

Responses of Richard Gergel
Nominee to the U.S. District Court for the District of South Carolina
to the Written Questions of Senator Jeff Sessions

- 1. You have had significant litigation and trial experience, but your experience is limited primarily to representing plaintiffs in medical malpractice litigation. If confirmed, will you be able to put aside your experience of representing solely one-side and be a neutral umpire?**

Response: I am confident that I can be fair and impartial to all parties. In regard to my experience as a litigator, I have had the privilege of representing very diverse clients. I have represented plaintiffs and defendants in a broad range of civil litigation, including extensive work as defense counsel representing the State of South Carolina and the City of Columbia. My 30 years of experience as a litigator have taught me that what all parties and counsel desire is a judge who provides a fair and level playing field in which to address claims and defenses. If fortunate enough to be confirmed, I pledge to provide all parties a fair and impartial forum.

- 2. In your questionnaire, you indicated that you have no experience litigating criminal cases. Criminal cases account for a substantial portion of the federal docket. If confirmed, how do you plan to educate yourself with respect to federal criminal law and procedure?**

Response: Since being nominated by the President, I have engaged in study and review of federal criminal law and procedures, including a careful analysis of the Federal Sentencing Guidelines. This has included reading various books provided by the Federal Judicial Center and observing numerous federal criminal trials, guilty pleas and sentencing proceedings. If confirmed, I will continue my study of federal criminal law and procedures, participate fully in programs offered by the Federal Judicial Center and consult regularly with my very experienced colleagues on the Federal District Court bench in South Carolina.

- 3. According to a press report, an associate described you as “a dyed-in-the-wool Democrat, [who] selects cases even if they put him at odds with party leaders.”**

- a. If confirmed, will you allow your political beliefs to influence your decisionmaking?**

Response: No.

- b. Do you think it is ever proper for a judge to indulge in his or her own policy preferences in determining what the law means? If so, under what circumstances?**

Response: No.

4. **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: I presume by my nomination that I met the standards of the President to be a United States District Judge.

- 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: None.

- 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? If so, under what circumstances?**

Response: No.

- 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: A judge should base his or her decisions solely on the law and facts presented.

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

Response: I received these questions on Friday, April 23, 2010, reviewed each question with considerable care and prepared my responses. Those responses were discussed with Department of Justice staff and then submitted to the Judiciary Committee.

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

Response: Yes.