

**Responses of Michael A. Shipp**  
**Nominee to be United States District Judge for the District of New Jersey**  
**to the Written Questions of Senator Chuck Grassley**

- 1. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor a little guy over a big guy?**

Response: It is not the role of a judge to favor a little guy over a big guy. A judge should treat all litigants impartially, regardless of political beliefs, racial or ethnic backgrounds or status as little guy or big guy. A judge should base all decisions exclusively on the law. If confirmed as a district judge, I would treat all parties who come before me fairly and impartially, regardless of status.

- a. At Justice Roberts' confirmation hearing he addressed this issue by saying that "If the Constitution says that the little guy should win, the little guy's going to win in court before me. But if the Constitution says that the big guy should win, well, then the big guy's going to win." Do you agree with Justice Roberts that the Constitution and the rule of law should always dictate who wins or loses?**

Response: Yes, I agree with the statement made by Chief Justice Roberts. A judge's decision should always be rooted in the law.

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

Response: The most important attribute of a judge is the ability to be impartial, evenhanded and fair. A judge must remain impartial and treat all litigants with respect. As a magistrate judge for the past five years, I have demonstrated that I possess this attribute.

- 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: The elements of judicial temperament that I consider most important are fairness, impartiality, respectfulness, and patience. I believe that I have demonstrated that I have met these standards as a magistrate judge, and I would continue to meet these standards if confirmed as a district judge.

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. 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, I am committed to following the precedents of the Supreme Court and the Court of Appeals for the Third Circuit. If confirmed as a district judge, I would give full force and effect to their decisions and refrain from interjecting my personal beliefs when evaluating any matter before the Court.

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: If confirmed as a district judge and faced with an issue of first impression, I would first look to whether the issue to be resolved arose from the application or interpretation of a statute. If so, I would examine the plain language of the provision of the statute. If the statute was ambiguous, I would then consider its legislative history. If the issue of first impression did not arise from the application or interpretation of a statute, I would look first and foremost to analogous Supreme Court and Third Circuit precedent. If neither Supreme Court nor Third Circuit cases addressed the issue, I would review the relevant decisions of courts of appeal outside the Third Circuit, and of other district courts, for guiding authority.

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: If confirmed as a district judge, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals in order to ensure certainty and stability within the judicial system. I would be bound to adhere to such precedent without regard for my own judgment of the merits or my personal beliefs.

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

Response: Congressional statutes are presumptively valid. In considering a constitutional challenge to a Congressional statute, a judge must decide whether Congress has exceeded its constitutional authority in enacting that statute, as well as determine whether the statute violates the Constitution.

- 8. 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: As a magistrate judge for the last five years, I am familiar with the caseload in our federal courts and have confronted the pressures of managing a heavy docket. If confirmed, I would analyze the docket and make a determination as to which cases are ripe for dispositive consideration. Further, I would continue my practice of encouraging early settlement discussions and would work to ensure that the cases before me proceed in accordance with a timely and efficient scheduling order.

- 9. 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 judges have a role in controlling the pace and conduct of litigation, while assuring each litigant's right to have his or her matter efficiently and fairly managed by the court. Following this premise, I would set reasonable, but firm scheduling deadlines, promptly decide motions, and facilitate early resolution through settlement discussions. With respect to conduct, judges must lead by example from the bench and demonstrate patience, attentiveness, and humility.

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

Response: I received and reviewed the questions on March 21, 2012 and prepared responses on March 22, 2012. I then reviewed my responses with representatives of the Department of Justice, finalized my responses and authorized transmittal to the Committee.

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

Response: Yes.