

**Responses of Andre M. Davis
Nominee to the U.S. Court of Appeals for the Seventh Circuit
to the Written Questions of Senator Orrin G. Hatch**

1. **Judge Davis, I want to better understand your judicial philosophy, your view of a federal judge's power and role in our political system. One of the things in your record that probably addresses this most directly is the essay you wrote in connection with the 50th anniversary of the Supreme Court's decision in *Brown v. Board of Education*. In that essay, you described the judiciary as literally a supplement to what you called the "politically-induced institutional inertia, if not the cowardice, of the executive and legislative branches." You referred to those elected branches as the primary law-making organs of government. This sounds like you believe that the courts are a secondary law-making organ of government. This sounds like you believe that social and political change should be not simply an effect of court decisions, but the intended result of those decisions. I would like your comment on that. Do you believe that is the role of judges in our system of government?**

Response: I do not believe that the role of a judge is to make law or that judges should intend social or political change. I strongly believe the role of a judge is to follow the written law and apply that law to the facts that come before him or her. That is the role I have fulfilled throughout my career as a District Court judge and the role I will fulfill, if I am fortunate enough to be confirmed, as a Circuit Court judge.

2. **In that essay on *Brown v. Board of Education*, you praised the Supreme Court for "following its moral compass to reach the correct result." May judges decide cases based on their moral compass rather than the law?**

Response: No.

3. **I was a little surprised that in that essay you commented on current political and legal issues such as the war in Iraq and same-sex marriage. You are, after all, a sitting federal judge. And now you have been nominated to the appeals court circuit that has a disproportionate impact on issues such as national security and the war on terror. Looking back, at least from the standpoint of the imperative for both the reality and the appearance of impartiality, do you think that was perhaps a mistake?**

Response: I certainly did not intend to express any view on legal issues. With the benefit of hindsight and reading the essay now, I can see how a reasonable person could possibly interpret my choice of language as an expression of personal opinion on a potential legal issue that could be presented in a case before me. I should not have used this formulation.

4. **Judge Davis, I have an ongoing, active legislative role in helping to provide opportunities for our fellow citizens with disabilities. So I am sensitive to the need for judges to construe and apply disability statutes the way Congress intended. A coalition of disability groups has examined your judicial record in this area and has raised serious concerns. I have attached two of their memos on this point for your review. They say, for example, that you are unsympathetic to persons with disabilities who seek employment. They come to this conclusion by noting that, at least by their count, you have ruled only once in favor of a plaintiff's ADA employment discrimination claim. They say you impose inappropriately stringent standards, cramped interpretations, and inappropriate procedural hurdles. I am not asking you to comment about individual cases, but I would like your response to these criticisms and this way of analyzing your record. Do you believe the results of your decisions in this area reflect your sympathies? Do you think it is appropriate for judges to decide cases based on their sympathies?**

Response: I do not believe judges should decide any issue based on their sympathies.

I have spent my entire professional career abiding by a deep belief in equality of opportunity for all. In every case I have decided, I have applied the law to the facts before me fairly and impartially. I am fully committed to equality of treatment for the disabled, in employment and in all facets of American life, goals justly embodied in the Rehabilitation Act and the Americans with Disabilities Act (and its recent amendments). In this area as in all others, I have been and I remain fully and unconditionally committed to giving the remedial statutes which are the law of our land the full sweep intended by the Congress.