

**Senator Dick Durbin**  
**Written Questions for Brian Benczkowski, Dabney Friedrich and Stephen Schwartz**  
**August 1, 2017**

For questions with subparts, please answer each subpart separately.

**Questions for Dabney Friedrich**

1. **Please discuss how your experience as a Commissioner on the U.S. Sentencing Commission has helped prepare you to serve as a district court judge.**

**Response:** The U.S. Sentencing Commission statutory mandate, as set forth in the Sentencing Reform Act of 1984, includes working with all three branches of government, as well as other stakeholders in the criminal justice system, to formulate sentencing policies and practices for the federal courts. As a member of the Commission, I learned a great deal about sentencing practices and procedures, the legislative drafting process, and the practices and procedures of administrative agencies. I believe that my experience as a Commissioner provides me with insight into the aims and objectives of the federal sentencing regime that will prove valuable when I confront sentencing decisions.

2. **Do you believe that our current federal sentencing laws for nonviolent drug offenses give judges an appropriate amount of discretion to make sure that sentences fit the crime?**

**Response:** Federal sentencing laws that apply to federal drug offenders include statutory maximum and minimum provisions enacted by Congress, as well as Sentencing Guidelines promulgated by the U.S. Sentencing Commission. While federal statutory and guideline provisions include enhanced penalties for aggravating factors such as the possession or use of a firearm, bodily injury, and criminal history, for example, they do not otherwise distinguish between violent and non-violent drug offenders.

The Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), which declared the federal sentencing guidelines advisory, enhanced the discretion of judges to sentence federal offenders outside of the relevant sentencing guideline range. However, statutory maximum, and in some cases, minimum penalties continue to limit judges' discretion in sentencing.

During my tenure on the U.S. Sentencing Commission, the Commission made a number of recommendations that would have lowered the statutory penalties for drug-related offenders (*see, e.g.*, Mandatory Minimum Report recommending an expansion of the safety valve, the reduction of certain mandatory penalties, the elimination of the stacking requirement for 18 U.S.C. § 924(c) offenses; Career Offender Report recommending distinguishing between drug trafficking and violent offenders in the career offender statutory directive). To date, however, Congress has not adopted any of these recommendations. If confirmed to be a federal district court judge, I will faithfully apply all federal statutory and

guideline sentencing provisions, as interpreted by the District of Columbia Circuit and the Supreme Court of the United States.

3. The United States incarcerates more people per capita than any other nation. I met several years ago with Justice Anthony Kennedy who said that our system of over-incarceration was a problem deserving of special focus. **What role do you see for federal judges to point out and address problems with our system of incarceration?**

**Response:** The role of a federal district court judge is to sentence all defendants consistent with the federal sentencing statutes, guidelines, and case law. Federal district judges have a statutory duty to impose in each individual case a sentence that is sufficient but not greater than necessary to fulfill the purposes of sentencing. In this sense, judges play a critical role in determining incarceration levels. However, policy determinations related to the overall incarceration levels in our federal criminal justice system are best addressed by the political branches which have the ability to study effectively sentencing-related data and practices on a national scale.

4.
  - a. **From your experience on the Sentencing Commission, do you believe that our nation does a good job helping people leaving the prison system re-enter society and re-establish themselves as productive citizens?**

**Response:** As a former member of the U.S. Sentencing Commission, I am aware of recidivism data that suggests that programs and supports provided in the federal system – by the Federal Bureau of Prisons and the Federal Probation Office – help some individuals successfully re-enter society. However, based on my experience at the Sentencing Commission and as a volunteer tutor in the Federal Bureau of Prisons, I believe that the federal government can and should do more to enhance the educational, vocational, and other programming within the federal criminal justice system.

- b. **Do you believe judges should play a role in helping identify ways to reduce recidivism?**

**Response:** Judges can play a role in helping to identify ways to reduce recidivism by fashioning sentences (including conditions of supervised release and probation) in individual cases that further rehabilitation and other purposes of sentencing. However, policymakers who have the ability to collect, analyze, and disseminate sentencing data on a macro level are better equipped to identify effective approaches to reduce recidivism.