

Responses of Beryl A. Howell
Nominee to be United States District Judge for the District of Columbia
to the Written Questions of Senator Jeff Sessions

1. **According to a May 2009 presentation you gave at the 18th Annual National Seminar on the Federal Sentencing Guidelines, only roughly 40% of sentences handed out by the D.C. District Courts are within the federal sentencing guidelines. Of course, that means that around 60% of all sentences are departures from the guidelines. If you are confirmed as a District Judge, you will be among the judges within the D.C. District Court imposing sentences.**

- a. **Do you agree that the sentencing guidelines, if applied properly and followed faithfully, can go a long way to assure predictability and uniformity in sentencing?**

Response: Yes.

- b. **I recognize a substantial number of the downward departures in the District of D.C. are requested by the government; however, if you are confirmed, do you think you would conclude the sentencing guidelines got it wrong more than half the time?**

Response: Should I be confirmed as a District Court Judge for the District of Columbia, I would adhere to a three-step sentencing process, in accordance with the policy statements of the U.S. Sentencing Commission and consistent with the directions of the U.S. Supreme Court. Specifically, first, I would determine correctly the applicable guideline range. *See* 18 U.S.C. § 3553(a)(4); *Rita v. United States*, 551 U.S. 338, 347-48 (2007) (a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range); *Gall v. United States*, 552 U.S. 38, 49 (2007) ("As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark."). Second, I would consider whether policy statements or commentary in the Guidelines Manual warrant consideration in imposing sentence. *See* 18 U.S.C. § 3553(a)(5). Finally, I would consider the factors set forth in 18 U.S.C. § 3553(a), taken as a whole, to determine the appropriate sentence in each individual case. As part of the process, I would consider fully and fairly the arguments made by the government and defendant, and explain the reasons for the sentence imposed.

2. **On April 30, 2008, you gave a presentation at the White Collar Women's Lunch entitled "Data Detours: E-Discovery and the EU Data Protection Directive." In that presentation, you discussed the effect European law has on discovery in cases involving multinational corporations. I recognize your presentation was about the practical consequences of foreign law, not the interpretation of American law. However, do you believe the multinational nature of the business environment**

makes it permissible for American judges to take foreign law into account when determining the meaning of America's laws and Constitution?

Response: No. Consideration of foreign law is not appropriate in interpreting the meaning of domestic law and the U.S. Constitution, unless such consideration is required by statute or the Constitution, or controlling precedent from the U.S. Supreme Court or the U.S. Court of Appeals for the District of Columbia Circuit.

3. **During the 2008 presidential campaign, President Obama 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: I am honored that President Obama nominated me to the position of District Court Judge for the District of Columbia and that my record of educational and professional achievements met his criteria.

- 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: In consideration of a case, a district court judge should find the relevant law from the text of the statute or the Constitution and binding precedent from the Supreme Court and appellate courts, determine the facts fairly from the evidence presented by the parties, and then apply the law to the facts, with clear articulation of the findings of fact and conclusions of law to the parties. Empathy does not play a role.

- d. **Do you think that it is 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: Not applicable.

- e. **Following Justice Stevens' 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." Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?**

Response: Judges should base their decisions solely on a diligent application of the law to fairly evaluated facts that are presented by the parties.

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

Response: I prepared my responses after careful consideration of each question and any relevant legal issues raised. I discussed my responses with representatives of the Department of Justice and requested that my responses be transmitted to the Committee.

5. **Do these answers reflect your true and personal views?**

Response: Yes.