

Responses of Esther Salas
Nominee to be United States District Judge for the District of New Jersey
to the Written Questions of Senator Charles Grassley

- 1. The Supreme Court Committee on Minority Concerns, of which you were a member, expressed a desire to place more minorities in the New Jersey Court system. You have expressed similar concerns as former president of the Hispanic Bar Association, including disappointment that the Governor failed to nominate Zulima Farber to the New Jersey Supreme Court.**

- a. What impact do you believe race or ethnicity has on judicial decisions?**

Response: I do not believe race or ethnicity has any impact on judicial decisions.

- b. Do you agree that a judge should aspire to be impartial regardless of who may be a party before the court—regardless of wealth, race, gender or privilege?**

Response: Yes, a judge has an absolute duty to remain impartial in any matter before the court.

- 2. When Justice Stevens announced his retirement, the President said that he would select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.”**

- a. Do you believe judges should ever base their decisions on a desired outcome, or solely on the law and facts presented?**

Response: A judge must never decide on a matter before the court based on his/her desired outcome but must strictly adhere to precedent and the facts presented.

- b. Do you believe a judge should consider his or her own values or policy preferences in determining what the law means? If so, under what circumstances?**

Response: No, I do not believe a judge should consider his or her own values or policy preferences in determining what the law means.

- 3. 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: Yes.

4. What is the most important attribute of a judge, and do you possess it?

Response: I believe a judge must be fair, evenhanded and decisive. In carrying out his or her duties, a judge must remain impartial and committed to following the law. As a United States Magistrate Judge for the past four years, I have demonstrated that I possess these attributes.

5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge should remain open minded and should never prejudge any matter that comes before the court. A judge should carefully review all materials submitted and consider the law and the facts when rendering decisions. Finally, a judge should treat all litigants that come before the court with respect and dignity. For the last four years I have met these standards, and if fortunate enough to be confirmed, I will remain true to these convictions.

6. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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: I am committed to following precedent. As a District Judge I would follow the law as set forth by the Supreme Court and the Third Circuit and would refrain from interjecting my personal beliefs when evaluating any matter before me.

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: First and foremost, I would look to available Supreme Court and Third Circuit precedents in analogous settings. In matters concerning statutory interpretation, I would examine the plain language of the text, consider the legislative history and look to whatever precedential guidance is available.

8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: A judge must adhere to precedent on questions of law in order to ensure certainty, consistency and stability in the administration of justice. As a trial judge, I would apply the law to the facts before me, and nothing else.

9. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: As a Magistrate Judge for the last four years, I have had to confront the pressures of managing a heavy caseload. Should I be fortunate enough to be confirmed as a District Judge, I would utilize the skills that I have acquired in the last four years and approach management of my docket in the same manner. In collaboration with the Magistrate Judge(s) assigned to work with me, I would carefully analyze the docket and determine which matters were ripe for dispositive consideration. I would continue to utilize the Magistrate Judges in a manner that has proven to be effective in our district. As a District Judge, I would afford all matters the proper attention and due consideration necessary to effectively and efficiently ensure that cases on my docket are moved through the system.

10. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, I believe judges have a role in controlling the pace and conduct of litigation of those matters before the court. Judges should be mindful that every litigant has a right to have their matter efficiently and fairly managed by the court. With that in mind, a judge should make great efforts to rule on matters before him or her with care and urgency. This requires both the skillful management of the matter at the pretrial stage, in conjunction with attentiveness by the district judge throughout the life of the matter.

As for the conduct, judges play a critical role in assuring that all litigants before the court remain professional and dignified. The judge starts by setting an example from the bench and the court should require that civility is maintained.

11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: In considering a constitutional challenge to a statute, a judge must assess whether the statute violates the Constitution or if Congress exceeded its authority under the Constitution in enacting the statute under review. The District Judge must be guided by precedent when carefully determining whether to declare a statute enacted by Congress unconstitutional.

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

Response: Having carefully considered each question, I drafted my responses which were reviewed by representatives of the Department of Justice. The final responses were forwarded to the Department of Justice for submission to the Senate Judiciary Committee.

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

Response: Yes.

**Responses of Esther Salas
Nominee to be United States District Judge for the District of New Jersey
to the Written Questions of Senator Jeff Sessions**

- 1. According to your questionnaire, you participated in the drafting of a March 13, 2006 letter to the U.S. Sentencing Commission from Federal Community and Public Defenders. Please explain for the Committee your role and work on this letter.**

Response: I played no role in the drafting of the March 13, 2006 letter. I did help prepare it by conducting research on various proposed amendments and preparing a background memorandum for the Federal Defender Sentencing Guidelines Committee (hereinafter referred to as Defender Committee) for their review. Finally, I recall participating in conference calls with the Defender Committee.

- 2. Among the sentencing guidelines opposed in the letter were new increased sentences for hoaxes, including hoax calls to military families conveying false information “about the death, injury, capture, or disappearance of a member of the Armed Forces.” The letter proposed a very low base offense level of six (half of what the Commission recommended), as well as “an invited downward departure, if the offense did not involve an expression of intent to injure a person or property.”**

- a. Isn’t it true that under your proposal, a hoax caller who intended to harass a military family would face no meaningful risk of jail time (zero to six months in the probation range)?**

Response: Having reviewed the Defender Committee’s proposal, it is possible for a hoax caller convicted of harassing a military family, where there was no “intent to injure a person or property,” to receive a probationary sentence. However, there are many factors that a sentencing court must consider before rendering any sentence in a criminal matter. The sentencing judge must first determine the appropriate guideline range, then consider all statutory factors mandated by 18 United States Code, Section 3553(a). The sentencing judge must also review the final presentence report and consider any and all aggravating and mitigating factors. It is important to note that if the hoax caller had a criminal history which resulted in a higher criminal history category, the hoax caller could receive a jail sentence.

- b. Do you disagree with the Commission’s decision to refer the hoax statute to the same guideline that governs threats?**

Response: As a judge my role is limited and I would afford a great deal of deference to the United States Sentencing Guidelines. It is the Commission’s job to set forth the appropriate guidelines and it is not my place to agree or disagree with any of the Commission’s decisions.

3. **The letter also objected to the proposed Commission guidelines for criminals who materially support the development, use, or threatened use of a nuclear weapon or other weapon of mass destruction. Among other objections, the letter proposed a downward departure for those convicted of materially supporting the development of a nuclear or other weapon. Do you not believe those who are convicted of intentionally and materially supporting the illegal development of rogue nuclear weapons deserve strict accountability and the highest available sentence?**

Response: Our system of justice requires that individuals convicted of a crime in a court of law must be accountable for their conduct. As a District Judge, I would not have a preconceived notion of what type of sentence a defendant should or should not receive. Rather, a sentencing judge must consider all appropriate factors in determining the sentence in any criminal matter. However, if the facts were such that the aggravating factors clearly outweighed the mitigating factors and the advisory guideline range recommended a sentence at or near the statutory maximum, I would have no difficulty in following the advisory guideline range.

4. **The letter also objected to proposed stepped-up guideline enhancements for those who destroy or damage veterans' memorials or a national cemetery. According to the letter, these proposed enhancements, which were in the range of four to six guideline levels, were "too high." In fact, the letter opined that existing sentences for these offenses were "too high already." But under the guidelines in effect at the time of your letter, a defendant who vandalized a national cemetery plot would be sentenced based on an Offense Level of 8, which yields a zero to six month term of imprisonment and pretty much guarantees probation. Do you personally believe a probation sentence is "too high" for someone who vandalizes a national cemetery?**

Response: If fortunate enough to be confirmed as a District Judge, I would refrain from interjecting my personal beliefs when presiding over any matter. In all sentencing proceedings, I would look to the Guidelines in order to determine the advisory guideline range. Then I would consider the statutory factors set forth in Section 3553(a) along with a thorough review of the final presentence report before making any determination as to the appropriate sentence.

5. **Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.**

Response: The Supreme Court has held that the death penalty does not constitute cruel and unusual punishment within the meaning of the Eighth Amendment. Accordingly, I would have no difficulty in enforcing the law in all aspects, including and not limited to, the death penalty.

6. **Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.**

Response: Yes, the Supreme Court has held the death penalty is constitutional and is an acceptable form of punishment. Accordingly, I would follow precedent as it related to the death penalty.