

Responses of John Z. Lee
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Chuck Grassley

1. In *Taylor Bean & Whitaker Mortgage Corp. v. Cebulak*, the judge dismissed a myriad of civil RICO claims you filed on behalf of your client, saying the complaint contained a “glaring deficiency” and citing Plaintiff’s failure “to properly plead.” You were asked about this at your hearing, but your reply did not address my concerns.

a. Your response indicated you and your client believed you had a good-faith basis to state a RICO claim. Why did the judge describe this as a “glaring deficiency”? Do you disagree with the judge’s determination and dismissal? Did you appeal that decision?

Response: In its opinion, the court held that the facts as alleged in the complaint were insufficient to satisfy the “continuity plus requirement” under civil RICO. More specifically, although it recognized that the Seventh Circuit had not established a per se durational requirement under RICO, the court found that a duration of less than two years between the first and final predicate acts was insufficient to establish the element of continuity under the closed-ended analysis of the “continuity plus requirement.”

If I am fortunate enough to be confirmed, I may be asked to decide a similar question in a future case. Accordingly, I do not believe it would be appropriate for me to state my agreement or disagreement with the court’s determination.

I would like to add, however, that when we filed the complaint on behalf of the client, we believed that it had sufficiently asserted the relevant facts to satisfy the pleading obligations under the Federal Rules of Civil Procedure as applied to civil RICO claims, including the “continuity plus requirement,” as discussed in prior rulings of the Court of Appeals of the Seventh Circuit and the District Court of the Northern District of Illinois. Once the court issued its ruling, we did not appeal that aspect of the order because such an order generally does not constitute an appealable final decision and the case was allowed to proceed on other grounds.

b. Do you think it is appropriate for attorneys to make all claims theoretically possible in a lawsuit, even if there is no factual basis for them?

Response: No. I do not believe that it is appropriate for attorneys to assert claims if there is no factual basis for them.

- c. What is the duty of a judge in reviewing pleadings? How much latitude should a judge give a party when pleadings are deficient?**

Response: The duty of a judge in reviewing pleadings is to apply the relevant procedural rules and controlling precedents to the case before the court. If a pleading does not comply with the relevant procedural rules and controlling precedents, a judge should reject the pleading and, if appropriate, dispose of the case in its entirety.

- 2. In a Harvard Crimson article published during your time at law school, you are quoted discussing a civil rights claim filed by the Harvard Civil Rights Coalition. The claim alleged students were harmed by a lack of diversity in the Harvard faculty and sought damages. It was dismissed for a lack of standing. According to the news article, you said: “When they talk about dialogue they talk about us dropping the law suit”**

- a. Were you a member of the Harvard Civil Rights Coalition?**

Response: The Harvard Civil Rights Coalition was a coalition of various law student organizations, including minority law student organizations and the women’s law student organization. The Asian American Law Students Association (“AALSA”) was a minority law student organization and a member of the Coalition. During this time period, I was the president of AALSA and served as AALSA’s liaison to the Coalition.

- b. Were you a party to this suit?**

Response: No. I was not a party to the lawsuit.

- c. Can you explain the reasoning behind seeking damages due to the alleged lack of diversity in the Harvard faculty?**

Response: I believe that the Coalition sought equitable relief from the court as part of its lawsuit. I do not recall whether the Coalition sought monetary damages as part of its claims or, if it did, the basis for that claim.

- d. Do you believe that students are harmed by a lack of faculty diversity, and if so, should there be a legal remedy?**

Response: I believe that law students benefit from an opportunity to interact with a faculty that includes professors from all types of backgrounds with diverse views and experiences. In the lawsuit filed by the Coalition, the Massachusetts trial court dismissed the action on the basis that law students lacked standing to file claims against their law school under the Massachusetts statutes at issue. The Massachusetts Supreme Court affirmed this determination, and I respect that ruling. As for whether there should be a legal remedy, I believe that any such

determination should be left to the legislative bodies of Congress and/or the state legislatures, and not the courts. The role of a judge is to apply existing law to the facts before the court, not to make new laws. And, if I am confirmed as a district judge, I will adhere to this fundamental principle.

3. Do you think racial quotas should play a part in university hiring processes or admissions?

Response: The Supreme Court made clear that the use of racial quotas in public university admissions is unconstitutional. *See Grutter v. Bollinger*, 539 U.S. 306, 334 (2003); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 315 (1978) (opinion of Powell, J.). If confirmed, I would strictly follow and apply all Supreme Court and Seventh Circuit precedents in this area.

a. In public universities, should such quotas be mandatory? What about private universities?

Response: As noted above, the Supreme Court made clear that the use of racial quotas in public university admissions is unconstitutional. The same precedents also make clear that the government may not mandate the use of racial quotas by private universities. If confirmed, I would strictly follow and apply all Supreme Court and Seventh Circuit precedents in this area.

4. Do you think the race or socio-economic status of a defendant in a criminal case should be a determining factor in the outcome or sentencing?

Response: No. I do not believe that an individual's race or socio-economic status should be a factor in the outcome or sentencing in a criminal case. In making sentencing determinations, if confirmed, I will demonstrate deference to the Federal Sentencing Guidelines and consider all legally relevant factors.

5. Given that you received a partial "Not Qualified" rating from the ABA's Standing Committee on the Federal Judiciary, I wanted to give you an opportunity to outline your qualifications and experience. I note that you have only one publication and did not begin doing pro bono work until later in your legal career. Would you please explain to the Committee why you believe you are qualified to sit as a United States District Judge?

Response: I believe that the breadth and nature of my federal litigation experience over the past twenty years have prepared me to be a district judge, if I am fortunate enough to be confirmed. Throughout my career, my legal practice has consisted predominantly of representing clients in complex cases before federal district courts. As a trial attorney at the United States Department of Justice, my responsibilities included representing the United States in federal courts in the Third, Seventh and Ninth Circuits. Most of these cases arose under the federal environmental statutes and involved complex legal issues as well as extensive factual and expert discovery. Since entering private practice, I have

represented clients in complex commercial disputes, including cases involving antitrust, intellectual property and business torts issues. I have represented all types of clients from large multi-national corporations to small businesses and individuals, both as plaintiffs and defendants. Most of these cases have been in federal courts, particularly in the Seventh and Ninth Circuits, and have required months, if not years, of fact and expert discovery, as well as extensive motion practice. I have also participated in a number of contested evidentiary hearings, multi-week jury trials, mediations and arbitrations. Additionally, I have served as an adjunct professor in antitrust law at The John Marshall Law School and trained numerous attorneys in procedural and substantive areas of the law while a partner at my firm. In light of my experience, I am confident that I will be able to perform the duties of a district judge, if confirmed.

6. Of the current justices sitting on the Supreme Court, which justice’s judicial, legal and constitutional philosophy do you agree with most? Why?

Response: There is no single Justice sitting on the Supreme Court with whose judicial, legal and constitutional philosophies I most agree. As an attorney, I hold the Supreme Court and all of the current Justices in the highest regard and have the utmost respect for all of their views and opinions. Moreover, as a district judge, if confirmed, I would adhere faithfully to all of the Supreme Court’s rulings, as well as those of the Seventh Circuit, regardless of my personal beliefs or views.

7. In Federalist No. 78, Alexander Hamilton said, “To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them.”

a. Do you agree that judges are bound by “strict rules and precedents” when making decisions?

Response: Yes. I believe that judges must apply strict rules and precedents in making decisions.

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

Response: The most important attribute of a judge is to have a deep respect for the rule of law and an unwavering commitment to apply the controlling law to the particular facts before the court, without regard to the judge’s personal background and beliefs. I am confident that I have this attribute, and as a district judge, if I am confirmed, I will abide faithfully by it.

- 9. 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: Above all, a judge must be fair and impartial to all of the parties that appear before the court. A judge must also be respectful of the parties as well as their counsel and all courtroom personnel and demonstrate integrity, patience, courtesy and humility in all matters before the court. Finally, a judge must exercise judicial restraint by narrowly ruling only on the specific issues in controversy before the court. I have demonstrated these characteristics throughout my professional life and will continue to do so, if I am fortunate enough to be confirmed.

- 10. 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 higher courts faithfully and giving them full force and effect, even if I personally disagree with such precedents.

- 11. 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 deciding a case of first impression, I would look first and foremost to the language of the relevant statute to decide the issue at hand. In the event that the meaning of the statutory provision could not be ascertained from its plain language, I would also consider the purpose and structure of the statutory scheme as a whole, determine whether identical language appears in other parts of the statute, and employ traditional tools of statutory interpretation. I would also consider any decisions issued by the Supreme Court and the Court of Appeals of the Seventh Circuit, as well as other Circuits, interpreting analogous statutory provisions. Finally, if questions remain regarding the meaning of the provision at issue, I would consider legislative history for additional guidance, being mindful of the limitations of such an inquiry.

- 12. 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: A district judge must apply the controlling precedents of the Supreme Court and the Court of Appeals, regardless of his or her personal judgment or beliefs. If I am confirmed as a district judge, I will apply controlling precedents without regard to my personal judgment or beliefs.

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

Response: All statutes enacted by Congress are presumed to be constitutional. A federal district court must declare a statute unconstitutional only in those instances where Congress has exceeded its constitutional authority and/or enacted legislation that violates the Constitution. In so doing, the district court should consider and apply the binding precedents of the Supreme Court and the relevant Circuit in which the district court sits.

14. 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: District courts face increasingly busy dockets. As a district judge, if I have the honor of being confirmed, I intend to actively manage the cases to which I am assigned by conducting early and regular status conferences in an effort to facilitate the prompt resolution of matters. I would also inform all parties that they are expected to adhere to the local rules and issue clear standing orders governing such items as dispositive motions, discovery motions and pre-trial procedures. Additionally, I would establish firm but reasonable deadlines for discovery and set and enforce trial dates. For criminal matters, in particular, I would conduct proceedings in accordance with the Speedy Trial Act. Finally, I would utilize alternative dispute resolution methods, such as settlement conferences and the services of magistrate judges, to explore expeditious resolution of cases prior to trial.

15. 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 district judges have an indispensable role in controlling the pace and conduct of litigation and, if confirmed, I would implement the steps described in response to Question No. 14.

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

Response: These responses were prepared personally by me and reviewed by officials at the United States Department of Justice. I have authorized them to be submitted to the Committee.

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

Response: Yes.

Responses of John Z. Lee
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Amy Klobuchar

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

Response: I believe that a judge must have a deep and abiding respect for the rule of law and should apply the controlling law to the facts before the court, regardless of his or her personal background or beliefs. A judge should also demonstrate judicial restraint and decide only the contested issues raised by the parties. Such a narrow approach to deciding cases is appropriate because judges are not permitted by our constitutional system to make new laws, but only to apply existing laws to the particular disputes raised by the parties before the court.

- 2. 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: As a first generation immigrant to this country, I have developed a deep respect for the rule of law and for the principle that everyone should be treated fairly regardless of their racial or ethnic background, social-economic status or political beliefs. These are the very principles that attracted my parents to this country over 40 years ago and that provided me with the professional opportunities that I have enjoyed throughout my career. I believe that I have adhered to those principles throughout my professional and personal life and am deeply committed to them.

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

Response: District judges must strictly apply the controlling precedents of the Supreme Court and the Court of Appeals of the Circuit in which they sit. I do not believe that district judges should refuse to follow controlling precedents under any circumstances.