

**Responses of Judge Tanya Walton Pratt
Nominee to the U.S. District Court for the Southern District of Indiana
To the Written Questions of Senator Jeff Sessions**

- 1. In February 2007, you stated that there should be more rehabilitation programs in prison, more programs to help prisoners re-enter society, and more educational programs for convicts. You also hinted that the rising crime rate is a call to action for the courts. In your view, what role do judges have in rehabilitating criminal offenders?**

Response: I do not believe Federal judges have a direct role in rehabilitating criminal offenders. However, Indiana trial court judges may order an offender to participate in reformation programs. Article 1, section 18 of the Indiana Constitution provides: "The penal code shall be founded on the principles of reformation and not of vindictive justice." In following my State Constitution, an Indiana trial court judge may fashion a sentence which orders certain offenders to participate in reformation programs such as substance abuse treatment, anger control, and sex offender treatment; while in prison, on probation or during parole. If I am so fortunate to be confirmed by the Senate, the provisions of the Indiana State Constitution would not apply.

- 2. In November 2006, you were honored by the Archdiocese of Indianapolis. An article describing the event reported that when deciding cases, you "try to balance the demands for justice with the concern for others that you view as one of the hallmarks of your faith."**

- a. If this is an accurate description of your statement, what did you mean by it?**

Response: The above statement is not a quote of mine and is not an accurate description of any statement made by me. The statement was made by a news reporter.

- b. Do you believe that judges should rule based on anything other than the law and the facts before them?**

Response: No. I believe judges should rule based only on the law and facts before them.

- c. Please provide an example of a case in which you balanced the "demands of justice with the concern for others."**

Response: I have not balanced the "demands of justice with the concern for others" in any of my cases.

- 3. 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. While I understand that you cannot know 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 do not know if I fit the criteria described by President in the above quote. However, when nominated, President Obama stated he believed I represented “some of the best in American jurisprudence” and that I would “serve the American people with integrity.” If confirmed, I will strive be fair and impartial and to treat all litigants with respect and dignity, regardless of their background or station in life.

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

Response: Empathy should not play a role in a judge’s consideration of a case.

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

Response: No. It is never proper for judges to indulge their own subjective sense of empathy in determining what the law means. In determining what the law means, a judge must look to precedent cases and applicable statutes and apply the law to the facts.

- i. If so, under what circumstances?**

Response: No circumstances.

- 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 subjective sense of empathy and rule based solely on the law.**

Response: In contested adoption cases and termination of parental rights matters, I have had to set aside my subjective sense of empathy for parents who may be struggling to care for their children, but are unable to do so; and rule based solely on the law. In each case in which I participate, I

provide the parties with a neutral and impartial decision and empathy plays no role.

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

Response: Department of Justice representatives forwarded the questions to me; I then conducted research, reviewed documents and drafted responses to the questions. I discussed my answers with representatives of the Department of Justice and then submitted my finalized responses.

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

Response: Yes

**Responses of Judge Tanya Walton Pratt
Nominee to the U.S. District Court for the Southern District of Indiana
to the Written Questions of Senator Tom Coburn, M.D.**

- 1. 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?**

Response: No. I do not agree with the perspective that the Constitution is a “living” document.

- 2. Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United State v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. Generally speaking, are *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes

- b. Why or why not?**

Response: In *Gonzales v. Raich*, 545 U.S. 1, 23 (2005), the Supreme Court indicated that the *Lopez* and *Morrison* decisions are consistent with prior Supreme Court Commerce Clause decisions.

- 3. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy’s analysis?**

Response: The decision in *Roper v. Simmons* is the law of the land. I will follow the Supreme Court’s ruling and apply the applicable law as dictated by the doctrine of *stare decisis*.

- a. How would you determine what the evolving standards of decency are?**

Response: I would apply the analysis established by Supreme Court law.

- b. Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in *all* cases?**

Response: No, a District Court Judge is bound by Supreme Court rulings and could never find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in *all* cases.

c. What factors do you believe would be relevant to the judge's analysis?

Response: If confirmed by the Senate to serve as a District Court Judge for the Southern District of Indiana my role would be to follow legal precedent, and to respect the doctrine of *stare decisis*. The factors relevant to judicial analysis would be those set out by the Supreme Court and the 7th Circuit.

4. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: No, The Supreme Court has not said that Federal Courts should rely on contemporary foreign or international law or decisions in determining the meaning of the Constitution.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Not applicable.

b. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No, the Supreme Court has not found that Federal judges should consider foreign law when interpreting the Eighth Amendment or any other amendments of the U.S. Constitution.