

Responses of James E. Boasberg
Nominee to be United States District Judge for the District of Columbia
to the Written Questions of Senator Jeff Sessions

- 1. As a D.C. Superior Court Judge, you have had to make sentencing decisions using the District of Columbia's Sentencing Guidelines, which are similar to the Federal Sentencing Guidelines, and are also advisory.**

- a. How much deference do you afford the D.C. Sentencing Guidelines?**

Response: As a Superior Court judge, I give a great deal of deference to the D.C. Sentencing Guidelines. In fact, I have imposed sentences that are within the Guidelines in the vast majority of my felony cases.

- b. If confirmed, do you anticipate affording the Federal Sentencing Guidelines the same level of deference?**

Response: Yes, if confirmed, I expect to afford the Federal Sentencing Guidelines a great deal of deference.

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

Response: When the Federal Sentencing Guidelines were mandatory, the U.S. Sentencing Commission enumerated particular circumstances in which judges were permitted to depart upward or downward. Although the Guidelines are no longer mandatory, I would, if confirmed, expect to consult those departure criteria in deciding whether to depart upward or downward.

- d. Given that you served as a federal prosecutor when the guidelines were mandatory, and you have served as a judge under a system where the guidelines are advisory, what is your view regarding whether the current federal scheme, where the Guidelines are advisory, is producing consistent and fair sentencing from one defendant to the next?**

Response: As a judge on the D.C. Superior Court, I have found the D.C. Sentencing Guidelines immensely helpful. Instead of starting from scratch in fashioning an appropriate sentence, I can refer to a presumptive sentencing range that has been determined by looking at the heartland of historical sentences. I and other judges on the Superior Court have thus greatly benefited from the Sentencing Guidelines and follow them in the vast majority of our cases, even though they are not mandatory. I would expect similarly consistent and fair sentencing under the Federal Sentencing Guidelines, which are also advisory, not mandatory.

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: Judges should not work from a desired outcome in assessing the law and facts. Instead, they should follow the law and facts to whatever outcome they dictate.

- i. **Please discuss an example of a case where you have had to set aside your own desired outcome and rule based solely on the law.**

Response: I have not presided over cases in which my desired outcome was contrary to the law.

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

Response: No.

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

Response: N/A

- ii. **Please identify any cases in which you’ve done so.**

Response: N/A

- iii. **If not, please discuss an example of a case where you have had to set aside your own values or policy preferences and rule based solely on the law.**

Response: I have not presided over cases in which my preferences were contrary to the law.

- 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.

3. **Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.**

Response: The Supreme Court in *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008), and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), held that the Second Amendment bestows an individual right to bear arms. That is the law that I would follow if confirmed.

a. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: In *District of Columbia v. Heller*, 128 S.Ct.2783 (2008), and *McDonald v. City of Chicago, Illinois*, 130 S. Ct. 3020 (2010), the Supreme Court left open the question of what level of heightened scrutiny should apply to a Second Amendment challenge. When the Supreme Court or the D.C. Circuit determines the level of scrutiny, I will, if confirmed, follow that standard.

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

Response: A judge should fairly and impartially uphold the law as it is written and apply it to the cases that appear before him or her.

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

Response: With a few narrow exceptions, the Supreme Court has held that the death penalty does not constitute cruel and unusual punishment under the Eighth Amendment to the Constitution. I would, if confirmed, follow that determination.

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

Response: The Supreme Court has determined that the death penalty is a constitutional and acceptable form of punishment. I would, if confirmed, follow that determination.

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

Response: I received these questions on September 22, 2010, from the Department of Justice's Office of Legal Policy. I prepared a draft of these answers, which I sent to OLP on September 24. I then discussed this draft with OLP staff that same day and submitted my final draft on September 26 for transmission to the Committee.

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

Response: Yes.