

**Responses of Jane Branstetter Stranch
Nominee to the U.S. Court of Appeals for the Sixth Circuit
to the Written Questions of Senator Jeff Sessions**

- 1. Over the course of your extensive career in private practice, you have represented several labor unions and union locals. You were also a member of the Board of Directors of the AFL-CIO Lawyers Coordinating Committee, which, according to the AFL-CIO’s website, “is comprised of more than 1,800 union-side labor lawyers.”**

- a. Do you think you can be impartial in cases filed by or on behalf of unions?
Please explain your answer.**

Response: I think I can be impartial in such cases. My wide ranging and varied practice has included the representation of labor organizations as one component. I recognize that the oath of office I would take if confirmed requires that I administer justice “without respect to persons” and that I treat equally all who come before me. I would honor that oath and act with impartiality in cases involving labor organizations and any of the other categories of persons or entities I have represented.

- b. Have you ever represented a party in a matter who was adverse to a union, other than a union local?**

Response: I have participated in my firm’s representation of parties, including individuals, against unions, other than a union local, including matters related to employment issues and/or issues relating to pension and other benefit matters.

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

Response: The role of a judge is to act as a fair and impartial arbiter of legal disputes, applying the governing law and precedent.

- a. Please describe your judicial philosophy.**

Response: My judicial philosophy is that judges must honor their commitment to faithfully and impartially perform their duties, treating all that come before them fairly and with civility, and must honor the division of authority that entrusts to them the application of legislation created by another body, Congress, and which requires them to act in accordance with precedent established by the Supreme Court.

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

Response: It appears to me that the term “judicial activism” has as many meanings as there are people who use it. It is my experience that using a term with no commonality of definition inhibits the ability to converse with one another; therefore, I have not formulated a definition of judicial activism. However, I can address the subject matters

that are frequently associated with the concept. I recognize that federal courts are courts of defined and, therefore, limited jurisdiction, that their decisions are bound by applicable laws promulgated by Congress and that their decisions are subject to the rulings of the Supreme Court. To the extent that judicial activism is defined as conflicting with these standards, I reject it.

- c. Do you think it is ever proper for judges to indulge their own values in determining what the law means? If so, what circumstances?**

Response: I do not think that it is ever proper for a judge to indulge his or her own values in determining what the law means. The job of a judge is to ascertain the facts as appropriate, apply the laws as written by Congress, honor applicable precedent and observe and enforce the Constitution.

- d. Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means? If so, under what circumstances?**

Response: I do not think that it is ever proper for a judge to indulge his or her own policy preferences in determining what the law means. The job of a judge is to ascertain the facts as appropriate, apply the laws as written by Congress, honor applicable precedent and observe and enforce the Constitution.

- 3. 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: I recognize that each Court of Appeals is bound by the rulings of the United States Supreme Court and I am committed to following those rulings if I am confirmed, even if I personally disagree with such.

- b. How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision?**

Response: If I am privileged to serve on the Court of Appeals, I would be bound by and would follow the applicable rulings of the Supreme Court. I also recognize that prior rulings of my own Circuit Court are due great deference and decisions to overturn them should be rare.

- i. Would you nevertheless apply that decision of your own best judgment of the merits?**

Response: Where there is Supreme Court precedent factually and legally applicable to the case at bar, I would be bound by that precedent. Where there is a prior decision of my own Circuit Court factually and legally applicable to the

case at bar, I recognize that the holding is due great deference and a decision to overturn it would be rare.

4. At your hearing, I asked you to describe your judicial philosophy with regard to President Obama’s “empathy standard,” and the requirements of the judicial oath of objectivity and fairness without respect to persons.

a. Do you believe that you fit President Obama’s criteria for federal judges, as described in his quote? Please explain your answer.

Response: I cannot speak to whether I satisfy President Obama’s criteria, though I am honored to be nominated. I can confirm that if allowed to serve, I will do so with objectivity and fairness and without respect to persons.

b. What role do you believe that empathy should play in a judge’s consideration of a case? Please explain your answer.

Response: I believe that any personal feelings a judge might have about a case are circumscribed by the duties of the job. A judge’s job is to apply the law and Constitution, to honor precedent and, where appropriate, to determine the facts.

c. Do you believe that a judge should identify with either party in a case? Please explain your answer.

Response: I do not think it is part of a judge’s job to identify with the parties to litigation. The judge’s job is to apply the law and Constitution, to honor precedent and, where appropriate, to determine the facts.

d. Do you believe that empathy should play a role in sentencing a criminal defendant? Please explain your answer.

Response: Empathy should not be the determiner of sentencing. Sentencing is governed by the law, including sentencing guidelines, and the Constitution, as applied to the facts established in the case.

e. Do you think that it is ever proper for judges to indulge their own subjective sense of empathy in determining what the law means? If so, under what circumstances. Please explain your answer.

Response: I do not think that it is ever proper for a judge to indulge his or her own subjective sense of empathy in determining what the law means.

5. As we discussed at your confirmation hearing, under the Supreme Court's decisions in *United States v. Booker*, 543 U.S. 220 (2005) and *Blakely v. Washington*, 542 U.S. 296 (2004), 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 in 18 U.S.C. 3553(a), he or she may impose any sentence ranging from probation to the statutory maximum. Following the Supreme Court's decision in *Gall v. United States*, 552 U.S. 38 (2007), 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 highly deferential standard enunciated in *Gall* has basically eviscerated substantive appellate review of sentencing decisions? If not, why? Please explain your answer.

Response: I am not in a position to characterize the Supreme Court's decision in *Gall* or to opine on whether it "eviscerated substantive appellate review" as, should I be confirmed to the Circuit Court, I would be bound to honor and apply that precedent. The *Gall* Court, referring to its decision in *Booker*, determined that the abuse-of-discretion standard of review now applies to appellate review of sentencing decisions. The Court provided direction regarding the duty of the district judge and the factors for consideration by the appellate courts. If confirmed, I will comply with the standards set out by the Supreme Court in *Gall*.

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? If not, why? Please explain your answer.

Response: I believe that sentences for a specific crime in like circumstances should be comparable without regard to what court a defendant happens to appear before or to where a defendant happens to reside.

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

Response: In *Gall*, the Supreme Court provided guidance that governs all sentencing proceedings. It outlined the requirements as beginning with the applicable Guidelines range, argument, consideration of all 18 U.S.C.S. Section 3553(a) factors, consideration of any Guideline deviation and justification therefor, and full explanation of sentencing to allow for meaningful appellate review and to promote the perception of fair sentencing. Any departure from the Guidelines would have to satisfy these standards which bind both the district and appellate courts.

d. Do you believe that mandatory minimum sentences are appropriate for:

i. Recidivist child abusers?

Response: I believe such mandatory sentences are the province of Congress and were such the law, I would follow it.

ii. Child pornographers?

Response: I believe such mandatory sentences are the province of Congress and were such the law, I would follow it.

iii. Illegal alien smugglers?

Response: I believe such mandatory sentences are the province of Congress and were such the law, I would follow it.

iv. Drug dealers?

Response: I believe such mandatory sentences are the province of Congress and were such the law, I would follow it.

e. What is your position on the disparity between crack cocaine and powder cocaine sentences?

Response: It is my understanding that research supports the efficacy of addressing this disparity and there is general agreement regarding doing so. That decision falls within the province of Congress. If Congress chooses to reduce or eliminate this disparity, I would enforce such.

f. How would you characterize the sentencing process since the Supreme Court's decisions rendering the guidelines advisory?

Response: I have not handled a criminal matter requiring a sentencing decision since the Supreme Court's decisions and am not in a position to fairly characterize the process.

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

Response: The questions were forwarded to me by the Department of Justice (DOJ). I undertook some research and spoke with colleagues. I drafted answers to these questions then discussed them with representatives of the DOJ. I then finalized my responses.

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

Response: Yes.