

Responses of Abdul K. Kallon
Nominee to the U.S. District Court for the Northern District of Alabama
to the Written Questions of Senator Jeff Sessions

1. 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, to faithfully give 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: If I am confirmed as a District Judge, my personal views about binding case law are irrelevant. If the decision is directly on point and is controlling law, I will follow it.

2. You indicated in your response to the committee's questionnaire that 100% of your practice has been in civil litigation. A large part of the federal district court's docket is made up of criminal cases, and federal judges must be proficient with the Federal Sentencing Guidelines. I believe the guidelines are good rules that lead to more fair and predictable sentences. If confirmed, will you commit to familiarizing yourself with and understanding the guidelines?

Response: Yes.

3. 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? Please explain your answer.

Response: Yes. Sentences should be based on the crime in question, the applicable sentence for that crime under the guidelines, and factors the Supreme Court and the controlling court of appeals have held a sentencing judge must consider in rendering a sentence.

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

Response: Downward departures should be rare and consistent with the standards set forth by the Supreme Court, the Eleventh Circuit, and the sentencing guidelines. At a minimum, as the guidelines require, the district judge must show the existence of an aggravating or mitigating circumstance that was not adequately taken into consideration by the Sentencing Commission and, consistent with *Gall*, the court must provide a full explanation of the sentence to allow for adequate appellate review.

4. 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 do not view the President’s criteria as suggesting that judges should decide cases based on empathy. Instead, I see it simply as an articulation of the sentiment that our society is best served when the judiciary reflects the nation’s diversity and is comprised of individuals of different socioeconomic, religious, ethnic, gender, and racial backgrounds. This lends credence to the notion that our legal system is unbiased and that all citizens are indeed treated equally under the law. Significantly, that the judiciary is comprised of qualified individuals from varying backgrounds does not in any way diminish the quality of judging or suggest that a particular judge’s interpretation of the law hinges on that judge’s personal background. Judges must and should decide cases by applying the law to the facts of the cases pending before them.

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

Response: Although I do not know the exact criteria the President utilized to nominate me, as an immigrant from humble beginnings and as an African

American, I believe I fit some of the President's criteria for federal judges. I believe that I can be empathetic to all litigants – plaintiff or defendant, individual or corporation, prosecution or the accused – and, if confirmed by the Senate, I will be fair and impartial and will apply the law to the facts before me without regard to the litigant's background.

- 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.

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

Response: As it relates to deciding the outcome of a case, none. The decision must rest always on the facts and the applicable law.

- 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?**

Response: No.

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

Response:

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

Response: In my view, the role of a judge should be that of a fair and impartial arbiter who applies the facts in a given case to the relevant controlling law and renders a decision that is consistent with legal precedent.

- 6. How would you define "judicial activism?"**

Response: This is not a term I use. However, as used by others, I understand it to mean a judge who ignores clearly established legal precedent that is directly on point in order to attain a desired result, even when the facts of the case and the relevant law dictate a contrary result. To me, a district judge should refrain from engaging in such conduct and should apply instead the settled legal precedent to the facts of the case pending before him or her, even if the judge disagrees with it.

- 7. 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: Although courts are called on to determine how the Constitution applies to situations that were not in existence at the time it was drafted, I do not subscribe to the view that it is a “living document that is constantly evolving as society interprets it.” The Constitution is the supreme law of the land and any interpretation of it must start with the original language and the controlling case law interpreting it.

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

Response: After the Department of Justice (DOJ) forwarded the questions to me, I reviewed them, undertook some research, and drafted my responses. I discussed the answers with representatives of the DOJ and then finalized my responses.

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

Response: Yes.