

Responses of Jesse M. Furman
Nominee to be United States District Judge for the Southern District of New York
to the Written Questions of Senator Chuck Grassley

- 1. At your hearing, Senator Kyl asked you about your article on President George H.W. Bush. You explained to Senator Kyl, “[T]he word sophomoric comes to mind and not merely because I was a sophomore. That article was intended to be tongue-in-cheek. It was an attempt at political humor. . . . I can assure you that, sitting here before you today, it does not characterize who I am. . . . I think you would find that I am known for treating people with respect that I did not show President Bush in that article and I apologize for that.” While I appreciate the fact that you wrote the article when you were young and that you now apologize for it, I was somewhat surprised that you described the article as “an attempt at political humor.” I recognize that sometimes the intent of the author is not evident by the text of an article. But as I read it, the article appeared to be entirely serious. Do you stand by your characterization that this article was “intended to be tongue-in-cheek” and “an attempt at political humor”?**

Response: As I stated at the hearing, the article was intended to be tongue-in-cheek and an attempt at political humor, but I acknowledge it may have been a failed and inadvisable attempt. Moreover, in saying that it was intended to be tongue-in-cheek, I did not, and do not, mean to excuse or minimize the disrespect I showed President Bush, for whom I have the utmost respect. As I told Senator Kyl at the hearing, the article was sophomoric and disrespectful. I can assure the Committee that I would never write such an article today.

- 2. You served as Treasurer of The Furman Foundation, a family foundation. This Foundation has donated money to a number of liberal organizations and causes, such as the Alliance for Justice, Media Matters, and People for the American Way. While there is nothing wrong with that, it may concern future litigants, should you be confirmed.**
 - a. Did you have any decision-making authority regarding where or to whom the Foundation donated money?**

Response: As Treasurer of the Furman Foundation from 2000 to 2008, I did not have any decision-making authority regarding where or to whom the Foundation donated money. The Foundation was established and funded entirely by my mother, and she exercised exclusive authority over decisions about where and to whom the Foundation donated money.

- b. What assurances can you provide both future litigants and the Committee that your decisions as a federal district court judge will be rooted in the law and not in a personal bias for one group over another?**

Response: Throughout my legal career – as a government lawyer in both Democratic and Republican Administrations; as a lawyer in private practice; and as a law clerk to two judges appointed by Republican Presidents and one judge appointed by a Democratic President – I have endeavored to interpret and apply the law faithfully and to treat all parties fairly, without regard for their political beliefs, economic condition, or social status. I believe that record makes clear that, if confirmed as a district judge, my decisions would be rooted exclusively in the law and that I would treat all parties before the Court fairly.

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

Response: I believe that the most important attribute of a judge is the ability to fairly and impartially find facts and then faithfully apply the law to those facts, with respect for the rule of law and without fear or favor for a particular party or outcome. I believe that I possess that attribute.

4. 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: I believe that the appropriate temperament of a judge includes the following important elements: integrity, fairness, modesty, even-handedness, open-mindedness, patience, adherence to the rule of law, and respect for all parties appearing before the Court. I believe that I meet that standard.

5. 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.

6. 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: If confirmed as a district judge and presented with an issue of first impression, I would begin with the text of the relevant statute or other legal provision. I would also look to decisions of the Supreme Court and the Second Circuit in closely related or analogous areas of law or, if appropriate, to persuasive authorities from other Courts of Appeals or District Courts.

- 7. 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: If confirmed as a district judge, I would faithfully apply any relevant Supreme Court or Second Circuit precedent, without regard for my own judgment or views of the precedent.

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

Response: In my view, it is appropriate for a federal court to declare a statute enacted by Congress unconstitutional if Congress has exceeded its constitutional authority or has enacted a statute in contravention of a constitutional provision. If confirmed as a district judge, I would faithfully apply any applicable precedents of the Supreme Court and the Second Circuit in evaluating whether Congress had done so.

- 9. 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 as a district judge, I would establish and publicize rules for litigants modeled on the most effective rules used by other judges in the Southern District of New York in an effort to provide clear guidance about my expectations for managing cases. Among other things, I would set clear deadlines, including trial dates, as early as possible and I would make clear to litigants that I expect them to meet those deadlines absent good cause. In addition, I would monitor my docket closely; encourage mediation or settlement when possible; make productive use of magistrate judges when appropriate; and strive to decide all matters promptly, consistent with fair and reasoned analysis.

- 10. 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 litigants – and the public at large – are entitled to the fair and efficient resolution of cases and disputes and that judges play a crucial role in accomplishing that goal by controlling the pace and conduct of litigation. If confirmed as a district judge, I would take the steps described in my response to Question 9 to control my docket.

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

Response: I received these questions on August 3, 2011. Over the course of the next day, I drafted responses to the questions. I then discussed my responses with an official at the Department of Justice, after which I finalized my responses. I then authorized the Department of Justice to transmit my final responses to the Committee.

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

Response: Yes.

Responses of Jesse M. Furman
Nominee to be United States District Judge for the Southern District of New York
to the Written Questions of Senator Amy Klobuchar

- 1. If you had to describe it, how would you characterize your judicial philosophy – and how do you see the role of the judge in our constitutional system?**

Response: In my view, judges play a narrow, but important role in our constitutional system, adjudicating disputes between parties based on a faithful application of the law to the facts. Consistent with that, I would characterize my judicial philosophy as adherence to the rule of law – specifically, the proposition that a judge must faithfully apply the law, whether found in the Constitution, statutes, or binding precedent, to the facts; and the notion that a judge should decide only the case and controversy before the Court.

- 2. As the one undemocratic branch, the courts have a special responsibility to make sure they are available to those Americans most in need of the courts to protect their rights. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: All parties are entitled to equal justice under law, without regard for their political beliefs, economic condition, or social status. I believe that my career in the law – especially my career as a federal prosecutor – demonstrates clearly my commitment to that principle. Throughout my career, I have endeavored to treat everyone – including judges, colleagues, opposing counsel, witnesses, victims, and defendants – with equal dignity and respect and, if confirmed as a district judge, I would continue to do so.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court?**

Response: In my opinion, judges should be strongly bound by the doctrine of stare decisis, as it is a foundation of the rule of law. I believe that stare decisis is an important principle for all judges, but it is especially important for district judges, who are bound by the decisions of the Supreme Court and their relevant Court of Appeals.