

Responses of William M. Conley
Nominee to the U.S. District Court for the Western District of Wisconsin
to the Written Questions of Senator Jeff Sessions

- 1. In your questionnaire submitted to the Committee, you indicated that you have been a member of the Southern Poverty Law Institute since 1986 and are still a member of that organization today. That organization, headquartered in Alabama, has taken a great many controversial positions on a number of issues. For example, in a 2007 report entitled “Close to Slavery,” the Southern Poverty Law Center quoted a statement from Representative Charlie Rangle regarding our nation’s H-2 non-immigrant worker visa program, saying “this guest-worker program’s the closest thing I’ve ever seen to slavery.” The Southern Poverty Law Center added that “Congressman Rangle’s conclusion is not mere hyperbole.” The report went on to say that “the H-2 guest-worker system also can be viewed as a modern-day system of indentured servitude.” As a federal district judge, you may be asked to preside over cases that involve the H-2 visa program. Do you agree with the Southern Poverty Law Center’s view on this program? Please explain your answer.**

Response: As you note, I may be asked to preside over cases that involve the H-2 visa program and, for that reason, believe it inappropriate for me to comment on that program specifically. Generally, I realize that the H-2A and H-2B programs attempt to address difficult issues arising out of temporary labor shortages in the United States. Moreover, my own views often do not comport with the rhetoric, and occasionally do not comport with positions, of the SPLC.

Were I fortunate enough to be confirmed, I would enforce the H-2 visa program as required by law and anticipate withdrawing from membership in the SPLC in recognition that it regularly takes positions on legal issues and subject matter that may come before me.

- 2. Under the Supreme Court’s decision in *United States v. Booker*, the federal sentencing guidelines are advisory, rather than mandatory. Under the current system, it appears to me that as long as the sentencing judge (1) correctly calculates the guidelines, and (2) appropriately considers factors set forth therein, the judge may impose any sentence ranging from probation to the statutory maximum. Following the Supreme Court’s decision in *Gall v. United States*, appellate courts must apply the highly deferential “abuse of discretion” standard when reviewing these sentencing decisions. As a result, district court judges may impose virtually any sentence, and as long as the decision is procedurally sound, there is virtually no substantive review on appeal.**
 - a. 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: I agree that the same defendant should receive the same sentence for the same crime without regard to what judge that defendant happens to draw.

b. Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?

Response: My understanding of the current state of the law is that any departure from the Sentencing Guidelines is justified only when a full consideration of all the applicable facts and factors in 18 USCS 3553 would support it and the reasons are fully explained for meaningful appellate review.

3. What in your view is the role of a judge?

Response: Ultimately, the responsibility and role of a federal judge is to uphold the United States Constitution, federal statutes and regulations, and as applicable state counterparts, as informed by judicial precedent, legislative history and the facts of each case. In doing so, a judge needs to be cognizant of the position he or she holds in the larger justice system, whether it be the directives of the United States Supreme Court and the courts of appeal, appropriate deference to the Executive and Legislative branches of the federal government or respect for the important role of comity to state government.

At least as important for a federal judge is realizing his or her role within the state and federal judicial system in dispensing both perceived and real justice. This begins by ensuring, to the extent possible, that the parties before the judge have a sense of basic fairness of the process and decision making, even if it is not favorable to them. It continues with careful, thorough review of the record and law, and a well- reasoned, cogent decision whether oral or written. A judge also needs to keep well in mind that justice delayed is more often than not justice denied. Finally, and most importantly, is the quality of justice, reflected in thoughtful deliberation, reasoned outcomes and, to the extent humanly possible, the correct result.

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? Please explain your answer.

Response: No.

- 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? Please explain your answer.**

Response: No.

- 6. How would you define “judicial activism?”**

Response: I have no personal definition, but have heard this phrase used in a variety of settings to at least suggest, if not accuse, a judge of departing -- generally based on personal bias or political views, whether on the right or left -- from their responsibility to uphold the United States Constitution, federal statutes and regulations, and as applicable state counterparts, as informed by judicial precedent, legislative history and the facts of each case. To the extent this is the intended meaning of this phrase, then I agree it represents behavior outside the proper role of a judge.

- 7. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No.

- 8. 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, what is your opinion with respect to President Obama’s criteria for federal judges, as described in his quote?**

Response: To the extent that the President’s “criteria” seek judges who have the ability to truly understand the positions of all who come before them, whether white or black, rich or poor, Christian or Muslim, I think it an ideal

worth striving toward. Other criteria are equally important (e.g., intelligence, fairness, common sense, honesty, and integrity).

- b. In your opinion, do you fit President Obama's criteria for federal judges, as described in the quote?**

Response: I will certainly do my best to understand the positions of all who come before me. Beyond that, I cannot say.

- c. During her confirmation hearings, Justice Sotomayor rejected President Obama's 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 the obligation of the judge is to apply the law to the facts to the best of his or her ability, without regard to personal feelings, biases or political views.

- d. What role do you believe that empathy should play in a judge's consideration of a case?**

Response: The obligation of a judge is to understand the positions of the parties to the best of their ability and then to apply the law to the facts dispassionately.

- e. Do you think that it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means? If so, under what circumstances?**

Response: No.

- 9. 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?**

Response: I would follow binding precedent.

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

Response: I drafted my own responses. I then finalized them myself, after discussing my draft with representatives of the US DOJ.

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

Response: Yes.