

Response of Raymond P. Moore
Nominee to be United States District Judge for the District of Colorado
to the Written Questions of Senator Chuck Grassley

- 1. In sentencing, what consideration should a judge give to factors such as a defendant's race, age, marital status, or family status (whether or not the defendant has children)? Should two defendants who committed the same crime receive different sentences based on these factors?**

Response: None of these factors should be a determining factor in imposing a sentence on an individual. Two defendants committing the same crime should not be sentenced differently simply because of such differences. Sentences should be imposed in accordance with the laws passed by Congress and binding precedent. Currently, 18 U.S.C. §3553 requires a sentencing judge to consider seven specific factors in sentencing a defendant.

- 2. As a federal judge, if confirmed, what factors would you weigh in considering alternative sentencing programs?**

Response: If confirmed, the only factors I would consider are those required by the laws of the United States and binding precedent. Currently, those factors are set forth in 18 U.S.C. §3553 and include the U.S. Sentencing Guidelines, policy statements of the Sentencing Commission, avoidance of unwarranted disparity and other factors.

- 3. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

Response: No.

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

Response: The most important attribute of a judge is to be fair and impartial in all matters coming before the court. A judge must apply the law without favoritism, bias or preconception as to the proper outcome. This attribute must be present both in fact and in appearance. I believe that I possess this attribute.

- 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 should be at all times even tempered, patient, open minded and courteous to those who appear before him. A judge must also be decisive in deciding

the issues that come before the court. I believe that all of these attributes are of equal importance. I also believe that I meet this standard.

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 turn first to the statute at issue and examine its plain language. If the plain language is unambiguous, the inquiry is at an end and the matter must be resolved on that basis. If the plain language does not resolve the matter, I would apply the existing standards or canons of statutory construction. I would also consider precedent with respect to analogous matters in the cases of the United States Supreme Court, the United States Court of Appeals for the Tenth Circuit, other circuit courts of the United States and, lastly, other United States District Courts.

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: The decision of the Supreme Court or Court of Appeals must be applied as it is binding precedent. My belief as to its wisdom or correctness would be irrelevant.

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

Response: Statutes passed by Congress are presumed to be constitutional. Such statutes should only be declared unconstitutional where it is clear that the statute violates an express provision of the Constitution or where Congress has clearly exceeded its constitutional powers.

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: I believe that caseload management can be aided by the use of realistic deadlines, status or case management conferences with the parties, availability to resolve matters that arise during the course of litigation, effective use of magistrate judges, and prompt rulings by the judge. I would employ all of these tools to manage my caseload. I would also consult with existing judges for procedures, tools and approaches which they have found to be effective.

- 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: Yes. I would employ the tools and methodologies described above in response to the previous question.

- 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: If confirmed, I would approach each case with an open mind. I would listen carefully to the arguments of the litigants and review carefully their memoranda and other written submissions. I would listen to the witnesses and review all exhibits received into evidence. If the decision I had to make were a factual one, I would reach that decision by looking to these matters as sources of information. If the decision were a legal one, I would apply existing law and precedent to the facts. What I expect to be the most difficult part of the transition will be to avoid any urge to argue, question, or analyze the issue as if I were presenting it. Being aware of this issue, however, I believe that I will be able to let the litigants litigate without interference and to confine myself to my new role in the judicial process.

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

Response: I received the questions on January 30, 2013. On January 30-31, 2013, I prepared my draft responses. I forwarded these to representatives of the Department of Justice for discussion on January 31, 2013. After discussion, I finalized my responses and, on February 2, 2013, authorized their submission.

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

Response: Yes.