

**Responses of Michael C. Green**  
**Nominee to be United States District Judge for the Western District of New York**  
**to the Written Questions of Senator Chuck Grassley**

- 1. Given your work on the New York Commission, and considering your experience with criminal law, what is your familiarity with the Federal Sentencing Guidelines?**

**Response:** I am familiar with the Federal Sentencing Guidelines from several different sources. First, as District Attorney I have worked with the United States Attorney's Office on a regular basis to determine whether cases can be prosecuted most effectively in state or federal court. This analysis included an examination of the applicable sentencing provisions in each jurisdiction, which in federal court required review of the Federal Sentencing Guidelines. Also, as a member of the New York Sentencing Commission, I studied the Federal Sentencing Guidelines as a reference in making recommendations for New York's sentencing scheme. Finally, I have been studying federal law, including the Federal Sentencing Guidelines, in preparation for my work as a federal district court judge, in the event I am confirmed by the United States Senate.

- a. What was your position, while serving on the New York Commission, regarding mandatory minimum sentencing?**

**Response:** As a member of the Commission I advocated for mandatory minimum sentences for those offenders convicted of crimes which threaten the safety of our communities.

- b. If confirmed, under what circumstances would you depart from the Federal Sentencing Guidelines?**

**Response:** Understanding that the Supreme Court in United States v. Booker, 543 US 220 (2005), held that the Federal Sentencing Guidelines are advisory, not mandatory, if confirmed as a district court judge, I would nevertheless give substantial deference to the applicable sentencing ranges calculated pursuant to the Guidelines. I would only consider departing from the Guidelines in an individual case when I felt a departure was warranted based upon the applicable statutory and decisional law. For example, I would consider a departure pursuant to 18 U.S.C. § 3553(e) when the government makes a motion for a departure based upon substantial cooperation by the defendant. In all cases, I would be strongly guided by the provisions of the Federal Sentencing Guidelines and any relevant decisions of the United States Supreme Court and Second Circuit Court of Appeals.

- 2. Do you believe it is proper for a judge, consistent with governing precedent, to strike down an act of Congress that it deems unconstitutional? If so, under what circumstances, and applying what factors?**

**Response:** Yes, I believe it is proper for a judge, consistent with governing precedent, to strike down an act of Congress. Such a decision would be proper when the judge

determines, after careful consideration, that such act exceeds Congressional authority as articulated in the Constitution and in relevant Supreme Court precedent.

**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 able to promptly decide cases on the narrow issues presented after making fair and impartial findings of facts, identifying and apply controlling statutory and case law, and applying that law to the facts of the particular case. I believe I possess this ability.

**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:** A judge should treat everyone with dignity and respect; should act in a manner that affords the federal courts and federal law the respect they deserve; and, should be firm in managing the docket, including ensuring that the décorum of the court is always maintained and that all decisions are prompt and just. I believe that I possess and have demonstrated that I possess the qualities that will ensure that I conduct myself in this manner should I have the honor of being confirmed as a federal district court judge.

**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:** Yes.

**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:** I would start by finding the facts in a fair and objective manner. I would then turn to an analysis of the language of the statute or provision of the Constitution at issue, and if necessary and available, any legislative history that sheds light on the meaning of the statute. I would also look to the decisions of the United States Supreme Court, the Second Circuit Court of Appeals, and the other Circuit Courts in which these courts have decided similar cases, for further guidance in addressing a case of first impression. I would attempt to decide the issue as narrowly as possible consistent with the language of the Constitution or statute in question, considering any relevant precedent.

- 7. 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 I am confirmed as a district court judge, I would follow all controlling law regarding any issue that came before me as set forth by the United States Supreme Court and the Second Circuit Court of Appeals without regard for my personal opinions.

- 8. 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 judge I would set an example for all parties in terms of my work ethic and level of preparation. I would make sure criminal cases are handled according to the applicable speedy trial standards. I would utilize scheduling orders and be firm in holding parties to those orders to facilitate the prompt disposition of cases. I would use the resources available to me, including magistrate judges, and effective methods developed by other judges in my district, including mediation where appropriate, to help manage the caseload. I would conduct court proceedings in a fair but efficient manner and make decisions promptly.

- 9. 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 significant role in controlling the pace and conduct of litigation; and, if confirmed, I would take the steps outlined in my response to question 8 to control my docket.

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

**Response:** I received these questions from the Department of Justice via email on the evening of May 31, 2011. I prepared draft responses to the questions and then reviewed them with the Justice Department. I then finalized my answers and emailed them to the Justice Department for submission to the Judiciary Committee.

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

**Response:** Yes.