

**Responses of Jimmie V. Reyna
Nominee to be Circuit Judge for the Federal Circuit
to the Written Questions of Senator Charles E. Grassley**

- 1. You were asked at your hearing how you would increase diversity on the bar, if confirmed. You said, "...diversity on the judiciary is extremely important and I think it's vital to our judiciary and our system of justice." Please expand upon your belief.**

Response: My testimony concerning diversity in the legal profession reflected the work and programs undertaken by bar associations throughout the country. For example, in early 2010, the ABA Presidential Initiative Commission on Diversity issued a report entitled, "Diversity in the Legal Profession: The Next Steps." The recommendations set out in the report were directed to all segments of the legal profession and were based on four rationales:

- Lawyers and judges have a unique responsibility for sustaining democracy.
- The profession must be diverse to thrive in a global and domestically inclusive business environment.
- Diversity is critical if the profession wishes to maintain a societal leadership role.
- Changing demographics in society compel the profession to change its own demographics.

- 2. At your hearing, I asked whether you personally believe the Constitution is a "living document." You said the Constitution "stands on its own text" and "says what it says." If confirmed and if faced with a constitutional issue, you said you would first apply precedent, then text, and then law, or perhaps the purpose of the originators of the Constitution.**

- a. In applying the text of the Constitution, do you believe it is appropriate to attempt to determine the original meaning of the words in the document?**

Response: Yes, if the text is not clear and precedent does not resolve the issue.

- b. How would you go about to determine the purpose of the originators?**

Response: If confirmed, as a lower court judge, I would be guided by the precedent of the Supreme Court and of the Federal Circuit. If necessary and appropriate, I would consult the relevant historical materials in an effort to determine the original meaning of the framers of the Constitution.

- c. Do you personally believe the Constitution is a "living document?"**

Response: No.

- 3. With regard to statutory interpretation, please discuss the following:**

- a. **What is your view of the role of a Judge in interpreting a law? Is it ever appropriate for a Judge to interpret a law in an effort to accelerate social change?**

Response: The role of the judge in interpreting a law is to apply binding precedent. It is not appropriate for a judge to interpret a law in an effort to accelerate social change.

- b. **Do you believe a judge should consider his or her own values or policy preferences in determining what the law means? If so, under what circumstances?**

Response: No.

- c. **In interpreting statutes, what tools will you use? What weight will you give Congressional findings, reports, and other statements of Congressional intent?**

Response: In interpreting statutes, I would read the text and structure of the statute and apply binding legal precedent and, if required, analogous legal precedent. As appropriate, I would apply the rules of statutory construction as set forth by the Supreme Court.

- d. **Does the Federal Circuit have the authority to circumvent the plain language of a statute and the stated Congressional intent of the Whistleblower Protection Act? May the Federal Circuit narrow the broad definitions Congress intended?**

Response: No.

- e. **If confirmed, will you uphold Federal Circuit precedent, even if it clearly conflicts with a statute's plain language?**

Response: Yes. I would uphold all Federal Circuit precedent until the precedent is overturned either by the Supreme Court or by the Federal Circuit in accordance with its Internal Operating Procedures governing hearings *en banc*.

4. **In 2008, when you were the Senior Editor of the Hispanic National Bar Association Journal of Law and Policy, the Journal published an article that argued a Latino Supreme Court Justice may come to different conclusions on certain issues. The article reasoned a Latino Justice would arrive at different conclusions "[b]ecause of personal experiences, as well as an appreciation of the diversities of the Lantina/o community in the United States."**

- a. **Although you did not author that article, do you agree with that statement?**

Response: No, I do not agree with that statement.

- b. In your personal view, how should an individual's personal experiences affect the decision making process of a Judge?**

Response: Personal experiences should not affect the decision making process of a judge.

- c. During her confirmation hearings, Justice Sotomayor rejected President Obama's so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?**

Response: Yes.

- 5. You have been significantly involved in a number of trade issues and organizations including NAFTA, WTO, and the Free Trade Agreement to the Americas (FTAA). In addition you have represented clients before the U.S. International Trade Commission and before the Court of International Trade. Do any of these activities give you any concern about potential or actual conflicts of interest or other recusal issues that might arise because of your prior activities? If so, how do you intend to resolve them?**

Response: If confirmed, I will address conflicts of interest issues in all cases that come before me. In doing so, I will strictly adhere to all ethical requirements and obligations applicable to a Circuit Judge of the CAFC, including applicable Codes of Conduct such as the Code of Conduct for United States Judges.

- 6. As an attorney for *Williams Mullen* you authored a letter responding to a request by the Department of Commerce on the applicability of countervailing duty law to China. In your letter you argued that the Federal Circuit's ruling in *Georgetown Steel* did not prohibit applying countervailing duty law to nonmarket economies, such as China. Do you still believe countervailing duty laws should apply to all imports from all countries, including China?**

Response: As an attorney for Williams Mullen, I acted as an advocate on issues such as the one addressed in the question. If confirmed, I would apply binding precedent and existing law to the specific facts of a case, including with respect to the applicability of U.S. countervailing duty laws to non-market economies.

- a. What legal restrictions, if any, prevent the Commerce department from placing countervailing duties on nonmarket economies, including China?**

Response: The Commerce Department is authorized to conduct countervailing duty investigations involving non-market economies, including China, and to assess countervailing duties in accordance with applicable laws and regulations.

- b. Do you agree that the determination as to what imports from China, or another non-market economy country, can or cannot be assessed countervailing duties remains within the discretion of the Department of Commerce – and should be determined on a case-by-case basis?**

Response: As noted above, the authority to determine whether specific imports from China or other non-market economies are subject to countervailing duties resides within the Department of Commerce. The determination of whether countervailing duties apply to specific imports from non-market economies should be made on a case-by-case basis, and on the basis of applicable law and regulations.

- 7. In *GPX International Tire Corp. v. U.S.*, the U.S. Court of International Trade appears to have placed a road block in the way the Commerce Department imposing countervailing duties in conjunction with antidumping remedies against Chinese imports.**

- a. In your personal view, how does the ruling in this case limit administrative action aimed at combating unfair trade practices by China?**

Response: In the GPX cases, the CIT addressed the potential for “double-counting” countervailing duties where antidumping investigations involve non-market economies and companion countervailing duty investigations on the same product. Given that issues that were before the CIT in the GPX cases are now before the CAFC, and in light of my own status as a nominee to the CAFC, it would be inappropriate for me to comment on any issues related to the cases.

- b. Are you aware of any method that could be used by the Commerce Department that would address the Court of International Trade’s concerns about double counting when applying both countervailing duties and antidumping remedies to the same product?**

Response: Given that issues that were before the CIT in the GPX cases are now before the CAFC, and in light of my own status as a nominee to the CAFC, it would be inappropriate for me to comment on any issues related to the cases.

- 8. Please identify what experience you have with respect to other issues that come before the Federal Circuit:**

- a. Patent law**

Response: I have worked with partners who are patent lawyers on patent law issues affecting my clients, including patent applications and patent prosecution. I have also advised clients on Section 337 matters; enforcement and protection of

intellectual property rights in connection with activities in foreign countries; and the negotiation and interpretation of the TRIPS Agreement.

b. Trademark law

Response: Generally, I have assisted clients with trademark issues in matters involving investments, mergers and acquisitions, and in the context of imports of goods from foreign countries.

c. Government contracts

Response: I have assisted in the preparation of responses for proposals and bids. I have assisted clients with export controls and customs matters involved in government contracts. In addition, I have assisted in the negotiation and preparation of Administrative Agreements that resulted from government contracts.

d. Claims against the government

Response: I have limited experience with matters involving claims against the government.

9. If confirmed, what will you do to prepare yourself to handle the issues listed in Question number 8?

Response: I have a healthy respect for the challenges that, if confirmed, I will encounter in addressing the range of subject matters that would come before me. I also recognize that no single person is expert in all the technical and complex issues inherent in the cases that come before the CAFC. If confirmed, I will work diligently to understand the legal and technical issues of each case. I will read all briefs and submissions of the parties and utilize oral argument to focus on specific issues for which I require additional clarity. If confirmed, I will maintain a staff of dedicated and able law clerks that possess the intellectual capacity, rigor and stamina that will be required to work with me as a team.

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

Response: I believe that impartiality is the most important attribute of a judge. A chief component of impartiality is independence. I believe that I possess the ability, strength and character to shield my work as a judge from outside pressures and public clamor, to respectfully listen to all parties that come before me, and to render decisions based on binding precedent and applicable law in a manner free from whatever personal views and opinions I may have on the issues or of the parties before me.

11. 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 demonstrate integrity in his or her personal and professional conduct, undertake the business of the court with respect for the litigants and the demeanor of the court, have an unwavering commitment to rule of law and due process, fairly consider both sides of a controversy, and possess the ability to exercise judgment that is independent and free from outside pressures and personal bias. I believe that I possess the appropriate temperament to serve on the CAFC.

- 12. 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.

- 13. 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: In situations where no controlling Supreme Court or Federal Circuit precedent exists, I would carefully review case law involving the same or similar facts and law as established in prior decisions of the Supreme Court and the Federal Circuit, followed by consideration of precedent and prior decisions of the other Circuit Courts.

- 14. What would you do if you believed the Supreme Court 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 be bound by any precedent established by the Supreme Court.

- 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 strike down a statute that violates the clear provisions of the U.S. Constitution, or that exceeds the boundary of congressional authority under the U.S. Constitution.

- 16. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider, in making this decision?**

Response: I would uphold all Federal Circuit precedent until the precedent is overturned either by the Supreme Court or by the Federal Circuit in accordance with its Internal Operating Procedures governing hearings *en banc*.

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

Response: I reviewed and carefully considered each question and answer. In addition, I reread the cited CIT opinion and the Williams Mullen letter in preparation of my answers to the questions that involved those materials. I reviewed my draft responses with officials of the Department of Justice and then submitted a final draft.

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

Response: Yes.