

Responses of Leonard P. Stark
Nominee to be United States District Judge for the District of Delaware
to the Written Questions of Senator Jeff Sessions.

- 1. In your questionnaire, you indicated that you taught Constitutional Law to undergraduates at the University of Delaware in 1998 and 1999, and you included a syllabus from your Fall 1998 class. The syllabus stated that the course “will pay particular attention to the impact of evolving constitutional interpretation on political events.”**

a. What did you mean by this statement?

Response: I believe the phrase about which you are asking is from a 1998 course catalog. I did not mean to imply that the Constitution was evolving. Rather, I meant that the course would include discussion of a number of legal questions related to political topics that had received or were receiving attention from the Supreme Court and/or the media, including (as the course catalog states): “Can a sitting president be indicted or made to answer a civil suit? When, and on what grounds, may Congress impeach a president or federal judge? Is the statute authorizing a special prosecutor to investigate high-ranking government officials an impermissible infringement on executive power? Can states limit the terms that their Representatives and Senators are eligible to serve in Congress?”

b. Do you think that the interpretation of the Constitution should change based on evolving societal norms?

Response: The interpretation of the Constitution is governed by the Supreme Court and the Court of Appeals. In my current position as a United States Magistrate Judge, and in the future if confirmed as a District Court Judge, my obligation is to follow the binding precedents of the Supreme Court and the Court of Appeals.

c. Do you believe the Constitution is a living document?

Response: No. The text of the Constitution is fixed (absent amendment through the Article V amendment process).

d. What in your view is the role of a judge?

Response: I believe the role of a District Court Judge is to apply the precedents of the Supreme Court and the Court of Appeals to the facts of the particular case before the judge, as carefully and impartially—and in as timely a manner—as humanly possible. This is what I have strived to

do as a United States Magistrate Judge and would continue to do if confirmed as a District Court Judge.

2. In your questionnaire, you indicated that 100% of the cases you have presided over as a magistrate have been civil proceedings. Criminal cases account for a substantial portion of the federal docket.

a. How has your experience as a magistrate judge prepared you for the position to which you have been nominated?

Response: My experience as a United States Magistrate Judge has prepared me for the position of District Court Judge by giving me the opportunity to handle criminal cases. My responsibilities in criminal matters include serving as our District's criminal duty judge every other week. In this capacity I preside at initial appearances, preliminary hearings, detention and bail hearings, and arraignments in all types of felony prosecutions. I also review proposed criminal complaints and search warrant applications. A recent review of my docket also reflects that I have presided over approximately five misdemeanor cases to judgment, including sentencing.

b. If confirmed, how do you plan to educate yourself with respect to federal criminal law and the federal sentencing guidelines?

Response: I am familiar with federal criminal law and federal sentencing guidelines, both from my experience as a United States Magistrate Judge and from my five and one-half years as an Assistant United States Attorney. As a Magistrate Judge, my criminal responsibilities include serving as our District's criminal duty judge every other week; presiding at initial appearances, preliminary hearings, bail and detention hearings, and arraignments; reviewing proposed criminal complaints and search warrant applications; and presiding over misdemeanor cases through sentencing. I will also rely on the knowledge I gained earlier in my career as an AUSA, in which capacity I prosecuted a wide variety of federal criminal offenses, including health care fraud, bank robbery, firearms offenses, narcotics, and racketeering. I handled cases from the investigative stage through sentencing and appeals, all of which gave me substantial experience with federal criminal law and the sentencing guidelines. If confirmed, I will also take advantage of training and education available to District Court Judges, as I have done as a Magistrate Judge.

c. 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.

d. What are your general views of the sentencing guidelines?

Response: My view is that the sentencing guidelines are a crucial consideration in any sentencing decision. I believe this is why, under controlling Third Circuit precedent, a sentencing judge is required to begin the analysis of an appropriate sentence by calculating the applicable guideline range.

3. During the 2008 presidential campaign, President Obama described the types of judges that he will nominate to the federal bench as follows:

“We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”

a. Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit President Obama’s criteria for federal judges, as described in his quote?

Response: To the extent the President’s concept of empathy requires that federal judges be committed to treating all individuals who appear before them with fairness, putting aside any personal bias or prejudice, and to do the work necessary to understand and critically evaluate the positions of all who come before the judge, I believe I satisfy his criteria.

b. During her confirmation hearing, Justice Sotomayor rejected this 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.

c. What role do you believe empathy should play in a judge’s consideration of a case?

Response: When making decisions, a judge must put aside whatever emotions or feelings the judge may feel for or against a litigant. The judge’s decision should be based solely on a careful, impartial application of the law to the facts.

d. Do you think that it is ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Response: No.

i. If so, under what circumstances?

Response: Not applicable.

ii. Please identify any cases in which you have done so.

Response: I do not recall any such case.

iii. If not, please discuss an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.

Response: I do not recall any such case. My rulings are based solely on the law and the facts.

e. As you know, Justice Stevens recently announced his retirement. The President said that he will select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.” Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?

Response: I believe judges should base their decisions solely on the law and facts presented.

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

Response: I received the questions directed to me through the Department of Justice (DOJ) on April 29, 2010. I reviewed the questions and the materials referenced in them and then prepared my responses. Later I discussed my responses with DOJ and then finalized my responses. On May 3, 2010, I asked that DOJ forward my responses to the Senate Judiciary Committee on my behalf.

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

Response: Yes.

Responses of Leonard P. Stark
Nominee to be United States District Judge for the District of Delaware
to the Written Questions of Senator Tom Coburn, M.D.

- 1. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No. The text of the Constitution is fixed (absent amendment through the Article V amendment process).

- 2. Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. Do you believe *Lopez* and *Morrison* are consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. Why or why not?**

Response: The Supreme Court stated in *Lopez* and *Morrison*, as well as in *Gonzales v. Raich*, 545 U.S. 1 (2005), that its decisions in these recent cases are consistent with its earlier Commerce Clause decisions.

- 3. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy’s analysis?**

Response: As a United States Magistrate Judge, I have not had occasion to consider the analysis referenced here. As a Magistrate Judge—and if confirmed as a District Court Judge—my obligation is to follow the binding precedent of the Supreme Court and the Court of Appeals.

- a. Do you believe evolving standards of decency are relevant to a court’s evaluation of the text of the Constitution or Bill of Rights?**

Response: No, except to the extent that the binding precedent of the Supreme Court and the Court of Appeals requires otherwise.

- b. How would you determine what the evolving standards of decency are?**

Response: If, under the precedent of the Supreme Court or the Court of Appeals, I were required in a particular case to assess evolving standards of decency, I would do so in the manner set forth in the decisions of these higher courts.

- c. Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in all cases?**

Response: The Supreme Court has held that the death penalty is constitutional. A judge could not find it unconstitutional in all cases.

- d. What factors do you believe would be relevant to the judge’s analysis?**

Response: A judge should follow the precedent of the Supreme Court and the Court of Appeals.

- 4. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: No, except to the extent the binding precedent of the Supreme Court and the Court of Appeals requires otherwise.

- a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: Only under circumstances in which the Supreme Court or the Court of Appeals has held that it is proper to do so.

- b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

Response: As a federal judge operating in the American justice system, my obligation is to apply and interpret the law of the United States, and in doing so I am bound to follow the law of the United States.

- c. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?**

Response: No, except to the extent the binding precedent of the Supreme Court and the Court of Appeals requires otherwise.