

Responses of Richard Seeborg
Nominee to the U.S. District Court for the Northern District of California
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: The quote by President Obama appears to pertain to criteria for the selection of judges. I have neither directly nor indirectly participated in selecting, nominating, or appointing judges on the state or federal level. In terms of judicial decision-making, I believe a district judge must apply the law as reflected in the Constitution, legislative enactments, and legal precedent to the facts of a specific case and not be swayed by feelings of empathy toward one party or the other.

b. Do you believe that you fit President Obama’s standard as described in his quote?

Response: I feel that I am a person with a sense of empathy for others who nonetheless will be prepared to apply the law and render judicial decisions in a fair and neutral fashion, as my record as a United States Magistrate Judge since 2001 reflects.

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

Response: I believe that a district judge’s duty is to follow the law as set forth in the Constitution, congressional statutes, and case precedent and not to substitute personal feelings in reaching a judicial decision. At the same time, I think it is important for a judge in conducting legal proceedings not to check his or her humanity at the courthouse door. The courtroom can be an intimidating place for individuals not accustomed to those surroundings, be they jurors, *pro se* litigants, crime victims, and others. I think the district judge must display empathy and understanding in his or her interactions with such individuals, while at the same time setting that approach aside in the process of making a judicial decision.

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: Not applicable.

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: In a case I decided in 2006 a young woman walking in Pacific Grove, California, suffered a horrific random attack at the hands of two off-duty soldiers who were subsequently convicted of attempted murder. The young woman sued the United States for negligence in connection with the supervision by the Marine Corps of the two perpetrators of the attack. While I had great empathy for the innocent victim, I felt compelled to grant summary judgment in favor of the United States as I concluded that the law and case precedent did not, in this instance, support imposing liability on the government under the Federal Tort Claims Act.

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

Response: In my view, the role of a judge is to resolve the disputes presented in a case by reference to the law as set forth in the Constitution, legislative enactments, and judicial precedent. The role of a district judge in particular is to apply the Constitution, the laws enacted by Congress, and precedent established by the Supreme Court and the applicable Court of Appeals to the facts at issue in each case.

a. Do you think it is ever proper for judges to indulge their own values 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: Not applicable.

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

Response: The case I described in 1 (d) (iii) above presented a situation in which an innocent crime victim was foreclosed from monetary recovery. The perpetrators were judgment-proof and no applicable legal basis supported a monetary award against any other party. While I believe that victims of crime should be able to recover for the injuries they incur, I was obligated as a judge to set that general value aside where no law or case precedent supported a finding against the party named as a defendant in the civil lawsuit.

b. Do you think it is ever proper for judges to indulge their own policy preferences 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: Not applicable.

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

Response: While no such specific case comes to mind, as a general matter I would deem it my obligation to base any ruling on the law regardless of any personal policy views I might hold. I believe that my record as a Magistrate Judge since 2001 reflects that I have not substituted any personal policy preferences in place of a decision based on the law as applied to the facts of the case presented.

3. How would you define “judicial activism?”

Response: The term “judicial activism” is not one I use, as I have heard many different definitions ascribed to it by different individuals. However, if called upon to select a definition, I would offer: judicial activism occurs when a judge goes beyond the application of the law to the facts of a case, and instead makes judicial determinations based on a personal view of what the law should be.

4. 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 believe that the Constitution sets forth immutable principles that do not and should not change with the times. In applying those principles to the facts of a particular case, a court may confront a factual scenario not directly contemplated by the Framers as a result of developments over time. In those instances, I believe a judge needs to look to the language of the Constitution and case precedent in the process of adjudicating a constitutional claim.

5. 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 follow precedent set forth by the Supreme Court and the applicable Circuit Court of Appeals regardless of whether or not I personally felt such precedent was correctly decided.