

Response of Beverly R. O'Connell
Nominee to be United States District Judge for the Central District of California
to the Written Questions of Senator Chuck Grassley

- 1. You indicated in your questionnaire that you were unable to find notes, transcripts, or recordings for your June 1, 2005 panel discussion on misconceptions of the United States Patriot Act. Could you provide the committee with a more detailed description of the points covered in that presentation?**

Response: The primary point of the presentation was that the United States Patriot Act did not provide unfettered discretion to law enforcement to intercept telephone conversations. The United States Patriot Act provided for judicial oversight and required applications before a judge in order to intercept telephone conversations.

- 2. You indicated that you were involved in Fetchik v. Circuit City Stores, Inc. as counsel for Circuit City. You wrote that "Circuit City retained new counsel prior to disposition." Please explain the circumstances of why new counsel was retained.**

Response: I was an associate at the time and was not included in those discussions. As a result, I do not know why new counsel was retained.

- 3. The majority of your career has been spent handling criminal cases. If confirmed, how will you prepare yourself to preside over the complicated civil matters that would come before you?**

Response: As an associate at Morrison & Foerster, I participated in complicated civil matters. If confirmed, I would have to re-familiarize myself with the relevant areas of law, including reviewing the Federal Rules of Civil Procedure, but presiding over complicated matters transcends subject matter. I would, as I do in criminal matters, work with the parties to identify the issues truly in dispute, set clear timelines for resolving those issues, make myself available to resolve disputes and rule clearly so that the parties understand the rulings. I am prepared to work hard to educate myself.

- 4. In October, 2012 you taught a class on California's Basic Felony Sentencing. One slide of your presentation was entitled "What Doesn't Work" and listed several factors that do not help prisoners from reoffending. One factor listed is "Drug education programs". Will you please explain why, in your opinion, drug education programs do not work?**

Response: This slide regarded "Evidence Based Principles" which courts in the State of California are implementing to focus limited resources on those who have the highest rate of recidivism. The point I was making in the presentation was that the studies have shown that drug education, when it consists solely of lectures, is not extremely effective. The studies have shown that a combination of factors is required, including active participation by the offender.

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

Response: The most important attribute of a judge is to fairly and impartially apply the law to the facts without regard to personal views. I believe that I possess that attribute and that the litigants who come before me believe that I will fairly and impartially render my decisions.

6. 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 even-tempered, respectful, free from bias, open-minded, courteous, patient and decisive. I believe that I meet this standard.

7. 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: I believe that it is essential that a judge follow the precedents of the higher courts faithfully, regardless of personal beliefs. If confirmed, I will continue to follow all applicable precedents, regardless of my personal views.

8. 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 apply the canons of statutory construction. First, I would start with the plain language of the provision in question. Only if the provision was ambiguous would I go any farther in the analysis. If it was ambiguous, I would examine analogous precedent from the Supreme Court and the Ninth Circuit. If those courts did not provide any guidance I would then turn to other Circuit and District Courts concerning the statute.

9. 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 Supreme Court or the Court of Appeals without regard to my personal opinion.

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

Response: One must first determine whether the case could be decided without reaching the constitutional issue. If the matter could be resolved without reaching the constitutional issue, it should be decided on that basis. If the dispute could not be resolved without addressing the question of constitutionality, the statute then enjoys a presumption of constitutionality. A statute should only be found unconstitutional if Congress clearly exceeded its powers or if the statute clearly violates the Constitution. In analyzing the constitutionality of a statute, a court should look to apply all precedents from higher courts.

11. 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.

12. 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 in one of the busiest courts in the United States, I have a heavy docket of criminal cases. In addition, I supervise three courthouses and 24 judges. I frequently meet with judges to discuss efficient case management techniques. I would continue to employ the techniques I have found successful. I would assess the complexity of each case, prepare myself for each matter prior to the hearing, set realistic deadlines and trial dates, work with the parties to narrow the issues in dispute, explore settlement, make myself available to rule upon disputed matters, and rule promptly and clearly to avoid re-litigating issues. If confirmed, I intend to continue these practices.

13. 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 that it is my responsibility to actively manage my docket. I would continue to employ the case management techniques discussed above to control the pace and conduct of litigation in my court.

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

Response: On December 20, 2012, I received these questions. On that same day, I responded to the questions and submitted them to a representative of the Department of Justice. On December 21, 2012, I finalized my responses with a representative from the Department of Justice. I then gave my authorization to forward the responses.

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

Response: Yes.