

**Responses of Amy Totenberg**  
**Nominee to be United States District Judge for the Northern District of Georgia**  
**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 now advisory, rather than mandatory.**

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

Response: I believe that the Sentencing Guidelines are entitled to significant deference in any sentencing decision and should be considered presumptively applicable.

- 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: If confirmed as a District Judge, I would review a defendant’s request to depart from the guidelines first with the understanding that the guidelines should be presumptively applicable. I would consider relevant Supreme Court and Eleventh Circuit precedent in determining whether an individual case presented special circumstances that warranted departure. *See, e.g., Kimbrough v. United States*, 552 U.S. 85 (2007); *Gall v. United States*, 552 U.S. 38 (2007); *United States v. Clay*, 483 F.3d 739 (11th Cir. 2007). I would then determine how these circumstances compared to other downward sentencing departure district court decisions reviewed by the Eleventh Circuit.

- 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 solely on the law and facts as presented.

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

Response: No.

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

Response: The Supreme Court’s decisions in *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008) and *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010) clearly hold that 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: The Supreme Court’s decisions in *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008) and *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010) indicate that a right under the Second Amendment should be treated in the same manner as any other right explicitly identified under the Bill of Rights. Under this precedent, the core protection conferred by the Second Amendment should not be treated as a “watered-down” right or one subject to judicial “interest-balancing.” *McDonald v. City of Chicago*, 130 S.Ct. at 3048-3050; *District of Columbia v. Heller*, 128 S.Ct. at 2821.

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

Response: The role of a District Court judge is to apply applicable statutory law and binding precedent of the Supreme Court and the Court of Appeals to the facts of each specific case before him or her in an impartial and thorough manner and to render decisions in a reasonable time frame, consistent with the requirements of law.

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

Response: Based on established Supreme Court precedent, my view is that the death penalty does not constitute cruel and unusual punishment under the Constitution except under narrow circumstances, such as those addressed in *Roper v. Simmons*, 543 U.S. 551 (2005) (for defendants who committed crimes before the age of 18) and *Atkins v. Virginia*, 536 U.S. 304 (2002) (for defendants determined to be mentally retarded).

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

Response: Consistent with my response to Question #5 above, my view is that the death penalty is a legally acceptable form of punishment except in those particular case circumstances exempted from the death penalty by binding precedent of the Supreme Court or the Court of Appeals or where the death penalty is not authorized by applicable statutes.

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

Response: I received these questions from the Department of Justice on September 22, 2010 and proceeded to draft my responses with careful attention devoted to each question. I subsequently discussed the questions with Department of Justice staff. I thereafter finalized my responses and forwarded these to the Justice Department for transmission to the Committee.

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

Response: Yes.