

**Responses of John A. Kronstadt
Nominee to be District Judge for the Central District of California
to the Written Questions of Senator Charles E. Grassley**

1. **In *Greenberg*, you awarded the defendant, the City of La Canada Flintridge, \$104,000 in attorney's fees. You were reversed on appeal. The Court concluded that you had not made the necessary findings that the plaintiff's case was "frivolous, unreasonable, or groundless." Therefore, the appellate court concluded that you had abused your discretion.**

- a. **Please explain the reasoning for your decision.**

Response: My decision in *Greenberg* was a follow-on to the decision of my predecessor, Judge Grimes. She granted summary judgment in favor of the City of La Canada, concluding that the claims advanced by the plaintiffs failed. When I took over the case, the sole issue remaining was whether attorney's fees should be awarded to the City as the prevailing party under Judge Grimes' decision, and, if so, in what amount. My decision in the matter that fees should be awarded was based on my review of the record of the decision made by Judge Grimes, the briefs of the parties, and the contentions raised during oral argument. My decision as to the amount of fees that should be awarded was based on my review of the billing statements of counsel for the City, my knowledge of the reasonable rates charged for legal services in Los Angeles, and my assessment of the scope and appropriateness of the services provided. I have decided hundreds of attorney's fees awards while on the Superior Court using these criteria. As a result of my analysis, I concluded to grant only a portion of the \$174,733.30 in fees sought by the City.

- b. **Do you agree with the appellate court's conclusion?**

Response: Yes.

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 do not believe that empathy has a role in judicial decision-making. Judges are to apply the law to the facts. Judges should also be courteous, respectful and patient in dealing with those who appear before them.

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: No, to the best of my knowledge, I have not expressed an opinion on this issue.

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

Response: The Supreme Court has ruled that the death penalty is constitutional except under certain narrow circumstances. I would adhere to the law in this area.

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

Response: Yes. The Supreme Court has so held.

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. Thus, if a constitutional issue is properly framed for a court it is obligated to decide it consistent with the applicable principles of constitutional law established by the Supreme Court.

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

Response: I cannot single out one attribute as the most important for a judge to possess. I believe that, among the most important attributes for judges to have are: courtesy, patience, a strong work ethic, integrity, impartiality, respectfulness for all who appear before them and thoroughness in their decision-making. Through this combination of attributes, judges can perform well by correctly determining the facts and the law as required by the cases before them. In addition, through their courtesy, patience, respectfulness, impartiality and thoroughness, judges can inspire confidence in the judiciary in those whose disputes are resolved there. Throughout my judicial career, I have worked hard to meet these standards of performance and to maintain and improve these attributes.

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: As stated in response to Question 8, patience, courtesy, impartiality and respectfulness are among the important attributes of temperament of a successful judge. Those who appear before a judge want to be heard and treated with courtesy and respect. A judge whose temperament features these critical attributes will inspire respect for, and confidence in, the judiciary. I aspire to meet these standards in court every day.

- 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, without any reservation.

- 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: I will look to available Supreme Court and Circuit Court precedents in analogous settings. Where the issue is one of statutory interpretation, I will study the words of a statute to seek to determine its meaning, and, if appropriate, will seek to determine the legislative purpose from legislative materials. In short, I will work hard to seek to determine the correct answer to the issue that is presented.

- 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: I would apply that decision.

- 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 work hard to stay on top of all matters pending before me. I would work with counsel to manage cases in a manner that achieves fair, efficient and timely proceedings from filing to final disposition. Some of the manners in which I would do so are the techniques that I have used in my current judicial assignment; these are discussed in response to Question 14.

- 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: I do think that judges have a significant role in controlling the pace and conduct of litigation. If confirmed, I would continue to use the methods that I have used as a judge over the last several years. These include an early status conference with counsel or self-represented parties to discuss the planned course of the litigation and the establishment of firm deadlines for the completion of pre-trial phases, the setting of firm dates for hearings on significant pre-trial motions and trial, and a discussion of the means through which the case might be resolved through some form of alternative dispute resolution. In addition, by setting periodic follow-up status conferences, and by having the parties file status reports with respect to their progress, cases can be well-managed and concluded in a reasonable amount of time. I would continue to work cooperatively with counsel and parties in finding efficient and cost-effective means of resolving disputes over discovery and other pre-trial issues. Such techniques include conference telephone calls. In addition, I would continue to work with counsel and parties in efforts to settle cases through settlement conferences at which a judge presides.

15. 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 find that a statute is in conflict with the Constitution under circumstances prescribed by Supreme Court precedent. Thus, if a statute is in clear conflict with an express provision of the Constitution, including an unambiguous limitation on the powers of the legislative branch, it should be found unconstitutional by a federal court. In considering such a challenge to a statute, a district court judge must follow the precedent of the Supreme Court as well as governing circuit court authority. The Supreme Court has recognized certain limitations on the exercise of Congress' legislative powers. In *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), for example, the Supreme Court determined the scope of such powers under the Commerce Clause.

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

Response: I prepared my answers after carefully considering the questions. I then reviewed my responses with representatives of the Department of Justice. I then finalized my answers and forwarded my written work to the Department of Justice for submission to the Judiciary Committee.

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

Response: Yes.