

**Responses of Marc T. Treadwell
Nominee to the U.S. District Court for the Middle District of Georgia
to the Written Questions of Senator Jeff Sessions**

- 1. In your questionnaire, you indicated that criminal cases amounted to only one percent of your overall litigation experience. Criminal cases account for a substantial portion of the docket you will handle if confirmed.**
- a. How has your professional experience prepared you for the position to which you have been nominated?**

Response: I believe that my extensive experience trying cases has prepared me for many issues encountered in criminal proceedings. Further, I have been appointed to represent criminal defendants in federal court and, as a result, I have a working knowledge of the federal sentencing guidelines. Moreover, since 1986, I have annually reviewed Eleventh Circuit evidence decisions for the Mercer Law Review and since 1988, I have reviewed Georgia appellate evidence decisions. Most appellate evidence decisions arise from criminal prosecutions, and thus I feel I have a strong base of knowledge of evidentiary principles applicable to criminal proceedings. For example, I have followed closely and written extensively about the use of extrinsic act evidence in criminal cases, as permitted by Federal Rule of Evidence 404(b), and the Supreme Court's recent decision in *Crawford v. Washington*, 541 U.S. 36 (2004), and its progeny regarding testimonial hearsay in criminal cases.

More generally, I believe that the broad variety of cases and matters I have handled during my twenty-eight years of practicing law has helped prepare me for service as a district court judge. I also believe that ten years of teaching third-year law students has given me a perspective that would serve me well if I am confirmed. Finally, I believe my legal writing experience as the author of over fifty articles for legal publications would assist me greatly in the performance of the duties of a district court judge.

- b. If confirmed, how do you plan to educate yourself with respect to federal criminal law and the federal sentencing guidelines?**

Response: If confirmed, I plan to avail myself of all available resources, particularly those offered by the Administrative Office of the United States Courts, to ensure that I would be prepared to fulfill my duties. I would place particular emphasis on the sentencing guidelines and procedural rules, such as the Federal Rules of Criminal Procedure, and I would consult with my colleagues.

- i. Now that the guidelines are advisory rather than mandatory, a judge may impose any sentence ranging from probation to the statutory maximum. What are your views of the guidelines?**

Response: I believe the guidelines are presumptively applicable. In my view, few circumstances or factors, if any, would warrant deviation from the guidelines.

ii. Do you commit to follow the guidelines?

Response: While the Supreme Court has held that the guidelines are advisory, I believe they are presumptively applicable and I would review any request to deviate from the guidelines with that presumption in mind.

iii. 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. I recognize that you do not know 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: I do not know if I fit the criteria quoted above, although I assume that I met the criteria used by the President in the selection of district court nominees. If confirmed, I commit to basing my decisions and rulings on the relevant facts and applicable precedent binding on district court judges.

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

Response: To the extent that empathy on the part of a judge would lead to the consideration of non-relevant factors, empathy should not play a role in a judge’s consideration of a case.

a. 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: See above.

3. 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 to the facts presented before you?

Response: If confirmed, I would rule in accordance with Supreme Court and Court of Appeals precedent, regardless of my personal feelings.

4. Do you think it is ever proper for judges to indulge their own values in determining what the law means? If so, under what circumstances?

Response: I do not think it proper for judges to indulge their own values in determining what the law means.

5. Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means? If so, under what circumstances?

Response: I do not think it is proper for judges to indulge their own policy preferences in determining what the law means.

6. Please describe with particularity the process by which these questions were answered.

Response: I received these questions, along with questions from Senator Coburn, by email from the Department of Justice. I prepared responses, discussed my responses with Department of Justice attorneys, and then submitted my responses to the Department of Justice for delivery to the Judiciary Committee.

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

Response: Yes.