

**Questions for the Record from Senator Kamala D. Harris
Submitted January 12, 2018**

For the Nominations of:

Annemarie Carney Axon, to be United States District Judge for the Northern District of Alabama

R. Stan Baker, to be United States District Judge for the Southern District of Georgia

Jeffrey Uhlman Beaverstock, to be United States District Judge for the Southern District of Alabama

Liles Clifton Burke, to be United States District Judge for the Northern District of Alabama

Thomas Alvin Farr, to be United States District Judge for the Eastern District of North Carolina

Charles Barnes Goodwin, to be United States District Judge for the Western District of Oklahoma

Michael Joseph Juneau, to be United States District Judge for the Western District of Louisiana

Matthew J. Kacsmark, to be United States District Judge for the Northern District of Texas

Emily Coody Marks, to be United States District Judge for the Middle District of Alabama

Terry Fitzgerald Moorer, to be United States District Judge for the Southern District of Alabama

Mark Saalfield Norris, Sr., to be United States District Judge for the Western District of Tennessee

William M. Ray II, to be United States District Judge for the Northern District of Georgia

Eli Jeremy Richardson, to be United States District Judge for the Middle District of Tennessee

Holly Lou Teeter, to be United States District Judge for the District of Kansas

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?

Because of my service as an Assistant United States Attorney for the Northern District of Texas, I am familiar with the current federal sentencing process and the jurisprudence relevant thereto. If confirmed, I will faithfully apply the relevant criminal statute, the sentencing range and bases for departure under Sentencing Guidelines, the sentencing factors set forth in Section 3553(a), and the binding Fifth Circuit and Supreme Court jurisprudence interpreting the same.

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

See Response to Question 1(a).

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

See Response to Question 1(a). The USSC Guidelines Manual includes a Policy Statement on “Departures” and a “List of Departure Provisions” identifying those Guidelines provisions that state when a downward or upward departure may be warranted. See USSG Ch.1, Pt. A, intro. comment. 4; USSG App. C (Nov. 2016). In the Northern District of Texas, the three most common bases for downward departure involve “substantial assistance,” “fast-track” disposition, and “cultural assimilation.”

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?

I have not had occasion to research the relative deterrence effect of statutory mandatory minimum sentences versus discretionary sentences.

That said, Section 3553(a)(2)(A) expressly states that the District Court shall consider “the need for the sentence imposed...to afford adequate deterrence to criminal conduct.” 18 U.S.C. § 3553(a)(2)(A); *see also United States v. Rodriguez-Suarez*, 692 Fed. Appx. 761, 762 (5th Cir. 2017) (“The court did not abuse its discretion by considering the need for the sentence imposed to promote respect for the law and to provide deterrence, either generally or specifically....”).

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

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

I have not had occasion to research the relative equitable effect of statutory mandatory minimum sentences versus discretionary sentences.

That said, the USSC Guidelines Manual states that the Guidelines seek to achieve “a more honest, uniform, equitable, proportional, and therefore effective sentencing system.” USSG Ch.1, Pt. A, intro. comment. 3 (Nov. 2016). Since *Booker*, both the Supreme Court and the Fifth Circuit have held that the Guidelines remain the “starting point,” “initial benchmark,” and “framework” for federal sentencing. *See, e.g., Gall*, 552 U.S. at 49-50; *U.S. v. Ibarra-Luna*, 628 F.3d 712, 717 (5th Cir. 2010).

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

As an AUSA, I reviewed sentencing appeals and advised prosecutors on the “substantial assistance” and “safety valve” provisions applicable to specific statutory mandatory minimums. *See* 18 U.S.C. § 3553(e); 18 USSG § 5K1.1.

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?

If I ascertained that the statute or relevant jurisprudence required an “unjust and disproportionate sentence,” I would consider noting my disagreement in the Statement of Reasons (SOR), sentencing hearing, or in a written opinion.

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

If consistent with the Canons of Judicial Ethics and any applicable federal laws, I would consider such action.

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>

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

If consistent with the Canons of Judicial Ethics and any applicable federal laws, I would consider such action.

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. As Deputy General Counsel to First Liberty Institute, I have worked with clients and recidivism experts who provide said alternatives.

2. Judges are one of the cornerstones of our justice system. If confirmed, you will be in a position to deciding 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 just one?

Yes. *See, e.g.*, Canon 3, Title, Code of Conduct for United States Judge (“A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently”); *see also* Canon 3A(5), Commentary, Code of Conduct for United States Judges (“In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay.”).

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. Based on my training and experience as an AUSA, it is my understanding that federal law enforcement agencies have researched and attempted to address sentencing disparity issues since the 1970s—including sentencing disparity between racial groups. For example, the Department of Justice’s Racial Disparities Working Group coordinates with the Bureau of Justice Statistics (BJS) and USSC to research, examine, and analyze patterns of federal sentencing disparity.

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. *See, e.g.*, Canon 3(B)(3), Administrative Responsibilities, Code of Conduct for United States Judges (“A judge should exercise the power of appointment fairly and only on the basis of merit, avoiding unnecessary appointments, nepotism, and favoritism.”).

- 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.