

Senator Jeff Sessions
Questions for the Record
Thomas M. Durkin

1. **It appears from your questionnaire that during your chairmanship of your firm's *pro bono* committee, your firm filed *amicus* briefs with the Supreme Court in *Rasul v. Bush* and *al-Odah v. U.S.*.**

- a. **As chair of the *pro bono* committee, did you approve your firm's involvement in these cases?**

Response: As chair of Mayer Brown's *pro bono* committee, I was one of many people on the committee who approved the firm's involvement in the *Rasul* and *al-Odah* cases in which Mayer Brown filed *amicus* briefs on behalf of retired senior military officers.

- b. **Please describe what role, if any, you had in drafting the briefs.**

Response: I had no role in drafting or reviewing the briefs.

2. **In your opinion, do the procedures put in place by the Military Commissions Act of 2009 meet constitutional standards?**

Response: As a law duly passed by Congress and signed into law, it enjoys a presumption of constitutionality. Were I to review that statute as a judge, I would apply that presumption, and follow any controlling precedent of the Supreme Court and the Circuit Court of Appeals in the Seventh Circuit.

3. **Do you believe that Due Process requires that criminal charges, provision of counsel, and some prospect of release for foreign terrorists captured on the battlefield and detained outside of the United States?**

Response: Although I was not substantively involved in the *Rasul* and *al-Odah* cases, and have not otherwise had occasion to study these issues, I am aware that the D.C. Circuit has concluded that the Due Process Clause of the Constitution does not apply to enemy combatants captured abroad and detained outside the sovereign territory of the United States. See *Kiyemba v. Obama*, 555 F.3d 1022 (D.C. Cir. 2009) (*opinion reinstated as amended*, 605 F.3d 1046 (D.C. Cir. 2010)). If confirmed as a district court judge, and presented with a case raising these issues, I would follow all relevant precedent of the Supreme Court and the Circuit Court of Appeals of the Seventh Circuit.