

Responses of Esther Salas
Nominee to be United States District Judge for the District of New Jersey
to the Written Questions of Senator Jeff Sessions

- 1. According to your questionnaire, you participated in the drafting of a March 13, 2006 letter to the U.S. Sentencing Commission from Federal Community and Public Defenders. Please explain for the Committee your role and work on this letter.**

Response: I played no role in the drafting of the March 13, 2006 letter. I did help prepare it by conducting research on various proposed amendments and preparing a background memorandum for the Federal Defender Sentencing Guidelines Committee (hereinafter referred to as Defender Committee) for their review. Finally, I recall participating in conference calls with the Defender Committee.

- 2. Among the sentencing guidelines opposed in the letter were new increased sentences for hoaxes, including hoax calls to military families conveying false information “about the death, injury, capture, or disappearance of a member of the Armed Forces.” The letter proposed a very low base offense level of six (half of what the Commission recommended), as well as “an invited downward departure, if the offense did not involve an expression of intent to injure a person or property.”**

- a. Isn’t it true that under your proposal, a hoax caller who intended to harass a military family would face no meaningful risk of jail time (zero to six months in the probation range)?**

Response: Having reviewed the Defender Committee’s proposal, it is possible for a hoax caller convicted of harassing a military family, where there was no “intent to injure a person or property,” to receive a probationary sentence. However, there are many factors that a sentencing court must consider before rendering any sentence in a criminal matter. The sentencing judge must first determine the appropriate guideline range, then consider all statutory factors mandated by 18 United States Code, Section 3553(a). The sentencing judge must also review the final presentence report and consider any and all aggravating and mitigating factors. It is important to note that if the hoax caller had a criminal history which resulted in a higher criminal history category, the hoax caller could receive a jail sentence.

- b. Do you disagree with the Commission’s decision to refer the hoax statute to the same guideline that governs threats?**

Response: As a judge my role is limited and I would afford a great deal of deference to the United States Sentencing Guidelines. It is the Commission’s job to set forth the appropriate guidelines and it is not my place to agree or disagree with any of the Commission’s decisions.

3. **The letter also objected to the proposed Commission guidelines for criminals who materially support the development, use, or threatened use of a nuclear weapon or other weapon of mass destruction. Among other objections, the letter proposed a downward departure for those convicted of materially supporting the development of a nuclear or other weapon. Do you not believe those who are convicted of intentionally and materially supporting the illegal development of rogue nuclear weapons deserve strict accountability and the highest available sentence?**

Response: Our system of justice requires that individuals convicted of a crime in a court of law must be accountable for their conduct. As a District Judge, I would not have a preconceived notion of what type of sentence a defendant should or should not receive. Rather, a sentencing judge must consider all appropriate factors in determining the sentence in any criminal matter. However, if the facts were such that the aggravating factors clearly outweighed the mitigating factors and the advisory guideline range recommended a sentence at or near the statutory maximum, I would have no difficulty in following the advisory guideline range.

4. **The letter also objected to proposed stepped-up guideline enhancements for those who destroy or damage veterans' memorials or a national cemetery. According to the letter, these proposed enhancements, which were in the range of four to six guideline levels, were "too high." In fact, the letter opined that existing sentences for these offenses were "too high already." But under the guidelines in effect at the time of your letter, a defendant who vandalized a national cemetery plot would be sentenced based on an Offense Level of 8, which yields a zero to six month term of imprisonment and pretty much guarantees probation. Do you personally believe a probation sentence is "too high" for someone who vandalizes a national cemetery?**

Response: If fortunate enough to be confirmed as a District Judge, I would refrain from interjecting my personal beliefs when presiding over any matter. In all sentencing proceedings, I would look to the Guidelines in order to determine the advisory guideline range. Then I would consider the statutory factors set forth in Section 3553(a) along with a thorough review of the final presentence report before making any determination as to the appropriate sentence.

5. **Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.**

Response: The Supreme Court has held that the death penalty does not constitute cruel and unusual punishment within the meaning of the Eighth Amendment. Accordingly, I would have no difficulty in enforcing the law in all aspects, including and not limited to, the death penalty.

6. **Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.**

Response: Yes, the Supreme Court has held the death penalty is constitutional and is an acceptable form of punishment. Accordingly, I would follow precedent as it related to the death penalty.