

Responses of Edmond E-Min Chang
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Jeff Sessions

- 1. You have served for over ten years as a federal prosecutor. As you know, now that the Sentencing Guidelines are advisory rather than mandatory, a judge may impose virtually any sentence ranging from probation to the statutory maximum.**

- a. Given your experience as a federal prosecutor, what level of deference will you show to the guidelines now that they are only advisory?**

Response: Although the Sentencing Guidelines are only advisory, the Supreme Court requires that district judges consider the Guidelines as “the starting point and the initial benchmark” in every sentencing, *Gall v. United States*, 552 U.S. 38, 49 (2007), in order to achieve Congress’s “basic goal in passing the Sentencing Act . . . to move the sentencing system in the direction of increased uniformity,” *Booker v. United States*, 543 U.S. 220, 253 (2005).

- b. Do you commit to follow the guidelines?**

Response: Based on Supreme Court and Seventh Circuit precedent, in every sentencing I would give “serious consideration” to the Guidelines, *Gall v. United States*, 552 U.S. at 46, which “remain an essential tool in creating a fair and uniform sentencing regime across the country,” *United States v. Mykytiuk*, 415 F.3d 606, 608 (7th Cir. 2005).

- 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.

- 2. As you may know, 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. 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: Based on the fact that the President submitted my nomination, I assume that I fit his criteria for selection of federal judges. If confirmed, I would base my decisions solely on the facts and binding legal authorities.

- 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: I believe that a judge must treat all litigants and lawyers with respect, and also must strive to understand their respective arguments, but empathy plays no role in deciding a case. Cases must be decided solely on the facts and binding legal authorities.

- d. Do you think that it’s 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: None.

- ii. Please identify any cases in which you’ve done so.**

Response: I have not served as a judge, and thus I have not had occasion to indulge my own subjective sense of empathy in determining what the law means. But if confirmed, I would apply only binding legal authorities in determining what the law means, which is the same approach I have adopted as a practicing lawyer.

- 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 have not served as a judge, and thus I have not had occasion to set aside my own subjective sense of empathy and rule based solely on the law. But if confirmed, I would set aside subjective views and would apply only binding legal authorities in rendering decisions, and I have adopted the same approach as a practicing lawyer in determining what legal positions to advance.

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

Response: I received a copy of these questions by email from Department of Justice (DOJ) staff on July 22, 2010, and I drafted answers to the questions. I then had discussions with DOJ staff and provided a final version for transmittal to the Committee.

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

Response: Yes.