

**Responses of Sue E. Myerscough
Nominee to be United States District Judge for the Central District of Illinois
to the Written Questions of Senator Jeff Sessions**

- 1. During your 2002 campaign for the Illinois Supreme Court, you were quoted as saying that, “[t]he [Illinois] Supreme Court is a social service agency, and they have too long ignored that role.” Please explain what you meant by that statement.**

Response: My comment was directed solely to the management role of the Supreme Court over adult and juvenile probation services as delegated by the legislature. Probation services monitor criminal offenders and incarcerate juveniles within the community. Funding for court services has been dramatically cut in the last 25 years.

- 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 base their decisions on a desired outcome, or solely on the law and facts presented?**

Response: Judges should base their decisions only on the law and facts presented.

- 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 do not have a desired outcome when I enter the courtroom. However, among the more difficult cases are those in which mental health patients must be released even though potentially dangerous because they did not receive their statutory notices. In those cases where the patients did not receive statutory notice, I have followed the law and reversed the commitments.

- 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: None.

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

Response: None.

- 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: The mental health cases referenced in 2(a).

- 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.

3. **Under the Supreme Court's decision in *United States v. Booker*, the federal sentencing guidelines are now advisory, rather than mandatory.**

- a. **If confirmed, how much deference will you afford the Sentencing Guidelines?**

Response: Significant deference. The Supreme Court has made clear in Nelson v. United States, 129 S. Ct. 890 (2009), that the sentencing guidelines are the guidepost for any sentence. "So modified, the federal sentencing statute . . . makes the Guidelines effectively advisory. It requires a sentencing court to consider Guidelines ranges[.]" United States v. Booker, 125 S. Ct. 738, 757 (2005).

- b. **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.

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

Response: Only rarely where recommended by the U.S. Attorney and that recommendation is supported by the statutory sentencing factors.

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

Response: The Supreme Court decisions in District of Columbia v. Heller, 128 S. Ct. 2783 (2008) and McDonald v. City of Chicago, 130 S. Ct. 3020 (2010) hold that the Second Amendment confers an individual right.

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

Response: In Heller and McDonald, the Supreme Court found a right under the Second Amendment must be treated in the same manner as any fundamental right identified in the Bill of Rights. The Second Amendment right to bear arms should therefore not be treated as a “watered down right” subject to “judicial interest balancing.” See Heller, 128 S. Ct. at 2821; McDonald, 130 S. Ct. at 3047.

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

Response: The role of a judge is to apply the law to the facts.

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

Response: The Supreme Court has found the death penalty constitutes cruel and unusual punishment in certain circumstances as applied to juveniles (Roper v. Simmons, 125 S. Ct. 1183 (2005)), low intellectual functioning (Atkins v. Virginia, 536 U.S. 304 (2002)) and in nonhomicide felonies (Kennedy v. Louisiana, 128 S. Ct. 2641 (2008)).

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

Response: Yes. Should I be confirmed as a district court judge, I would follow the law regarding imposition of the death penalty, both as directed by statute and in binding precedent from the Supreme Court and the United States Court of Appeals for the Seventh Circuit.

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

Response: After reviewing the legal issues presented, I prepared my answers after careful consideration of each question. I discussed my answers with representatives of the Department of Justice and requested my answers be forwarded to the Committee.

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

Response: Yes.