

Response of Troy L. Nunley
Nominee to be United States District Judge for the Eastern District of California
to the Written Questions of Senator Chuck Grassley

- 1. As part of a judicial profile that appeared in the Sacramento Bee in 2006, you are reported as saying, “My experience helps me to have a certain perspective...A Young African American male who took a certain route, I can see what happened to them.”**

- a. In what way, if any, do your personal experiences inform you in the courtroom?**

Response: My personal experiences do help me listen to and understand litigants and witnesses from different backgrounds. However, my adjudication of cases is based solely on the evidence before me and the governing law without regard to my personal experiences.

- b. Do your personal experiences enter into your decision making processes when making a ruling or sentencing determination?**

Response: No. I have been a state superior court judge for over 11 years. My personal experiences have never entered into my decision making processes when making a ruling or sentencing determination.

- 2. In 2011 interview with Harry Henry you expressed a preference for rehabilitation programs over incarceration, stating that America has “turned into a society that is punitive, that incarcerates people” and does not do an “effective job rehabilitating and reintegrating people back into society.” You also expressed some dissatisfaction with California’s three strikes law and mandatory sentences saying that, “unfortunately, sometimes the law is such that I have no discretion in terms of what I can sentence a person too.” You went on to discuss sentences you have given to young adults, including sentences under California’s three strikes law. You mentioned that when a young adult has a “compelling reason or has a great prospect for the future” you will take a chance on them in limited circumstances.**

- a. Do you oppose mandatory sentences? If so, why?**

Response: No, I do not oppose mandatory sentences, and I have imposed such sentences over the past eleven years while serving as a state court judge.

- b. In the interview, you also mentioned that there are instances in which you do have discretion. You continued onto say that in limited circumstances you will take a chance on someone if there is a “compelling reason.” Could you provide an example of a case where a compelling reason existed and how you adjusted that person’s sentence?**

Response: A minor came before me in juvenile court on several occasions after committing a series of burglaries and possessing drugs. His father’s whereabouts

were unknown and his mother was a drug addict. His two sisters were attending college and wanted me to allow the minor to live with them. However, I sent him to the juvenile detention facility pursuant to prevailing juvenile sentencing laws. Upon release he continued to commit petty crimes. I ultimately decided to send him out of state to a foster home placement in Pennsylvania. I told him if he attended school, stayed out of trouble and remained in placement in Pennsylvania then I would consider allowing him to return to live with his two sisters in California. While in placement in Pennsylvania, the minor stayed out of trouble and became an honor student. I adjusted the minor's sentence and allowed him to return to California where he enrolled in college while living with his sisters. During monthly progress reports the young man continued to progress while remaining in school and working a part-time job.

- c. **Since *United States v. Booker*, the Federal Sentencing Guidelines have been advisory rather than mandatory. If confirmed, how much deference would you afford the Guidelines?**

Response: In the aftermath of *United States v. Booker* the Federal Sentencing Guidelines are now advisory rather than mandatory. If I am confirmed, I intend to give the Federal Sentencing Guidelines significant deference. The Federal Sentencing Guidelines create uniformity, consistency and fairness while assuring that similarly situated cases are treated the same.

- d. **Under what circumstances do you believe it is appropriate for a district court judge to depart downward from the Sentencing Guidelines?**

Response: It is appropriate for a federal district court judge to depart downward from the Federal Sentencing Guidelines if a case presents unusual attributes. In such cases if a court departs from the guidelines and sentences outside the prescribed range, the court must specify reasons for the departure. Examples include cases where a defendant provides substantial assistance to authorities or if the victim's wrongful conduct contributes significantly to provoking the offense behavior.

- e. **Do you believe a judge should take into consideration a person's ability to contribute to society in sentencing an individual?**

Response: No. I don't believe a judge should take into consideration a person's ability to contribute to society in sentencing an individual. An individual's sentence should depend upon the applicable statutes, Federal Sentencing Guidelines, precedent and the facts of the case.

3. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

Response: The sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw. A defendant's sentence should never depend upon

forum shopping for the most favorable disposition. The sentence should depend upon the applicable statutes, Federal Sentencing Guidelines, precedent and facts of the case.

4. Do you believe empathy should play a role in arriving at just decisions and should play a role in a judge's consideration of a case?

Response: A judge must have a faithful and consistent interpretation of the law while adhering to precedent without regard to sympathy for the parties or a particular outcome. A judge must also listen to and comprehend all of the litigants who appear in court.

5. Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution?

Response: The United States Supreme Court has upheld the constitutionality of the death penalty except for a few special circumstances such as cases involving juveniles and the mentally retarded. If I am confirmed as a federal district court judge, I will follow United States Supreme Court precedent as well as Ninth Circuit precedent.

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

Response: The most important attribute of a judge is fairness to all litigants without regard to their status. Fairness gives litigants the confidence that regardless of the outcome of a particular case, a judge will allow them their day in court without regard to the judge's personal beliefs. Throughout the years I have given all litigants who appear before me an opportunity to be heard. I have rendered decisions fairly and I have a healthy respect for judicial precedent.

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 are decisiveness, open-mindedness, patience, respect and courtesy. I believe I meet this standard, and over the years I have gained a reputation in the legal community of meeting said standards.

8. 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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: A judge's personal beliefs should never enter into the decision-making process. If confirmed I would be fully committed to following United States Supreme Court precedent and Ninth Circuit precedent without regard to my personal beliefs.

- 9. 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: When confronted with a case of first impression involving a statute or regulation, I would initially review the plain language of the statute or regulation and apply the canons of statutory construction. If the meaning remained ambiguous, I would then look at both United States Supreme Court precedent and Ninth Circuit precedent in analogous cases. If I needed further guidance I would look to legislative history, if available and if it were appropriate. Lastly I would examine analogous precedent from Circuit and District Courts outside my jurisdiction.

- 10. 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 apply the decision of the United States Supreme Court or the Ninth Circuit Court of Appeals faithfully and impartially.

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

Response: A federal court may only declare a statute unconstitutional when Congress exceeds its constitutional authority or when the statute violates an express provision of the United States Constitution.

- 12. 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.

- 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: As a state court judge for the past 11 years, I am familiar with heavy caseloads and I have experience dealing with such caseloads. I am also aware the Eastern District Court here in California has the heaviest caseload in the nation. If confirmed, I would manage my caseload as follows: thoroughly review all pending cases in order to identify and manage complex cases that require immediate attention; conduct frequent status conferences to keep abreast of case progress; impose discovery limitations consistent with the Federal Rules of Civil Procedure; strongly encourage the litigants to highlight the issues in dispute; set and enforce reasonable deadlines; discourage unnecessary extensions of time; and rule on motions and issues promptly.

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: Yes, I believe judges do have a role in controlling the pace and conduct of litigation. If confirmed I would control my docket as set forth in question No. 13. I would require the attorneys to abide by the court's deadlines so cases can move along and not languish.

15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: In deciding the legal issues in cases that come before me, I first talk to the parties to clarify the issues and determine how the law applies to the relevant facts. I subsequently examine the relevant governing law before looking at precedent established by the California Supreme Court or the state appellate court.

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

Response: I received these questions from a representative of the Department of Justice on September 26, 2012. I wrote my answers on September 27 and September 28, 2012. I submitted them to the Department of Justice on September 28, 2012 and on October 2, 2012, I worked with them to finalize the responses.

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

Response: Yes.