

Reponses of Roberto A. Lange
Nominee to the U.S. District Court for the District of South Dakota
to the Written Questions of Senator Jeff Sessions

1. **President Obama has 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. **Do you agree with President Obama’s quote?**

Response: I am not in a position to agree or disagree with President Obama’s quote. The criteria that President Obama applies to nominate federal judges are different than the criteria that I, if confirmed, would apply in deciding cases.

- b. **Do you believe that you fit President Obama’s criteria for federal judges, as described in his quote?**

Response: I am interested in becoming a federal district judge because I see it as a form of public service that befits me. My hope is that I and indeed all human beings, particularly those who are in public service positions, have the trait of empathy. I have never been a young teenage mom, African American, gay, disabled or old, but have not been immune from struggles in life and have worked very hard to achieve, with God’s grace, what I have accomplished in life.

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

Response: Generally, empathy should play no role in a judge’s consideration of a case.

- d. **Do you think that it is every proper for judges to indulge their own subjective sense of empathy in determining what the law means? If so, under what circumstances?**

Response: No.

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

Response: Typically, the role of a judge is to apply the law to the facts in a fair and impartial manner.

- a. **Do you think that it is ever proper for judges to indulge their own values in determining what the law means? If so, under what circumstances?**

Response: No.

- b. **Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means? If so under what circumstances?**

Response: No.

3. How would you define “judicial activism?”

Response: When I hear someone refer to “judicial activism,” I understand the term to mean a judge having exceeded his or her authority by conduct deemed legislating from the bench, failing to follow settled precedent, or elevating the judge’s personal views or policy considerations above settled law. A judge of course is not to engage in such conduct, but is to apply the Constitution, statutes, and settled precedent in a fair and impartial manner to the facts and case presented.

- a. **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: I certainly do not view the Constitution as dead. However, I do not view the Constitution as “evolving as society interprets it.” The Constitution remains the primary governing document of the United States and the supreme law of the land. As a district judge in the United States District Court for the District of South Dakota, if confirmed, my responsibility would be to follow the language of the Constitution as interpreted by the Supreme Court of the United States and Eighth Circuit cases.

4. Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit.

- a. **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.

- b. **How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision of your own best judgment of the merits?**

Response: If confirmed as a district judge, I would apply the settled precedent.

5. **Do you believe that a federal district court has the institutional expertise to set rules for and oversee the administration of the prisons, schools, or state agencies?**

Response: No, although in cases where such entities are subject to federal jurisdiction, a district court must apply the Constitution, congressional enactments and precedent.