

Responses of Edmond E-Min Chang
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Jeff Sessions

1. You have served for over ten years as a federal prosecutor. As you know, now that the Sentencing Guidelines are advisory rather than mandatory, a judge may impose virtually any sentence ranging from probation to the statutory maximum.

a. Given your experience as a federal prosecutor, what level of deference will you show to the guidelines now that they are only advisory?

Response: Although the Sentencing Guidelines are only advisory, the Supreme Court requires that district judges consider the Guidelines as “the starting point and the initial benchmark” in every sentencing, *Gall v. United States*, 552 U.S. 38, 49 (2007), in order to achieve Congress’s “basic goal in passing the Sentencing Act . . . to move the sentencing system in the direction of increased uniformity,” *Booker v. United States*, 543 U.S. 220, 253 (2005).

b. Do you commit to follow the guidelines?

Response: Based on Supreme Court and Seventh Circuit precedent, in every sentencing I would give “serious consideration” to the Guidelines, *Gall v. United States*, 552 U.S. at 46, which “remain an essential tool in creating a fair and uniform sentencing regime across the country,” *United States v. Mykytiuk*, 415 F.3d 606, 608 (7th Cir. 2005).

c. 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. 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: Based on the fact that the President submitted my nomination, I assume that I fit his criteria for selection of federal judges. If confirmed, I would base my decisions solely on the facts and binding legal authorities.

- 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: Yes.

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

Response: I believe that a judge must treat all litigants and lawyers with respect, and also must strive to understand their respective arguments, but empathy plays no role in deciding a case. Cases must be decided solely on the facts and binding legal authorities.

- d. 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: None.

- ii. Please identify any cases in which you’ve done so.**

Response: I have not served as a judge, and thus I have not had occasion to indulge my own subjective sense of empathy in determining what the law means. But if confirmed, I would apply only binding legal authorities in determining what the law means, which is the same approach I have adopted as a practicing lawyer.

- iii. If not, please discuss an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.**

Response: I have not served as a judge, and thus I have not had occasion to set aside my own subjective sense of empathy and rule based solely on the law. But if confirmed, I would set aside subjective views and would apply only binding legal authorities in rendering decisions, and I have adopted the same approach as a practicing lawyer in determining what legal positions to advance.

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

Response: I received a copy of these questions by email from Department of Justice (DOJ) staff on July 22, 2010, and I drafted answers to the questions. I then had discussions with DOJ staff and provided a final version for transmittal to the Committee.

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

Response: Yes.

Responses of Edmond E-Min Chang
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Tom Coburn, M.D.

- 1. 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.

- 2. Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. Do you believe *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. Why or why not?**

Response: In *Gonzales v. Raich*, 545 U.S. 1, 23-25 (2005), the Supreme Court explained that *Lopez* and *Morrison* were consistent with prior Commerce Clause precedent because the statutes at issue in *Lopez* and *Morrison* did not regulate economic activity.

- 3. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy’s analysis?**

Response: Justice Kennedy’s analysis comprised an opinion of a majority of the Supreme Court, and if confirmed as a district judge, I would be bound to follow that precedent.

- a. How would you determine what the evolving standards of decency are?**

Response: I would follow any applicable Supreme Court case law and Seventh Circuit precedent. In *Roper*, the Supreme Court’s analysis began with legislative enactments and state practice, followed by a determination of the proportionality of the punishment at issue. 543 U.S. 551, 563-74.

- b. Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in all cases?**

Response: The Supreme Court has rejected the view that the death penalty is unconstitutional in all cases, and thus a district judge could not make such a finding.

c. What factors do you believe would be relevant to the judge's analysis?

Response: Because the Supreme Court has rejected the view that the death penalty is unconstitutional in all cases, a district judge would have no basis to apply any factors to ignore that binding precedent.

4. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: No.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" to legal problems?

Response: As a judge of the United States courts, if confirmed I would be bound to follow the laws of the United States, not to resolve legal problems by reference to foreign countries.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Under no circumstances would I do so, unless the binding decisions of the Supreme Court or Seventh Circuit required otherwise.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: No.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No, unless the binding decisions of the Supreme Court or Seventh Circuit required otherwise.