

Responses of Dolly M. Gee
Nominee to the U.S. District Court for the Central District of California
to the Written Questions of Senator Jeff Sessions

1. In 1996, you spoke regarding the Historical Perspective of Affirmative Action. In that speech, you made the point that many of the laws necessary to remediate civil rights abuses were in place after the Civil War. But you stated that you believed society did not respond to those laws and that inaction required additional legal protections such as the Civil Rights Act of 1964 and subsequent Supreme Court decisions.

a. Do you believe it is the role of judges to interpret laws to compel social change, regardless of whether we agree that such social change may be beneficial?

Response: I believe that a judge's role is to fairly and impartially ascertain the facts in individual cases and to faithfully apply to those facts the laws as enacted by the legislature or as set forth in binding legal precedent. A judge should not interpret the laws to compel any pre-determined result or promote a personal agenda, whether it be for or against social change or any other personal purpose or preference.

b. Do you believe that after the Civil War, the Supreme Court, and courts in general, were acting as legal impediments to social change?

Response: No, the courts are not the proper forum for implementing social change. In my 1996 speech regarding the history of affirmative action, I pointed out that real progress in the realm of social equality accelerated and emerged from the crucible of democratic action (e.g., the Civil Rights Movement), legislative action (e.g., the Civil Rights Act of 1964), and executive action (e.g., presidential Executive Orders).

2. You state in your Questionnaire that you "helped edit but did not sign a joint Asian American Bar Associations letter to Sen. Alan Cranston regarding the nomination of Robert Bork" to be an Associate Justice of the Supreme Court. However, since 1986 you have been a member of the Southern California Chinese Lawyers Association, which is the first signatory to the letter. In 1987, one year after the letter was written, you became a member of the Association's Board of Governors.

a. Do you agree with the statements and sentiments of the letter that was drafted?

Response: To the extent that the letter criticized judicial activism and endorsed judicial restraint and respect for legal precedent, I agree with the intent of the letter.

- b. Do you agree with the statement in the letter that the Senators should not have confirmed Judge Robert Bork because his “extremist social philosophy must inevitably shape his judicial behavior”?**

Response: I must defer to the judgment of the U.S. Senators who reviewed Judge Bork’s complete record as to whether his judicial opinions exhibited requisite qualities of judicial restraint and respect for binding legal precedent.

- c. Why should you be treated by a different standard for confirmation than you were willing to apply to Judge Bork?**

Response: While many people think that Supreme Court nominees should be subjected to a different standard than District Court nominees, I believe that all judicial nominees should be evaluated for their ability to be fair and impartial, including evidence of respect for legal precedent and faithful adherence to the law. To that extent, I do not believe that I should be treated by a different standard for confirmation as that applied to Judge Bork. Although I do not have a judicial track record as yet, my work as an arbitrator and court-appointed neutral reflects no ideological bias.

- 3. 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. Do you agree with President Obama’s quote?**

Response: I cannot say what President Obama intended in making that statement. I construe President Obama’s comments, however, to mean that judges should have an open mind, broad life experience, and should not pre-judge litigants or witnesses due to factors that have nothing to do with the merits of their case or testimony. If that is the import of President Obama’s comments, then I agree with the quote.

- b. Do you believe that you fit President Obama’s standard as described in his quote?**

Response: Based upon my understanding of his quote, I believe that I fit President Obama’s description.

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

Response: I do not believe that empathy should dictate the outcome of a case or that it should be a substitute for the dispassionate application of the law to the facts of a case. Empathy may come into play in how a judge treats litigants or witnesses in his or

her courtroom—for example, with dignity and respect rather than disdain or condescension.

- 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 do not.

- i. If so, under what circumstances?**

- 4. 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, unequivocally.

- 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 of your own best judgment of the merits?**

Response: If I am confirmed to be a U.S. District Judge, I would be obligated and duty-bound to apply the decisions of the Ninth Circuit Court of Appeals and the United States Supreme Court, regardless of whether I personally agree with those decisions or not.

- 5. What in your view is the role of a judge?**

Response: The role of a judge is to fairly and impartially apply the law to the facts of each individual case regardless of the judge's own subjective views, and, when called upon, to serve as the neutral trier of fact.

- a. Do you think it is ever proper for judges to indulge their own values in determining what the law means?**

Response: No, I do not.

- i. If so, under what circumstances?**

- b. Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means?**

Response: No, I do not.

c. **If so, under what circumstances?**

6. How would you define “judicial activism?”

Response: Judicial activism appears to have a variety of meanings, including decision-making that disregards the facts, clear and unambiguous statutory language, and/or binding legal precedent; making law rather than interpreting it (i.e., “legislating from the bench”); insinuation of a judge’s personal preferences into judicial decision-making; and aggrandizement of judicial power to the detriment of executive or legislative power.

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: The beauty and brilliance of our Constitution are that its timeless values have endured even as our society has evolved. I believe that application of the plain language of the Constitution and respect for binding precedent are the twin pillars of constitutional interpretation for any federal district judge.

8. You were a member of the ACLU for nine years. According to the ACLU’s website, the ACLU believes that the death penalty inherently violates the constitutional ban on cruel and unusual punishment and the guarantees of due process and equal protection. At your hearing, I asked you whether you agreed with the ACLU’s position. You responded that you never had an active role in the organization. However, I am still unclear as to whether you agree or disagree with the ACLU’s position on the death penalty.

a. **Do you agree with the ACLU’s position on the death penalty, as set forth on its website?**

Response: It is the duty of every federal district judge to apply the existing law on the death penalty in appropriate cases and, if I am confirmed as a judge, I intend to do so. There are no moral or philosophical constraints that would interfere with my ability to apply existing law. I am not familiar with the contents of the ACLU’s website but, if the ACLU’s position on the death penalty is as stated, it is not consistent with my own.

a. **The ACLU Capital Punishment Project, which “challenges the unfairness and arbitrariness of capital punishment while working towards its ultimate repeal,” filed an *amicus* brief in the Supreme Court case *Kennedy v. Louisiana*, arguing that the Eighth Amendment’s rule against cruel and unusual punishment prohibited application of the death penalty for child rapists under “evolving standards of decency.” The Supreme Court held that the death penalty for the crime of child rape always violates the Eighth**

Amendment. Writing for a five-justice majority, Justice Kennedy based his opinion partly on the fact that 37 jurisdictions – 36 states and the federal government – did not allow for capital punishment in child rape cases. In reality, however, Congress and the President specifically authorized the use of capital punishment in cases of child rape under the Uniform Code of Military Justice (UCMJ) in the National Defense Authorization Act of 2006, as reported first by Col. Dwight H. Sullivan in his blog and later by the *New York Times*.

- i. Given the heinousness of the crime, as well as the new information on the federal government’s codification of capital punishment in child rape cases under the UCMJ, do you believe *Kennedy v. Louisiana* was wrongly decided? If not, why?**

Response: I am not familiar with the record before the Supreme Court in Kennedy v. Louisiana. If I am confirmed as a federal district judge, however, I will be duty bound to apply existing Supreme Court precedent, including Kennedy v. Louisiana, regardless of my personal views on whether it was wrongly decided.

- ii. Following the Supreme Court’s decision, President Obama announced at a press conference: “I think that the death penalty should be applied in very narrow circumstances for the most egregious of crimes. I think that the rape of a small child, 6 or 8 years old, is a heinous crime.” Do you agree with that statement?**

Response: Yes. Nonetheless, if I am confirmed as a federal district judge, I will be obligated to apply existing Supreme Court precedent, including Kennedy v. Louisiana so long as it has not been overturned.