

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

**Responses of Benita Y. Pearson
Nominee to the U.S. District Court for the Northern District of Ohio
to the Written Questions of Senator Charles E. Grassley**

1. What is your view of the role of a judge?

Response: A judge plays the key role in dispute resolution. In disputes brought before the Court, it is the role of a judge to fairly and impartially apply the law to the facts consistent with due deference to the plain meaning of legal text and applicable legal precedent.

2. Do you believe it is ever appropriate for judges to indulge their own values in determining the meaning of statutes and the U.S. Constitution?

Response: No.

a. If so, under what circumstances?

Response: None.

b. Please provide an example of a case in which you have done so.

Response: None.

c. Please provide an example of a case where you have had to set aside your own values and rule based solely on the law.

Response: None.

3. Do you believe it is ever appropriate for judges to indulge their own policy preferences in determining the meaning of statutes and the U.S. Constitution?

Response: No.

a. If so, under what circumstances?

Response: None.

b. Please provide an example of a case in which you have done so.

Response: None.

- c. **Please provide an example of a case where you have had to set aside your own policy preferences and rule based solely on the law.**

Response: None.

4. How do you define “judicial activism?”

Response: I define judicial activism as judicial action designed to achieve a predetermined goal, despite the applicable law and facts. I believe in judicial restraint. Congress writes the law. Judges apply the law to the facts. If confirmed, that is what I intend to do.

Responses of Benita Y. Pearson
Nominee to the U.S. District Court for the Northern District of Ohio
to the Written Questions of Senator Tom Coburn, M.D.

- 1. In your testimony last week in response to one of my questions, you stated that “the Animal Defense Fund has a goal that is not my goal.” Does that mean you oppose the Animal Legal Defense Fund’s goal of creating an Animal Bill of Rights?**

Response: I am not familiar with the Animal Legal Defense Fund’s goal of creating an Animal Bill of Rights or the text of any such document. Therefore, I have no view on that matter.

- a. Do you believe animals should have standing in court?**

Response: Existing law does not confer standing upon animals.

- b. If so, to what extent?**

Response: Animals do not have standing under existing law. 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 treatment of primates). If confirmed as a United States District Judge, I will apply the applicable legal precedent.

- 2. You also stated that you are “not an advocate for animal rights” but that you are “an advocate for doing what is in the best interest of animals.” Can you explain that distinction?**

Response: Animal rights is not a term I use. Based upon your use of that term at the hearing and in these questions, I think it refers to abstract entitlements not necessarily based upon or attached to existing law. My understanding is that the law is intended to do what is in the best interest of animals and humans. If confirmed as a United States District Judge, I will apply existing law to the facts in a fair and impartial manner.

- 3. ALDF’s animal bill of rights advocates for the “right of farm animals to an environment that satisfies their basic physical and psychological needs” and “the right of wildlife to a natural habitat, ecologically sufficient to a normal existence and self-sustaining species population.” Do you agree with these rights for animals?**

Response: I am not familiar with the text of the ALDF’s Bill of Rights beyond your quoted language above. Unless the ALDF’s Animal Bill of Rights is enacted by Congress and made law, I would not apply it. If confirmed, I will apply existing law.

- a. **If this bill of rights were enacted, who would determine what a farm animal's "basic psychological needs" are?**

Response: I am not familiar with the text of the ALDF's Bill of Rights beyond your quoted language above. If ALDF's Animal Bill of Rights is enacted by Congress and I am confirmed and called upon to interpret it, I would do so as I would any other statute.

- b. **Would the "right of wildlife to a natural habitat, ecologically sufficient to a normal existence and self-sustaining species population" trump a business' right to develop land?**

Response: I am not familiar with the text of the ALDF's Bill of Rights beyond your quoted language above. If ALDF's Animal Bill of Rights is enacted by Congress and I am confirmed and called upon to interpret it, I would do so as I would any other statute.

- c. **Would it trump the government's right to patrol the borders of our country if such patrol might interfere with local wildlife?**

Response: I am not familiar with the ALDF's Bill of Rights and, therefore, cannot speak to who would make these determinations. If ALDF's Animal Bill of Rights is enacted by Congress and I were confirmed and called upon to interpret it, I would do so as I would any other statute.

- d. **How do you balance those interests?**

Response: If confirmed as a United States District Judge, I would consider the facts and apply the applicable law.

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?**

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 that legal issue should be presented *via* competent legal representation, as is the case for other non-human 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. In your testimony you mentioned that you are “an advocate for what is in the best interest of animals and, at times, that coincides with doing what is in the best interests of animals and humans.” How you do think we should handle animal rights when they conflict, rather than coincide, with the best interests of humans?

Response: If confirmed as a United States District Judge, I would follow existing precedent and applicable law, in determining how to handle animal rights when they conflict, rather than coincide, with the best interests of humans.

a. Must those rights be balanced or does the interest of humans always supersede the interests of animals?

Response: Like all conflicting interests wherein the law is implicated, the matter would have to be decided based upon its facts and the applicable law. If confirmed as a United States District Judge, I would follow existing precedent and applicable law.

6. In response to my final question, you suggested that the determination as to whether slaughtering a steer infringes upon the rights of that steer depends upon whether the slaughter is “necessary ... in order to provide food for those who would otherwise go hungry.” Is it your belief, then, that a slaughter is inappropriate unless it is *necessary* to prevent human starvation?

Response: No.

a. What if the meat from the steer will be used to feed humans who could otherwise subsist on a strictly vegetarian diet without any threat of starvation?

Response: To my knowledge there is no prohibition against using meat from a steer in that fashion. If confirmed as a United States District Judge, I would follow existing precedent and applicable law.

7. Do you believe that trophy hunting should be illegal since it is not necessary for human subsistence?

Response: No. Hunting, within the parameters permitted by law, is legal. If confirmed as a United States District Judge, I would follow existing precedent and applicable law.

8. 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. **Generally speaking, are *Lopez* and *Morrison* consistent with the Supreme Court's earlier Commerce Clause decisions?**

Response: In *Gonzales v. Raich*, 545 U.S. 1, 23 (2005), the Supreme Court indicated that its *Lopez* and *Morrison* decisions are consistent with prior Supreme Court Commerce Clause decisions.

- b. **Why or why not?**

Response: In *Gonzales v. Raich*, the Court rejected a reading of *Lopez* and *Morrison* as inconsistent with prior Commerce Clause precedent. 545 U.S. 1, 23 (2005). Specifically, the Court rejected the respondent's "myopic focus" on *Lopez* and *Morrison*, which "overlook the larger context of modern-era Commerce Clause jurisprudence preserved by those cases." *Id.*

9. **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: I do not believe that the Constitution constantly evolves as society interprets it. Absent a constitutional amendment, the words of the Constitution do not change. The words of the Constitution should be given their plain meaning, and, where there is ambiguity, the intent of the framers should be given great weight. The framers, however, did not envision all the issues that confront us today, particularly, for example, issues presented by developments in technology. In these situations, I believe a judge should apply the words of the Constitution and constitutional principles, as construed by applicable Supreme Court case law.

10. **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: I am bound by the Supreme Court's rulings and, if confirmed as a United States District Judge, I would apply Supreme Court precedent.

11. **At your hearing, I asked you whether, in your view, it is ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution. You answered "no," for which I commend you. However, in a couple of cases including *Roper v. Simmons*, and *Lawrence v. Texas*, 539 U.S. 558 (2003), a majority of the Supreme Court considered and cited foreign law in its majority opinion. Do you believe the majority was incorrect in these cases? Please explain**

Response: The decisions in *Roper* and *Lawrence* were ultimately decided based upon United States law. The mention of foreign law does not change that. I fully accept that as precedent to be followed, and will do so if confirmed as a United States District Judge. A decision by the Supreme Court should help to develop, clarify or harmonize the law. To that end, some

Justices have found it useful, for purposes of comparison, to explore how other countries handle certain issues. For example, the Supreme Court has looked to foreign law, on occasion, to a limited extent, for purposes of comparison, though always relying on American law. Beyond this, having not reviewed the briefs filed by the parties, having not read all of the decisions cited within the majority and dissenting opinions, and having not heard the oral arguments in the action, I am not in a position to state any viewpoint regarding the correctness of the majority's dicta.

a. Do you believe foreign law has any bearing on a court's interpretation of the Eighth Amendment?

Response: If confirmed as a United States District Judge, I would not interpret the Constitution or its amendments based upon foreign law.

b. What about any other amendments?

Response: If confirmed as a United States District Judge, I would not interpret the Constitution or its amendments based upon foreign law.