

Responses of Robert N. Chatigny
Nominee to be U.S. Circuit Judge for the Second Circuit
to the Supplemental Written Questions of Senator Jeff Sessions

- 1. In Question 10(a), I asked you whether you still believed as you did in 2005 that “death row syndrome” is a well-recognized phenomenon. You did not answer, stating, “I do not know how this ‘syndrome’ is currently viewed.” Please provide an answer to this question.**

Response: In the years since the Ross litigation, I have not had occasion to revisit the topic of “death row syndrome” and, as a result, I previously answered that “I do not know how this ‘syndrome’ is currently viewed.” To my knowledge, although “death row syndrome” has been recognized by courts outside the United States, no court in the United States has recognized it. Nor has it been recognized by the American Psychiatric Association or listed in the Diagnostic and Statistical Manual of Mental Disorders. Accordingly, it appears to me that “death row syndrome,” although recognized by courts outside the United States, is not a well-recognized phenomenon in the United States.

- 2. In response to Senator Cornyn and Senator Coburn’s questions, you cite the *Soering* case as part of the literature you were referencing in the Ross teleconference when you said, “a fair amount of literature which I have read . . . gives great weight to the notion that a person who is in that setting can lose his ability to make a knowing, intelligent, and voluntary choice.”**

- a. Do you believe that American judges should consider foreign law regarding the death penalty in deciding whether to impose the death penalty in an American court?**

Response: No. In deciding whether to impose the death penalty in a given case, an American judge must apply the governing law of the particular forum. Foreign law should not affect the decision.

- b. In the *Soering* case, the U.K. refused extradition of German national Jens Soering to Virginia for trial after a grand jury indicted him for capital murder. The European Court of Human Rights determined the U.K. was required to refuse extradition based on the “death row phenomenon,” which is defined as cruel and unusual punishment due to “exceptional delay in the carrying out of the death sentence.”**

- i. Do you believe “death row phenomenon” is a valid concern?**

Response: I am not aware of any legal authority to support the proposition that delay in carrying out a death sentence renders the sentence unconstitutional under the Eighth Amendment.

- ii. Do you believe delay in carrying out the death penalty, even if the delay is based on numerous appeals on the part of the defendant, amounts to cruel and unusual punishment?**

Response: I know of no legal authority for the proposition that delay in carrying out a death sentence arising from a defendant's appeals amounts to cruel and unusual punishment under the Eighth Amendment.

- iii. **Do you believe prolonged detention on death row, even if the prolonged detention is based on the defendant's numerous appeals, could render an individual mentally incompetent?**

Response: I am not aware of any legal authority for the proposition that prolonged detention on death row renders an individual mentally incompetent. If a future case came before me raising this issue, I would want the benefit of a full adversarial presentation of views focused on the facts and circumstances presented by the case and would faithfully follow applicable Supreme Court and Second Circuit precedent.

- iv. **Did you believe that this phenomenon was present in the *Ross* case?**

Response: I believed that under *Rees v. Payton*, 384 U.S. 312 (1966), the evidence proffered by the Office of the Chief Public Defender was sufficient to require a hearing on the claim that Ross was incompetent to waive challenges to his death sentence due to severe mental illness exacerbated by the conditions of his confinement.

3. **At your hearing, Senator Cornyn asked: "How does your empathy for defendants influence your handling of criminal proceedings and sentencing?" You responded: "Empathy does not influence my sentencing decisions." How does empathy for defendants influence your handling of criminal proceedings?**

Response: Empathy influences me to do my best to give all persons who come before the court a full and fair hearing, including criminal defendants.

4. **In your speech at the inaugural meeting of the American Constitution Society at the University of Connecticut School of Law, you said "[e]mpathy for individuals involved in a case inevitability comes into play, as it should." At your hearing, you testified that your "empathy" remark "refer[red] to not just the defendant, but also the victims, as well as witnesses." In response to one of Senator Grassley's questions for the record, you stated: "When I used the term 'empathy' in my speech, I meant respectful attention to, and careful consideration of, the legitimate interests of all concerned." Please explain the inconsistency between the above statements and your answer to Senator Cornyn's question (referenced in question 3 above).**

Response: I do not believe there is an inconsistency. As a district judge, I am required to impose a sentence that is sufficient but not greater than necessary. In making this individualized determination, I try to understand the positions of all concerned. This is where empathy, as I use the term, enters into the sentencing process. But empathy does not determine the sentence. Rather, once I have gained an understanding of the positions

of all concerned, I determine the sentence that should be imposed by applying the law to the facts of the case.