court.

c. What if the executive branch declines to enforce federal law on a uniform basis? Suppose the U.S. Attorney for the District of Nevada continued to prosecute individuals under federal drug laws even while federal authorities might decline to prosecute in other States where marijuana has been legalized? Would that have any bearing on how you would approach the case?

Response: I am not familiar with the law in this area, and cannot say what, if any, bearing those facts might have on the legal analysis. If confirmed as a district judge and I am presented with a case raising these issues, I would faithfully follow the United States Constitution and the legal precedents of the Supreme Court.

3. Does the executive branch's failure to enforce a constitutionally-sound law unilaterally invalidate the law?

Response: No.

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

Response: I do not believe there is one "most important" attribute of a judge, but rather many important attributes. Judges should faithfully follow the legal precedents of the Supreme Court and the Courts of Appeals. Judges must be fair, must be patient and careful listeners, must not pre-judge a case or issue, and must treat all parties with respect and dignity. Federal judges must keep in mind that their jurisdiction is limited, and they must respect, and not usurp, the roles of the legislative and executive branches of government. I possess all of these traits.

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: A judge must be patient and courteous, treating the parties with respect and listening carefully to them. A judge must keep his ego in check, must remember that he is a public servant, and must remember that the courts belong to “we the people.” Having served as a private arbitrator and mediator for more than 10 years, I believe I meet these standards.

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 was dispositive on 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: I would begin with the plain language of the Constitution and the statute at issue. If the language is clear and the answer is found in the plain language, the inquiry is over. If not, and if there were no precedents from the Supreme Court or the Ninth Circuit Court of Appeals, I would look for legal precedent from the other circuits. Absent that, I would look for cases analyzing analogous statutes. I also would look to the context of the specific statute within the broader statutory scheme. If necessary, I would look for legislative history for some guidance.

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 best judgment of the merits to decide the case?**

Response: I would follow the precedents of the Supreme Court and the Court of Appeals.

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

Response: Statutes are strongly presumed to be constitutional, and if the statute can reasonably be interpreted as constitutional, it should be upheld. If, based upon precedents of the Supreme Court and the Court of Appeals, a statute clearly violates a

provision of the Constitution and it cannot be interpreted as constitutional, it should be declared as unconstitutional.

- 10. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community,” in determining the meaning of the Constitution?**

Response: No.

- 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: In my 25 years of practice, I have managed my heavy caseload by calendaring every deadline and building in reminders of upcoming deadlines. I would continue that as a judge. In addition, I would timely address motions, and I would strive to keep the litigants on track and meeting deadlines, to avoid delays. I also would encourage parties to consider settlement where appropriate.

- 12. 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 a significant role in controlling the pace and conduct of litigation. If confirmed, I would work with the magistrate judges to ensure that appropriate Discovery Plans and Scheduling Orders are entered; I would enforce deadlines; I would schedule status checks with the litigants as necessary to keep them on track; and I would timely address motions filed by the parties. I also would encourage parties to consider settlement where appropriate.

- 13. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: For the past 10 years, I have devoted a significant portion of my practice to serving as a private arbitrator and mediator. Thus, I have experience ruling upon motions, listening to witnesses, weighing evidence, and deciding cases. If confirmed as a judge, I will continue to approach cases in the same way: keeping an open mind, listening carefully to the arguments of counsel and the testimony of witnesses, conducting legal research as needed, and relying on the precedents of the Supreme Court. I expect that the most difficult part of my transition will be in the area of criminal law. As I testified at my confirmation hearing, I will work hard to learn this area.

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

Response: I reviewed the questions and personally drafted my answers on December 20, 2012. I reviewed my answers with an official from the Department of Justice before submitting them to the Committee.

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

Response: Yes.