

**Questions for the Record from Senator Kamala D. Harris
Submitted February 21, 2018
For the Nominations of**

Colm Felix Connolly, to be a judge on the United States District Court for the District of Delaware

Maryellen Noreika, to be a judge on the United States District Court for the District of Delaware

William Frederic Jung, to be a judge on the United States District Court for the Middle District of Florida

1. District court judges have great discretion when it comes to sentencing defendants. It is important that we understand your views on sentencing, with the appreciation that each case would be evaluated on its specific facts and circumstances.

a. What is the process you would follow before you sentenced a defendant?

I would follow the rules and procedures required by the relevant statutes, binding case law, the Sentencing Guidelines, and the Federal Rules of Criminal Procedure. I would adhere in particular to the three-step process suggested by *Gall v. United States*, 552 U.S. 38 (2007) and confirmed in *United States v. Lofink*, 563 F.3d 232 (3d Cir. 2009). In engaging in that process, I would review carefully the Presentence Report and the relevant filings made by the government and the defendant. I would consult with the presentence officer, review the applicable sentencing guidelines and the case law interpreting and applying those guidelines, consider the factors set forth in 18 U.S.C. §3553(a), read and listen to any victim statements, and read and listen to the presentations made by counsel, the defendant, and other relevant parties. I would also consider any information collected by the Sentencing Commission about sentences received by similarly situated defendants in other cases.

b. As a new judge, how do you plan to determine what constitutes a fair and proportional sentence?

Please see my response to Question 1(a).

c. When is it appropriate to depart from the Sentencing Guidelines?

In the Third Circuit, in which the District of Delaware lies, “a departure is based on reasons provided by the Guidelines themselves.” *United States v. Lofink*, 564 F.3d 232, 238 n. 14 (3d Cir. 2009). Accordingly, it would be appropriate to depart from the guideline sentencing range when a departure is warranted by one

or more factors set forth in the guideline commentary or policy statements in the *Guidelines Manual*.

- d. Judge Danny Reeves of the Eastern District of Kentucky – who also serves on the U.S. Sentencing Commission – has stated that he believes mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing.¹**

i. Do you agree with Judge Reeves?

The legislation of mandatory minimum sentences lies exclusively with Congress and therefore I believe it would be inappropriate for me under the Judicial Canons to express an opinion as to the merits or non-merits of mandatory minimum statutes.

ii. Do you believe that mandatory minimum sentences have provided for a more equitable criminal justice system?

Please see my response to Question 1(d)(i).

iii. Please identify instances where you thought a mandatory minimum sentence was unjustly applied to a defendant.

Please see my response to Question 1(d)(i).

iv. Former-Judge John Gleeson has previously criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.² If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:

1. Describing the injustice in your opinions?

The power to legislate mandatory minimum sentences lies exclusively with Congress. The power to charge individuals with crimes punishable by mandatory minimum sentences lies exclusively with the Executive Branch. The separation of powers is a fundamental tenet of our constitutional framework and judges are not engage in political questions. Accordingly, as a general matter, a district court judge should refrain from including in opinions criticisms that encroach on matters that fall exclusively

¹ <https://www.judiciary.senate.gov/imo/media/doc/Reeves%20Responses%20to%20QFRs1.pdf>

² See, e.g., “Citing Fairness, U.S. Judge Acts to Undo a Sentence He Was Forced to Impose,” NY Times, July 28, 2014, <https://www.nytimes.com/2014/07/29/nyregion/brooklyn-judge-acts-to-undo-long-sentence-for-francois-holloway-he-had-to-impose.html>

within the constitutional powers of Congress and the Executive branches of our government. Nonetheless, if I were fortunate enough to be confirmed and was required by statute to impose in a particular case what I considered to be a manifestly unjust sentence, I could envision describing that injustice in an opinion.

2. Reaching out to the U.S. Attorney and other federal prosecutors to discuss their charging policies?

The power to charge individuals with crimes punishable by mandatory minimum sentences lies exclusively with the Executive Branch, and judges should be careful not to encroach upon the authority afforded exclusively to the Executive Branch by the Constitution. That said, in an extreme case and only in the presence of defense counsel if the case were pending before me, I could envision discussing with a representative of the U.S. Attorney's Office a particular charging decision.

3. Reaching out to the U.S. Attorney and other federal prosecutors to discuss considerations of clemency?

The power to grant clemency lies exclusively with the Executive Branch, and judges should be careful not to encroach upon the authority afforded exclusively to the Executive Branch by the Constitution. That said, in an extreme case, I could envision discussing with a representative of the U.S. Attorney's Office possible considerations of clemency for a sentenced defendant.

e. 28 U.S.C. Section 994(j) directs that alternatives to incarceration are “generally appropriate for first offenders not convicted of a violent or otherwise serious offense.” If confirmed as a judge, would you commit to taking into account alternatives to incarceration?

Yes.

2. Judges are one of the cornerstones of our justice system. If confirmed, you will be in a position to decide whether individuals receive fairness, justice, and due process.

a. Does a judge have a role in ensuring that our justice system is a fair and equitable one?

Yes. A judge is bound by oath to be impartial and “administer justice without respect to persons, and do equal right to the poor and to the rich.”
See 28 U.S.C. §453.

- b. Do you believe that there are racial disparities in our criminal justice system? If so, please provide specific examples. If not, please explain why not.**

Yes. I know, for example, that in my home state of Delaware there are a disproportionately high number of African Americans in the criminal justice system. In 2014, I accepted an appointment by the Delaware Supreme Court to serve on Delaware's Access to Justice Commission, the purpose of which is to address and research the reasons for the disproportionate number of African Americans in Delaware's criminal justice system.

3. If confirmed as a federal judge, you will be in a position to hire staff and law clerks.

- a. Do you believe that it is important to have a diverse staff and law clerks?**

Yes.

- b. Would you commit to executing a plan to ensure that qualified minorities and women are given serious consideration for positions of power and/or supervisory positions?**

Yes..