

**Responses of John Thomas Fowlkes, Jr.
Nominee to be United States District Judge for the Western District of Tennessee
to the Written Questions of Senator Chuck Grassley**

- 1. You gave a presentation at the Trial Practice Workshop for the Memphis Bar Association in 1995. In your notes you describe a trial this way:**

"It must always be remembered that trials should be fun... Each of us has the choice of presenting evidence in a drab and uneventful way or to prepare and choreograph an event. Remember, you are only limited by your imagination and the personality of the judge before you."

- a. Are there appropriate limits should bind attorneys in their presentation of law and evidence in trials. As a judge, if confirmed, how would you enforce such limits?**

Response: Yes, there are appropriate limits that bind attorneys in their presentation of law and evidence in trials. The limits include the Rules of Evidence, the Rules of Civil and Criminal Procedure, the Canons of Ethics and principles of professionalism and courtesy. As a trial judge, I have presided over 90 jury trials in nearly five years. All of the limits outlined above are in place and are enforced in my courtroom, and proper courtroom decorum is maintained. If confirmed, these limits will be enforced in all proceedings before me in federal district court.

- b. Recognizing your audience and the purpose of your presentation, some might still take issue with the notion that "trials should be fun." Certainly there are serious issues at risk in trials - including life, liberty and property. Given the serious nature of federal court proceedings, how would you conduct your courtroom, should you be confirmed as a federal district judge?**

Response: Of course, federal court proceedings involve serious issues. As a state criminal court judge, I preside over equally serious issues including punishment for capital and other serious violent crimes. All trials involve a huge commitment of time and hard work. Trial work is rigorous, demanding and stressful. If a lawyer does not enjoy trial work, in time, he or she may be overwhelmed emotionally. If I am confirmed, trials and other proceedings in my courtroom will be conducted with the proper decorum, professionalism and ethical considerations, consistent with the Rules of Evidence and Procedure.

- 2. You indicated in your questionnaire that you served on the Judicial Committee on Fairness and Sensitivity.**

- a. What exactly does this committee do?**

Response: In 1997, the Tennessee Supreme Court formed a commission to inquire into the state of racial and ethnic fairness in the judicial system. The commission found that although incidents of unfairness or bias were rare, there existed in some communities a view that unfairness or bias was prevalent in the judicial system. The commission made several recommendations to address the public's concern. In response, the Tennessee Judicial Conference, an organization of Tennessee trial judges, formed the Judicial Committee on Fairness and Sensitivity. Its purpose is to address the misconception of bias in the judicial system. Surveys of judges, court personnel and community organizations were conducted to determine what specific steps should be taken.

b. What was your role in the committee?

Response: The role of committee members is to encourage other members of the Tennessee Judiciary to participate in public and civic events and interact with members of the public to dispel the misconception of judicial bias. I have set an example by frequently speaking in public and receiving students of all ages and other members of the public in my courtroom to view courtroom activities and discuss judicial issues.

3. You were the Shelby County Administrator for many years. During your time in this role, the local Homeland Security Office was bugged.

a. Could you please briefly describe that incident, your role, and the outcome of that situation?

Response: During the months before this incident, reports of grant mismanagement in the Office of Homeland Security were being investigated. A team of grant managers and auditors from other departments had been put in place to correct the errors made by Homeland Security employees. The working relationship between the grant management team and Homeland Security employees was strained. As the corrective work progressed, it came to light that listening devices had been located in the Homeland Security Office. An inquiry began to identify who had placed the devices in the offices. As Chief Administrative Officer, I was kept informed of the progress made in the inquiry. One of the grant management team members informed me and other management officials that he had contacted a friend who was a Special Agent with the Federal Bureau of Investigation. He said he informed the Special Agent of circumstances at the Homeland Security Office and the FBI was investigating. However, when I contacted the Special Agent in Charge of the Memphis FBI, I was informed that no contact had been made and no investigation was taking place. Soon thereafter, the grant management team member that made statements about FBI investigation was confronted and admitted that he had provided false statements. He was immediately suspended, and after a full investigation, he was terminated.

- b. You were quoted in a newspaper article saying that "We gave you some information that was false." Do you recall why your office first said that the FBI was investigating when they were not?**

Response: As noted above, a grant management team member who had been assigned to the Office of Homeland Security informed his superiors that a Special Agent with the FBI was investigating the matter. That information was communicated to members of the media. Later, it was found that the information provided by the team member was false. During a subsequent press conference, the false information and its source were identified, and the record was corrected.

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

Response: The most important attribute of a judge is character. A judge's personal character is revealed every day the judge is on the bench. It includes integrity, an uncompromising sense of fairness and impartiality, infinite patience, and a strong and enduring work ethic. I possess all of these attributes and I have demonstrated them for the nearly five years I have been a judge, as well as the 25 years I practiced law prior to becoming a 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: Judges must be respectful, courteous, and patient when dealing with attorneys, parties or members of the public. A judge sets the example that others appearing in the court should follow. I have demonstrated appropriate judicial temperament for the nearly five years I have been a judge.

- 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. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

- 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: If faced with a case of first impression, I would begin by reviewing the specific constitutional provision or statute raised by the parties. If the plain language of the provision or statute were clear and unambiguous, I would consider the facts, apply the provision or statute and make the decision. If it were not clear or were ambiguous, and no controlling precedent existed, I would consider Supreme Court and 6th Circuit precedent involving interpretation of similar or closely related constitutional provisions or statutes. I would also take into consideration any legislative intent on the specific constitutional provision or statute. Throughout the

process, I would have no hesitation to consult with other district court judges in my district to ascertain whether or not they had faced the precise or similar question.

- 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 exercise judicial restraint and fully apply the decision.

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

Response: The only circumstances where a federal court should declare a statute enacted by Congress unconstitutional is where the statute violates a provision of the Constitution or where Congress has exceeded its constitutional authority or power.

- 10. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: I am a state criminal court judge. There are ten criminal courts in my district. When I first took the bench, I had the second largest case load of the ten courts. Two years later, I had cut the case load by nearly 40 percent. Now, my case load continually ranks as one of the smallest. This was accomplished by instilling a new work ethic in my division of court. Parties quickly realized that time periods between court settings were significantly reduced, and matters set for hearing, trial or other disposition would not be reset unnecessarily. Once the parties knew what to expect, final disposition of cases occurred more rapidly. If confirmed, I would bring a similar system to the federal bench.

- 11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Judges have a very significant role in controlling the pace and conduct of litigation. If confirmed, I would implement the steps outlined in my response to question number ten. More specifically, after reviewing all of the pending cases in my division of court, I would hold pretrial conferences in all matters as soon as possible and develop reasonable scheduling for each. This would include periodic reports to the court to ensure that deadlines were being met and progress towards disposition of the case, whether by trial, mediation or other disposition, is accomplished.

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

Response: I received the questions on the March 21, 2012. I prepared the answers and forwarded them to the Department of Justice on March 23, 2012. That same day, I spoke with a representative of the Department of Justice about finalizing my answers. Thereafter, I requested the representative to submit my responses to Senator Grassley.

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

Response: Yes.