

Responses of Benita Y. Pearson
Nominee to the U.S. District Court for the Northern District of Ohio
to the Written Questions of Senator Sessions

- 1. In question number 18 of your questionnaire, you were asked to describe the most significant legal activities you have pursued, including significant litigation. You have had a diverse legal career and your response did not describe past legal activities.**

- a. Please describe, in detail, the most significant legal activities you have pursued, including cases and individuals you have prosecuted or represented.**

Response: Of the 15 years since I became an attorney, I spent eight as an Assistant United States Attorney, three in private litigation practice and two as a law clerk to a United States District Judge. Since 2008, I have served as a United States Magistrate Judge.

As an Assistant United States Attorney (AUSA) for the Northern District of Ohio, I served my entire eight-year tenure investigating and prosecuting cases in the Organized Crime and Public Corruption Strike Force Unit of the criminal division. My activities included working with Federal and State law enforcement officers to investigate matters and to prepare them for presentation to grand juries and for trial in District Court. As is typical for Federal prosecutions, I resolved many cases by plea agreement, after significant negotiation. Several of the cases listed in my questionnaire as among the most significant litigated matters that I personally handled are also representative of my legal activity as an AUSA. For example, in *United States v. Onunwor*, I was co-counsel in the trial of a sitting mayor, who a jury then convicted of bribery and bankruptcy fraud. The *Onunwor* investigation also led to the conviction of three additional public officials, among others. In *United States v. Lay*, I was lead trial counsel in a major securities fraud case that presented many novel issues of first impression for the Sixth Circuit. I was assisted in the investigation of the charges against *Lay* and the preparation for trial by a multi-jurisdiction task force of approximately 25 persons whose daily activities I supervised. In addition to winning a conviction of *Lay*, the investigation led to the conviction of the Chief Financial Officer of the Ohio Bureau of Workers' Compensation and a guilty plea to ethics violations by the then Governor of Ohio.

As a litigation associate at Jones Day (1998-2000) and McDonald Hopkins Burke and Haber (1995-1996), I participated in pretrial motion practice and trials in both in State and Federal courts. These trials included a complex contract dispute, in which we represented a hospital suing one of its medical groups in State court, and a two-month antitrust trial in the United States District Court, in which we represented a real estate company claiming anticompetitive behavior by the then leaders in the market.

From 1996 to 1998, I served as a law clerk to United States District Judge John M. Manos. I assisted Judge Manos with legal research and writing. I have aspired to adhere to Judge Manos' unwavering dedication to the law during my service as a United States Magistrate Judge and would continue to do so if confirmed as a United States District Judge.

- 2. In your questionnaire, you described a speech you gave to the Advent Lutheran Church during Women's Day 2009. Even though you did not have a copy of the speech, you described a situation where you exercised leniency in a case in which a man had violated the terms of his supervised release. Please describe this situation in detail, including your reasons for exercising leniency.**

Response: In this presentation, I discussed an offender serving a term of supervised release, who had violated the release conditions by repeated failure to report to his probation officer. I issued a warrant for the offender's arrest and ordered him to appear in my Court. After the offender admitted to the reported violations, I engaged him in a colloquy and learned that his income was extremely limited and that he had been prescribed a number of medications for serious medical conditions, including a heart condition, that he had not taken in several weeks because he had run out of both his prescription medications and money. Rather than impose a sanction such as re-incarceration, I ordered the offender to go from the courthouse to the pharmacy and commit to keeping current with his prescription medications and his probation office appointments. To my knowledge, the offender has complied with both my orders.

- a. Do you think it is proper for a judge to rely on his or her personal beliefs when issuing an opinion or ruling on a case? Please explain why or why not.**

Response: No. Personal preferences have no role in judging and certainly no role in my judging. If confirmed as a United States District Court Judge, I will apply the law the facts, not feelings or personal preferences to the facts.

- b. As an Assistant U.S. Attorney, what factors did you consider to determine whether leniency should be exercised?**

Response: Exercising leniency is not the role of an Assistant United States Attorney. I charged appropriately and prosecuted robustly.

- 3. In your questionnaire, you noted that you are a member of the Animal Legal Defense Fund ("ALDF"). As you noted during your hearing, you also teach Animal Law at Cleveland-Marshall College of Law. According to the syllabus you provided, your course includes a section devoted to constitutional standing. The ALDF advocates that animals should be considered "legal persons" and have "standing" in court. Do you believe that animals should be conferred legal standing to bring a lawsuit?**

Response: Existing laws do not confer standing upon animals. On a case by case basis, however, courts have addressed whether standing should be conferred upon the legal representative of an animal. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (finding that respondent lacked standing); *Animal Legal Defense Fund v. Glickman*, 154 F.3d 426 (D.C. Cir. 1998) (*en banc*) (finding ALDF had standing to challenge the treatment of primates). If confirmed as a United States District Judge, I will enforce applicable legal precedent.

4. Professor Cass Sunstein has written the following:

“[A]nimals should be permitted to bring suit, with human beings as their representatives, to prevent violations of current law ... Any animals that are entitled to bring suit would be represented by (human) counsel, who would owe guardian like obligations and make decisions, subject to those obligations, on their clients’ behalf.”

a. Do you agree with Professor Sunstein? Please explain why or why not.

Response: I do not know the context of this quoted language. Animals do not have standing under existing law. However, courts have ruled that, to the extent an animal has a legal interest that is justiciable, then the legal issue should be presented *via* competent legal representation, as is the case for other nonhuman litigants such as corporations.

b. Do you believe an animal should be classified as “property” in our legal system?

Response: Animals are classified as property. *See, e.g., Sentell v. New Orleans*, 166 U.S. 698 (1897) (addressing the property status of dogs). If confirmed as a United States District Judge, I will follow this and all other applicable precedent.

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, do you believe that you fit President Obama’s criteria for federal judges, as described in his quote?

Response: Given that President Obama nominated me, I can only assume that I fit the criteria the President has established for nomination to the Federal bench.

- 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: None. Empathy should play no role in deciding the law.

- 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: None.

- 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: None. My subjective sense of empathy does not enter my mind so I do not have to set it aside.

- 6. Supreme Court precedent is binding on all lower federal courts and Circuit Court precedent is 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 apply the precedent of the Supreme Court and the Court of Appeals for the Sixth Circuit.

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

Response: I read the questions, drafted responses, discussed my draft responses with attorneys for the Department of Justice, finalized my responses, and forwarded my responses to the Department of Justice for submission to the Committee on the Judiciary.

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

Response: Yes