

**CONFIRMATION HEARING ON  
FEDERAL APPOINTMENTS**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON THE JUDICIARY**  
**UNITED STATES SENATE**  
ONE HUNDRED FOURTEENTH CONGRESS  
FIRST SESSION

WEDNESDAY, SEPTEMBER 30, 2015

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## **CONFIRMATION HEARING ON FEDERAL APPOINTMENTS**

**WEDNESDAY, SEPTEMBER 30, 2015**

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:17 a.m., in Room 226, Dirksen Senate Office Building, Chairman Thom Tillis, presiding.

Present: Senators Tillis [presiding], Grassley, and Durbin.

### **OPENING STATEMENT OF HON. THOM TILLIS A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA**

Chairman TILLIS. Welcome, everybody, to the eighth nominations hearing this year. Today we will hear from four nominees for Federal district courts: Brian Martinotti, for the District of New Jersey; Julien Neals, for the District of New Jersey; Bob Rossiter, Jr., for the District of Nebraska; and Edward Stanton III, for the Western District of Tennessee. I want to welcome you all and your families, and I am sure they are all very proud of you.

I see that we have two Members we are going to go ahead and start with. We will start with Senator Menendez. And, Senator Menendez, if you will try to keep your remarks within the allotted time, I am hoping that the other Members will get here so that we can quickly get to the nominees. But welcome, and I have called on you first in the spirit of the early bird rule that Senator Grassley so consistently upholds. So welcome.

### **STATEMENT OF HON. ROBERT MENENDEZ A U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator MENENDEZ. Well, thank you, Mr. Chairman. I work hard to get at the early bird rule, so I want to dispel any ideas that Hispanics are late.

It is a pleasure to introduce two outstanding nominees to the United States District Court for the District of New Jersey: Brian Martinotti and Julien Neals. And I know Senator Booker, who will be here shortly, joins me in that view.

Both nominees would provide the necessary wisdom, experience, and judicial temperament that the district court deserves, and considering the rapidly increasing vacancy rate on the district court, both nominees deserve swift consideration by the Committee and the full Senate.

I wholeheartedly endorse the nomination of Judge Brian Martinotti. For well over a decade, about 13 years or so, he has

served as a superior court judge in Bergen County, the most populous county of our State. He works in the Civil Division now handling a diverse caseload from complex mass tort litigation, to environmental lawsuits, housing issues, and so many others. And he is exceptionally well regarded by those who appear before him and by other jurists. His tenure on the bench has repeatedly shown judicial temperament, judgment, observance of precedent, and intellect.

But beyond his leadership on the bench, Judge Martinotti has been a member of the Bergen County Law and Public Safety Institute, the Palisades Medical Center, the March of Dimes, the Bergen County Community College Foundation, the Italian American Police Society of New Jersey, just to mention a few. He has been honored by countless other community organizations, so he has been an excellent jurist, someone who gives back to the community, and he will continue to be an excellent jurist on the Federal bench.

Let me turn to another impressive nominee: Julien Neals. He is presently serving as the county counsel for Bergen County since January. He was previously a partner at Chasan, Leyner & Lamparello specializing in civil rights, employment discrimination, and intellectual property, an issue that I know the Committee is in the midst of looking at. He has been the business administrator for the city of Newark. From June 2010 to 2014—when I think Senator Booker who was the mayor of Newark will speak to his extraordinary service there, the highest appointed administrator in the city. But he also led the city's law department, and he also has judicial experience as the chief judge of the municipal court of the State's largest city, which has—that is not a typical municipal court. It has vast, expansive jurisdiction that comes before it.

He is a graduate of Morehouse College and Emory University School of Law. He has been a leader in the legal community from the Supreme Court Committee on Character and Fitness, the District VI Ethics Committee, to Volunteer Lawyers for Justice, Re-entry Legal Services, and the New Jersey Law and Education Empowerment Project. He also has given back to the people of the State.

This diverse experience from which I have perceived firsthand, his even-keeled temperament even under fire, his great judgment, and incredible breadth of knowledge makes Mr. Neals an excellent nominee.

So, Mr. Chairman, let me close by saying New Jersey's District Court has seen four vacancies since February alone, all of which have been declared "judicial emergencies" by the Judicial Conference of the United States. These open vacancies are putting tremendous stress on the system of justice in my State, where we believe, as we do nationally, that justice delayed is truly justice denied.

I strongly urge the Committee's unanimous support and hope that we can have a speedy confirmation process on these qualified nominees. And, Mr. Chairman, I hope you realize that I am yielding back a significant balance of my time.

Chairman TILLIS. Senator Menendez, I would observe that you are actually yielding back about 7 minutes because you introduced two nominees.

[Laughter.]

Chairman TILLIS. So, well done.  
Senator Fischer, welcome to the Committee. You may now introduce the nominee for the District of Nebraska, Robert Rossiter, Jr.

**STATEMENT OF HON. DEB FISCHER  
A U.S. SENATOR FROM THE STATE OF NEBRASKA**

Senator FISCHER. Thank you, Mr. Chairman. It is an honor to be here today to speak in support of Bob Rossiter, who has been nominated by the President to fill the vacancy on Nebraska's Federal District Court.

The U.S. District Court for the District of Nebraska has a tradition of fairness and justice. This court owes its reputation to the well-respected judges who have served on it. With only three judgeships, Nebraska's Federal district bench is relatively small. For this reason, judges serving in this court have always understood the important role that respect plays in responsible adjudication.

Nebraska's Federal bench is an example of efficiency and integrity. It also has one of the busiest dockets. During the 12-month period preceding September 2014, Nebraska had the most per judgeship weighted filings among the eight States that have only three authorized judgeships and a single Federal district.

With a small bench and a full docket, it is important that this Federal district court is operating at its full capacity. Despite this fact, however, the judgeship that Bob has been nominated for has been vacant for over a year. Because this court must be provided with the necessary resources to work efficiently, I was pleased to work with Senator Mike Johanns to select a highly qualified candidate for this very important position.

Through an open process, we considered many applicants with excellent credentials. Approximately 20 individuals asked to be considered for this position, and we had each person fill out your Committee's lengthy questionnaire. The questionnaire and the binders of supplementary materials were then carefully reviewed, and having reviewed the qualifications and materials of these applicants, I can tell you that Nebraska has no shortage of principled and sharp legal minds.

Narrowing the list was challenging. Senator Johanns and I consulted, and we decided then to interview about half a dozen finalists. After weeks of consideration, we both agreed one person for this job, and that is Bob Rossiter, and we recommended him to President Obama for the judgeship. As I am sure that Senator Johanns would agree, even among many fine candidates, Bob's accomplishments truly stand out.

Bob has an impressive list of professional accomplishments. After graduating cum laude from law school, Bob clerked for U.S. District Court Judge C. Arlen Beam. Currently Bob is a partner at Fraser Stryker in Nebraska. Whether it be working on Federal and State employment litigation or administrative agency investigations, Bob has always demonstrated an admirable commitment to integrity and the rule of law.

Over the years, he has gained the respect of his clients by handling a variety of important issues with excellence. He is listed in the Best Lawyers in America and in Chambers USA: America's Leading Business Lawyers.

Perhaps the strongest testament to Bob's aptitude and his integrity, as well as the admiration of his colleagues, is the fact that he has been selected to serve as president of the Nebraska Bar Association. This honor, which is not bestowed lightly, is a reflection of the trust placed in Bob by those who know and work with him. For these reasons, I am very confident that we have found a truly remarkable and qualified person to fill the vacancy on Nebraska's Federal District Court.

I urge my colleagues to support Bob Rossiter's nomination quickly so that he can put his outstanding intellect, his skill, his judgment to work for the American people.

Thank you, Mr. Chairman.

Chairman TILLIS. Thank you, Senator Fischer. I know you have got a busy schedule, so please leave as you need to, to meet other obligations.

Senator FISCHER. Thank you.

Chairman TILLIS. Good morning, Senator Corker.

Senator CORKER. Good morning, sir.

Chairman TILLIS. You may now provide an introduction to Edward Stanton III for the Western District of Tennessee.

#### **STATEMENT OF HON. BOB CORKER**

##### **A U.S. SENATOR FROM THE STATE OF TENNESSEE**

Senator CORKER. Well, thank you for allowing me to be here. And to our people in the audience, we have a vote that just took place. That is why we are meandering in the way that we are. I know Senator Alexander is chairing a Committee hearing and hopes to step down at some point, if you will let him do so.

But I want to thank you for allowing this hearing to take place today. It is my pleasure to introduce Edward Stanton III, nominee to be U.S. District Court Judge for the Western District of Tennessee. I am very pleased to welcome him and those who are supporting him. I know he has his family. A young daughter and son, a wife, his parents, and others are here, and I welcome them. I know many people back home are very proud of this nomination and are also looking on.

He is a lifelong member of the Memphis community. Mr. Stanton attended the University of Memphis, where he received his law degree. In 2010, the Senate unanimously confirmed Mr. Stanton to serve as U.S. attorney for the Western District of Tennessee, where he is currently serving today. He has done that in a very distinguished manner.

I was very proud to support him then. I want to recognize his particular interest as U.S. attorney in dealing with human trafficking, something that I know all of us care deeply about, and ending modern-day slavery, which affects more than 27 million people worldwide. He has thrown himself into that, among other issues, and I deeply appreciate that.

Throughout his legal career, Mr. Stanton has distinguished himself not only as a talented attorney but for his leadership in the Memphis community, and I know all of us look for that. We look for a lifetime of service. We know these are lifetime commitments that are made, and we appreciate—I appreciate his service to the community.

He has assured me that he will be impartially enforce the rule of law as a Federal judge and will continue to give his best to the people of Tennessee. I want to congratulate him, his family, and the administration for nominating such a qualified person. I hope that he will not only—I hope he will be confirmed very, very soon, and I thank you for this time today to talk about him.

Chairman TILLIS. Thank you, Senator Corker. Senator Booker, welcome. I have to tell you that the senior Senator from New Jersey set a high bar. He yielded back 6 of the 10 minutes that he could have had to introduce two candidates. But there is no pressure. You may now introduce the nominees from New Jersey.

**STATEMENT OF HON. CORY A. BOOKER  
A U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator BOOKER. Well, first of all, I hate to correct Senator Corker, but in the South, they may meander in late. In the North, we dash with conviction.

[Laughter.]

Senator BOOKER. But I want to thank Chairman Grassley in particular for him and his staff doing so much work to allow me to have this opportunity to speak before you today. I want to thank the Ranking Member Leahy and Senator Durbin also for their work.

I am very pleased right now to introduce two distinguished Americans, Judge Julien Neals and Judge Brian Martinotti, for your consideration as the next United States District Judges for the District of New Jersey. I join my colleague Senator Menendez in supporting these well-qualified nominees, and I urge the Committee to recommend their confirmation to the Federal bench.

I again want to thank Chairman Grassley. His team has been extraordinary in helping my team prepare for this moment, and, of course, Ranking Member Leahy and his staff for moving quickly on scheduling this hearing along with the Chairman. I deeply appreciate my good friend Senator Durbin for his work as well. This has been truly a team effort.

Mr. Chairman, I humbly acknowledge my gratitude to you and your staff again for their substantial amount of time and energy devoted to making this hearing possible. You, sir, Mr. Grassley, are an honorable man, and I greatly admire your integrity and sense of decency. My grandmother, who is also from Iowa, would be proud of you and your team. And I look forward to working with you in the coming months on many critical issues, some of which we were just talking about on the floor.

But today is a very special day for the nominees and their families. I am very happy to see some of their family members here as well. Both of these nominees have friends and families here, and I welcome them all to this hearing. It is not every day that you sit in the United States Senate for such a momentous occasion. These are incredible men, and I am happy to see that they are dedicated to public service. They have extraordinary integrity and incredible commitment to community.

The President nominated Julien Neals and Judge Martinotti to fill vacant seats on the Federal District Court of New Jersey which were recently declared “judicial emergencies” due to a very heavy

caseload. Both of these nominees, who were recommended to me by a bipartisan judicial selection committee, stand ready and able to fill these vacancies.

I want to thank President Obama for acting on my recommendation to nominate Judge Neals, a superbly qualified jurist, to the Federal bench. My experience with Judge Neals has shown him to be a fair-minded man with extraordinary integrity. His legal career as a judge, an attorney, and a community leader has earned him the respect of his colleagues throughout the State of New Jersey. His body of work demonstrates his qualifications to serve on the Federal bench. Judge Neals has ample judicial experience. He served as chief judge of the Newark Municipal Court, a position that I had the honor of appointing him to during my tenure as mayor. Early in his career, he served as a law clerk to a New Jersey Superior Court judge, and he is a graduate of Morehouse College and the Emory University School of Law.

When I was mayor of Newark, Judge Neals' obvious legal talent led me to appoint him to positions in my administration not once, not twice, but three times. From chief judge of the municipal court, to corporation counsel, to business administrator, Judge Neals has proved to be an extraordinary leader.

He currently served as the Bergen County counsel, the top attorney for the county. He is a former partner of a prestigious law firm, and in addition to his professional work, Judge Neals has shown an enduring commitment to the community. He recently served as chairman of the board of trustees for the Volunteer Lawyers for Justice, a nonprofit he has served for almost a decade, which provides free legal services to the poor. There is no question that Judge Neals is well suited to serve on the Federal bench. That is why he rightly earned the American Bar Association's highest rating of unanimously well qualified Federal judge.

I am also proud to introduce and support Judge Martinotti, and I thank President Obama for acting on my recommendation to nominate him to the Federal bench. Based on his almost 30 years of legal experience, I am confident that Judge Martinotti will serve with distinction on our Federal bench. Judge Martinotti brings to the Federal bench an unusually broad spectrum of experience. He has been a public defender, a prosecutor, a State trial judge. He served as a judge on the New Jersey Superior Court for over a decade and has the distinction of being one of the State's three multi-county litigation judges. He has proved to be a talented judge and legal scholar whose consistent commitment to thoughtful, sound, and fair reasoning is impressive. He has served as both a municipal prosecutor and a public defender, which shows both his ample trial experience and the value of public service to him.

Judge Martinotti graduated from Fordham University and Seton Hall Law School, and he clerked for a judge on the New Jersey Tax Court. In his distinguished legal career, he has acted consistently with integrity and fairness. He has exemplary legal skills, proper temperament, excellent judgment, a strong work ethic, an unwavering belief in our judicial system—qualities that will make him a first-rate Federal judge.

Judge Martinotti has been rated unanimously "well qualified" by the American Bar Association, which is the gold standard of ABA

ratings, reflecting the highest level of intellect, character, and judicial temperament.

Again, my home State's Federal bench has four judicial emergencies. These nominees are the right people for two of these vacancies. Both are brilliant, have acute legal minds, and have terrific records of service, not to mention tremendous family and friends who are with them today.

Again, I appreciate the Committee's time and consideration of these highly qualified nominees. Thank you all, and thank you especially, Mr. Chairman.

Chairman TILLIS. Thank you, Senator Booker. Again, I know you have got a busy schedule, so please leave as you need to fulfill other obligations.

Senator Alexander, welcome to the Committee. We appreciate you being here. I understand you are chairing another committee, so we would be happy to have your introduction of Edward Stanton III for the Western District of Tennessee.

**STATEMENT OF HON. LAMAR ALEXANDER  
A U.S. SENATOR FROM THE STATE OF TENNESSEE**

Senator ALEXANDER. Thank you, Chairman Tillis, Senator Grassley, Senator Durbin, ladies and gentlemen. It is a real pleasure to introduce Ed Stanton to the Committee. I support his confirmation. I am sure he is well qualified to serve. His background is well known to the Committee. You have looked it over and reviewed it carefully, so I will not go into the details except to say this: He is a lifelong Memphian, graduated from Central High School there. His bachelor degree is from the University of Memphis, law degree from the University of Memphis School of Law, practiced law in Memphis, joined FedEx's legal team as a senior counsel.

We have already confirmed him once by voice vote as U.S. attorney for the Western District of Tennessee. People who know Memphis know that for some time now Edward Stanton has been considered to be a rising star. I would say that with this confirmation, he will be considered risen, and we look forward to a long and productive career in public service by Ed.

He has a number of Memphians here today in his support, including members of his family. This includes children, parents, wife and parents, sisters, along with several friends. We welcome all of those Tennesseans.

Mr. Chairman, Ed Stanton will be an asset to the Federal bench. He is a distinguished Tennessean, and we are fortunate to have such a well-qualified nominee. I urge the Committee to support his confirmation and speedily confirm him.

Thank you very much, Mr. Chairman.

Chairman TILLIS. Thank you, Senator Alexander.

Senator Sasse was here just a moment ago. He wanted to make a statement in person, but he has another commitment, so he will be submitting his statement for the record for Robert Rossiter, Jr., for the District of Nebraska.

Now, if we can have the nominees, we will make a quick transition with the name tags, and we will have the nominees step forward. And please remain standing. We will first administer the oath.

[Pause.]

Chairman TILLIS. If you will please raise your right hand. Do you affirm that the testimony you are about to receive—give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge MARTINOTTI. I do.

Judge NEALS. I do.

Mr. ROSSITER. I do.

Mr. STANTON. I do.

[Witnesses are sworn in.]

Chairman TILLIS. Thank you. You may be seated. Now, before we get started with questions, this is an opportunity for you all to make opening statements. If you have friends and family in the audience, please feel free to recognize them. We will begin with Mr. Martinotti.

**STATEMENT OF BRIAN R. MARTINOTTI,  
NOMINEE TO SERVE AS DISTRICT JUDGE FOR  
THE DISTRICT OF NEW JERSEY**

Judge MARTINOTTI. Thank you, Mr. Chairman, thank you, Senator Grassley and the Ranking Member, for scheduling this hearing and for providing me the privilege to appear before this Committee.

I would like to thank Senator Booker for recommending me to the White House, President Obama for this nomination, Senators Menendez and Booker for their very kind words of introduction this morning, as well as their staffs' unwavering support and guidance throughout this process.

I would also like to congratulate my fellow nominees. I am humbled to be here this morning with them before this Committee.

Mr. Chairman, I would like to thank my Chief Justice, Stuart Rabner; former Chief Justice James Zazzali; Assignment Judge Bonnie Mizdol; former Assignment Judge Peter Doyne; my civil presiding judge, Robert Polifroni; all my colleagues on the Bergen bench, past and present; Brenda and everyone in chambers; Kelly Gibson, the mass tort team, and the entire Civil Division for all their help during my 13 years on the bench.

Mr. Chairman, I would like to introduce first and foremost my wife, Dana. We will be celebrating our 25th anniversary this March. Whether it was when I was a young associate trying to become a partner, a partner in a law firm aspiring to become a judge, a new judge learning the ropes, or during this very daunting process, Dana has been there supporting me and our children. She has also managed to serve for almost 14 years on our borough council and recently became a principal in an elementary school. I understand that this is going to be their civics lesson watching this hearing.

Next to Dana is our son, Christian. He is presently a second lieutenant in the Air Force, and we are so proud of him and his accomplishments for serving our country.

Unfortunately, Mr. Chairman, our daughter, Brianna, could not be with us here. She is in the middle of a rigorous course and, over her objection, we thought she should concentrate on her studies.

We are so proud of her. She is really our family's inspiration, and I know she is watching on the internet.

Sadly, Mr. Chairman, my mother passed last November, but I know she and my mother-in-law, affectionately known as "Nonny," are watching this hearing. One can only imagine their reaction when they saw President Obama nominating me to the Federal bench.

I am happy that my father, Ray, is here, along with my father-in-law, August.

As an only child, Mr. Chairman, I did not have any brothers or sisters growing up, but Dana was 1 of 5, and they and their spouses became my siblings. I know they along with my many good friends, who I consider siblings, are watching this proceeding.

I am happy to have someone here with me, Mr. Chairman, who I consider an older brother. My cousin Raymond was here and orchestrated the trek from New Jersey down to DC this morning.

Also here is someone I consider a younger brother. I met Gregg 30 years ago when he was working in the mail room. This past February, he became Judge Padovano, and I have the privilege of serving with him on the New Jersey Superior Court.

Also here, Mr. Chairman, is my nephew, Justin, as well as representing my 22 law clerks, Phil Danziger.

Mr. Chairman, my apologies for taking so much of the Committee's time, and I thank you for the opportunity to appear here today.

Chairman TILLIS. Thank you, Mr. Martinotti. You were very efficient with your use of time. Mr. Neals.

**STATEMENT OF JULIEN XAVIER NEALS,  
NOMINEE TO SERVE AS DISTRICT JUDGE FOR  
THE DISTRICT OF NEW JERSEY**

Judge NEALS. Thank you, Mr. Chairman. It is an honor to be here with such distinguished nominees, and I just want to express my heartfelt appreciation for that. I would like to thank Senator Booker for the recommendation to President Obama and extend my sincere thanks to President Obama for his nomination. I would like to thank the White House staff and the Senate Judiciary Committee for this opportunity to be considered and the Senate Judiciary Committee staff for their thorough work and research that I know is required as part of this process.

I would be remiss if I did not take just a moment to thank those who have been part of my professional career without whom I would not have made it thus far in this process. I spent 14 years as a litigator with the wonderful firm of Chasan, Leyner & Lamparello, who always offered their undying support for me in all my endeavors. My first foray into public service was with the Newark Municipal Court where an entire staff gave me dedication and helped me succeed as the chief judge there.

I would like to thank the Office of the Corporation Counsel for Newark where some hard-working professionals, attorneys, tried to do their best to protect the interests of a large urban city. I would like to thank the Department of Administration where I served as business administrator and all the employees and city officials,

elected officials in the city of Newark, where it was a true proving ground as far as the needs in public service.

I would like to thank the County of Bergen, the Department of Law, the administration there, and all my colleagues there who welcomed me with open arms since my time there since January. And I would like to mention those educational institutions who have been part of my history that I owe a debt of gratitude as well: Seton Hall Prep, Morehouse College, and Emory University School of Law.

I am very fortunate to have some wonderful people with me here today who I would like to introduce, and I will start with my parents. My father, Felix Neals, a retired administrative law judge of years, is here with me. My mother, Betty Neals, a retired school-teacher and poet, who actually still gigs around the country, is here with me as well.

I am very honored to have a very strong woman who has kept me grounded throughout this process and throughout my career, my wife, Lauren Jones-Neals. My son, Julien K. Neals, who is donning his Seton Hall Prep blazer to show proof that he was here today, and I thank his school for giving him the time off.

[Laughter.]

Judge NEALS. I have other colleagues and friends who are here as well: Anna Pereira, who served with me on the Newark Municipal bench and in Corporation Counsel with the city of Newark; Arvelise Gonzalez-Murrel, who has been with me for 18 years as my assistant, although looking at her you would think they violated child labor laws.

John Libretti is here, who serves as a deputy county counsel in Bergen County, and his son, who is also a Seton Hall Prep graduate, Nick Libretti, is here. I would like to acknowledge my brother, Felix Neals, and his family, who could not make it from the great State of Washington where he lives. The Neals family, my aunt, Antoinette; my cousin, Huerta, and his family; my cousin Neal and his family; and other family and friends. Thank you for the time.

Chairman TILLIS. Thank you, Mr. Neals. Mr. Rossiter.

**STATEMENT OF ROBERT F. ROSSITER, JR.,  
NOMINEE TO SERVE AS DISTRICT JUDGE FOR  
THE DISTRICT OF NEBRASKA**

Mr. ROSSITER. Thank you, Mr. Chairman, and thank you to the Committee for giving me this opportunity. It truly was a pleasure to meet my fellow nominees. They are an impressive bunch of people, and it has been great visiting with them over the last day.

I want to start out by thanking President Obama, of course, for the nomination to this important position, and I want to give special thanks to Senator Fischer and Senator Johanns, who started this process—it seems like a long time ago—when Senator Johanns was still in the Senate. You heard Senator Fischer describe the process. I think it was a good and open process, and I appreciate her continuing support upon the retirement of Senator Johanns. And I appreciate the support of Senator Sasse, who came into the Senate after this recommendation had been made and had continued to support me.

I want to thank—and I will introduce family, but I want to thank some important people in my life. First and foremost is Judge C. Arlen Beam, who is a judge on the Eighth Circuit Court of Appeals, who I had the honor to clerk for when he was first nominated—or first named as a United States district court judge. That clerkship really gave me a view of the United States district court system and a love of that system that I have practiced in since that time.

Also, following from what Senator Fischer said, we are a small but mighty district in the District of Nebraska, and we have had fantastic judges over the years that I hope to, if confirmed, emulate. If confirmed, I look forward to serving the District of Nebraska.

I want to do some brief introductions as well, if I may. Behind me is my wife of 31 years—hopefully I got that right—Mary Beth, who is also an attorney in Omaha, who was a law school classmate of mine, and who is my best friend, and who has endured going through this process with me and has been a great support.

My four children, who I am very proud of, three of them are here: Robert III. Rob is in finance for Ford Motor Company in the Detroit area, came in for this. Daughter Katherine is an elementary art teacher in a Title I school in the Kansas City area. And daughter Erin, who is doing her year of rotations as a physician's assistant student.

Our other child, Maggie, is hopefully getting the connection to this from Madrid, Spain. She is—she graduated last year from college and is teaching English in Madrid for a year, so we wish she was here.

I also have one of my best friends over life is, along with my other siblings, but my youngest brother, Bill, is here with us today. He runs a business in Sylvania, Ohio. And, last, a law school classmate of Mary Beth and mine, who is a good friend of mine and happens to be my cousin—I did not know that until we got to the Creighton Law School, Tom McGivern, who has been in DC virtually since graduating from law school, and he is now an attorney with Homeland Security. So, I am very happy, very proud of my family, and very happy those guests could join me.

My father passed away a little over a year ago. He was an attorney in Philadelphia and then in the Omaha area in his later years. He knew of the process. He knew that I was going through this process and was very proud. I very much wish he could be here. But I know he is happy about this process. And my mother, who is still alive but was not able to make the trip, I think also would have been happy to be here. But thank you for the opportunity to do that introduction, and thank you for scheduling this hearing.

Chairman TILLIS. Thank you, Mr. Rossiter. Mr. Stanton.

**STATEMENT OF EDWARD L. STANTON III,  
NOMINEE TO SERVE AS A DISTRICT JUDGE FOR  
THE WESTERN DISTRICT OF TENNESSEE**

Mr. STANTON. Thank you, Mr. Chairman, and thank you to the Committee Members for this opportunity. I want to first thank Senator Alexander for the very gracious words of support, along with Senator Corker; also to Congressman Steve Cohen for his sup-

port and the judicial selection committee that the Congressman put together for this nomination; and certainly to President Obama for the confidence in nominating me to this distinguished post. I am very appreciative and grateful.

I want to recognize individuals that are here with me that have traveled from across the country, but particularly from Memphis. First and foremost, my lovely wife, Mae Stanton, who is here. She is the rock of our family. She is a best friend and someone I have known practically all of my life. And, again, it is an honor to have her here with my two kids, Mackenzie Zora, who keeps reminding me that she will turn 11 next week, and while this is very important to her, she is more concerned about what is going to happen next week for her 11th birthday. My son, Edward Stanton IV, he is here and sitting behind me. And, again, just a tremendous honor to have my family with me on today.

I am also very blessed and fortunate to have my parents, Edward L. Stanton, Jr., who is a lifelong public servant and serves currently as the duly elected general session's court clerk in Shelby County in Memphis, Tennessee. My mother is retired from the local public school system as a counselor, and, again, they are the people that pretty much raised me—obviously raised me. They gave me my learning, and, Senators, when I got out of line, my burning to get me back in line. And, again, it is just an honor to have them with me on today from Memphis.

Also with me are my sisters: Arnetta Stanton Macklin, who works for a very distinguished nonprofit organization in the city of Memphis; my other sister, Tameka Stanton-Riley, is also here, and she is also a public servant in the city of Memphis as well. They always remind me that I am their favorite brother, and it took me years to realize that I am their only brother. But, again, I am happy to have them with me.

Also with me on today is my mother-in-love—instead of saying “mother-in-law,” we affectionately term them as “mother-in-loves”—and that is Carolyn Mason who is here today; and her husband, I am sure he is watching the Webcast, Ronnie Mason. And also my father-in-law, Artie Smith, is here today as well with his wife, Maria Smith.

I have some friends that are here from Memphis and actually from across the country, and a very close and best friend, Isaac Forjure, who is here with me. We began our public service careers back at Central High School in the student council homeroom together. We served there and have remained very best of friends ever since. I also want to acknowledge the great men and women who I know are watching right now in the U.S. Attorney's Office, which I have the great opportunity to serve as U.S. attorney now. And I know they are watching, and I appreciate all of their support that they have given over the past 5½ years and the great work that they do.

Also a number of members of the Bar Association back home and fellow colleagues from the Department of Justice and fellow U.S. attorneys that have sent well wishes. Certainly to my former colleagues in the FedEx Express legal and litigation department, I want to thank them for the opportunities and their well wishes.

I also want to thank a gentleman by the name of Charles Carpenter, and he is the person that gave me my first opportunity, my first job—he saw something in me—out of law school nearly 20 years ago, and I want to thank him and acknowledge him for the opportunities that he provided. I look forward, Senators, to answering any questions that you have, and, again, I want to say thank you so much for this opportunity.

Chairman TILLIS. Thank you, Mr. Stanton, and to all of you. We will now start a series of questions, 5-minute rounds. We will begin with Chairman Grassley.

Chairman GRASSLEY. First of all, congratulations to all four of you and to the families and friends that support you. I have three questions for every one of you, but I am only going to ask one now and then submit the others for answer in writing, if you understand how that system works.

I am going to start with you, Mr. Stanton, and this is a very general question, not pinpointed toward any one policy that you may have been involved in as a candidate for Congress. You tend to be different than other people that come here. We ask them if they have been politically active. Then, you know, this question comes. So, it comes to you except from a little different standpoint than just making contributions.

Could you—since you did run for office, could you comment on your ability to show fairness and impartiality to litigants who may have different political views who come before you?

Mr. STANTON. Thank you, Senator, Chairman, for the question. And to answer your question, absolutely I would unequivocally serve and honor the oath that I would take to serve in a fair and impartial manner as a member of the judiciary. I think my track record demonstrates that. And even over the past 5, 5½ years, the oath that I have taken to serve as the United States attorney to always follow the rule of law in a very fair and impartial manner.

Chairman GRASSLEY. Okay. Thank you.

Mr. ROSSITER, I am going to ask you something that you may or may not have been involved with, but it is something that stands out in your work. While you were on the board of directors of Catholic Charities Omaha, your organization published a position paper on immigration reform which stated in part, quote, “Undocumented immigrants may bring social problems with them, and they need to avail themselves of benefits to which they have or have not been able to contribute,” unquote. It goes on to say that the organization, quote, “will support immigration reform legislation which provides a path to lawful permanent residency for undocumented persons in the United States,” end of quote.

So, it follows with a very simple question to you. What role, if any—and I emphasize “if any”—did you play in the development of the paper?

Mr. ROSSITER. Thank you, Senator. I was on the board of directors of Catholic Charities and was also on the legislation committee for a few years, and we reviewed legislation. Those white papers were put together from staff following the directives of Catholic Charities of America. And I really did not—other than reviewing that paper and being part of the legislative committee, I did not have any hand that I can recall in writing that.

Chairman GRASSLEY. Okay. Thank you. Now, Mr. Neal, during your time working for the mayor of Newark, the city established two alternative courts. It is my understanding they were called “community courts” and “youth courts.” What impact did the establishment of these courts have on your judicial philosophy, if any?

Judge NEALS. Thank you for the question, Senator. The establishment of the courts did not have any impact on my judicial philosophy. More so the purpose was to try and see how we could create additional programs to avoid juvenile delinquency, truancy, and to treat any particular problem such as substance abuse or other things that a particular defendant may have. But as far as my judicial philosophy was concerned, it did not impact that.

Chairman GRASSLEY. Okay. And for you, Mr. Martinotti, in your capacity as a multi-county litigation judge, you have on occasion implemented a series of, quote unquote, “bellwether settlements” in order to facilitate settlements in mass torts. This technique has been critiqued for diminishing transparency and judicial oversight of mass torts. How would you respond to those critics?

Judge MARTINOTTI. Thank you for that question, Mr. Chairman. Mr. Chairman, that policy was implemented in a litigation early on to have the parties engage in mediation on several cases early on in the litigation to get ranges of values that they felt warranted resolving their case. We utilized that to set up a matrix, and within that matrix, if parties wanted to participate in the settlement, they could participate in the settlement. We in no way ever shut the door to any litigants or litigants could have opted out of those settlements. It was a way to resolve the cases early, inexpensively, without going through a long and protracted litigation.

I might add, Mr. Chairman, I coordinated that with Judge Frank from Minnesota as well. Thank you, Mr. Chairman.

Chairman GRASSLEY. Thank you, and I will yield the floor now.

Chairman TILLIS. Thank you, Mr. Chairman. Senator Durbin.

Senator DURBIN. Thank you very much, Mr. Chairman. Thank you all for being here, and your families as well, and everyone here should know, and probably does, that all of the nominees have gone through extensive investigation and questioning before they arrived. So, if we only ask a few questions, it is no indication of our lack of interest. They have been through it already. So, for the record, they will be asked several questions.

One that I ask and I already know the answer to but I will just say for the record, a lifetime appointment is a good thing for a judge because it gives you the independence to make the right decision, even if it is not a popular decision. A lifetime appointment is also an invitation for judges to become imperial and to believe that black robe gives them some special status.

As a former practicing attorney, I did not appreciate imperial judges. I wanted them to be competent and, of course, have the highest integrity. But I also wanted them to be able to identify with the reality of the courtroom and the people who were there seeking justice.

I will not ask if each of you agrees with me, because I will bet you do. If there is one who does not, please raise your hand.

[Laughter.]

Senator DURBIN. Okay. Let me proceed. Let me ask specific questions, if I can. Judge Martinotti, to go back to the question asked by Senator Grassley, you also in this mass tort litigation involving a birth control pill were involved with Judge David Herndon of the Southern District of Illinois, whom I appointed—or the President appointed, I nominated, and he has very high regard for his experience with you in that case. How did that cooperation between your State judge judicial position and the Federal judicial position work? And how does it help you as you seek this Federal spot?

Judge MARTINOTTI. Thank you for that question, Senator Durbin. Judge Herndon and I worked on a birth control case, as you indicated, and I am a proponent of State and Federal cooperation. I work with my Federal counterparts on a daily basis, but I will not cede my jurisdiction or my rules to the other jurisdiction. It is a cooperative effort. It helps keep the costs down of the litigation. It coordinates schedules by and between the lawyers and the litigants. It is a way to move the case, to manage the case in an efficient way to receive a just result.

Senator DURBIN. Thank you. Mr. Neals, it was about 10 years ago, while you were representing the municipality of Paterson, that you were involved in the Federal case of *Rossmori v. City of Paterson*, in which you represented the city in a suit in which the plaintiffs claimed that there were unlawful arrests and use of excessive force by the police during a riot that occurred at a festival. The case was in 2006. The issues are still here today. What lessons do you bring from that case to your view of the law?

Judge NEALS. Thank you for that question, Senator Durbin. The lessons that it brings is it is important—and if confirmed, I will continue, but it is important to recognize the rule of law and recognize the law as it has to be applied to particular facts. I think that experience helped just from a diversity standpoint in terms of things that I have been exposed to in my legal career which will help me in terms of a certain degree of understanding with the types of cases that would come before me and understanding the various positions of the parties in particularly excessive force cases.

It also helped me understand that you have to delve into the facts of those cases in a very discerning and specific manner in order to be able to come out with the appropriate conclusion. And if confirmed, that conclusion would take the form of potential rulings that I would make, but that is how that case has impacted me.

Senator DURBIN. Thank you. Mr. Rossiter, it was 20 years ago when you were involved in a significant case, *Wilson v. U.S. West Communications*, involving a workplace accommodation of religious views. The case was brought by a Catholic employee of U.S. West who wanted to wear a button at work calling for an end to abortion. The question in litigation was whether U.S. West offered the employee reasonable alternatives to accommodate her religious views. You represented U.S. West, which prevailed.

Can you please discuss the facts of the case in light of our continuing debate in America about religious freedom?

Mr. ROSSITER. Thank you, Senator. Yes, that case involved a plaintiff who chose to wear a button that had a graphic of an aborted fetus on the front of it and stated, I believe, “Stop Abortion Now.” The employer in that case actually did, I believe, what they

should have under Title VII and took steps to discuss reasonable accommodations. There were workplace issues that arose out of it because of co-employees and some of the history that those co-employees had. The issue really came down to, as I remember it, the graphic of the fetus.

What the employer had offered as reasonable alternatives was to wear it while she was in the cubicle, to wear it with a sweater over it, to change the button with the same message that said "Stop Abortion Now" but to take the graphic off. Judge Shanahan, I believe it was, that handled the case found that U.S. West had reasonably accommodated in that circumstance.

Senator DURBIN. Thank you. I see I have run out of time here.

Chairman TILLIS. Go ahead.

Senator DURBIN. One last question? Mr. Stanton, you have served as U.S. attorney now, and we have talked about in many different levels of the judiciary, particularly the State level in my home State, alternatives like drug courts, veterans courts, which are trying to solve problems and divert people from 16 incarceration.

What is your impression as a prosecutor or your experience as an attorney when it comes to that concept?

Mr. STANTON. I agree with the concept, and it is in practice something that we are doing in the Western District of Tennessee. Shortly after assuming the U.S. attorney post, working closely with the court system, probation, the clerk's office, we launched a re-entry and drug court, which is very effective and having a huge impact on the recidivism rate.

We are also looking at, even on the front end, Senator-and, again, thank you for the question—the charging decisions and working closely with our State counterparts. We have special assistant U.S. attorneys and State and Federal prosecutors working side by side to determine which cases should be taken federally. Certainly when you have limited resources, which cases actually should have be—there is an opportunity for diversion, and a number of I guess one size does not fit all, we have learned in the criminal justice system and are proud of the efforts that we have made in making a difference not only on the end with reentry but on the front end with outreach and out-of-the-box initiatives.

Senator DURBIN. I am glad to hear that. I might just add parenthetically that during the vote this morning on the floor at 10 o'clock, we had a gathering of several Senators, including Senator Grassley, the Chairman of this Committee. And I think we made significant progress this morning in moving forward on legislation, bipartisan legislation, to deal with not only sentencing but incarceration. I am hoping that we can announce it soon, but it would be a big breakthrough. And for each of you, serving on the Federal bench would make your jobs, I think—I do not want to say "easier." It is a hard job no matter what, but at least give you a more reasonable basis for seeking justice. So thank you all.

Chairman TILLIS. Thank you, Senator Durbin. Unless we have another Member come forward, I will ask a few questions. We will leave the record open for a week, which will provide the Senators who may not have been able to be here to submit their questions and have you all have an opportunity to respond.

Mr. Stanton, I think I will start with you. As U.S. attorney, you chose not to seek the death penalty against the defendant who murdered an African-American policeman and dismembered him and subsequently confessed to killing an individual by beating him to death with a hammer. I know it is a complicated process to proceed with the death penalty. Can you give me some sense about what elements went into the decision to pursue a life sentence in that particular case?

Mr. STANTON. Thank you for the question, Senator. That particular case—and it is one actually that I worked on after assuming the U.S. attorney post. The decision that you referenced, not seeking the death penalty, was one that was made by my predecessor. It was months before I assumed the post. But with any potential capital case, it is something that we look at the facts and circumstances and certainly the evidence and the rule of law in making a decision. Ultimately, that decision is made by the United States Attorney General.

Chairman TILLIS. In that particular case, do you agree with the ultimate decision that was made to go forward?

Mr. STANTON. I do, Senator.

Chairman TILLIS. Okay. Thank you.

Mr. STANTON. Thank you.

Chairman TILLIS. I am going to go ahead and ask you one other question. I was glad to hear Senator Durbin say that we are making progress on this. Some supporters of mandatory minimums claim that removing the mandatory minimums reduces some of the negotiating leverage for prosecutors. Do you believe this assertion is true?

Mr. STANTON. Well, at this point I would follow the rule of law, and one of the things that we are doing in addressing mandatory minimum sentences is looking at the charging decisions that we make on the front end. Certainly that is an act of Congress and a legislative body to determine the laws, and as a Federal judge, I would uphold the oath to uphold those laws until otherwise the legislation is changed.

But, again, when we look at the charging decisions and particularly those that trigger mandatory minimums, I believe it is important—what we look for is the worst of the worst, and we look at factors, Senator, such as: Are they low-level, nonviolent drug offenders? Are they individuals who have committed crimes against children, high-level drug traffickers, crimes of violence? And certainly in those very egregious cases, mandatory minimums have proven to be very effective.

Chairman TILLIS. Thank you, Mr. Stanton. And an early happy birthday to your soon to be 11-year-old daughter.

Mr. STANTON. Thank you. She will be happy to solicit any gifts that you want to leave as well.

[Laughter.]

Chairman TILLIS. Mr. Rossiter, you are before us never having served as a judge before, so you come with business experience and obviously deep law experience. How do you envision that experience being applied to your job on the bench in terms of efficiency, things that you may consider doing differently today—or doing differently than the status quo?

Mr. ROSSITER. Well, the status quo—thank you. The status quo involves keeping time sheets, which I will not miss one bit—I will tell you that—if I am lucky enough to get this confirmation. I have spent a lot of time, as I said earlier in my opening remarks, with the court as a law clerk on our Federal Practice Committee working closely with our Federal judges, tried a number of cases, many cases in Federal court and the District of Nebraska. It will—it will be different. I have practiced for 30-plus years at the Fraser Stryker law firm after clerking, and I will go from being an advocate to following the oath that I would take, were I to be confirmed.

But I think with the background and experience and knowing that court, I think I know that court and the judges and their support that I can be successful.

Chairman TILLIS. Thank you, Mr. Rossiter. I, too, happen to have a best friend who is a younger brother. It is a great thing to have, and I am sure he is proud of you.

Judge Neals, you have been a proponent of alternative courts, such as the youth courts in New Jersey that allow Newark youth to participate in the judicial process as jurors and judges. When imposing sentences on young defendants, what types of mitigating factors do you feel necessitate a defendant serving a sentence other than jail time?

Judge NEALS. Thank you for the question, Senator Tillis. In particular, one of the main ideas that went behind the youth court was trying to create an alternative that would address some of the outside factors that may be steering youth toward criminal or delinquent type behavior. So, with regard to the ability to examine mitigating factors such as home situation or mental illness or some type of substance abuse, I think it is constructive in the judicial system and for the system as a whole—A, it is efficient so you do not necessarily have a revolving door type circumstance, and it has been very public, the amount of funds that are required as far as housing individuals, as far as detention is concerned. So, I think those are important mitigating factors that should be considered for judicial efficiency and also for efficiency for the entire system.

Chairman TILLIS. Thank you. Judge Neals, I have one other question. I know you were chief judge of the Newark Municipal Court, and I believe you probably supervised some 11 other judges. Oftentimes—and I am not an attorney, so oftentimes I kind of look at the business of the judiciary and was kind of curious what kinds of things do you think we could do to more efficiently run our courtrooms so that we provide the resources for better—not take them away, but put them to better and higher purposes, if you have any thoughts on that.

Judge NEALS. Yes, thank you, Senator. The Newark Municipal Court did have 11 full-time judges and heard about half a million cases a year. So, as far as New Jersey standards are concerned, it was probably larger than the majority of the superior court systems there. And one thing that has been an adage in the judicial system is, “Justice delayed is justice denied.” And when you have such a significant caseload as that, it is important that there is a discerning effort for the overall efficiency of the system. And with the case management, with the case analysis, with the caseloads, analyzing the particular types of cases and seeing what is the most ef-

ficient process implementations that can be done particular to those cases. But I think that is something that can serve any court system, whether it is the Federal system, State system, or the municipality.

So, if I am fortunate enough to be confirmed, hopefully I can bring some of that experience forward as well.

Chairman TILLIS. Thank you, Judge. I hope all the nominees have the opportunity to do that. In my time in North Carolina in the legislature as speaker, we were constantly trying to find ways just to get more efficiency so that we can have the resources put to a better use. And we hope that you will keep that in mind and always call on this Committee when there are things that we can do here to facilitate the process.

I might also add that your son may be able to go on C-SPAN and get a legitimate photo bomb picture of him in the background.

[Laughter.]

Chairman TILLIS. Mr. Martinotti, Chairman Grassley touched on the one question—or touched on a subject that I am only going to ask you question on, that is: What would you say to folks who claim that the use of multidistrict litigation causes the plaintiff to lose autonomy over their claims?

Judge MARTINOTTI. Thank you for that question, Mr. Chairman. I would say that the use of an MDL or stated MCL actually benefits the plaintiffs. They can participate in litigation with a group of plaintiffs. They can use what is called a “common benefit fund” to share information among each other, with each other. They do not have to travel to depositions because they would have the use of a deposition done by somebody on a coordinating committee or a liaison counsel. So, I think it helps the plaintiffs manage the litigation, keeps costs down, and ultimately in the Federal system it goes back to the State or the district from which it came. In my State, it stays with me through trial.

Chairman TILLIS. Thank you, Mr. Martinotti. I will also add, I know that you lost a Nonny in your family. Well, we lost a Nonny in our family. My wife is an Italian from Boston, and we had Nonnys and Nanas and Gumpies and Poppananos. I learned a lot about the Italian life in my 28 years of marriage. I also want to thank your son for your service. Thank you for your service to the country.

This concludes the questions here. I for one look forward to supporting your nominations. We will leave the record open for a week so that other members may be able to submit questions for the record, and we will call on your to respond to them.

But, again, on behalf of Chairman Grassley and all the Members of the Judiciary Committee, we want to congratulate you for this huge milestone in your life and also your family’s, and thank you for being here today. The meeting is now adjourned.

[Whereupon, at 11:17 a.m., the hearing was adjourned.]

Senator Grassley  
Questions for the Record

Brian R. Martinotti  
Nominee, U.S. District Judge for the District of New Jersey

1. **In your testimony you noted that the Bellwether settlements you supervised were entirely voluntary and the litigants could easily opt out of the litigation at any time and proceed to trial with their case. Some individuals contend that the option to opt out of litigation is often not an informed choice. Specifically, Bellwether settlements in multi district litigation (MDL) are often for a fixed amount and plaintiffs are not able to determine their own recovery before they must accept the settlement or proceed to trial. How would you respond to these critics?**

Response: In contrast to global settlements, where a sum of money is placed into a fund and distributed to plaintiffs by a third-party administrator, a bellwether settlement is the product of individual mediations with individual plaintiffs, who are represented by their own counsel, have varying degrees of damages, and are geographically diverse. The plaintiffs mediate their individual cases at arm's length and arrive at mutually acceptable resolutions (i.e., the bellwether settlement). These resolutions then become data points to establish a voluntary program for settlement. Plaintiffs can "opt in" if they so choose. As this process evolves, the parties also proceed on a parallel track of pre-trial discovery. This procedure ensures an avenue of litigation always remains viable, and is not delayed, for those parties that choose not to participate in the voluntary settlement program.

2. **Commentators have raised concerns about mass torts and the "vanishing trials." Most of these settlement negotiations occur outside of the courtroom and outside of the public view—consequently, mass tort attorneys are not monitored by either their clients or the courts. What steps would you take to ensure that the cases in your docket were subject to sufficient judicial oversight?**

Response: In my experience, as a Multicounty Litigation (MCL) judge, I have worked closely with federal judges overseeing multi district litigation (MDL) cases. In that capacity, and always with all parties' consent, I have personally and successfully mediated thousands of matters to conclusion, working with the federal MDL judges and/or court-appointed mediators. Throughout all stages of a case, I require frequent status reports via regular case management conferences as well as telephonic reports to assure all cases are subject to sufficient judicial oversight. If I am fortunate enough to be confirmed as a District Judge, I will continue to actively involve myself in all aspects of litigation, including, but not limited to, overseeing in-court and outside settlement discussions and procedures to ensure all cases are transparent and subject to sufficient judicial oversight. I will also follow the Code of Conduct for United States Judges with regard to my involvement in settlement procedures, taking care to ensure that my role is limited to facilitating and monitoring, but not coercing, settlements.

3. **Concerns about “vanishing trials” in mass torts largely address the rising number of claims that are resolved outside of the courtroom and the impact that this trend may have on the American justice system; particularly, in regard to the shifting role of courts and judges. If confirmed, how would you view your role in light of this shifting landscape?**

Response: I firmly believe every litigant has the right to open, fair and equal access to the court system. In my thirteen years as a Superior Court Judge, I have never denied a litigant an opportunity to be heard on the merits. However, I do (and will continue to) encourage settlement discussions with the goal of reaching an amicable resolution to disputes which I believe provides litigants with certainty of outcome. In my opinion, a judge must encourage the parties to discuss an amicable resolution to their matters while maintaining and ensuring equal access to the court system for all litigants who wish to try their case on the merits. I believe I have demonstrated this ability, from my thirteen years as a Superior Court Judge, and will continue to do so if I am fortunate enough to be confirmed as a District Judge.

4. **Your legal career is primarily compromised of civil practice. What steps have you taken or will you take to prepare to handle the complex criminal cases that would come before you, if confirmed?**

Response: Although my career has been primarily comprised of civil matters, I have experience in the criminal justice system, based on the approximately seven years I served as a municipal prosecutor and public defender. In addition, as a Superior Court Judge for over thirteen years, although not handling criminal matters, I have presided over hundreds of cases in which I have applied the rules of evidence that govern criminal cases as well as civil cases. I believe my judicial experience, along with my experience as a prosecutor and public defender, have prepared me to handle complex criminal cases. I will attend continuing legal education classes and utilize the services of the Administrative Office of the U.S. Courts to gain the necessary background in all areas of law that would come before me, including federal criminal law and practice.

5. **In your testimony before the committee you discussed your experience coordinating MDL parallel litigation with federal courts. Parallel litigation, in the context of MDL, presents significant challenges because MDL litigation often proceeds alongside unconsolidated state court actions that cannot be removed to federal court. How would unconsolidated state court actions related to MDL proceedings before you in federal court change your case management strategy?**

Response: While an MCL Judge I have coordinated with several federal MDL judges in the area of scheduling, discovery, substantive motions, pre-trial hearings and trial. The Federal Judicial Center’s Manual for Complex Litigation encourages this coordination in order to avoid unnecessary and duplicative court appearances and redundant procedures in an effort to manage the litigation in an efficient manner. If I am fortunate enough to be confirmed as a District Judge, I will continue to encourage and maintain an open dialogue with judges in sister courts, both state and federal, through direct communication with

those judges and/or through the use of liaison counsel with cases both in the MDL and state court proceedings.

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

Response: The most important attribute of a judge is impartiality; namely, an objective application of the law to the facts. I believe my record over the past thirteen years as a Superior Court Judge has demonstrated I possess this attribute.

**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: Judges must understand that each case may be a litigant's only interaction with the justice system. Therefore, a judge should be patient, fair and impartial. I believe that, during my thirteen years on the Superior Court bench, I have demonstrated that I meet this standard.

**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: If I am fortunate enough to be confirmed as a District Judge, I will follow all cases decided by the Supreme Court and Third Circuit giving them full force and effect regardless of any personal beliefs I may have.

**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: In a case of first impression, I would initially look to the plain meaning of the statute's text. If the language is clear and unambiguous, I would apply its plain meaning. If there were any ambiguity, I would look to similar or analogous Supreme Court or Third Circuit precedent in addition to the canons of statutory construction.

**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 all binding precedents decided by the Supreme Court and Third Circuit regardless of any personal opinions I may have about the binding precedent.

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

Response: Initially, a federal court should not address the constitutionality of a statute unless it is necessary to resolve the case before it. Furthermore, federal statutes are presumed to be constitutional. If there is a reasonable interpretation to a statute that would avoid declaring it unconstitutional, the federal court should employ that interpretation. Only when Congress exceeds its authority or if the statute violates a constitutional provision should a federal court declare a federal statute unconstitutional.

**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? Please explain.**

Response: No.

**13. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: I believe my record as a Superior Court Judge for thirteen years demonstrates that my decisions are grounded in precedent and the text of the law, rather than any underlying political ideology or motivation. If I am fortunate enough to be confirmed as a District Judge, I will continue to maintain this impartial method of adjudicating disputes.

**14. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: I believe my record as a Superior Court Judge for thirteen years provides sufficient evidence that I have put any personal views aside and applied the rule of law to the facts before me in an objective fashion. If I am fortunate to be confirmed as a District Judge, I will continue to put aside any personal views and be fair to all who appear before me.

**15. If confirmed, how do you intend to manage your caseload?**

Response: I believe in regular case management conferences and maintaining frequent contact with the lawyers appearing before me. During my thirteen years as a Superior Court Judge, I have remained proactive with the lawyers appearing before me and always encourage constant dialogue with the court, either in person, by telephone or by e-mail. As an MCL judge, I have a docket of approximately 15,000 cases that I actively coordinate with state and federal judges throughout the country. If fortunate enough to be confirmed as a District Judge, I would continue to manage my caseload in the same manner.

16. **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. A judge should and must control the pace and conduct of litigation. As discussed above, this is accomplished by regular contact with counsel either in person or through the use of technology. I also encourage settlement discussions at every stage of the litigation and frequently order individual parties to appear at conferences. In my opinion, allowing litigants to play an active role in the litigation and settlement process provides them with an opportunity to observe how the litigation is evolving and dictate its ultimate resolution.

17. **If confirmed, you will be charged with deciding cases and writing opinions. 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.**

Response: I have decided thousands of cases during my thirteen years as a Superior Court Judge. I review the submissions by counsel and authorities they cite, and conduct my own independent research. After reading the submissions, I may schedule oral argument to permit counsel to present their case if I believe it will assist in the resolution of the issues presented. When appropriate, I either rule from the bench or issue a written opinion to ensure cases are decided as expeditiously as possible.

18. **President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?**

Response: I am not familiar with this quote or the context in which it was made. I will make my decisions by applying the rule of law to the facts presented in an objective manner. Any personal beliefs of the judge should not be employed in the decision making process.

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

Response: I received these Questions for the Record from the Office of Legal Policy on October 7, 2015. I reviewed the questions and drafted my answers, which I submitted to the Office of Legal Policy for review. Thereafter I finalized my responses before submitting them to the Committee.

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

Response: Yes.

**Written Questions of Senator Jeff Flake**  
U.S. Senate Committee on the Judiciary  
*Judicial Nominations*  
October 5, 2015

**Brian R. Martinotti, Nominee, U.S. District Judge for the District of New Jersey**

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1. **What is your approach to statutory interpretation? Under what circumstances, if any, should a judge look to legislative history in construing a statute?**

Response: In a case of first impression, I would initially look to the plain meaning of the statute's text. If the language is clear and unambiguous, I would apply its plain meaning. If there were any ambiguity, I would look to similar or analogous Supreme Court or Third Circuit precedent in addition to the canons of statutory construction. To the extent that legislative history is relevant and appropriate I would look to Supreme Court and Third Circuit case law for guidance.

2. **What is the proper scope of the 10th Amendment to the Constitution? In what circumstances should a judge apply it?**

Response: As the Supreme Court has explained, "the Tenth Amendment makes explicit that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people..." New York v. United States, 505 U.S. 144, 155 (1992) (quoting U.S. Const. amend. X) (internal marks omitted). Faced with a challenge under the Tenth Amendment, a federal judge should objectively apply the law as promulgated by the Supreme Court and circuit courts. As the Supreme Court stated, "[a]s an initial matter, Congress may not simply commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." Id. at 161 (internal marks and citations omitted).

3. **Does current standing doctrine foster or impede the ability of litigants to obtain relief in our legal system?**

Response: The standing doctrine, as established by the Supreme Court, recognizes that federal courts are courts of limited jurisdiction. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Similar to the jurisdictional challenges many litigants face, in the event a litigant does not have standing to bring their claims in federal court, there often remains an alternate avenue for redress in the state courts or otherwise.

**Senator Grassley  
Questions for the Record**

**Julien X. Neals,  
Nominee, U.S. District Judge for the District of New Jersey**

- 1. What are some of the lessons you learned while serving as Chief Judge of the Newark Municipal Court that you will utilize if confirmed as a federal district court judge?**

Response: Of the many lessons that I learned as Chief Judge that I will utilize if confirmed, I offer the following as among the most significant: (1) in order to gain and to inspire the public trust, the judge, a public servant, should act with humility; (2) the judge sets the tone for the court and therefore must exhibit a balanced, fair-minded demeanor and the appropriate judicial temperament; (3) a judge must move cases quickly in the interest of justice; (4) the court must render well-reasoned, legally supported and transparent decisions in order to provide evidence of fairness and a clear record in the event of further review; (5) a judge must treat all who enter the court, whether staff, litigants or counsel, with the utmost dignity and respect; and (6) a judge must control the court proceedings, maintain order and require adherence to the appropriate standards of conduct.

- 2. During your hearing, Senator Tillis asked you what mitigating factors a judge should consider when giving a young defendant a sentence other than jail time. You mentioned housing factors, mental health, and substance addiction. Please elaborate on how these factors would affect your sentencing decisions, if confirmed. Be specific.**

Response: If confirmed as a federal district judge, I would apply the controlling constitutional provisions, statutes and binding precedent, when deciding a criminal matter involving a young defendant or any other matter. Juvenile proceedings in the district court are controlled by the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5031 – 5042). The United States Supreme Court has also recognized special considerations that apply in the context of juvenile sentencing. *See e.g., Miller v. Alabama*, 132 S. Ct. 2455, 2464-66 (2012); *Graham v. Florida*, 130 S. Ct. 2011, 2026-27 (2010); *Roper v. Simmons*, 543 U.S. 551, 567, 569-70 (2005). When sentencing a young defendant, I would apply any mitigating factors in accordance with binding Supreme Court and Third Circuit precedent, statutory authority or sentencing guidelines.

- 3. Please describe your judicial philosophy.**

Response: My judicial philosophy is that a judge must in all matters do the following: (1) make an impartial and unbiased commitment to review, comprehend and apply the appropriate rule of law; (2) provide to all parties a full and fair opportunity to present facts and legal argument in all proceedings; and (3) act diligently and efficiently in all proceedings to ensure that all matters are disposed of in a timely manner.

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

Response: I believe the most important attribute of a judge is integrity. I believe that I possess the necessary integrity to faithfully execute the duties of a district judge.

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: In my view the appropriate judicial temperament is calm, even-tempered and confident. A judge's temperament should be genuine and consistent in dealings with colleagues, court staff, litigants, attorneys and the public in general. I believe that the most important elements upon which judicial temperament is based are humility, patience, integrity, and respect for others. I 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. 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: In my view, the consistent application of the rule of law serves as the foundation of American jurisprudence. The consistent application of the rule of law cannot be achieved by the court unless judicial decisions are firmly rooted in established legal precedent. The failure to follow precedent based upon personal views would erode the foundation of the judicial system. Accordingly, if confirmed I will faithfully follow precedents of the United States Supreme Court and of the Third Circuit without consideration of any personal views.

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 first examine the text of the statute to determine its meaning. If clear and unambiguous, my inquiry would end and the statute itself would serve as the source of controlling authority. If the language were ambiguous then I would review the statute as a whole in order to determine its intent. I would also review whether analogous Supreme Court or Third Circuit precedent exists on closely related questions. In the absence of analogous precedent, I would review relevant decisions of courts of appeal outside the Third Circuit and of other district courts, for guiding authority. I would then review legislative history and secondary sources such as learned treatises or other recognized authorities, consistent with binding Supreme Court and Third Circuit precedents governing statutory interpretation.

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: I would be bound to apply the decision of the Supreme Court or the Court of Appeals without consideration of any personal beliefs, and I would apply the binding precedent.

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

Response: Congressional statutes maintain a presumption of constitutionality. Accordingly, a court must endeavor to uphold the constitutionality of a duly enacted statute, if possible, and to decide a case without reaching a constitutional question if there are other grounds upon which to base a decision. However, if no such ground exists, a federal court is required to declare a statute unconstitutional where the relevant provision, considered in light of applicable precedent, compels the conclusion that Congress exceeded its constitutional authority in enacting the statute or if the statute clearly violates the Constitution.

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? Please explain.**

Response: Unless United States Supreme Court or Third Circuit precedents explicitly rely on foreign court decisions, judges should not rely on foreign law or on the views of the “world community” in determining the meaning of the Constitution.

11. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: It is my firm belief that the court must render well-reasoned, legally supported and transparent decisions in order to provide evidence of fairness and a clear record in the event of further review. If a judge’s decision is based upon underlying political ideology or motivation then it undermines the integrity and impartiality of the judicial system and violates the public trust and judicial ethics. As Chief Judge of the Newark Municipal Court I required that all judges and court employees adhere to this standard of conduct in all court operations. If confirmed as a federal district court judge, I would continue to follow this standard of conduct.

12. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: As part of my judicial philosophy, I firmly believe that a judge must in all matters make an impartial and unbiased commitment to review, comprehend and apply the

appropriate rule of law, and provide to all parties a full and fair opportunity to present facts and legal argument in all proceedings. Personal views have no place in a fair and efficient court system. My record as Chief Judge of the Newark Municipal Court is the best evidence that I can offer that I treat all litigants fairly and put aside any personal views in judicial proceedings. If confirmed, I would continue to treat all litigants who appear before me fairly. I would put aside any personal views in judicial proceedings and would require the same of any court staff.

**13. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I will manage my caseload in accordance with the Federal Rules of Civil and Criminal Procedure, the applicable Local Rules and the appropriate established practices. I will remain actively involved over the course of a given matter to ensure that it is disposed of efficiently and expeditiously. I will work closely with the magistrate judge and coordinate the efforts of our respective staffs to ensure that all matters are appropriately monitored. I will also render decisions quickly in order to preserve the court's and litigants' resources.

**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: I firmly believe that judges have a vital role in controlling the pace and conduct of litigation. If confirmed, I will work closely with the magistrate judge and clerk and require that our respective staffs regularly review the docket and monitor compliance with scheduling deadlines. I will make prompt rulings on any motions and pretrial issues in order to move the case to resolution. I will also take proactive steps to schedule the appropriate conferences to address any issues that may cause undue delay in any proceedings. I will also make the court available to assist counsel and litigants in resolving any unforeseen circumstances that may arise that impede the progress of any matter.

**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: When I served as judge, I obtained a firm grasp of the facts alleged in order to determine the issues properly before the court for disposition. I also thoroughly reviewed the claims asserted and the law upon which the claims were based. I then fairly and impartially evaluated the facts, and applied the relevant law according to precedent. Finally, I endeavored to communicate a decision in a clear and concise manner, based upon a detailed record, to ensure that the reasoning for any decision was apparent to the attorneys, litigants and reviewing court.

**16. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?**

Response: I am not familiar with the statement by the President or the context in which the quoted statements were made. In my view, a federal judge in every case must be impartial and fair, and must apply the binding law to the facts of the particular matter before the court. A judge must also have the integrity and firmness of mind to decide difficult cases regardless of popular views or public criticism.

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

Response: I received these questions from the Office of Legal Policy (OLP) at the Department of Justice on October 7, 2015, via electronic mail. I reviewed the questions and personally prepared the answers. I submitted my answers to OLP on October 12, 2015, and discussed the same with OLP staff, after which I finalized my responses. I then authorized OLP to submit these responses on my behalf.

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

Response: Yes.

Written Questions of Senator Jeff Flake  
U.S. Senate Committee on the Judiciary  
*Judicial Nominations*  
October 5, 2015

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**Julien X. Neals,**  
Nominee, U.S. District Judge for the District of New Jersey

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1. **What is your approach to statutory interpretation? Under what circumstances, if any, should a judge look to legislative history in construing a statute?**

Response: I would first examine the text of the statute to determine its meaning. If clear and unambiguous, my inquiry would end and the statute itself would serve as the source of controlling authority. If the language were ambiguous then I would review the statute as a whole in order to determine its intent. I would also review whether analogous Supreme Court or Third Circuit precedent exists on closely related questions. In the absence of analogous precedent, I would review relevant decisions of courts of appeal outside the Third Circuit and of other district courts, for guiding authority. I would then review legislative history and secondary sources such as learned treatises or other recognized authorities, consistent with binding Supreme Court and Third Circuit precedents governing statutory interpretation.

2. **What is the proper scope of the 10th Amendment to the Constitution? In what circumstances should a judge apply it?**

Response: The 10<sup>th</sup> Amendment to the United States Constitution expresses the principle that the federal government possesses only those powers delegated to it by the Constitution. All remaining powers are reserved for the states or the people. The Supreme Court has determined that federal government action that exceeds its enumerated powers is an impermissible interference with state sovereignty. *See e.g., New York v. United States*, 505 U.S. 144 (1992). A judge should apply the 10<sup>th</sup> Amendment in accordance with precedents established by the Supreme Court and the Circuit Courts when reviewing any challenged federal action.

3. **Does current standing doctrine foster or impede the ability of litigants to obtain relief in our legal system?**

Response: Article III of the Constitution limits the judicial power of federal courts to deciding actual “Cases” or “Controversies.” The Supreme Court has determined that in order to have standing in federal court a litigant must prove that he or she has suffered a personal and tangible harm or injury, fairly traceable to the conduct complained of, and likely to be redressed by a favorable judicial decision. *See e.g., Already, LLC v. Nike, Inc.*, 133 S. Ct. 721 (2013). I believe that the standing doctrine neither fosters nor impedes the ability of litigants to obtain relief in federal court but rather outlines the parameters of federal court jurisdiction.

**Senator Grassley  
Questions for the Record**

**Robert F. Rossiter, Jr.  
Nominee, U.S. District Judge for the District of Nebraska**

- 1. Throughout your career as a litigator, you have successfully represented many employers in lawsuits brought by former employees alleging sexual harassment and religious discrimination in the workplace. Because of this, some future litigants who bring similar claims against their employers could be wary of appearing before you.**

- a. If confirmed, how will you reassure these litigants and ensure all sides receive a fair trial?**

Response: I take seriously and will abide by the oath taken under 28 U.S. Code § 453 and will "faithfully and impartially discharge and perform all the duties incumbent upon me. . . ." I understand the difference between the role of an advocate and that of a United States District Judge. If confirmed, I assure the Committee and any litigants that I will act impartially and with an open mind.

- b. Do you believe that you have any bias toward employees bringing sexual harassment or religious discrimination suits?**

Response: No. While I have handled this type of litigation throughout my career, one of my duties to my clients was to objectively advise them including when claims brought against them had merit. I believe that I can view such suits in an objective and impartial way.

- 2. You have made donations to partisan candidates running for public offices. If confirmed, what assurances can you give the Committee that you will be fair to all litigants who come before you, particularly those with different political beliefs than your own?**

Response: I have made very limited political contributions over time. I have made small contributions to candidates of both major political parties. I assure the Committee that any such contributions would not be indicative of or lead to any political leanings becoming a part of my impartial decision making process as a United States District Judge.

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

Response: I believe the most important attribute of a judge is fairness. That term includes patience, an even temperament, and an unbiased view of the facts and application of the law to each case. I believe I have those attributes and would utilize them in performing my duties, if confirmed.

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: Judicial temperament is important to the fair and impartial application of the law. A judge must be patient and respectful in dealing with litigants, attorneys, and witnesses; and the judge's actions must engender respect for the court and the rule of law. I believe that I have displayed the appropriate temperament through my interactions with other attorneys, litigants, witnesses, and judges in numerous cases during my years of practice.

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. 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: Should I be confirmed, I will follow all precedents of the United States Supreme Court and of the United States Court of Appeals for the Eighth Circuit. My personal agreement or disagreement with such precedent would have no place in my decision making process.

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 faced with a case of first impression involving a statute, and if the plain language of the statute were ambiguous, I would apply the established rules of statutory construction. If that process would not be dispositive, I would view similar cases from the United States Supreme Court, the Eighth Circuit Court of Appeals, and if necessary, similar cases from other districts and circuit courts.

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 precedents of either the United States Supreme Court or the United States Court of Appeals for the Eighth Circuit. Any belief that either court might have erred would not provide a basis to stray from that precedent.

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

Response: I would deal only with the constitutionality of a statute if it were necessary to decide the case. Consistent with precedent, I would start with the presumption that the

statute is constitutional. Finding that a statute is unconstitutional should occur only in the very limited circumstance involved when Congress has exceeded its authority or a statute unquestionably is in violation of the Constitution.

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? Please explain.**

Response: I do not believe it is proper for a United States District Judge to rely on foreign law or the views of the "world community" when striving to determine the meaning of the United States Constitution. If confirmed, I would not rely upon or apply foreign law or the views of the "world community". I would apply law and precedents as established by the United States Supreme Court and the United States Court of Appeals for the Eighth Circuit.

10. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: If confirmed, my decisions would be grounded in precedent and the text of the law. The oath I would take would require me to apply precedent and statutory text rather than relying upon any political ideology, motivation or other bias.

11. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: If confirmed, I assure this committee and future litigants that I would put aside any personal views I have on issues and would be fair to all who appear before me. I would seriously and respectfully carry out the oath of office for a United States District Court judge.

12. **If confirmed, how do you intend to manage your caseload?**

Response: As a practitioner for over 30 years, I have seen the hardship that ineffective docket control, in some courts, causes for attorneys and litigants. Ongoing case management is essential to the timely and fair determination of pending cases. If confirmed, I would follow the procedures and rules of the United States District Court and utilize the tools available to me, including technology, court staff, and magistrate judges to assist in moving cases towards disposition. Other tools would include the use of status conferences, scheduling orders, and the timely determination of motions filed by the parties.

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: Judges play a critical role in controlling the pace and conduct of litigation. If I am confirmed, I would actively utilize the tools set forth in question 12 to control my docket.

- 14. If confirmed, you will be charged with deciding cases and writing opinions. 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.**

Response: If confirmed, I would decide cases on my docket by carefully reviewing and considering the legal issues raised by the parties consistent with statutory language and precedent. I would impartially review the legal arguments of the parties and would apply applicable statutes and precedent to the relevant facts.

- 15. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?**

Response: I am not familiar with this statement or the context in which it was presented. Having said that, I believe that a judge should decide cases by following the law, including statutes and any precedent. I believe a judge should fairly and impartially apply that law to the relevant facts of each case.

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

Response: On October 7, 2015, the foregoing questions were forwarded to me by the Office of Legal Policy at the United States Department of Justice. I reviewed and considered each of the questions proposed and drafted my responses. Following the drafting of my responses, I did have discussions with an attorney from the Office of Legal Policy at the Department of Justice. Following those conversations, I finalized my responses and requested that the Department of Justice attorney submit my answers to the Senate Judiciary Committee.

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

Response: Yes.

Written Questions of Senator Jeff Flake  
U.S. Senate Committee on the Judiciary  
*Judicial Nominations*  
October 5, 2015

Robert F. Rossiter, Jr., Nominee, U.S. District Judge for the District of Nebraska

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**1. What is your approach to statutory interpretation? Under what circumstances, if any, should a judge look to legislative history in construing a statute?**

Response: If faced with a case of first impression involving a statute, and if the plain language of the statute were ambiguous, I would apply the established rules of statutory construction. If that process would not be dispositive, I would view similar cases from the United States Supreme Court, the Eighth Circuit Court of Appeals, and if necessary, similar cases from other districts and circuit courts. A judge should look at the legislative history of a statute only when relevant and appropriate under United States Supreme Court and Eighth Circuit Court of Appeals precedent. *See, e.g., Argus Leader Media v. United States Department of Agriculture*, 740 F.3d 1172, 1175-76 (8<sup>th</sup> Cir. 2014).

**2. What is the proper scope of the 10th Amendment to the Constitution? In what circumstances should a judge apply it?**

Response: The 10<sup>th</sup> Amendment of the Constitution provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." In a case involving a 10<sup>th</sup> Amendment challenge, I would apply controlling precedent of the United States Supreme Court and the Eighth Circuit Court of Appeals.

**3. Does current standing doctrine foster or impede the ability of litigants to obtain relief in our legal system?**

Response: Article 3 of the United States Constitution defines judicial power of the federal courts to deciding actual "cases" or "controversies". The United States Supreme Court has held that "[o]ne essential aspect of this requirement is that any person invoking the power of a federal court must demonstrate standing to do so. This requires the litigant to prove that he has suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision. In other words, for a federal court to have authority under the Constitution to settle a dispute, the party before it must seek a remedy for personal and tangible harm." *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013). If confirmed, I would apply applicable precedent relating to the issue of standing. I am unable to comment generally on whether precedent regarding standing either fosters or impedes the ability of litigants to obtain relief in our legal system.

**Senator Grassley  
Questions for the Record**

**Edward Lesley Stanton III  
Nominee, U.S. District Judge for the Western District of Tennessee**

1. **As United States Attorney, you have discussed the need to show love and compassion to young men who are troubled in the community. If confirmed, how would you do this as a judge?**

Response: First and foremost, if confirmed, I will always apply and adhere to the rule of law and the binding precedent of the Supreme Court and the Sixth Circuit in any matter that should come before me as a judge. If confirmed, and there is no conflict with my duties and oath as a judge or the Code of Conduct for United States Judges, I hope to continue to speak to youth groups when called upon to encourage them to make the right decisions in life. The full context of the comments I made on this topic is from general remarks where I have stated that society should not give up on the young people in our community. I also said that we should use our best efforts to give back to our next generation by volunteering and mentoring youths when possible – with the ultimate goal of intervening and steering them on the right path before they engage in unlawful conduct. In these remarks, I often refer to the support, love and compassion that many of my teachers, neighbors and family members provided me as a youth.

2. **When you were campaigning, you made public statements about social security, health care, and the minimum wage. Can you foresee any situations where you would need to recuse yourself from presiding over a case, if the case involved one of these matters? If so, describe what matters you would recuse yourself from. If not, please explain why.**

Response: I presently do not foresee a situation where I would need to recuse myself from presiding over cases involving social security, health care or the minimum wage. Regardless of my past opinions and beliefs on any issue, if confirmed, I will always apply and adhere to the rule of law and the binding precedent of the Supreme Court and the Sixth Circuit in any matter that should come before me as a judge. In the event a question arises of whether I could be fair and impartial in any case, or involves an actual or potential conflict of interest, I would handle it by careful and diligent application of the Code of Conduct for United States Judges, as well as any other relevant canons and statutory provisions, including rescuing myself when appropriate to avoid the appearance of impropriety.

3. **As United States Attorney, have you ever sought the death penalty for a defendant? If not, and you are confirmed, would you have any problems imposing the death penalty, if the law called for it?**

Response: Yes, my office sought the death penalty in the matter of *United States of America v. Chastain Montgomery, Sr.*, United States District Court, Western District of Tennessee, case number: 2:11-CR-20044.

4. **You have been a proponent of the “Smart on Crime” initiative and have spoken about the need to reform sentencing laws and policies. How will your support for this initiative influence your decision making process as a judge, if at all?**

Response: If confirmed, the “Smart on Crime” initiative will have no influence or impact on my decision making process as a judge. If confirmed, I will be faithfully committed to adhering to the rule of law and binding precedents of the Supreme Court and the Sixth Circuit.

5. **You described the Smart on Crime mandate from the Department of Justice as something that protects kids from a potentially racially biased system. How is the system potentially racially biased and what would you do as a judge to combat that?**

Response: I do not recall ever describing the Smart on Crime initiative as something that protects kids from a potentially racially biased system. I do recall making the following statement when asked by a news reporter in October 2014 about alleged racial biases in the detention of juveniles in the Shelby County, Tennessee Juvenile Court system: “[w]e want to be vigilant in holding individuals accountable, but the Constitution prevails and safeguards must be in place before doing those things.”

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

Response: The most important attribute of a judge is to have the ability to fairly and impartially apply and adhere to the rule of law and controlling precedent. I believe that I possess this attribute and, if confirmed, I will always uphold the oath of serving in a fair and impartial manner.

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: I believe that a judge should always be well-prepared, patient, and even-tempered. A judge should also be respectful, courteous and treat every individual who comes before the court with dignity and respect. If I am fortunate enough to be confirmed, I am confident that I would meet this standard of judicial temperament.

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: If confirmed, I will be faithfully committed to adhering to the rule of law, including binding precedents of the Supreme Court and the Sixth Circuit. I will be committed to doing so regardless of whether I personally agree or disagree with these precedents.

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: If confirmed and presented with a case of first impression, I would first look to the plain and ordinary language of the statute, regulation, or rule at issue. If the language were clear, I would apply the plain meaning of the text. If the language were ambiguous, I would look to analogous provisions of law and to applicable rules of construction. I would also look to analogous Supreme Court and Sixth Circuit cases for persuasive authority when applicable.

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 always apply the applicable rule of law and binding precedent of the Supreme Court and Sixth Circuit without reservation. Neither my personal opinions nor philosophies would ever play any role in my decisions.

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

Response: Congressional statutes are presumed to be constitutional. An Act of Congress should only be declared unconstitutional in the rare and limited circumstance where it is clear that a statute is contrary to the Constitution or when Congress has exceeded its constitutional authority with legislation.

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? Please explain.**

Response: No. In my view, it is only proper for a judge to adhere to the rule of law and binding precedent of the Supreme Court and Sixth Circuit to determine the meaning of the Constitution of the United States of America.

13. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: If confirmed, my decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation. In addition, I believe that my record as a practicing attorney and United States Attorney reflects my unequivocal respect for, and adherence to, the rule of law.

- 14. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: If confirmed, I assure the Committee and future litigants who will appear before me that I will strictly adhere to and honor my oath to act with fairness, impartiality and integrity in all matters. I will always apply the rule of law even-handedly without regard to any personal views.

- 15. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I intend to manage my caseload in an effective and efficient manner by utilizing scheduling orders, status conferences and timely adjudicating motions. I will also hold litigants accountable to scheduling deadlines and work closely with the district's magistrate court judges for proactive case management.

- 16. 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 play a large role in controlling the pace and conduct of litigation. If confirmed, I will utilize the methods described in my previous answer to effectively move cases towards final disposition in an efficient manner.

- 17. If confirmed, you will be charged with deciding cases and writing opinions. 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.**

Response: If confirmed, I would reach decisions in cases that come before me by carefully reviewing the facts and evidence presented in each case, and applying the rule of law and binding precedent of the Supreme Court and Sixth Circuit in reaching a decision.

- 18. President Obama said that deciding the "truly difficult" cases requires applying "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy . . . the critical ingredient is supplied by what is in the judge's heart." Do you agree with this statement?**

Response: I am not familiar with this statement by President Obama or the context in which it was made. A judge must faithfully apply the rule of law and binding precedent

to the facts and evidence presented in every case regardless of his or her personal views or philosophies and, if confirmed, that is what I intend to do.

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

Response: I received these questions from the Department of Justice, Office of Legal Policy (OLP) on October 7, 2015. I reviewed the questions, and drafted my responses. I finalized my responses after speaking with an OLP official and authorized their submission to the Senate Judiciary Committee on my behalf.

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

Response: Yes.

**Senator Jeff Flake  
Questions for the Record**

**Edward Lesley Stanton III  
Nominee, U.S. District Judge for the Western District of Tennessee**

1. **What is your approach to statutory interpretation? Under what circumstances, if any, should a judge look to legislative history in construing a statute?**

Response: If confirmed and presented with a case of first impression, I would first look to the plain and ordinary language of the statute, regulation, or rule at issue. If the language were clear, I would apply the plain meaning of the text. If the language were ambiguous, I would look to analogous provisions of law and to applicable rules of construction. I would also look to analogous Supreme Court and Sixth Circuit cases for persuasive authority when applicable. When the text of a statute still remains ambiguous, I believe only then it may be appropriate to consider looking to the legislative history of a statute.

2. **What is the proper scope of the 10th Amendment to the Constitution? In what circumstances should a judge apply it?**

Response: The 10th Amendment states, “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” There has been longstanding Supreme Court precedent that identifies state powers protected by the 10th Amendment. *See, e.g., New York v. United States*, 505 U.S. 144, 155 (1992). If confirmed, I will faithfully adhere to Supreme Court and Sixth Circuit precedent concerning the proper scope of the 10th Amendment to the Constitution.

3. **Does current standing doctrine foster or impede the ability of litigants to obtain relief in our legal system?**

Response: To establish Article III standing, an injury must be “concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 150 (2010). I do not have an opinion as to whether the current standing doctrine fosters or impedes the ability of litigants to obtain relief in our legal system. If confirmed, I will faithfully adhere to Supreme Court and Sixth Circuit precedent concerning standing.