

**Questions for the Record for  
Sarah Daggett Morrison From Senator Mazie K. Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

**a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

No.

**b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

No.

2. In 2014, when you were General Counsel and Chief Ethics Officer of the Ohio Bureau of Workers' Compensation (BWC), the head of medical claims unit—Douglas Farmer—faced serious sexual harassment allegations. Another state agency investigated these allegations because Farmer's wife was the BWC's Chief Human Resource Officer. Investigators ultimately found probable cause of a hostile work environment including evidence that Farmer regularly engaged in inappropriate conversations, including conversations about "the size of employees' breasts, strippers, and pole dancing."

**a. As part of the leadership at the BWC, when did you become aware of Farmer's sexual harassment?**

I became aware of the allegations when an anonymous complaint was filed with the Ohio Department of Administrative Services, Equal Opportunities Division (DAS/EOD).

**b. What did you personally do in response to Farmer's misconduct? What steps did you take, if any, to make sure that the BWC offered a safe work environment free of sexual harassment?**

When BWC became aware of the anonymous complaint that had been filed with regard to Mr. Farmer's conduct, the agency retained an outside investigator to look into the allegations. My personal involvement was as counsel to the agency and I made sure that the investigator had full access to witnesses and information that she needed to conduct her review.

At the conclusion of the investigation, BWC acted swiftly and took aggressive action. Mr. Farmer was given a five-day unpaid suspension, was reassigned to a non-supervisory role in a different office, experienced a 26% reduction in pay, and was required to do additional EEO training. Mr. Farmer left the agency in May, 2015.

As a woman, I take all allegations of sexual harassment seriously. It is the policy of BWC to maintain a work place environment that is free of discrimination and harassment based on race, color, religion, gender, national origin, ancestry, military status, disability, age, genetic information, sexual orientation, or retaliation. The steps that I have taken to make sure that BWC offers a safe work environment free of sexual harassment include, among other things, reacting swiftly when allegations of misconduct in the workplace have arisen and by insisting upon thorough investigations of any such allegations. When allegations have been substantiated, discipline has been implemented. BWC has also conducted training of its managers of their obligations under federal and state law and BWC's equal employment opportunity policy, in addition to training of all employees of how to report allegations of misconduct.

- c. **What mechanisms were in place to allow employees to report sexual harassment by Douglas Farmer safely without fear of retaliation given that his wife was the Chief Human Resources Officer? If there were no such mechanisms, please explain why.**

BWC's Human Resources Memos 8.01 and 8.03 provide that any BWC employee who believes that he is she is the victim of discrimination or harassment should communicate any specific incidents to his or her supervisor. The policies further provide that the employee may report any incidents directly to BWC's EEO Department, the Chief Human Resources Officer, or to the Chief Legal Officer. In addition, as in the situation involving Mr. Farmer, employees can file allegations of sexual harassment with the Ohio Department of Administrative Services, Equal Opportunity Division. An employee can also choose to file a complaint with the Ohio Inspector General and/or with the Ohio Civil Rights Commission.

3. We hear time and again that female employees often do not feel safe reporting incidents of sexual harassment, particularly when there is a significant power imbalance such as between judges and law clerks or other court employees. As Chief Justice Roberts has recognized, the judiciary is not immune from the problem of sexual harassment.

- a. **If you are confirmed, what will you do to make sure that the judiciary provides a harassment-free environment?**

As the Administrator/CEO of the Ohio BWC, I implemented a diversity and inclusion initiative to make sure that our work spaces are welcoming and inclusive places for all of our employees. As a leader, I want to make sure that BWC is a comfortable environment for all parties involved. My initiatives have included diversity and inclusion training for all employees, with a separate training specific to managers; dedicated months to focus on different diverse populations such as an autism month and an LGBT month, and; lunch and learn opportunities for staff. My efforts led to Ohio BWC being recognized by Columbus Business First as an Outstanding Diverse Organization in August, 2018.

While I am hesitant to make commitments of any kind in the context of consideration of my nomination, if I am fortunate enough to be confirmed to the District Court for the Southern District of Ohio, I believe that the actions that I have taken at BWC are best practices for a state agency employer and I will work with the leadership at the district court to explore the best practices for diversity and inclusion in the judiciary.

- b. **What do you think are ways the federal judiciary can ensure that law clerks and other employees can report sexual harassment safely without fear of retaliation?**

Please see my answer to Question 4(a), *supra*. In addition, any employer should have policies in place to provide that (i) any employee can report allegations of harassment or other misconduct promptly, (ii) he or she can make such allegations anonymously if they wish, and (iii) there are options to report the allegations to different individuals within the organization so that if one person has a conflict, the report can be made to someone else.

4. During your tenure as the Ohio Bureau of Workers' Compensation's General Counsel and Chief Ethics Officer, the BWC was reported to have employed "conviction quotas" for prosecuting workers' compensation fraud claims. Press reports suggest that these quotas resulted in the waste of thousands of dollars of taxpayer money and wrongful convictions.

**a. What role did you play in establishing the BWC's "conviction quota" system?**

BWC has not had during my tenure, and to the best of knowledge has never had, a conviction quota system.

**b. As General Counsel and Chief Ethics Officer, what steps did you take, if any, to ensure that the BWC-based prosecutions were properly conducted?**

Under Ohio Rev. Code 4121.13(F), the administrator of the Ohio BWC shall, among other things, "[i]nvestigate all cases of fraud or other illegalities pertaining to the operation of the workers' compensation system..." In furtherance of that mandate, BWC created a Special Investigations Department to investigate, detect, and deter workers' compensation fraud and to protect the state insurance fund. However, BWC does not have prosecutorial authority. When an investigation reveals sufficient evidence to suggest that a crime has been committed, the Ohio Attorney General's office or local county prosecutors have the sole prosecutorial discretion regarding whether or not to pursue an indictment in a particular case. If those with prosecutorial authority decide to prosecute, the conduct of that prosecution would be handled by that independent authority and not by BWC staff.

**Nomination of Sarah Daggett Morrison  
United States District Court for the Southern District of Ohio  
Questions for the Record  
Submitted October 17, 2018**

**QUESTIONS FROM SENATOR BOOKER**

1. According to a Brookings Institute study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.<sup>1</sup> Notably, the same study found that whites are actually *more likely* to sell drugs than blacks.<sup>2</sup> These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.<sup>3</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison system is greater than 10 to 1.<sup>4</sup>

**a. Do you believe there is implicit racial bias in our criminal justice system?**

While I have not had any training on the issue of implicit bias in the criminal justice system, I do believe that it exists in some parts of the criminal justice system.

**b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?**

I have seen statistics such as those footnoted below that demonstrate that people of color make up a disproportionately higher percentage of incarcerated individuals than they do of the population generally.

**c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.**

While I have participated in diversity and inclusion training that included the concept of implicit bias, I have not studied the issue in the context of the criminal justice system.

2. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell an average of 14.4 percent.<sup>5</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an 8.1 percent average.<sup>6</sup>

**a. Do you believe there is a direct link between increases of a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.**

I have not studied or reached any conclusion about the statistical relationship between incarceration and crime rates.

- b. Do you believe there is a direct link between decreases of a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.**

I have not studied or reached any conclusion about the statistical relationship between incarceration and crime rates.

- 3. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.**

Yes.

- 4. The color of a criminal defendant plays a significant role in capital punishment cases. For instance, people of color have accounted for 43 percent of total executions since 1976 and 55 percent of those currently awaiting the death penalty.<sup>7</sup>**

- a. Do those statistics alarm you?**

Those statistics are concerning; certainly the race of a criminal defendant should play no role in a case. If confirmed, racial prejudice would have no place, and would play no role, in my courtroom.

- b. Do you believe it is cruel and unusual to disproportionately apply the death penalty on people of color? Why not?**

Please see my answer to Question 4(a), *supra*. It would be inappropriate for me to state my personal views because doing so might mistakenly suggest that I would decide a case based on something other than the relevant law and facts before me. *See* Canons 2 and 3, Code of Conduct for United States Judges; *cf.* Canon 1, Commentary (“This code is designed to provide guidance to judges and nominees for judicial office.”).

I would faithfully follow all relevant United States Supreme Court and Sixth Circuit precedent on capital cases fairly and without regard to race or any other improper consideration.

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<sup>1</sup> JONATHAN ROTHWELL, HOW THE WAR ON DRUGS DAMAGES BLACK SOCIAL MOBILITY, BROOKINGS INSTITUTE (Sept. 30, 2014), available at <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/>.

<sup>2</sup> *Id.*

<sup>3</sup> ASHLEY NELLIS, PH.D., THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENTENCING PROJECT 14 (June 14, 2016), available at <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

<sup>4</sup> *Id.* at 8.

<sup>5</sup> THE PEW CHARITABLE TRUSTS, NATIONAL IMPRISONMENT AND CRIME RATES CONTINUE TO FALL 1 (Dec. 2016), available at [http://www.pewtrusts.org/~media/assets/2016/12/national\\_imprisonment\\_and\\_crime\\_rates\\_continue\\_to\\_fall\\_web.pdf](http://www.pewtrusts.org/~media/assets/2016/12/national_imprisonment_and_crime_rates_continue_to_fall_web.pdf).

<sup>6</sup> *Id.*

- c. **The color of the victim also plays an important role in determining whether the death penalty applies in a particular case. White victims account for about half of all murder victims, but 80 percent of all death penalty cases involve white victims. If you were a judge, and those statistics were playing out in your courtroom, what would you do?**

Please see my answer to Questions 4(a) and (b), *supra*.

5. **Your record shows a range of experiences in the private sector and with the Bureau of Workers' Compensation, but you do not have a great deal of experience involving criminal proceedings. As a district judge, you would of course preside over a docket that includes many criminal trials and sentencings. Could you please speak to how you would prepare to preside over these cases if you are confirmed?**

If I am confirmed to the District Court, I plan to take advantage of the training and materials offered to new judges by the Federal Judicial Center.

In addition, each of the sitting judges in Columbus, Ohio, (which is the Court where I will sit) have offered to mentor me on criminal trials and sentencings and I will look to those judges for guidance. In fact, while my nomination has been pending, I have sat in on several criminal proceedings, including trials, pleas and sentencings. Before I take the bench in any case, I will review the pleadings and any other relevant filings in that case as well as any relevant law to prepare myself.

6. **I understand that while you were General Counsel at the Bureau of Workers' Compensation, there were serious allegations involving sexual harassment by the head of the BWC's Medical Claims Unit. It appears that this person was disciplined and has since left the BWC. Could you describe generally your involvement in this incident, including how you went about gathering the relevant facts, and any lessons learned about handling harassment allegations in the workplace?**

When BWC became aware of the anonymous complaint that had been filed with regard to the allegations referenced in Question 6, the agency retained an outside investigator to look into the allegations and to gather the relevant facts. My involvement was as counsel to the agency and I made sure that the investigator had full access to witnesses and information that she needed to conduct her review.

At the conclusion of the investigation, BWC acted swiftly and took aggressive action. Mr. Farmer was given a five-day unpaid suspension, was reassigned to a non-supervisory role in a different office, experienced a 26% reduction in pay, and was required to do additional EEO training. Mr. Farmer left the agency in May, 2015.

As a woman, I take all allegations of sexual harassment seriously. Both before and after this particular incident, I believe that management must react swiftly to ensure a thorough investigation when allegations arise. When allegations are substantiated, discipline must be implemented.

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<sup>7</sup> The American Civil Liberties Association, Race and the Death Penalty, <https://www.aclu.org/other/race-and-death-penalty> (Last visited June 13, 2018).

**Questions for the Record from Senator Kamala D. Harris**  
**Submitted October 17, 2018**  
**For the Nominations of**

Sarah Daggett Morrison, to the U.S. District Court for the Southern District of Ohio

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 believe that sentencing a criminal defendant is one of the most important and difficult jobs of a United States District Judge.

If confirmed, I would approach sentencing with the recognition that the ultimate sentence imposed will impact the defendant and his or her family, as well as the community and any victims of the offense. I would begin by calculating the applicable Sentencing Guidelines range for the offense. Then I would evaluate any applicable statutes, including 18 U.S.C. §3553, the presentence report, the allocution of the defendant, the arguments of counsel, any statements by the defendant's family and friends, and any victim impact statements. After considering all appropriate factors, information, authorities, and materials, I would attempt to impose a sentence "sufficient, but not greater than necessary, to comply" with the congressionally-designated purposes of federal sentencing: "the need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; [] to afford adequate deterrence to criminal conduct; [] to protect the public from further crimes of the defendant; and [] to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner[.]" 18 U.S.C. § 3553(a).

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

In addition to my answer to Question 1(a), *supra*, if confirmed, I would read and study relevant materials relating to sentencing, including (i) publications of the United States Sentencing Commission, (ii) publications of the Federal Judicial Center, and (iii) sentencing decisions rendered by the United States Supreme Court and the Sixth Circuit Court of Appeals.

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

Under United States Supreme Court precedent, the Sentencing Guidelines are not binding on trial judges; they are advisory. *See, e.g., United States v. Booker*, 543 U.S. 220, 246 (2005). Part K of Section 5 of the Sentencing Guidelines lists the specific circumstances under which a trial judge may depart from the advisory Guidelines range. In addition, a judge may, consistent with the factors set out in 18 U.S.C. § 3553, vary either up or down from the advisory Guidelines range. If confirmed, I would carefully consider all such

authorities and factors, and the positions of the parties before deciding whether a departure was appropriate.

- 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.<sup>1</sup>**

**i. Do you agree with Judge Reeves?**

The question of which kind of sentencing regime better deters crime is one for the political branches. It would be inappropriate for me to state my personal views because doing so might mistakenly suggest that I will decide a case based on something other than the relevant law and facts before me. *See* Canons 2 and 3, Code of Conduct for United States Judges; *cf.* Canon 1, Commentary (“The Code is designed to provide guidance to judges and nominees for judicial office.”). Answering this question would also require me to inappropriately state my opinion on a matter of public policy. *Id.* and Canon 5. If confirmed, I would follow all relevant United States Supreme Court and Sixth Circuit precedent on criminal sentencing, and I would ensure that every sentence I impose is fair and reasonable in light of the factors set out in 18 U.S.C. § 3553.

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

Please see my answer to Question 1(d)(i), *supra*.

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

I have not studied this issue and am unaware of any such instance.

**iv. Former-Judge John Gleeson has criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.<sup>2</sup> 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 confirmed, I will apply any applicable mandatory minimum sentence to the extent that the relevant statute is constitutional. I will faithfully apply those

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

<sup>2</sup> *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>



laws, as well as any other laws, without regard to my personal views as to whether sentences led to unjust outcomes. District Court judges cannot ignore validly passed statutes.

Judges also must comply with 18 U.S.C. §3553(c) and “state in open court the reasons for its imposition of the particular sentence . . .” and, where required or appropriate, state that the law required the sentence imposed. All of this can be done without offering personal criticisms of Congress’s decision to impose a mandatory minimum sentence, as judges must comply with the Code of Conduct for United States Judges.

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

The question of what crime to charge is one that our Constitution commits to the Executive Branch. If confirmed I would raise charging decisions with federal prosecutors only in appropriate situations where permitted by applicable law and consistent with the Code of Conduct for United States Judges.

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

The clemency power is one that our Constitution reserves to the Executive Branch. If confirmed, I would not advocate for or against clemency for any defendant. If appropriate and permitted by applicable law, a judge may state on the record that he or she would not have imposed a certain sentence but for a statutory mandate to do so. If an Executive Branch official later decides that the case merits clemency consideration, that official would then have the benefit of the judge’s recorded view on the justness of the sentence in question.

**i. 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 permitted by applicable law.

**3. 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.

- 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.**

I have seen statistics demonstrating that people of color make up a disproportionately higher percentage of incarcerated individuals than they do of the population generally.

4. 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?**

If confirmed, I would ensure that qualified minorities and women are given serious consideration for all positions that I am in a position to fill.