

State of Connecticut
GENERAL ASSEMBLY

Office Use Only
o Interim ● Session
M / Y Submitted: 5-1-10



JUDICIARY COMMITTEE

Appellate or Supreme Court Nomination Questionnaire

1. Full Name: Lubie Harper, Jr.
2. Home Address:
- Telephone: Fax:

3. Do you believe in judicial activism, judicial restraint, or in some other judicial philosophy?

I believe in judicial restraint because it respects the separation of powers doctrine. This philosophy serves only to restrain, not to interdict, the exercise of judicial power. My judicial philosophy embraces the belief that a judge should interpret and apply state statutes in a manner consistent with their legislative intent and case law in a manner consistent with the doctrine of stare decisis.

4. How do you feel about the statement that judges should interpret the Constitution to enforce the original intent of the drafters? Do you believe that the interpretation of the Constitution must evolve with history?

The statement that judges should interpret the Constitution to enforce the original intent of the drafters is unrealistic and fails to reflect the intent of the founding fathers of the Constitution. The Constitution is a "living" document and, therefore, the interpretation of the Constitution must evolve with history. When our founding fathers created the Constitution they realized that any document meant to frame a government needed flexibility. They wanted the Constitution to be able to stand for generation after generation. In recognizing this principle they incorporated two important features: (1) the Elastic Clause (Article I, Section 8, Clause 18 - "congress may pass all laws necessary and proper.") and (2) the Amendment process (Article V).

5. Would your personal beliefs interfere with your ability to apply the law fairly and in a neutral manner? For example, could you affirm a judgment that was in accordance with the Constitution and relevant statutes and might result in the death penalty, if you personally opposed the death penalty on religious or moral grounds? Could you preside over a case based on a constitutional amendment authorizing internment of foreign nationals from a particular country?

My personal beliefs would not interfere with my ability to apply the law fairly and in a neutral manner. With respect to the death penalty and the internment issue, I would base my decision on the applicable laws of our state and any constitutional amendments which might apply.

6. Do you believe the Connecticut Constitution provides the same rights and protections as the United States Constitution, greater rights and protections, or fewer? Do you believe states are free to develop constitutional rights and protections separate from federal guarantees? Would you make an independent analysis of a claim based on the state Constitution, or would you solely rely on United States Supreme Court precedent?

At a minimum, the Connecticut Constitution provides the same rights and protections as the United States Constitution and allows for greater rights and protections of its citizens, if desired. Independent analysis is allowed under the Connecticut Constitution and is required if a claim is based on the state Constitution.

7. Would you be able or willing to reverse a trial court decision if you thought it would result in freeing a defendant even if the case involved a particularly heinous crime and a retrial was unlikely?

Yes, provided the decision is supported by the correct application of the law.

8. In what types of situations should an appellate judge disqualify himself? Would you disqualify yourself from a case involving an issue about which you have very strong personal beliefs?

An appellate judge should disqualify himself in situations where his/her impartiality might reasonably be questioned. As to the second question, I would disqualify myself if my personal beliefs result in an appearance that would cause one to question the integrity of the decision.

9. For what types of constitutional or evidentiary errors do you think it is appropriate to overturn a trial court's conviction? Which rules of evidence or constitutional safeguards, if any, do you think are applied or interpreted too broadly so as to exclude probative evidence in criminal trials?

Any errors that affect the fairness of the proceeding should be considered as a basis to overturn a trial court's conviction. I am not aware of any particular rule of evidence or constitutional safeguards which have been applied or interpreted consistently that excludes probative evidence.

10. What values do you think the exclusionary rule serves in Fourth Amendment cases? Do you think it is effective in furthering these values? Is there a better way?

The exclusionary rule is a necessary restraint on police misconduct and an established basis for an individual's rights. Further, it is an effective way of maintaining judicial integrity. (Government must obey its own laws.) I am not aware of any better ways to accomplish the noted public policy objectives.

11. What do you think the functions of the Supreme and Appellate courts are? Do you think it is more important to apply the law or do justice?

The primary functions of both appeal courts are to review and decide claimed errors of law. It is more important to apply the law as written, and if there is an inequity in the law based on the court's interpretation of the law, the legislature can then address that issue.

12. Do you believe affirmative action is proper to remedy discrimination? Do you feel hiring quotas are a legitimate tool in implementing affirmative action?

I believe affirmative action is proper to remedy discrimination, however, I do not believe that quotas are a legitimate tool in implementing affirmative action because, by their nature, they do not take into account the individual's qualifications or capabilities.

13. Do you believe the balance may have begun to tip too far in favor of criminal defendants and against the ability of the police and prosecutors to protect society? How is society served by protecting the rights of criminal defendants?

There will always be questions concerning the proper balance in our criminal justice system. It is imperative that judges view an accused as an individual and not merely as part of larger considerations related to our criminal justice system.

14. How do you believe the balance should be struck between the rights of individuals to environmental and job safety regulations and the need of society for economic growth to help provide jobs?

This subject presents a very complex issue which needs to be studied fully and requires a careful review of all parties' rights and protections. The bottom line, however, is that the law in this area must be applied in such a way that no party is unduly harmed or deterred.

15. Do you believe that an Appellate or Supreme court judge should substitute his or her conclusions on issues of fact for the finding of the trial court? For example, would you substitute your findings for the trial court's findings in family matters, which are usually upheld on appeal?

No, it is not the role of either reviewing court to retry the facts or to substitute its view of the facts for that of the trial court. When reviewing factual determinations of the trial court, the role of the Appellate and Supreme court judge is to determine whether the findings of fact are clearly erroneous.

16. Philosophically, should property rights and personal liberties be entitled to similar constitutional protection?

Philosophically, personal rights seem to be entitled to greater constitutional protection, however, one can not minimize the importance of property and economic rights.

17. When you read a court opinion, what particular features do you look for in terms of judging its quality?

The thoroughness and clarity of the legal analysis and its application to the specific facts of the case.

18. In trying to reach a decision, would you follow through on a principle you strongly believed in or would you be willing to compromise in order to build a consensus?

I am open to compromise, provided that the court's analysis and the final result reflected a legitimate and reasonable interpretation of the law governing the issue under consideration.

19. What attributes do you believe an appellate judge should have, in order of priority?

Fairness and impartiality; the ability to think logically and to analyze issues; the ability to write clearly and understandably; a general knowledge and understanding of the law; the ability to make difficult decisions in a timely manner; and, a depth and breadth of life experiences to draw upon.

20. What United States or Connecticut Supreme Court justice from current or recent courts do you admire the most and why?

Last Name: Harper

Thurgood Marshall, the nation's first African-American Supreme Court justice. He served on the court for 24 years. Justice Marshall was a staunch advocate for integration and equal rights under the law. He upheld constitutional protections and assured that those protections were afforded equally.

Certification

I, hereby certify that the information contained in this questionnaire is true to best of my knowledge.

Signature: 

Date: 2/28/11