

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?

If I am fortunate enough to be confirmed, I would review all relevant materials and then impose a sentence consistent with all governing law. In particular, I would review the Presentence Investigation Report (PSR), as well as the parties' arguments in relation to the PSR. If conviction was pursuant to a guilty plea, I would closely review the plea colloquy as well as the plea agreement, if any. If conviction was pursuant to a trial, I would review pertinent provisions of the transcript and consider my personal recollection of impressions gleaned from the trial. I also would review any sentencing memoranda submitted by the parties, along with any other relevant materials submitted by the defendant. I would endeavor to make correct guidelines calculations. Then, at the sentencing hearing, I would consider all testimony or other evidence presented on any sentencing issue, the arguments presented by the parties, any allocution the defendant chooses to make, and any oral or written victim impact statements. With all of these matters under consideration, I then would apply the standards of relevant law to determine the proper sentence.

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

See response to Question 1(a) above.

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

Title 18, United States Code, Section 3553(a) sets forth the applicable standard for determining the appropriate sentence. It dictates that the sentence should be sufficient, but not greater than necessary, to accomplish the recognized goals of sentencing, considering each sentencing factor set forth in Section 3553(a). The Sentencing Guidelines are only one such factor, and courts are not required to presume that a sentence should be imposed within the guideline range. Accordingly, sentencing outside the guideline range is appropriate whenever all of the factors of Section 3553(a), considered cumulatively, suggest a sentence that is outside the guideline range.

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

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

i. Do you agree with Judge Reeves?

On balance, I believe that stiff mandatory minimum sentences are more likely than discretionary or indeterminate sentences to deter some individuals from committing certain types of crimes.

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

Mandatory minimum sentences may help promote certain policy objectives, but I do not have a definitive opinion as to whether they have provided for a more equitable criminal justice system. If I am fortunate enough to be confirmed, I would, in any event, faithfully apply the relevant law.

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

One example from my practice comes to mind. A few years ago, I represented on appeal a defendant who had been convicted at trial of multiple offenses, including aggravated identity theft, which carried a mandatory two-year consecutive term of imprisonment in addition to the sentence imposed for other offenses. I believed that the conviction was unwarranted by law, in that the conduct proved at trial simply did not amount to aggravated identity theft within the meaning of the statute. I felt that the prosecutors had overreached, overzealously charging my client with a crime that did not fit the facts. The Sixth Circuit agreed, reversing the conviction for aggravated identity theft on those very grounds.

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

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 I am fortunate enough to be confirmed, I would be open to the possibility of any of these three efforts, so long as they were consistent with my legal and ethical obligations and an appropriate respect for the separation of powers.

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 required by Section 3553(a)(3) of title 18, U.S. Code, when determining a sentence I would consider “the kinds of sentences available.” This would include consideration of a non-custodial sentence in every case, except those in which a sentence of incarceration is required by statute.

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.

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 cannot personally vouch for any statistics, but I understand there are reports that minorities are disproportionately represented in prison populations, and may disproportionately be forced to rely on overtaxed public defender’s offices.

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, I am committed to ensuring that qualified minorities and women are given serious consideration for any positions over which I have hiring authority.