

Responses of Kathleen Williams
Nominee to be United States District Judge for the Southern District of Florida
to the Written Questions of Senator Charles Grassley

- 1. You testified before the U.S. Sentencing Commission on several occasions. You criticized sentencing guidelines as being overly harsh. In 2006, you referred to the application of the Sentencing Guidelines prior to the Supreme Court’s decision in *United States v. Booker* as an “unprecedented social and juridical tragedy.” Please describe in what ways the application of guidelines pre-*Booker* were an “unprecedented social and juridical tragedy.”**

Response: As an advocate, in my testimony before the Commission, I noted what seemed to be the enormous financial and social cost occasioned by an increasing federal incarceration rate, especially to persons and communities of color.

As cited in my testimony at that time, the federal inmate population had reportedly grown from 24,000 in 1980 to over 188,000 at a cost of over four billion dollars a year. Moreover, approximately 65% of the federal prison population were African -American or Hispanic.

I was particularly concerned with the imbalanced consequences meted out to indigent defendants charged in crack cocaine prosecutions. These cases were illustrative of some of the problems posed in a mandatory guideline regime. However, subsequent remedies fashioned by the Sentencing Commission, aided by members of this Committee, represent an important step in redressing those unwarranted disparities and in fulfilling what the Commission repeatedly references in Chapter 1 of the Guidelines: an empirically based and evolutionary guidelines process.

- 2. In your 2006 testimony before the Sentencing Commission, you called into question the need for a sentencing enhancement for smuggling terrorists. You said: “It will be a rare occurrence, but it is not something that needs to have enhanced penalties within the guidelines; it is something that every district court judge is capable of assessing with the Advisory Guidelines and 3553 factors.” Do you continue to believe that enhanced penalties for smuggling terrorists are unnecessary? Please explain your rationale.**

Response: In 2006, I testified before the Sentencing Commission as a representative of the Defender community. As I stated in my testimony, I advocated that the guideline calculus for an immigration violation involving the smuggling of terrorists -- along with the arguments available to the Government pursuant to Title 18 U.S.C. §3553, which allows a court to enhance guideline sentences under appropriate circumstances --

provides ample capacity to mete out robust sentences for those involved in terrorism offenses.

3. **During your hearing, Senator Coons noted your criticism of the Sentencing Guidelines and asked how much deference you would afford them if confirmed. You replied,**

“As the chair is aware, the Supreme Court has stated -- and all circuits, that I am aware of -- in an advisory guideline system, you must start with an accurate calculation of the guidelines. So it appears that courts everywhere have given significant deference to the guidelines, as it is a starting point, and I would adhere to that in any sentences I would render.”

You correctly noted that District Court judges must begin the sentencing analysis by calculating the appropriate guideline range, but merely calculating the applicable range does not mean the District Judge will afford the guidelines deference. Aside from calculating the applicable guideline range as required by precedent, how much deference will you afford the sentencing guidelines, if confirmed?

Response: As I testified, the guidelines are the starting point for all sentences and must be followed and accurately calculated by the court throughout the sentencing process. Accordingly, it is clear that a trial court must give the sentencing guidelines significant deference consonant with the law and precedent of the Supreme Court and the Circuit Courts. If I serve as a judge, I will sentence in accord with these principles.

4. **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.

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

Response: A downward departure (or an upward departure) is only warranted when the facts and law presented in a particular case support that departure.

6. **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.” Do you believe judges should ever base their decisions on a desired outcome, or solely on the law and facts presented?**

Response: A judge should never base his or her decision on a desired outcome; decisions should be made by applying the law to the facts of the case.

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

Response: No.

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

Response:

8. **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: I do agree with Justice Sotomayor.

9. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is his or her unwavering integrity and commitment to the principles of equal justice, due process, and our Constitution. I believe I possess the integrity and commitment demanded of this position.

10. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should demonstrate his or her fairness and impartiality in any matter by listening carefully to the parties' positions and scrupulously applying the law to those facts presented by the parties. I believe that I possess the appropriate temperament to fulfill the obligations of a jurist and the expectations of the litigants who would come before me.

11. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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: Yes.

- 12. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In deciding a case of first impression in this circuit, after studying the plain language of the statute at issue, I would ascertain whether another circuit had persuasive precedent and study those cases to determine whether they applied in the matter before me. In a case of first impression anywhere, I would look to analogous statutory schemes to see if precedent construing that statute could inform a just resolution to the facts of the case at hand. If statutory text was ambiguous, I would look to any evidence of legislative intent for possible guidance. In either situation, I would be circumspect in narrowly tailoring a decision to address the particular issues and facts presented to me.

- 13. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: In deciding any case, I would be bound by the precedents of the 11th Circuit Court of Appeals and the Supreme Court and I would follow those precedents.

- 14. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I intend to manage my caseload with attentiveness, discipline, and active involvement. I would schedule regular status conferences and set reasonably stringent deadlines for the litigants in order to focus critical issues and expeditiously resolve the matters before me.

- 15. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: I believe that judges best control the pace and conduct of litigation by consulting frequently with the parties on the status of the case and setting reasonable but firm deadlines for discovery and pre-trial motion practice. I would do my utmost to be fully conversant with a case at each stage of the litigation and make myself available to parties to render decisions that would promote a fair, equitable, and prompt resolution of the matter.

- 16. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: The Supreme Court has recognized certain limitations on the exercise of Congress' legislative prerogative [for example, with regard to the Commerce Clause, in *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000)]. These limitations are based on a strict reading and application of constitutional text and a mindfulness of the importance of stare decisis. Moreover, the question of constitutionality involves a decision as to whether the entirety of a statutory plan is unsustainable or if it is unconstitutional as applied to the facts of the particular matter. Additionally, the issue of severability of certain provisions must be addressed.

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

Response: I prepared my answers after careful consideration of each question. I then reviewed my responses with representatives of the Department of Justice. I finalized my paperwork which I then forwarded to the Department of Justice for submission to the Committee.

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

Response: Yes.