

Responses of Arenda Wright Allen
Nominee to be District Judge for the Eastern District of Virginia
to the Written Questions of Senator Charles E. Grassley

- 1. In 2007, you were quoted in an edition of William and Mary Law School's newspaper, *The Advocate*. You stated that you had a desire to serve "those considered 'undesirable' by society." Additionally, you said, "I believe there's hope in everyone, and I believe in hope, even if I don't see the change."**

a. What did you mean by this statement?

Response: My experiences as an Assistant United States Attorney for fifteen years caused me to believe that defendants are sometimes deemed undesirable by society. As an Assistant Federal Public Defender, it is my job to provide zealous representation for indigent defendants, which includes giving them hope about their futures and rehabilitative potential, notwithstanding their crimes or whether I actually have the opportunity to witness the positive changes made in their lives once serving their sentences and successfully completing supervised release. My hope was to try to deter my clients from committing further crimes and to encourage them to become productive members of our society. That is what I meant by the statements.

b. How did this desire/belief affect your work as a public defender?

Response: This desire and belief allows me to passionately and zealously represent my clients. I provide them with effective assistance of counsel, which includes revealing to them positive attributes about themselves and their lives as I try to humanize them before the trier of fact and sentencing judge. I have a duty to them, according to my oath of office, to highlight positive facts for them, which they need to know, if they were going to remain law abiding productive citizens after serving their sentences.

c. As a judge, how do you believe this view would influence your decisions?

Response: I hold this view while serving as a defense advocate and it would not influence my decisions if I were to be confirmed. As a judge, I would respect and understand that I would be prohibited from being an advocate for any litigant and that I would be required to be a fair and impartial arbiter of the facts as I applied them to the law.

d. How would this view impact your sentencing decisions?

Response: This view would not impact my sentencing decisions. The Supreme Court and Fourth Circuit precedent, the advisory sentencing guidelines and the statutory sentencing factors would be relied upon in aiding me to render any and all sentencing decisions.

2. You have had experience with sentencing issues as both a prosecutor and defense attorney. Given that background:

- 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?**

Response: Yes.

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

Response: If confirmed, I would afford the Sentencing Guidelines substantial deference.

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

Response: I believe it is appropriate for a district court judge to depart downward (or upward) from the sentencing guidelines if a particular section permits a departure and if the facts and Fourth Circuit precedent support the departure requested.

3. In 2008, President Obama said,

“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.”

Do you agree with the President’s statement?

Response: No, I do not agree with the President’s statement. I believe that judges must apply the law to the facts.

4. Have you ever expressed an opinion regarding whether the death penalty constitutes cruel and unusual punishment under the Constitution? If so, what opinion did you express?

Response: No, I have never expressed an opinion regarding whether the death penalty constitutes cruel and unusual punishment under the Constitution.

5. What is your personal view regarding whether the death penalty is constitutional?

Response: I have asked jurors to recommend the imposition of the death penalty on three defendants. I have also defended several death penalty eligible clients. My personal beliefs at no time interfered with me executing my assigned duties and responsibilities. If

confirmed, I would have no hesitation in sentencing a defendant to death, a penalty held to be constitutional by the Supreme Court of the United States.

6. Do you believe that the death penalty is an acceptable form of punishment?

Response: Yes, I do believe that the death penalty is an acceptable form of punishment. More importantly, the Supreme Court has stated that the death penalty is constitutional and if confirmed, I would follow that precedent without reservation or hesitation.

7. Do you hold any personal views that would preclude you from enforcing the death penalty?

Response: I do not hold any personal views that would preclude me from enforcing the death penalty.

8. Do you believe that when Congress enacts a law that is contrary to the Constitution or takes action not authorized by some enumerated power therein, a court must either invalidate the Congressional action or, where appropriate, limit its application on an “as applied” basis?

Response: Yes.

9. In your hearing, you stated you had been in front of Federal Judges during your entire career, and that you have been watching them, writing down what they say, studying it, and “keeping it in your back pocket.”

a. From the judges you have observed, what positive role models stand out?

Response: All of the judges whom I have had the honor of appearing before, either while in the Navy or while practicing in the Western District of Virginia and the Eastern District of Virginia, have stood out, in one way or another, as being positive role models. Collectively, I have witnessed them all display efficiency and exhibit appropriate judicial temperament, fairness, integrity and objectivity.

b. What lessons have you learned from the judges you have observed regarding courtroom management, fidelity to the law, professional competence, and personal integrity?

Response: I have learned to prosecute and defend my cases in a competent, efficient and expeditious manner. The Eastern District of Virginia has a reputation for being a very efficient district and I am thankful for having been given the opportunity to work in this district. I have also learned the value of being a public servant who works hard and does whatever is necessary to provide the public with a quality product. I have always respected the law, as all of our judges do, regardless of which side of the aisle I am sitting on. All of the judges I

have appeared before have continually displayed personal integrity, with a commitment to administering equal justice and providing due process of law to everyone.

- c. What negative characteristics or poor temperament, if any, have you observed that would serve as a lesson to potential judges?**

Response: My observations have allowed me to conclude that the federal courtroom belongs to the public. Potential judges should never forget that, even during bad days or tough trials. Everyone entering into a federal courtroom for any reason at all should always be treated with the utmost dignity and respect. In my view, a judge can sentence someone to the death penalty, in a calm, respectful and polite manner.

- 10. If confirmed, how would you plan to use Federal Magistrates to help with your docket and workload?**

Response: If confirmed, I would use the Federal Magistrates in a manner that is consistent with the present practice used in the Eastern District of Virginia. The Federal Magistrates are seasoned jurists and over the years have always been very approachable and respectful to me while I carried out my various duties. I plan to use their wisdom, experience and historical knowledge in a manner that will enable me to continue with carrying on the traditions and judicial reputation of our district.

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

Response: I believe the most important attribute of a judge is being able to be fair and impartial to all parties while applying the law to the facts. I do believe I have these attributes and will always exhibit them if I am confirmed.

- 12. 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: I believe a judge should always exhibit a pleasant disposition, reflective of patience and politeness, as he or she treats everyone with dignity and respect. Judges should listen very carefully to the parties and ensure that everyone has had the opportunity to be heard before rendering a decision. I do believe that I meet these standards.

- 13. 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.

- 14. 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 a case of first impression, if there were no controlling precedent, I would review prior rulings of the Supreme Court and Fourth Circuit to see if analogies and guidance could be made from those cases to my case. I would also look at the plain wording of the statute, consider any legislative history and consult with my colleagues for their thoughts and opinions.

- 15. 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: I would apply the decision of the Supreme Court or the Court of Appeals and not use my own judgments of the merits.

- 16. 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 plan to manage my caseload, in the same manner I have managed my caseload: by adhering to the timely disposition of all matters that are tried in the Eastern District of Virginia and by working with the Federal Magistrates, the Court Clerks and the litigants.

- 17. 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: Yes, I do believe that judges have a role in controlling the pace and conduct of litigation. If confirmed, I along with my law clerks, will work whatever hours and days are necessary to quickly sift through cases and files to ascertain the facts, the law and the positions of the parties, with the goal of proceeding towards pretrial resolution or trial and disposition.

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

Response: When Congress exceeds its authority, it is appropriate for a federal court to declare a statute enacted by Congress unconstitutional.

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

Response: I received the questions on February 24, 2011. I prepared responses on February 25, 2011. I also consulted with representatives of the Department of Justice regarding my responses, and then finalized them before authorizing their transmittals to the Committee.

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

Response: Yes.