

**Responses of Raymond Joseph Lohier, Jr.
Nominee to be United States Circuit Judge for the Second Circuit
to the Written Questions of Senator Jeff Sessions**

- 1. You participated in the drafting of a report by the New York Gubernatorial Task Force on Judicial Diversity, which noted that diversity “actually helps improve the quality of judicial decision-making” because different backgrounds “keep the law rooted in the experience of our whole society.”**

Response: I participated in drafting the report that was ultimately issued by the New York Gubernatorial Task Force on Judicial Diversity based on comments from and views expressed by members of the Task Force. I was not a signatory to the report.

- a. Do you agree with the report’s conclusion that diversity “actually helps improve the quality of judicial decision-making”?**

Response: Experiential, gender, racial, ethnic, religious and other categories of diversity is important to maintain and enhance public confidence in the judiciary. It neither improves nor degrades the quality of judicial decision-making itself, and it does not serve as a proxy for arriving at any particular result in a case.

- i. If so, how does diversity help improve the quality of decision-making?**

Response: Please see my response above.

- ii. What role, if any, do you believe diversity plays or should play in judicial decision-making?**

Response: Diversity in the judiciary plays an important role in enhancing the confidence of litigants, lawyers and members of the public of all backgrounds that everyone will be treated fairly and equally under the law, regardless of background.

- b. How can litigants know that they are being treated fairly if a judge’s background, rather than the application of the law to the facts, affects his or her legal decisions?**

Response: A judge’s application of the law to the facts alone should affect his or her legal decisions.

- 2. The report offered several suggestions on ways to improve judicial diversity within the New York court system, including that judicial screening panels should “consider any lack of diversity in the appointments already made by others and, if several persons are to make appointments at the same time, those persons confer with regard to adequate diversity prior to making appointments.”**

Response: I participated in drafting the report that was ultimately issued by the New York Gubernatorial Task Force on Judicial Diversity based on comments from and views expressed by members of the Task Force. I was not a signatory to the report.

- a. **Do you personally agree that selection panels should consider whether a particular appointment would improve judicial diversity?**

Response: Yes. I personally believe that diversity in the judiciary plays a role in enhancing the confidence of litigants, lawyers and members of the public of all backgrounds that everyone will be treated fairly and equally under the law, regardless of background.

- b. **If so, what weight should diversity be given during that selection process?**

Response: The preeminent function of a selection panel is the selection of qualified judges. As long as diversity is also considered as a factor, what weight to give it rests with the selection panel.

3. **During the 2008 presidential campaign, President Obama 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: If confirmed, I would treat every litigant, regardless of background, fairly, without bias, and with respect. I also would work hard to understand and carefully consider the arguments and facts presented by every litigant.

- 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: I agree that judges should not apply feelings to facts and should apply the law to facts.

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

Response: If “empathy” in the judicial context means only the ability and willingness to understand the arguments and facts presented by litigants, as opposed to sharing their feelings, then I believe it is an important quality for a judge to have.

- 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: Please see my response above.

- e. As you know, Justice Stevens recently announced his retirement. The President said that he will select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.” Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?**

Response: Judges should base their decisions solely on the law and facts presented in a case.

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

Response: I drafted these answers, and they are mine.

- 5. Do these answers reflect your true and personal views?**

Response: Yes.