

**Response of William H. Pryor Jr.,
Nominee to the United States Sentencing Commission,
to the Written Questions of Senator Amy Klobuchar**

Part of your role on the Sentencing Commission would be serving as a resource of information for all branches of government, criminal justice practitioners, the academic community, and the public. What would you do to ensure that critical new research and updated information is getting to each of these different groups? How will you incorporate input from these parties into the Commission's policies?

Response: The Commission currently publishes and widely distributes a wealth of information about its research and policies. These publications include, for example, Guideline Manuals, Reports to Congress, Research Publications, Working Group Reports, and Sourcebooks of Federal Sentencing Statistics. These publications are available to the public for free download on the website for the Commission, www.ussc.gov, and are printed in hard copies by the Government Printing Office and then distributed to officials, participants in the criminal justice system, and the public. The Commission also solicits input from advisory groups, sponsors training seminars, and conducts public hearings to further its work. I would support continuing these programs and any others that would serve the purposes of Congress in creating the Commission.

**Responses of William H. Pryor Jr.,
Nominee to the United States Sentencing Commission,
to the Written Questions of Senator Chuck Grassley**

1. Why do you want to serve on the Sentencing Commission?

Response: I am committed to the mission of the Sentencing Commission to establish guidelines and policies that make federal sentencing more honest, fair, and rational. After the decision of the Supreme Court in *United States v. Booker*, which made the federal sentencing guidelines advisory with appellate review for reasonableness, the Sentencing Commission faces new challenges in fulfilling that mission. I would be honored to assist the Commission in that endeavor.

2. What unique skills, perspective or experience will you bring to the Commission—what do you hope to contribute?

Response: I believe that my experiences as a federal circuit judge for the last nine years and formerly as a state attorney general for seven years would allow me to make meaningful contributions to the work of the Commission. If confirmed as a commissioner, I would be the only circuit judge to serve on the current Commission, and I would be the only commissioner with experience in the creation and work of a state sentencing commission.

3. According to the United States Sentencing Commission's 2010 Annual Report, the offense type with the highest within-guideline sentencing range was simple drug possession, with 94.9% of such cases resulting in a within-guideline sentence. Manslaughter had the highest rate of above-range sentences based on *Booker*, at 10.9%. Conversely, child pornography offenses had the highest rate of below-range sentences, at 42.7%.

- a. I understand that many of these cases may have involved a government-sponsored departure, but do you think it is possible that the beliefs of judges about the nature and seriousness of particular offenses might be playing a role in the rates of above and below range sentencing, post-*Booker*?**

Response: Post-*Booker*, district judges must consider both the nature and seriousness of the offense, 18 U.S.C. § 3553(a)(1), (2)(A), in deciding whether to sentence an offender outside the guideline range. For that reason, the beliefs of judges about both the nature and seriousness of particular offenses is, without doubt, playing a role in the rates of above and below range sentences.

b. If not, what do you think explains this variance by offense?

Response: Not applicable.

4. Legal scholars generally recognize four purposes for imposing criminal sentences: retribution, incapacitation, rehabilitation and deterrence. Sometimes, these purposes may contradict one another. When such situations arise, the different purposes must be prioritized.

a. If deterrence and rehabilitation were in conflict such that both could not be emphasized equally, which would you emphasize in determining an appropriate sentencing range?

Response: I would give priority to deterrence.

b. If you would emphasize rehabilitation, what effect do you think that emphasis might have on potential future offenders?

Response: Not applicable.

5. Do you believe that mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing?

Response: Because certainty in punishment deters crime as a general rule, a mandatory minimum sentence is more likely to deter offenders than the uncertainty of punishment that is characteristic of indeterminate sentencing.

6. As a sitting federal judge, you have participated in the adjudication of hundreds of federal appeals of criminal convictions. Would you please describe how this experience will aid you on the Commission?

Response: In *Booker*, the Supreme Court stated that it expected that appellate review for reasonableness would reduce sentencing disparity, and the Sentencing Commission is evaluating sentencing data, post-*Booker*, to test that expectation. My experience as a circuit judge could assist the Commission in understanding how circuit judges decide sentencing appeals and apply standards of review as the Commission considers whether to recommend to Congress changes in the operation of this system. My experience could also assist the Commission in understanding the potential reaction of circuit judges to proposed changes in sentencing guidelines and policies.