John Robert Blakey
Nominee, United States District Court for the Northern District of Illinois
Responses to Questions for the Record
From Senator Chuck Grassley

1. You have criticized the 5th Circuit's decision in *Heller Financial v. Grammco Computer Sales,* a case involving RICO. This Circuit would not be binding precedent over you, if you were confirmed.

a. Can you describe for the Committee the general facts and holding in this case and explain why you consider this to be a bad ruling?

Response: The *Heller Financial* case was a civil RICO matter involving a defrauded bank victimized by commercial bribery and a mail fraud scheme. On appeal, the jury verdict and trial court's judgment in favor of the bank were reversed in part by a Fifth Circuit panel, because it found that the bribery and fraud predicate offenses were not sufficiently "interrelated" to each other for the purposes of the pattern element of the federal RICO statute. In 1996, while still in private civil practice, I wrote a short legal criticism of the panel opinion for the Civil RICO Report (April 1996), because I believed that the *Heller Financial* panel failed to consider and follow applicable Supreme Court precedent regarding the proper two-prong "relatedness" analysis for addressing a RICO pattern. *See H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 238 (1989) (For the purpose of a RICO pattern, it "is not the number of predicates but the relationship that they bear to each other or to some external organizing principle that renders them 'ordered' or 'arranged.'"). Under controlling case law in the Supreme Court and the Courts of Appeals (including other Fifth Circuit opinions), the relatedness of a RICO pattern of predicate activity can be either "horizontally" interrelated among the acts themselves, or "vertically" related to each other through the affairs of the same enterprise. I believe the *Heller Financial* panel failed to properly consider and address the second prong of the requisite "relatedness" test.

b. How would you approach RICO cases, if confirmed?

Response: If confirmed, I would approach cases involving the RICO statute in the same manner as any other federal statute, that is, I would faithfully apply the plain text enacted by Congress and do so based upon the controlling precedent of the Supreme Court and the Seventh Circuit.

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

Response: A strong commitment to the rule of law and public service remains the most important attribute of a judge. Through this commitment, the court must maintain the highest standards of integrity, independence, fairness, hard-work, expertise, professionalism, and judicial restraint within our constitutional system. As evidenced by my record, I possess this commitment in full measure.

3. 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 order to earn and keep the public trust, and fulfill the important responsibilities of the court, a federal judge must possess a temperament of patience, respect, impartiality and humility. Such qualities not only support the rule of law, but also promote the judicial listening required to render thoughtful opinions in each case. As demonstrated by my background and experience, I more than meet this standard.

4. 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: The rule of law requires lower courts to adhere to the precedent of higher courts in order for the civil and criminal justice systems to function. If confirmed, I would faithfully follow the rulings of higher courts and give them full force and effect. Any personal agreement or disagreement that I might have with such precedents would be irrelevant, and thus, it would never play any part in my decision-making process as a district court judge.

5. 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 each case of first impression regarding a question of law, the starting point for the court in the absence of controlling precedent is to apply the plain meaning of the operative legal text whether constitutional, statutory or regulatory. If the plain meaning is not clear, then the court should apply the text in light of the well-established canons of statutory construction and any analogous case law from the Supreme Court and the relevant Circuit Court of Appeals (in my case the Seventh Circuit) that has interpreted similar legal texts in a similar context, as well as any applicable persuasive authority that may prove helpful in giving a proper reading of the law as enacted.

6. 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: As a district court judge, I would faithfully apply all binding precedent without regard for any personal belief that I might possess that the Supreme Court or the Seventh Circuit may have erred in rendering a decision.

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

Response: Every statute enacted by Congress retains a judicial presumption of constitutionality. As such, the federal courts may declare a statute unconstitutional in light of precedent and the Constitution, only if the constitutional question cannot be avoided within the case or controversy properly before the court, and the statute itself cannot be interpreted in a constitutional manner. If, under these limited circumstances, the federal court finds that a plain showing has been made that Congress has exceeded its constitutional bounds, then the court must declare the statute unconstitutional either on its face, or as applied, based upon the facts in the case.

8. 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. If confirmed, I would follow binding precedent from the Supreme Court and the Seventh Circuit, and would not rely on the views of the world community or foreign law in determining the meaning of the Constitution.

9. 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 give my personal assurance to the Committee and the assurance of my years of experience adhering to the rule of law and the highest standards of professionalism (as a state and federal prosecutor, civil litigant and federal law clerk), that if confirmed, I would issue decisions well-grounded in precedent and the text of law, rather than in any political ideology or motivation.

10. 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: Like political ideology or motivation, personal views cannot form any legitimate basis for any ruling of the court. Throughout my career, I have stood committed to the rule of law and, if confirmed, I would continue to do so as a district court judge. Under the rule of law, I would treat each litigant with respect and fairness, and impartially apply the law and precedent to the facts in each case without regard to any personal views that I might possess.

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

Response: If confirmed, I would continue to employ the strong work ethic that I have possessed during my career, make myself available for the parties whenever needed, and adopt internal practices to keep chambers running professionally, efficiently, and fairly. These practices would include specific case management orders, status conferences, evidentiary hearings, and clear rulings to resolve disputes as they arise. I would also use

technology effectively to track pending matters, review the factual record, and ascertain the controlling legal authority in each case.

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: In order to avoid unnecessary costs or delay, judges need to play an active role in the pace and conduct of both criminal and civil litigation. If confirmed, I would do so as a district court judge in the interests of justice. As to civil cases, I would take proactive steps to control my docket, including setting an early status conference in the proceedings to engage the attorneys and enable them to define a reasonable plan and timetable for discovery in light of the nature of the case. Thereafter, I would hold the attorneys accountable for implementing that plan with periodic status hearings, and through this process, identify the key factual and legal issues for a proper and timely resolution of the matter by way of settlement, dispositive motion or trial. As part of this schedule, I would rule on motions in an efficient manner, and hold firm trial dates and effective pretrial conferences as needed. In appropriate cases, I would also take advantage of alternate dispute resolution measures such as court-ordered mediation. As to criminal cases, I would take all necessary steps to maintain the criminal docket consistent with due process and the Speedy Trial Act, including setting and keeping reasonable schedules for the completion of discovery, pretrial motion practice, trial and sentencing.

13. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. 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. What do you expect to be most difficult part of this transition for you?

Response: Over the course of my legal career (including my two years as a federal law clerk), I have seen first-hand the importance of judges working within the proper judicial role in our nation's justice system. If confirmed, I would no longer serve as an advocate of the public who administers the law, but rather as an impartial servant of law itself. In this role, I would fairly manage the flow of evidence at trial without any bias for either party, and when called upon in appropriate cases, I would make factual determinations myself based upon the record with an open mind. Thereafter, I would apply the controlling law to the case by adhering to the plain language of the operative statutory text and the applicable higher court precedent.

I fully realize that the transition from advocate to judge is challenging for any attorney, especially in learning new areas of substantive law, but given my prior legal experience, I am confident that I would make this transition smoothly, and I would often seek the guidance of my more experienced judicial colleagues during this process. I would also remain mindful of fact that, as a judge, I would no longer build the case myself as a litigant. Instead, the case would and must arise from the facts and parties themselves working through the adversarial system in my courtroom.

14. 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 do not know the context or exact intentions of the President's statement, but to the degree his remarks about "empathy" refer to the necessity of a court to possess a deep understanding of the facts and litigants in each case, then those comments remain consistent with the traditional role of the courts in applying the law, including the provisions of Title 18, United States Code, Section 3553 and the U.S. Sentencing Guidelines. To the degree the remarks may reflect any emotional bias on behalf of the courts either for or against any party, however, they would not reflect the rule of law.

15. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

a. In the penultimate sentence of the Court's opinion, Justice Kennedy wrote, "This opinion and its holding are confined to those lawful marriages."[1]

i. Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.

Response: Yes, this statement is a part of the holding in *Windsor*.

ii. What is your understanding of the set of marriages to which Justice Kennedy refers when he writes "lawful marriages"?

Response: Justice Kennedy is referring to the set of marriages recognized as lawful under state law.

iii. Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?

Response: Yes.

iv. Are you committed to upholding this precedent?

Response: Yes.

[1] *United States v. Windsor*, 133 S.Ct. 2675 at 2696.

b. Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, "By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States."[2]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes. I understand this portion to be binding precedent entitled to full force and effect by the lower courts.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes. I will commit to giving this portion of the Court's opinion full force and effect.

c. Justice Kennedy also wrote, "The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens."[3]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes. I understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes. I will commit to giving this portion of the Court's opinion full force and effect.

d. Justice Kennedy wrote, "The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.'"[4]

[2] *Id.* 2689-2690.
[3] *Id.* 2691.
[4] *Id.* (internal citations omitted).

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes. I understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes. I will commit to giving this portion of the Court's opinion full force and effect.

e. Justice Kennedy wrote, "The significance of state responsibilities for the definition and regulation of marriage dates to the Nation's beginning; for 'when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.'"[5]

i. Do you understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.

Response: Yes. I understand this portion of the Court's opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts.

ii. Will you commit to give this portion of the Court's opinion full force and effect?

Response: Yes. I will commit to giving this portion of the Court's opinion full force and effect.

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications**.

Response: No, I have not.

[5] *Id.* (internal citations omitted).

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No, I am not.

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

Response: On September 16, 2014, I received the Committee's written questions for the record. After reading through the questions and reviewing the applicable case law, I drafted answers to each question and sent them to representatives from the Department of Justice for review. Thereafter, I finalized my responses and authorized the Department of Justice to send my final answers to the Committee on my behalf.

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

Response: Yes.

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Nominee, United States District Court for the Northern District of Illinois
Responses to Questions for the Record
From Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: If I am fortunate enough to be confirmed, my judicial philosophy would be to fairly and impartially apply the law to the facts presented in each case in a timely and professional manner. While I am not sufficiently versed in each of the individual judicial philosophies of the various Supreme Court Justices from the Warren, Burger and Rehnquist Courts to properly identify the one most analogous to mine, I believe that the Supreme Court Justices, as a whole, would endorse the judicial approach noted above.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If confirmed, I would interpret the Constitution as set forth by binding precedent. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court adopted an "original public meaning" interpretation of the Second Amendment of the Constitution. If confirmed, I would faithfully adhere to this ruling and all other precedent of the Supreme Court and the Court of Appeals for the Seventh Circuit.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a member of the District Court for the Northern District of Illinois, I would be bound to follow the precedent of the Supreme Court and the Seventh Circuit, and thus I could not, and would not, overrule prior precedent.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If confirmed, I would follow and faithfully apply the Supreme Court's ruling in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), and all other binding precedent placing constitutional limits on federal power, and do so without regard to whether or not I personally agreed or disagreed with such precedent.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court identified three categories of activity that the Congress may regulate under the Commerce Clause and the Necessary and Proper Clause: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) the activities substantially affecting interstate commerce. *See also Gonzales v. Raich*, 545 U.S. 1 (2005); *United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would follow these decisions and all other precedent from the Supreme Court and Seventh Circuit interpreting the constitutional scope of Congressional power.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: As the Supreme Court held in *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)), the President's authority to issue executive orders or engage in other executive actions must stem from an act of Congress or from the Constitution itself. If confirmed, I would apply the requisite "tripartite" analysis set forth in this case, and all other binding precedent.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: Under Supreme Court precedent, a right is "fundamental" for the purposes of the substantive due process doctrine if, viewed objectively, it is "deeply rooted in this Nation's history and tradition" and is "implicit in the concept of ordered liberty such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (internal citations and quotations omitted). If confirmed, I would follow this case, and all other controlling case law.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: As set forth by binding Supreme Court precedent, certain classifications are subjected to heightened levels of scrutiny under the Equal Protection Clause if they are based upon race, religion, national origin, gender, or if they burden a fundamental constitutional right. *See City of Cleburne v. Cleburne Living Center*, 472 U.S. 432 (1995). If I am confirmed, I would faithfully apply this case law, and all other precedent of the Supreme Court and the Seventh Circuit.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I do not have any personal expectations regarding the future use of racial preferences in public higher education and, if confirmed, I would apply all Supreme Court and Seventh Circuit precedent in any case based upon the facts presented.