

Response of Derrick Kahala Watson
Nominee to be United States District Judge for the District of Hawaii
to the Written Questions of Senator Chuck Grassley

- 1. It appears you have very limited experience with criminal law matters, focusing exclusively in civil matters. How will you get up to speed on criminal matters that will come before you, if confirmed?**

Response: I have already started to observe the criminal calendars of the District of Hawaii, to consult with criminal Assistant United States Attorneys within my office and to read the substantive materials provided to nominees by the Federal Judicial Center. If confirmed, I will reach out to the federal bench within the District of Hawaii for guidance on particular and common criminal law issues and continue to study criminal law and procedure as best I can to prepare for taking the bench myself.

- 2. How will you use the Sentencing Guidelines to guide you in criminal cases?**

Response: The Sentencing Guidelines, calculations based on the guidelines and departure justifications, if any, are among those issues which I will have to study in earnest. I generally intend to give the Guidelines great weight.

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

Response: While many qualities are important, the most important attribute of a judge is to apply the law fairly to all parties, whether or not represented by counsel. I believe that I possess this ability.

- 4. 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 federal district judge should be patient, considerate, respectful and decisive. I believe I possess each of these traits.

- 5. 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, I would follow the controlling precedent from higher courts, even if I personally disagreed with those decisions.

6. **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: If the interpretation of a statute was a matter of first impression, I would first look to the plain language of the statute itself to determine its meaning. If the plain language was unambiguous, no further search is necessary. If the language, however, was ambiguous, and there was no controlling precedent from the United States Supreme Court or Ninth Circuit Court of Appeals, principles of statutory construction should be employed, potentially including reference to legislative history. If the issue of first impression did not involve a statute and was again without controlling precedent, guidance may be found in the non-controlling case law of other jurisdictions.

7. **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 and apply the precedent of the United States Supreme Court and the Ninth Circuit Court of Appeals, even if I personally believed that such precedent had been wrongly decided.

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

Response: Statutes should not be held unconstitutional unless they clearly violate the Constitution, based on United States Supreme Court and Ninth Circuit Court of Appeals precedent, and cannot be reasonably interpreted as constitutional, or are enacted without authority.

9. **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, it is not proper to rely on foreign law or the world community in determining the meaning of the Constitution.

10. **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 intend to manage a heavy docket in a number of ways, including promptly adjudicating dispositive motions, aggressively calendaring pretrial and trial dates and only continuing such dates when necessary, utilizing the case management, discovery and alternative dispute resolution services of the District of Hawaii’s three

excellent federal magistrate judges, and encouraging the use of private mediation and arbitration in appropriate cases.

- 11. 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: Responsible judges play a significant role in the pace and conduct of litigation. Together with federal magistrate judges, federal district judges should explore the possibility of early settlement, set and continually monitor an aggressive pretrial and trial schedule that does not allow for date slippage, absent good cause, and hear and decide dispositive motions at the earliest opportunity.

- 12. 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: I intend to reach decisions after listening to, weighing, and testing the parties' written and oral submissions, conducting independent research of the relevant law and employing court-appointed experts where appropriate. I anticipate that learning the criminal law and procedure will be the most difficult aspect of my transition. I intend to work hard to overcome this challenge and have already started on this path by observing the criminal calendars of the District of Hawaii, speaking with criminal Assistant United States Attorneys within my office and reading the substantive materials provided to nominees by the Federal Judicial Center.

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

Response: I received the questions on January 30, 2013 and personally drafted my answers that same day. I reviewed my answers with an official from the United States Department of Justice before submitting them to the Committee.

- 14. Do these answers reflect your true and personal views?**

Response: Yes.