

**Responses of Rosanna Malouf Peterson
Nominee to the U.S. District Court for the Eastern District of Washington
to the Written Questions of Senator Jeff Sessions**

- 1. Under the Supreme Court’s decision in *United States v. Booker*, the federal sentencing guidelines are advisory, rather than mandatory. Under the current system, it appears to me that as long as the sentencing judge (1) correctly calculates the guidelines, and (2) appropriately considers factors set forth therein, the judge may impose any sentence ranging from probation to the statutory maximum. Following the Supreme Court’s decision in *Gall v. United States*, appellate courts must apply the highly deferential “abuse of discretion” standard when reviewing these sentencing decisions. As a result, district court judges may impose virtually any sentence, and as long as the decision is procedurally sound, there is virtually no substantive review on appeal.**

- a. 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.

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

Response: I believe that it may be appropriate for a district court judge to depart downward from the sentencing guidelines when the prosecution and the defense make a joint recommendation that the judge do so. Often joint recommendations are pursuant to plea agreements in cases in which the defendant has provided substantial assistance to the government, which could justify the recommendation for a downward departure from the sentencing guidelines.

- 2. What in your view is the role of a judge?**

Response: I view a judge as an unbiased decision maker who applies the established law to the facts of a case and arrives at the conclusion dictated by that law and those facts.

- 3. How would you define “judicial activism?”**

Response: I define “judicial activism” as when a judge creates law rather than interpreting and applying established law.

- 4. 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? Please explain your answer.**

Response: No. I do not agree that the Constitution is constantly “evolving.” The Constitution is unchanging in its establishment of rights and responsibilities and allocation of power among the branches of government.

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, what is your opinion with respect to President Obama’s criteria for federal judges, as described in his quote?**

Response: I think that President Obama is correct in selecting judges who have a broad range of life experiences and a breadth of understanding of the human experience.

- b. **In your opinion, do you fit President Obama’s criteria for federal judges, as described in the quote?**

Response: Yes. I have a wide range of life experiences that would allow me to comprehend all types of arguments and communicate with all types of parties who may appear before me, if I am confirmed.

- 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’s statement.

- d. **What role do you believe that empathy should play in a judge’s consideration of a case?**

Response: I believe that a judge’s breadth of understanding of the human experience would allow the judge to comprehend and communicate with diverse parties who appear before the judge, which could assist a judge in determining credibility of witnesses.

- e. **Do you think that it’s ever proper for judges to indulge their own subjective sense of empathy in determining what the law means? If so, under what circumstances?**

Response: No.

6. Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are 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 follow Supreme Court and Ninth Circuit precedent in making my decision regardless of my personal beliefs.

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

Response: I read the questions, considered the issues, and drafted responses. I submitted my draft responses to representatives from the Department of Justice and discussed those draft responses with them before finalizing and submitting my responses.

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

Response: Yes.