

**Nomination of Dabney Langhorne Friedrich
to be United States District Judge for the District of Columbia
Questions for the Record
Submitted August 1, 2017**

QUESTIONS FROM SENATOR WHITEHOUSE

1. You were serving as an Associate Counsel in the White House Counsel's Office during the 2005-2006 U.S. Attorney firing scandal. You coordinated with the DOJ on behalf of White House Counsel Harriet Miers and later emailed to your husband, Matthew Friedrich, the list of districts in which the U.S. Attorneys were to be fired.

- a) Why did you email your husband this information?

Response: I did not have a decision-making role in the removal of U.S. Attorney's during the Bush Administration, and I have very limited knowledge about how those decisions were made. I left the White House Counsel's Office in April 2006. My recollection is that the overwhelming majority of the U.S. Attorneys were removed in December 2006, several months after I left the White House Counsel's Office.

The e-mail that I sent to my husband was personal and was unrelated to my duties as an Associate Counsel to the President.

- b) What role does the White House Counsel's Office have in determining whether a U.S. Attorney should be hired or fired?

Response: U.S. Attorneys serve at the pleasure of the President. The role of the White House Counsel's Office in appointments and removals varies from Administration to Administration.

During my tenure as an Associate Counsel to the President (September 2003 to April 2006), Associate Counsels routinely attended interviews of candidates for U.S. Attorney positions in geographical areas to which the Associate Counsels were assigned.

- c) Do you think White House Counsel Harriet Miers or Attorney General Alberto Gonzales did anything wrong in the series of events that led to the removal of nine U.S. Attorneys?

Response: As noted above, I left the White House Counsel's Office several months before the majority of the U.S. Attorneys were removed. I do not have sufficient personal knowledge of the actions that White House Counsel Harriet Miers or Attorney General Alberto Gonzales took related to the removal of U.S. Attorneys to offer an opinion.

- d) Do you think it is appropriate for the White House to remove a U.S. Attorney during an investigation that could target members of the White House staff?

Response: As a nominee for judicial office, I believe it would be inappropriate for me to offer any opinion with respect to this hypothetical.

- e) What institutional changes would you like to see to prevent future incidents of politically influenced personnel decisions in the Justice Department?

Response: As a nominee for judicial office, I believe it would be inappropriate for me to offer any recommendations with regard to personnel decisions of the Executive Branch.

2. In 2002, you were the AUSA assigned to the case of a suspected terrorist, Jean-Tony Oulai, from the Ivory Coast. Although immigration law required that he be released within six months, he was held for well over a year before being deported. You later spent eleven years serving on the U.S. Sentencing Commission.

- a) What are your views on the current sentencing guidelines? Are they too harsh, too lenient, or appropriately calibrated?

Response: During my tenure as a member of the U.S. Sentencing Commission, the Commission made a number of recommendations to Congress regarding statutory provisions that affect the sentencing guidelines. Among other things, the Commission recommended that Congress broaden safety valve relief so that a fewer number of offenders would be subject to mandatory minimum penalties, eliminate the stacking requirement in 18 U.S.C. § 924(c), and reduce and narrow certain mandatory minimum penalties. To date, Congress has not adopted any of these recommendations.

If confirmed, I will faithfully follow all relevant statutory and guideline sentencing provisions and Supreme Court and District of Columbia Circuit case law.

- b) Were you concerned in Mr. Oulai's case with his prolonged detention?

Response: During my tenure at the U.S. Attorney's Office in the Eastern District of Virginia, I worked on a matter involving Jean-Tony Oulai. I left the U.S. Attorney's Office in early 2002, before Mr. Oulai's case was resolved. I do not have access to Mr. Oulai's case file.

While I worked on Mr. Oulai's case, the U.S. Attorney's Office worked diligently to resolve his case in a timely fashion.

- c) Do you consider it a valid exercise of executive power to detain suspects in Guantanamo Bay or other facilities overseas without charge?

Response: In *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), the Supreme Court of the United States held that the U.S. government had the power to detain enemy combatants, including U.S. citizens, based on Congress's authorization for the use of military force. The Court further held that due process demanded that a citizen held in the United States as an enemy combatant be given a meaningful opportunity to contest the factual basis for that decision before a neutral decision maker. Since *Hamdi*, the Supreme Court and the District of Columbia Circuit have issued a number of decisions relating to the detention of enemy combatants. If confirmed, I will faithfully apply all relevant precedents of the Supreme Court and the District of Columbia Circuit.

3. You've said that "[t]hose of us who work in the White House Counsel's Office clearly do not serve the President in his personal capacity."

- a) When does it become appropriate for a president to bring in outside counsel when being investigated for activities undertaken before becoming president?

Response: The decision by a President to seek outside counsel is a personal one that depends on the facts and circumstances of each case.

- b) Are you concerned about the dual legal teams – the White House Counsel's Office and the private legal team led by Marc Kasowitz – currently surrounding the president?

Response: I do not have enough factual information to opine on the President's legal representation. Moreover, as a nominee for judicial office, it would not be appropriate for me offer an opinion.

4. You defended President Bush's detention powers, noting that "[t]he President's legal authority to detain American citizens as enemy combatants is, in our view, clear," and adding: "For the detainees, the living conditions, medical care, and diet are no doubt among the best ever provided by a country to individuals who have taken up arms against it."

- a) Do those comments still reflect your views of executive detention powers?

Response: The remarks I delivered regarding the Bush Administration's detention policies were made in my capacity as an Associate Counsel to the President. The remarks reflected the Administration's legal position at that time, and not my personal views.

- b) Do your comments mean that you would uphold executive power to detain American citizens in foreign prisons like Guantanamo Bay without charge?

Response: If I am confirmed to be a federal district judge, I will faithfully apply all relevant Supreme Court and District of Columbia Circuit

precedents in deciding whether to uphold Executive branch decisions relating to detention.

- c) Did the subsequent revelations of waterboarding and other “enhanced interrogation techniques” being used on detainees change your view of the favorable conditions you describe above, or do you stand by your description of the living conditions afforded to enemy detainees?

Response: As I have noted, the remarks I made did not represent my personal views. Issues relating to the Department of Defense were not part of my assigned portfolio, and I do not have adequate knowledge of the facts relating to detainee conditions to express any views on this matter.

5. As a judge, you will be expected to impartially administer justice to all who come before you. Who are the judges you consider exemplars of the type you would seek to emulate, and what makes them stand out in your eyes?

Response: As a young lawyer recently graduated from law school, I had the honor to serve as a law clerk to Judge Thomas F. Hogan on the U.S. District Court for the District of Columbia. Since then, Judge Hogan, who has served with distinction as a federal judge for thirty-five years, has been my role model and mentor. Not only does Judge Hogan have a first-rate legal mind, he is widely viewed as a fair and impartial judge who keeps an open mind and applies the law to the facts of each case, without regard to the parties or his own political or personal views. He treats everyone in his courtroom – the parties, attorneys, witnesses, jurors, and courtroom staff – with great respect. If confirmed as a district judge, I would strive to follow Judge Hogan’s example.

6. The Seventh Amendment to the Constitution gives citizens the right to civil jury trials. But a series of recent 5-4 decisions from the Supreme Court has eroded that access, often forcing individuals into alternative proceedings that are more favorable to corporations – like mandatory arbitration. Today, juries try less than 1 percent of civil cases in the federal court system. What is your view on the importance of civil jury trials in our legal system? Do you think the decline of jury trials has any positive or negative consequences? Please specify.

Response: Jurors perform a critical role in our justice system by protecting the rights and liberties of American citizens. Civil jury trials provide an important safeguard in our legal system that I will honor if confirmed to serve as a federal district judge. I do not have sufficient knowledge to comment on the prevalence of civil jury trials or the impact that any changes have had on our civil justice system over time.