

**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 Moor, to be United States District Judge for the Southern District of Alabama

Mark Saalfeld 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?

I would begin by making sure that I understand fully the factual basis of the conviction or the plea. I would then follow the process set forth by federal statute and interpreted by the Supreme Court and Eleventh Circuit. To the extent permitted by law, I would consider any aggravating factors against the defendant, any mitigating factors beneficial to the defendant, any pre-sentencing report generated by the probation officer assigned to the case, any victim impact statement submitted, other sentences typically given for the crimes, the sentences that any co-defendants have received or likely would receive for the same transaction, and the degree to which the defendant had accepted responsibility for his or her actions.

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

Although I would be a new District Court Judge, should I be fortunate to receive Senate confirmation, I would not be new to this process. I served over 10 years as a Superior Court Judge in the Gwinnett Judicial Circuit of Georgia, in addition to serving as a Judge on the Court of Appeals of Georgia for over 5 years. Thus, I have sentenced many defendants and reviewed the sentences of many defendants in my over 16 years as a judge in the State of Georgia system. Except as modified by federal law, I will use the same the process that I have used in the past.

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

In Georgia, there are not sentencing guidelines, but in sentencing defendants in my over 10-year career as a trial judge, I would always look at circuit and state averages for similar charges when I would sentence defendants. I would depart from the average sentences for any defendant, up or down, based upon my consideration of the factors outlined above in Question 1(a). As a federal district court judge, I would follow federal statutes and precedents governing when it may be appropriate to depart from the U.S. Sentencing Guidelines.

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?

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

I generally believe that trial judges should have discretion in sentencing to make sure that the sentence a defendant receives is consistent with his or her culpability in any given case. Although longer sentences might deter some people from engaging in serious crimes, my experience within the criminal justice system leads me to believe that many defendants will not be deterred from their criminal conduct based upon the length of the sentence. Often, repeated criminal behavior is predicated on, for example, substance abuse and dependency.

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

As a judge, I prefer to have as much discretion as possible to fashion the appropriate sentence, yet, I understand and respect the right of the legislative branch of government to set such minimums.

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

One case that comes to mind involved a defendant convicted of being a party to the crime of armed robbery, where she had assisted her boyfriend by driving him to the scene of an armed robbery. The prosecutor had offered to allow her to plead guilty to the lesser included crime of robbery, for which she would have received a sentence of a few years in prison and probation. But the defendant rejected the plea offer and asked for a trial, at which the jury convicted her of armed robbery. Although the defendant argued that the mandatory minimum sentence was unjust as applied to her, I was required to sentence her to a 10-year prison sentence.

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?

I would follow the law as written in sentencing, as in other matters. If I felt that the law required me to impose a sentence not appropriate for the facts of the case, I would consider any proactive steps to address that injustice available under the law.

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>

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

See response to Question 1(d)(iv)(1).

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

See response to Question 1(d)(iv)(1).

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, to the extent allowed by law. As a state trial judge, I founded and presided over a felony drug court in my jurisdiction which sought to rehabilitate and to provide counseling and drug treatment, along with job training and assistance, to defendants rather than send them to prison. I also frequently sentenced defendants as “first offenders,” which allowed them to avoid a conviction if they were successful while on probation.

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?

Absolutely.

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.

Statistics show a greater percentage of minorities incarcerated in my state and in this country. As a trial judge for over 10 years and an appellate judge for over 5 years, I have worked hard to be cognizant of this fact as I consider charges and cases that come before me.

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.