Nomination of Ralph Erickson to the U.S. Court of Appeals for the Eighth Circuit
Questions for the Record
Submitted August 1, 2017

QUESTIONS FROM SENATOR FEINSTEIN

1. You have served as a federal district court judge for 14 years. **What are some of the most important lessons you've learned as a district court judge that you will bring to the Eighth Circuit, if you are confirmed?**

Response: The most important lessons I learned during my time on the bench are to treat all parties and counsel with respect, to be as well prepared for every hearing as humanly possible, and to decide every case consistent with the facts and law to the utmost of my ability.

2. You gave an interview for a book called "The Promise Fulfilled: A Portrait of Norwegian Americans Today." Based on your interview, the book states the following: "District Court Judge Ralph Erickson in Fargo, a fourth-generation Norwegian-American . . . made the observation that Scandinavians who appeared in front of his bench did not commit violent crimes; such felonies were more commonly associated with other ethnicities in the community."

    a. **Please provide some additional context for this statement. Why did you make this statement? And what did you mean by this statement?**

Response: While I have a vague recollection of being interviewed by the author, I have no recollection of ever making such a statement. On its face, the comment is completely unfounded and does not represent a belief I have ever held. I believe that whatever I may have said was misunderstood by the author or taken out of context.

    b. **Criminal defendants who come before you—especially defendants who do not have Scandinavian heritage—may be concerned that this statement indicates that you have biases about their likelihood of committing violent felonies, and that these biases may prevent them from getting a fair trial. Is that a fair concern? If not, why not?**

Response: To the best of my knowledge, I never made the statement attributed to me in the book and whatever comment I made was taken out of context by the author. As a state and federal trial court judge, I have presided over hundreds of cases involving litigants with different backgrounds, national origin, sex, religion, and race. These cases demonstrate a long record, over the course of more than two decades on the bench, of my strong commitment to equal justice before the law.

3. During your hearing, you offered to provide a copy of the sealed orders in *North Dakota v. Burwell* and *Catholic Benefits Association v. Burwell*, in which you entered a stay of the Health and Human Services rule interpreting section 1557 of the Affordable Care Act. **Please provide those orders to the Committee.**

Response: Please see attached order.

4. In 2015, you entered an injunction that blocked a regulation by the Environmental Protection Agency from taking effect. That regulation, known as the "Waters of the United States" rule, enlarged the number of bodies of water that the EPA can protect under the Clean Water Act.

    a. It's my understanding that part of your decision rested on your conclusion that the EPA's decision was not supported by adequate evidence. How did you reach that conclusion?

Response: *North Dakota v. U.S. Environmental Protection Agency*, Case No. 3:15-cv-00059 (D.N.D.) remains open on my docket, and I am precluded from publicly commenting on any pending case. *See* Canon 3, Code of Conduct for United States Judges ("A judge should not make public comment on the merits of a matter pending or impending in any court."). Please note, however, that my order granting the plaintiffs' motion for injunction can be found at 127 F. Supp. 3d 1047 (N.D. 2015). In that order, I explained why I granted the motion.

    b. As a general matter, when do you think it is appropriate for a court to defer to agency expertise and when do you think it's appropriate for a court to second-guess an agency's conclusions?

Response: The Administrative Procedure Act (APA) states that a "reviewing court shall decide all relevant questions of law" and may set aside an agency's decision only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706. In *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the Supreme Court explained how courts should treat an agency's interpretation of an ambiguous statute that requires the agency to take some action. Courts should defer to an agency's interpretation of such statutes unless it is unreasonable. I will faithfully apply *Chevron*, the APA, and all other binding administrative law precedent.

5. Please respond with your views on the proper application of precedent by judges.

    a. Are you committed to following circuit court precedent if confirmed?

Response: Yes, as a Circuit Judge, I am bound by all controlling circuit precedent. *See, e.g.*, *Owsley v. Luebbers*, 281 F.3d 687, 690 (8th Cir. 2002) ("It is a cardinal rule in our circuit that one panel is bound by the decision of a prior panel."). I will apply such precedent faithfully and to the best of my ability.

    b. When, if ever, is it appropriate for lower courts to depart from Supreme Court precedent?

Response: All lower courts are bound by controlling Supreme Court precedent. Only the Supreme Court has "the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989).

c. Do you believe it is proper for a circuit court judge to question Supreme Court precedent in a concurring opinion? What about a dissent?

Response: Lower court judges, and the courts they sit on, are bound by controlling Supreme Court precedent. In the past, I have commented on Supreme Court precedent. *See, e.g.*, *Twombly v. City of Fargo*, 388 F.Supp. 2d 983, 986 (D.N.D. 2005) (noting that Supreme Court Establishment Clause jurisprudence is widely debated and incapable of succinct analysis). Even so, in all cases, I as well as all lower court judges are bound to follow Supreme Court precedent. I will apply such precedent faithfully and to the best of my ability.

d. When, in your view, is it appropriate for a circuit court to overturn its own precedent?

Response: In the Eighth Circuit, the holding of a prior panel is binding on all subsequent panels unless it is overruled, undermined or abrogated by the Supreme Court or the Court of Appeals sitting *en banc*. *See Mader v. United States*, 654 F.3d 794, 798–800 (8th Cir. 2011) (en banc).

e. When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?

Response: As a sitting lower court judge, it is not appropriate for me to opine on what circumstances might be sufficient for the Supreme Court to overturn its own precedent. The Supreme Court determines when it is appropriate to overturn its precedent. *See Rodriguez de Quijas*, 490 U.S. at 484.

6. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as "super-stare decisis." A textbook on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a "super-precedent" because it has survived more than three dozen attempts to overturn it. The book explains that "superprecedent" is "precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation." (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

a. Do you agree that *Roe v. Wade* is "super-stare decisis"? "superprecedent"?

Response: *Roe* is binding precedent on all lower courts. I am bound to apply binding precedent to all cases which come before me, both in my capacity as a District Judge and, if confirmed, as a Circuit Judge. Labelling a decision "super-stare decisis" or "superprecedent" is simply not a relevant concept for lower courts. Judges on lower courts are bound by their oaths to apply all controlling precedent. If I am fortunate enough to be confirmed, I will faithfully and to the best of my ability apply all controlling precedent.

b. Is it settled law?

Response: Please see the response to Question 6(a) above.

7. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry.

    a. Is the holding in *Obergefell* settled law?

Response: *Obergefell* is binding precedent on all lower courts. I am bound to apply binding precedent to all cases that come before me, both as a District Judge and, if confirmed, as a Circuit Judge. I will faithfully and to the best of my ability apply all controlling precedent.

    b. On June 30, the Texas Supreme Court issued a decision in *Pidgeon v. Turner* which narrowly interpreted *Obergefell* and questioned whether states were required to treat same-sex couples equally to opposite-sex couples outside the context of marriage licenses. The Texas Supreme Court stated that "The Supreme Court held in *Obergefell* that the Constitution requires states to license and recognize same-sex marriages to the same extent that they license and recognize opposite-sex marriages, but it did not hold that states must provide the same publicly funded benefits to all married persons, and… it did not hold that the Texas DOMAs are unconstitutional." Is this your understanding of *Obergefell*?

Response: I am unfamiliar with *Pidgeon v. Turner* and have not studied the facts nor the law undergirding the decision. That said, *Obergefell* is binding precedent and must be applied by lower courts. I will faithfully, and to the best of my ability, apply all binding precedent whether serving as a District Judge or, if confirmed, as a Circuit Judge.

8. In Justice Stevens's dissent in *District of Columbia v. Heller* he wrote: "The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms."

    a. Do you agree with Justice Stevens? Why or why not?

Response: Litigants frequently raise Second Amendment claims in criminal prosecutions in my court, a number of which are currently pending before me on my existing docket. Other such cases will invariably be presented to me. Under Canon 3 of the Code of Conduct for United States Judges, I "should not make public comment on the merits of a matter pending or impending in any court." Having said that, *Heller* is binding on lower courts, and I will apply it—like all Supreme Court decisions—faithfully and to the best of my ability.

    b. Did *Heller* leave room for common-sense gun regulation?

Response: Please see the response to Question 8(a) above.

c. Did *Heller*, in finding an individual right to bear arms, depart from decades of Supreme Court precedent?

Response: Please see the response to Question 8(a) above.

9. In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations' independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

a. Do you believe that corporations have First Amendment rights that are equal to individuals' First Amendment rights?

Response: *Citizens United v. FEC* is precedent that binds all lower courts. My personal views are unrelated to my duty to apply all binding precedent to the best of my ability, which I promise faithfully to do.

b. Do individuals have a First Amendment interest in not having their individual speech drowned out by wealthy corporations?

Response: Please see the response to Question 9(a) above.

c. Do you believe corporations also have a right to freedom of religion under the First Amendment?

Response: Please see the response to Question 9(a) above.

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

Response: I received the questions on the evening of Tuesday, August 1, 2017. I reviewed the questions, drafted answers, and (as necessary) conducted research. I shared the answers with the Office of Legal Policy at the Department of Justice. After conferring with the lawyers there, I made revisions and authorized them to submit the responses on my behalf.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

The Religious Sisters of Mercy; Sacred Heart Mercy Health Care Center (Jackson, MN); Sacred Heart Mercy Health Care Center (Alma, MI); Alma, MI); SMP Health System; University of Mary;

and

State of North Dakota,

Plaintiffs,

vs.

Sylvia Burwell, Secretary of the United States Department of Health and Human Services; and United States Department of Health and Human Services,

Defendants.

Civil File No. 3:16-cv-386

Catholic Benefits Association, Diocese of Fargo, and Catholic Charities North America,

Plaintiffs,

vs.

Sylvia M. Burwell, Secretary of the United States Department of Health and Human Services; United States Department of Health and Human Services; Jenny R. Yang, Chair of the United States Equal Employment Opportunity Commission; and United States Equal Employment Opportunity Commission,

Defendants.

Civil File No. 3:16-cv-432

SEALED ORDER STAYING ENFORCEMENT

The above-captioned cases contain issues related to Section 1557 of the Affordable Care Act. Some of the rules at issue are set to take effect on January 1, 2017. Pending

before the court are the following motions in Case No. 3:16-cr-386: motion for preliminary injunction;[1] emergency motion for remittal of disqualification;[2] motion to expedite the plaintiffs' motion for preliminary injunction;[3] and motion for a hearing.[4] In Case No. 3:16-cr-432, there is a pending motion for a temporary restraining order[5] that was filed on December 28, 2016, and in which a decision is sought before January 1, 2017.

On December 29, 2016, the undersigned sent to the parties a notice concerning waiver of judicial disqualification. Issues surrounding disqualification were not intended to be made public at this time. However, the plaintiffs in Case No. 3:16-cv-386 have filed "emergency" motions regarding the notice. In addition, the defendants in Case No. 3:16-cv-432 have stated they will need seven days to file a response to the notice.

In light of the uncertainty regarding which judge will address the merits of the case and the imminent deadline of January 1, 2017, the court **HEREBY ORDERS** that enforcement of Rule 1557 as against the named plaintiffs in these two cases be **STAYED** pending a determination on the recusal issues and until such time as a hearing can be held on the pending motions.

IT IS SO ORDERED.

Dated this 30th day of December, 2016.

/s/ Ralph R. Erickson
Ralph R. Erickson, District Judge
United States District Court

[1] Doc. #5.

[2] Doc. #21.

[3] Doc. #21.

[4] Doc. #22.

[5] Doc. #3

Senator Mazie K. Hirono

Questions for the Record following hearing on July 25, 2017 entitled:

"Nominations"

Hon. Ralph R. Erickson:

1) As discussed during your hearing, in March 2013, you gave a speech on religious liberty to the North Dakota Catholic Medical Association, in which you described the "Big Question" as whether employers should be required to pay for things that violate their conscience in order to ensure a right to "reproductive medicine," a term you put in quotations in your notes. You suggested that while there is no constitutional right to medical care, being compelled to violate one's conscience in this way would be immoral.

    a. Do you believe that employers cannot constitutionally be compelled to provide reproductive medicine to employees?

Response: As I attempted to explain at the hearing, the scenarios quoted on the slide were not my opinions. In fact, the quoted language was followed on the same slide with this quote: "Forget your conscience—I have a right to 'reproductive medicine' you have no right to deprive me of it." Ten slides earlier in the presentation I told the audience "I can not (sic) comment on any particular issue that might come before the federal courts."

The purpose of the slides was to lay out the debate in the starkest terms possible and then to lay out the decisional rubric. I refused to answer any questions asking for my personal opinions on the matters set forth. After five or six questions attempting to elicit a response to the scenarios, I distinctly recall telling the audience that if I answered the questions I would need to resign my commission because I would violate my oath.

The remainder of the question presents issues that are currently pending or impending in the courts of the United States. As such I cannot answer the questions consistent with my duties under Canon 3 of the Code of Conduct for Federal Judges.

    b. Given that you discussed this issue publicly while serving as a federal judge, and framed it in such a way that suggests a personal view, would you recuse yourself from future cases that may come before you that involve a reproductive care mandate?

Response: I did not offer my personal opinions on any of these issues during the presentation. Please see the response to Question 1(a) above for a more detailed response.

    c. Do you believe the Constitution protects the right to make "intimate and personal" decisions about reproductive care, such as the right to purchase contraception, or to terminate a pregnancy?

Response: The Supreme Court has consistently held that there is a right to privacy that encompasses the right of married couples to use contraceptives, *Griswold v. Connecticut,* 381 U.S. 479 (1965), the right of

unmarried persons to use contraceptives, *Eisenstadt v. Baird*, 505 U.S. 438 (1972), a woman's right to an abortion, *Roe v. Wade*, 410 U.S. 113 (1973), and the right of consenting adults to engage in intimate relations, *Lawrence v. Texas*, 539 U.S. 558 (2003). I will faithfully apply this precedent, as well as all Supreme Court precedent, as required by my oath.

2) As discussed in your hearing, in December 2016, you issued sealed orders preventing the Department of Health and Human Services from enforcing a rule on Section 1557 of the Affordable Care Act, which deals with nondiscrimination in health care, against two entities.

    a. During the hearing, you promised to provide the sealed orders to the Committee. If you have not done so already, please include them as an attachment to your responses to these questions.

Response: A copy of the order has been provided to the Committee along with these responses.

    b. Have you read the nationwide injunction order by Judge Reed O'Connor that superseded the case you heard? Do you agree with the reasoning of that order?

Response: I have not read Judge O'Connor's order nor do I have an opinion about its reasoning.

    c. Do you agree with the Supreme Court's majority in *Hobby Lobby* that its decision does not provide a "shield" for discrimination "cloaked as religious practice"?

Response: As a Circuit Judge, my personal views about any Supreme Court decision will not be relevant, as I must follow controlling precedent. In *Hobby Lobby*, the Supreme Court stated that its decision does not provide a "shield" for employers "to escape legal sanction" by cloaking discrimination "as religious practice." 134 S.Ct. 2751, 2783 (2014). I am bound by *Hobby Lobby*, just like all Supreme Court precedent, and I will apply it faithfully.

3) What limits does the Constitution place on government funding or endorsement of religious activity?

Response: I have not had an opportunity to fully study this area of the law. If such questions are presented to me, I would conduct research and review the record so that I was fully informed of the precedent, the facts of the case, and the arguments of the parties. I would faithfully apply all precedent established in the Supreme Court and the Eighth Circuit.

4) During the hearing, I asked you about voter suppression laws. You said that you were not familiar with the topic and that you would have to study the case law. However, you did assert that voting is a fundamental right. Last year, one of your colleagues on the U.S. District Court for the District of North Dakota, Judge Daniel Hovland, struck down North Dakota's voter ID law for unconstitutionally burdening Native Americans' right to vote, despite the virtual non-existence of voter fraud in the state, a point the state itself conceded.

    a. Are you familiar with the case against North Dakota's voter ID law and have you read Judge Hovland's decision? If so, do you agree with his conclusions?

Response: I have not read Judge Hovland's opinion, nor the statute underlying the case. I am in no position to comment on his opinion.

b. Do you agree that voter ID laws that place a disproportionate burden on a minority group burden the fundamental right to vote you identified in your hearing? Do you agree that voter ID laws that are not justified by any evidence of voter fraud burden the fundamental right to vote?

Response: I have not had an opportunity to fully study the exact parameters of the Supreme Court's jurisprudence in this area. What I have read has led me to believe that the Supreme Court has recognized the fundamental nature of the right to vote. *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 561 (1964) ("Undoubtedly the right of suffrage is a fundamental matter in a free and democratic society."); *see also Goosby v. Osser*, 409 U.S. 512, 519–520 (1973); *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 670 (1966). I will faithfully apply Supreme Court and Eighth Circuit precedent articulating the proper standard of review for any claim that the right to vote has been infringed.

c. Do you agree that a law can burden the fundamental right to vote in effect, even if there is no evidence of intent?

Response: I previously ruled that a disparate impact violates the Voting Rights Act of 1965. *Spirit Lake Tribe v. Benson County, N.D.*, 2010 WL 4226614 (D.N.D. 2010). I have not had the opportunity to study other aspects of right to vote law. I will faithfully follow all controlling precedent of the Supreme Court and the Eighth Circuit.

d. If confirmed, will you uphold the fundamental right to vote against any voter suppression efforts?

Response: As a judge, I am bound by all controlling precedent. I will apply such precedent related to voting rights faithfully and to the best of my ability.

5) During your hearing, you indicated that you were uncomfortable with being required to impose mandatory minimum sentences, and that such sentences were an example of you following laws that don't reflect your views.

a. Why do you disagree with the imposition of mandatory minimum sentences? How do they diminish the powers traditionally reserved to a judge?

Response: I have served as a trial judge for over 23 years and have sentenced thousands of people. Each person who appeared before me was a unique individual with a personal history and characteristics that needed to be considered. Each crime committed arose out of a unique milieu of facts that also needed to be considered. I started my career as a judge in a system that allowed me to sentence nearly everyone based on those considerations within statutory provisions that included very few mandatory minimums. I was comfortable sentencing individuals within that broad discretion in a way that I believed would protect the public, restore the victim, and rehabilitate the defendant in the most efficient way possible. Mandatory minimum sentences create a different rubric for judges. In my time on the bench, I have observed that mandatory minimum sentences remove sentencing discretion from judges.

b. What role do personal views on laws play in judging? Do you believe they influence judicial decisions? Is there an advocacy role for judges, including on sentencing?

Response: As I indicated in my hearing testimony, judges should not have any politics, creed, or will when it comes to performing judicial business. As a judge, I am bound to follow the Constitution and laws, setting aside my personal views. A judge is allowed to advocate for reform of the law and legal practices under certain narrow circumstances set forth in Canon 4 of the Code of Conduct for Federal Judges.

6) Last month, the Supreme Court ruled that the President's travel ban executive order—the 90-day ban on travelers from Iran, Libya, Somalia, Sudan, Syria, and Yemen that is an attempt to fulfil the "Muslim ban" promise he made during his campaign—could remain in place pending argument before the Court, but that applicants who could show a "bona fide relationship" with a "person or entity" in the United States would be exempt. Recently, a federal judge in Hawaii, Derrick K. Watson, ruled that the Supreme Court's order should not prevent grandparents and other close relatives of residents from entering the U.S. Given your comments about your family's role as a constant motivating force in your life, do you agree with Judge Watson's ruling?

Response: It is my understanding that this case is still pending before the Supreme Court. Under Canon 3 of the Code of Conduct for United States Judges, "[a] judge should not make public comment on the merits of a matter pending or impending in any court." I am therefore unable to provide any comments.

7) During the hearing, you referenced the class you teach at the University of Jamestown—"Justice and Forgiveness." Your syllabus states that "in reality, there is no justice without forgiveness and a system that fails to provide a path to mercy tends toward tyranny." Given your views on justice, forgiveness, and mercy, what are your views on the ongoing mass deportations of law-abiding and contributing individuals who happen to be undocumented?

Response: Please see the response to Question 6 above.

8) You were cited in a 1998 book about Norwegian Americans called "The Promise Fulfilled" as having said that Scandinavians who appeared before you during your time on the North Dakota District Court did not commit violent crimes, although members of other ethnic groups did. The author expressed surprise that you would openly express such biased beliefs, and classified your remarks as relying on stereotypes and "exhibiting white class-based biases that are widely held."

a. Were you accurately cited in the book, and is this an accurate reflection of your views at the time? Of your views now?

Response: While I have a vague recollection of being interviewed by the author, I have no recollection of ever making such a statement. On its face, the comment is completely unfounded and does not represent a belief I have ever held. I believe that whatever I may have said was misunderstood by the author or taken out of context.

b. Do you think that people of Scandinavian descent are less likely to commit violent crimes? Do you think that people of any other national, ethnic, or racial origin are more or less likely to commit violent crimes?

Response: No. No.

c. Do you believe that biases characterizing white or Scandinavian people more favorably than non-white people are widely held, or were at the time at which you were interviewed for this book?

Response: No, I have never held such views. However, racial discrimination certainly exists in America today.

d. Have you taken any steps to ensure that your judging is not influenced by unconscious biases?

Response: I have attended seminars that dealt with implicit and subconscious bias. I have made efforts to conduct all my affairs with sensitivity toward minority rights of all kinds. I have been a judge for over two decades and believe I have a strong record of even-handedness and fairness to all persons who appear before me.

e. You spoke during your hearing about life experiences that give you empathy for defendants with addiction problems. Can you point to any life experiences that might give you empathy for members of minority groups?

Response: Confronting my alcoholism and coming to terms with the nature of addiction allowed me to come to understand the brokenness of all human beings. It helped me to see that each of us is formed by experiences that we have little control over and that the human condition is permeated by suffering and injustice. I came to know, in a profoundly personal way, that all people are worthy of love and respect—and that all have suffered because of the human capacity to be unjust with our peers. Oppression comes in many forms and perhaps the most pernicious form is racism. Racism is a great tragedy of American history and, while progress has been made, we still have a long way to go as a nation. I strive in my work as a judge to ensure that all persons are provided equal justice before the law.

9) In September 2016, you gave a speech at Minnesota State University Moorhead in which you argued that there was an assault on free speech on college campuses, and that it represented "a Constitutional crisis the likes of which we have not seen in this country since the Civil War."

a. Why did you choose that topic for your speech?

Response: I have given a series of Constitution Day lectures at Minnesota State Moorhead over the years. I do not recall why I chose the topic for my speech other than it built on the other themes I had developed over the years and the general topic was in the news.

b. What lead you to the conclusion that there is an assault on free speech on college campuses? Was it based on your own experience teaching or visiting campuses, and if so, do you have examples? Or was it more of a general impression based on news accounts?

Response: I do not recall what led me to pick the topic for my speech. My concern was that the free interchange of ideas—including unpopular ideas—is necessary in a free society.

c. What do you mean by a "Constitutional crisis"? Based on your remarks, is it accurate to say that you think that the "assault" on campus free speech represents a greater threat to the Constitution than did Jim Crow laws, the Sedition Act, Japanese internment, the Watergate cover-up, or any number of other events since the Civil War?

Response: The term "Constitutional crisis" was an improvident choice, and I would not make the same choice today. My goal in the speech was to cause the students and faculty to reflect on speech and its importance in a free society. Benjamin Franklin under his pseudonym as Silence Dogood said, "Without freedom of thought, there can be no such thing as wisdom, and no such thing as public liberty, without freedom of speech." Louis Brandeis said, "It is the function of speech to free men from the bondage of irrational fears." It was my purpose to encourage the attendees of the lecture to listen respectfully to persons who hold different views than they do. And, like Desmond Tutu famously said in a prayer, come to understand each other and help the mistaken among us to see that "Goodness is stronger than evil; Love is stronger than hate; Light is stronger than darkness; Life is stronger than death." I do not believe that campus free speech is a greater current threat to our Constitution than Jim Crow laws, the Sedition Act, Japanese internment, or any of the other things listed. But free speech is necessary to protect the weakest and most defenseless among us. The price we pay to protect the weak and defenseless is to put up with odious speech from time to time.

10) What is the appropriate level of scrutiny to apply to challenges to campaign contribution limits or bans?

Response: I have not had an opportunity to research this area of law and have no basis upon which to answer this question.

11) What remedies are available should the President or Executive Branch disregard a ruling of the Supreme Court or a lower federal court?

Response: I have never presided over a case where an executive branch employee or agency has refused to follow my orders. If such a case were to arise, I would thoroughly review all authorities and statutes relating to contempt and, after notice and an opportunity to be heard, impose such sanctions as are authorized by law and necessary to obtain compliance.

12) Do you believe that when analyzing a statute, and choosing to use the construction of original public meaning, such a choice reflects your values?

Response: I understand that a statute is to be given its plain meaning as understood by a reasonable person while applying all provided statutory definitions and any binding precedent within the jurisdiction. The judge's personal values should have no role to play in construction of a statute.