

Responses of Nannette Jolivette Brown
Nominee to be United States District Judge for the Eastern District of Louisiana
to the Written Questions of Senator Chuck Grassley

1. At your hearing I asked you what you meant when you said environmental racism is “just another symptom [of general racism]...we’re not going to get environmental justice in this country until we get full social and economic justice.” Gyan, Joe Jr., “*Environmental Racism*” *Global, Experts Believe*, The Advocate, July 31, 2002. At your hearing, it was unclear whether or not you believed you made this statement.

- a. At your hearing you declined to answer how you defined the term ‘environmental justice.’ You talked about how other organizations use the term, but I still would like for you to provide your definition. Please respond.

Response: When I have written about the term “environmental justice,” I have referred to the concept as articulated in Executive Order 12898, dated February 11, 1994, entitled, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, executed by President William J. Clinton. See, *Diversity Refined: Access to Justice: The Many Faces of Environmental Justice: Which One Speaks the Truth?*, 56 La. B. J. 420, Apr./May 2009. The Order states in pertinent part, “To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.”

If I am confirmed as a district court judge, I would faithfully follow the precedence of the Supreme Court and the Court of Appeals for the Fifth Circuit regarding matters involving environmental law.

- b. Is the above quote correctly attributed to you? At your hearing you were ambiguous about whether or not it was your statement. Please give me a clear answer as to whether or not you made the statement.

Response: I apologize if I was not clear; however, I do not recall if I made that statement. I do not believe I attended the panel during the International Association of Official Human Rights Agencies’ annual meeting that was the subject of Mr. Gyan’s article, and while I may have been interviewed as part of his reporting, the term “environmental racism” is not one which I use or of which I have a clear understanding. Indeed, the phrase “environmental racism” itself is not directly attributable to me, and neither was the phrase “of racism in general.”

However, I am aware that it is often used interchangeably with the term “environmental justice,” and that may have been the reporter’s intent. As noted in 1(a), my understanding of “environmental justice” is as it is described in Executive Order 12898, and addresses the “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations,” and which can also be addressed through improving the social and economic conditions of these populations.

- c. Your answer to my question as to what was meant by the above statement during the hearing was a bit unclear. If you made the statement, what did you mean by it?**

Response: Please see above.

- d. Do you believe that “environmental racism” exists?**

Response: Please see above.

- e. If so, please explain fully what you mean by the term?**

Response: Please see above.

- 2. At your hearing I asked the following question, which you declined to answer. I am asking the question again, and would like you to respond in the context of explaining your writings, not how you would rule as a judge, if confirmed.**

- a. Do you believe economic considerations, such as increased job opportunities for residents, should be taken into account in litigation that seeks to prevent an “undesirable” industry from being located in a poor community?**

Response: No; not unless specifically directed to do so by statute or Supreme Court or Appellate Court precedent.

- 3. Over the years, environmental groups have sought to use the courts as way to impose regulations of greenhouse gases. For example, in *Massachusetts v. Environmental Protection Agency*, several states challenged the Environmental Protection Agency’s decision not to regulate greenhouse gases. Recently, the Supreme Court heard oral arguments in *American Electric Power Co. v. Connecticut*, in which several states and private parties seek emissions caps on utilities for their alleged contribution to global climate change. These cases have contributed to concerns that the Judiciary is overstepping its bounds by intruding on the policy-making authority of the legislative and executive branches.**

- a. Do you believe these concerns are valid? Why or why not?**

Response: As a district court judge my beliefs would be irrelevant and inapplicable. Should I be confirmed, I will apply the applicable precedent to the facts before me and only consider the issues properly before me. Considering that 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, if I am confirmed, I am committed to following the precedents of higher courts faithfully and giving them full force and effect, including those mentioned above.

- b. Do you agree that some issues, no matter how pressing or critical one may view them to be, are outside the purview of the courts?**

Response: Yes.

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

Response: The most important attribute of a judge is integrity, in my opinion, because integrity implies honesty, fairness, ethics and a commitment to adhere to the principles they are sworn to uphold. I believe I possess these attributes.

- 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 general, I believe a judge should demonstrate calm, even temperament. Temperament, as I apply it here, describes a manner of thinking, behaving and reacting. A judge's thinking should be clear, informed, objective and impartial. A judge should behave in a way that is professional, respectful and he or she should treat all litigants and participants, as well as his or her staff and court staff in general, with respect and dignity and always be prepared. Finally, a judge should preside in a manner that is calm, measured and even tempered. I believe 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. 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 dispositively concluded 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, where there is no controlling precedent that dispositively concluded an issue with which I was presented, I would first examine the facts of the case in accordance with the Constitution and any statute that could in any way reflect on the issue of first impression. I would also look at prior rulings of the Supreme Court and Appellate Courts to see if analogies could be made from those cases to the case of first impression.

- 8. At your hearing, you were asked about the use of precedent and the role of courts in interpreting laws. You mentioned factors you would use. Is it ever appropriate for a judge to use foreign law in determining the meaning or application of U.S. law?**

Response: No.

- 9. 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 own judgment of the merits, or your best judgment of the merits?**

Response: I would apply the decision of the Supreme Court or the Court of Appeals and not use my own judgment of the merits.

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

Response: When Congress exceeds its authority, it is appropriate for federal courts to strike down an act of Congress.

- 11. 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: If confirmed, I would manage my caseload by utilizing a scheduling order system to keep all of the cases before me on track to be resolved in a timely manner. I would also utilize the alternative resolution processes incorporated into the Eastern District of Louisiana's scheduling orders, such as mediation before trial and encourage the parties to get together early in the litigation to mediate, resolve or eliminate issues they can compromise on early.

- 12. 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 that judges have a role in controlling the pace and conduct of litigation and, if confirmed, I would take the following steps to control my docket: As mentioned above, I would utilize a scheduling order system to keep all of the cases before me on track to be resolved in a timely manner; I would be prepared to rule, where appropriate, on all matters when scheduled to do so, whether oral argument is granted or not; I would adhere to a daily schedule beginning all matters on time and moving matters

along with respect to all parties interests. I would make myself available for status conferences and even schedule status conferences regularly in cases that are particularly adversarial, to offer assistance to parties who find themselves bogged down with procedural or scheduling disputes that prevent the progress of the litigation.

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

Response: I received the questions on the evening of May 11, 2011. I prepared responses on May 12, 2011. I consulted with representatives of the Department of Justice regarding my responses, and then finalized them before authorizing their transmittal to the Committee.

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

Response: Yes.