

Responses of Rosanna Malouf Peterson
Nominee to the U.S. District Court for the Eastern District of Washington
to the Written Questions of Senator Jeff Sessions

1. 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: Yes.

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

Response: I believe that it may be appropriate for a district court judge to depart downward from the sentencing guidelines when the prosecution and the defense make a joint recommendation that the judge do so. Often joint recommendations are pursuant to plea agreements in cases in which the defendant has provided substantial assistance to the government, which could justify the recommendation for a downward departure from the sentencing guidelines.

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

Response: I view a judge as an unbiased decision maker who applies the established law to the facts of a case and arrives at the conclusion dictated by that law and those facts.

3. How would you define “judicial activism?”

Response: I define “judicial activism” as when a judge creates law rather than interpreting and applying established law.

4. 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? Please explain your answer.

Response: No. I do not agree that the Constitution is constantly “evolving.” The Constitution is unchanging in its establishment of rights and responsibilities and allocation of power among the branches of government.

5. 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: I think that President Obama is correct in selecting judges who have a broad range of life experiences and a breadth of understanding of the human experience.

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

Response: Yes. I have a wide range of life experiences that would allow me to comprehend all types of arguments and communicate with all types of parties who may appear before me, if I am confirmed.

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: Yes, I agree with Justice Sotomayor’s statement.

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

Response: I believe that a judge’s breadth of understanding of the human experience would allow the judge to comprehend and communicate with diverse parties who appear before the judge, which could assist a judge in determining credibility of witnesses.

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.

6. 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 Supreme Court and Ninth Circuit precedent in making my decision regardless of my personal beliefs.

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

Response: I read the questions, considered the issues, and drafted responses. I submitted my draft responses to representatives from the Department of Justice and discussed those draft responses with them before finalizing and submitting my responses.

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

Response: Yes.

**Responses of Rosanna Malouf Peterson
Nominee to the U.S. District Court for the Eastern District of Washington
to the Written Questions of Senator Tom Coburn, M.D.**

- 1. President Obama has described the types of judges that he will nominate to the federal bench as those who have “empathy,” as “someone 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.” While the ability to empathize is an admirable human trait, there is serious concern about a judge who empathizes with one litigant over another based on their circumstances. This is why the judicial oath requires judges to do equal justice to the rich and the poor.**

In *U.S. v. Torres-Sanchez*, you represented an illegal alien in deportation proceedings. The defendant not only was previously deported, but also had been convicted of a prior drug offense. Notwithstanding, in your questionnaire, you stated that this case was significant to you because you:

“gained a new level of understanding of the issues illegal aliens face in trying to return to the United States after a prior deportation even though they have lived their entire lives in the United States.”

- a. That sounds a lot like empathy towards a defendant even though that defendant had repeatedly broken the law. Can you explain why your statement should not be concerning when the Senate is trying to determine whether you will be a neutral arbiter in a lifetime appointment?**

Response: I assisted Ms. Torres-Sanchez as her attorney, and therefore her advocate, in entering a plea of guilty to the charge of being in the U.S. after a prior deportation. My statement of understanding that you cite was based on the facts of her case, which included her attempts to seek approval to re-enter the U.S. legally prior to her re-entry into the U.S. illegally. If I am confirmed to serve as a district court judge, I would become a neutral arbiter and not an advocate, which I fully comprehend are very different roles. If I were confirmed, I would be committed as a neutral arbiter to apply the established law to the facts in any case and arrive at the conclusion dictated by that law with those facts.

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

Response: No.

- c. If confirmed, what assurances can you provide that you will enforce immigration laws as they pertain to persons illegally present in the United States?**

Response: If confirmed, I would take the oath of office to uphold the Constitution and the laws of the United States, including all immigration law. My background and character provide assurance that I do not violate my oaths.

- d. **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.

2. **The case of *U.S. v. Uriel Silva Rivas* raises a similar concern. In that case, you represented a defendant who, along with most of his family, was indicted for conspiracy to distribute controlled substances. You stated that the case was important to you because**

“it demonstrated the impact of criminal charges on the entire family.”

- a. **Doesn't that statement indicate empathy towards multiple defendants who were charged with breaking the law?**

Response: I intended that statement to indicate an understanding of how criminal activity by some family members destroys the entire family, including those who have not participated in any criminal activity.

- b. **Again, why should we not be concerned about that statement?**

Response: My ability to comprehend the destruction that occurs as a result of criminal activity applies to victims' families as well as defendants' families and would not undermine my commitment to applying the established law to the facts in any case and arriving at the conclusion dictated by that law with those facts.

- c. **If confirmed, would you take into consideration the impact on a defendant's family in sentencing a defendant?**

Response: If confirmed, I would follow the relevant statutes, sentencing guidelines, and established law. I would only take into consideration the impact of a sentence on a defendant's family if the established law, including the sentencing guidelines, called for such consideration.