

Responses of Amy B. Jackson
Nominee to be United States District Judge for the District of Columbia
to the Written Questions of Senator Jeff Sessions

1. **During the 2004 presidential election, you co-authored an article entitled, “[Question]: Who’s Better for Lawyers? [Answer]: John Kerry,” published in the *Legal Times*.**

- a. **Can you explain what you meant when you said that President Bush had no commitment to the law and that he “view[ed] the legal profession with contempt”?**

Response: In retrospect, the language of the article was too harsh. It was meant to suggest that the courts should play a role in the resolution of issues such as those ultimately addressed in *Haamdi v. Rumsfeld*, 542 U.S. 507 (2004) and *Boumediene v. Bush*, 553 U.S. 723 (2008). I think that the tone of the article can be attributed to the fact that it was a political piece, written on the eve of a close election, and also to the fact that it was the product of joint authorship. The piece stands out among my thirty years’ worth of writings and public statements not only because of its tone, but because it was the only political piece that I played any role in writing. When one gets past the rhetoric of the article, I believe that at bottom it expresses the view that a President should appoint judges who will follow the rule of law.

- b. **Do you still stand by your statement that “the Bush presidency was secured through the legal process rather than the electoral process”?**

Response: The electoral process and the legal process were both involved in the election of President Bush.

- c. **You said of President Bush’s appointment of John Ashcroft as Attorney General:**

“When Bush selected his attorney general, he chose not a distinguished leader of the bar with the stature and experience appropriate to the position, but an undistinguished politician who could not win against a deceased opponent. The choice of John Ashcroft . . . was a stick in the eye of the American electorate”

Do you still stand by that statement?

Response: No. I have a great deal of respect for the manner in which Attorney General Ashcroft sought to perform his duties during a very difficult period for the country.

- d. **You also wrote that since the terror attacks of September 11th, “the [Bush] administration has most clearly engaged in a brazen disregard of the law . . . [pursuing] policies that condoned the torture of enemy prisoners in violation of international treaties.” You also blamed Bush Administration policies for “Muslim hatred of the United States.” Do you still stand by those statements?**

Response: I did not and I do not blame the Bush Administration for the criminal actions of terrorists who target innocent civilians. At the time of the article, I was troubled by reports of torture of prisoners held by the United States, and I was impressed by statements by Sen. John McCain, Sen. Lindsay Graham, and others that such tactics were not consistent with American values and that they could ultimately be ineffective or counter-productive.

- e. **Do you still believe that the recess appointments of Judges Pickering and Pryor, and the elevation of Judge Bybee, were a “circumvention of the democratic process”?**

Response: I have a great deal of respect for the Senate’s role in the advice and consent process, and I acknowledge that recess appointments are fully constitutional.

2. **Under the Supreme Court’s decision in *United States v. Booker*, the federal sentencing guidelines are now advisory, rather than mandatory.**

- a. **If confirmed, how much deference will you afford the Sentencing Guidelines?**

Response: If I am confirmed, the Guidelines will assist me in achieving the important goals of uniformity and predictability in sentencing. Under 18 U.S.C. §3553 and Supreme court precedent, including *Rita v. United States*, 551 U.S. 338 (2007), the Guidelines serve as an important benchmark and the starting point for the sentencing determination. If confirmed, I would look to the Guidelines in accordance with the sentencing statute and the relevant Supreme Court precedents.

- b. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

Response: Yes.

- c. **Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?**

Response: A sentence should be based upon a consideration of all of the factors set forth in 18 U.S.C. §3553, including proper consideration of the applicable Guideline range in accordance with the Supreme Court’s directives. As the

Supreme Court has held, any variance from the applicable Guideline range must be supported by clearly stated reasons.

3. **When Justice Stevens announced his retirement, the President said that he would select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.”**

- a. **Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?**

Response: Judges should base their decisions solely on the law and facts.

- b. **Do you believe a judge should consider his or her own values or policy preferences in determining what the law means?**

Response: No.

- c. **During her confirmation hearings, Justice Sotomayor rejected President Obama’s so-called “empathy standard” stating, “We apply the law to facts. We don’t apply feelings to facts.” Do you agree with Justice Sotomayor?**

Response: Yes.

4. **Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.**

Response: In *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), and *McDonald v. City of Chicago, Illinois*, 130 S. Ct. 3020 (2010), the Supreme Court held that the Second Amendment confers an individual right.

- a. **What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?**

Response: The Supreme Court has indicated that it should be a higher level of scrutiny than rational basis scrutiny. See *District of Columbia v. Heller*, 128 S. Ct. 2783, 2817 n. 27 (2008).

5. **What is your view of the role of a judge?**

Response: The role of a District Court judge is to apply the law set forth in the Constitution, statutes, and Supreme Court and appellate court precedent to the particular facts of each case in a fair and impartial fashion. When ruling on the legal questions presented to the court for decision, a judge has the responsibility to decide on a timely basis and to articulate the reasons for the decision with clarity. A District judge presides over trials, ruling on evidentiary questions and instructing the jury as to the law to be applied, and a judge can serve as the finder of facts

during motions and bench trials. It is the role of a judge to perform all of these tasks with objectivity, intellectual honesty, appropriate temperament, efficiency, sound judgment, and clear reasoning.

- 6. Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.**

Response: The Supreme Court has held that the death penalty comports with the Eighth Amendment except in certain specific circumstances.

- 7. Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.**

Response: Congress has determined that certain federal crimes should be punishable by the death penalty, and the Supreme Court has held that the death penalty comports with the Eighth Amendment. If confirmed as a District Court judge, I would be bound by federal law and Supreme Court precedent.

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

Response: I received the questions from the Department of Justice Office of Legal Policy on Wednesday, September 22, 2010, and carefully drafted answers to them myself. I reviewed those answers with representatives of the Department of Justice and requested that they be submitted to the Committee.

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

Response: Yes.