

**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 Moorhead, 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?

In sentencing a defendant, district courts must follow applicable statutes, rules, and procedures. That includes: (1) calculating and considering the sentencing range provided in the United States Sentencing Commission Guidelines Manual, (2) calculating any departures from the sentencing range provided in the Guidelines Manual, and (3) considering the relevant factors in 18 U.S.C. § 3553(a). If I am fortunate enough to be confirmed, I would generally follow this process. I would also consider the Presentence Report, arguments from counsel, and any statements from the victims (if applicable). I would faithfully and to the best of my ability apply all precedent of the United States Supreme Court and the United States Court of Appeals for the Tenth Circuit on this issue.

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

If I am fortunate enough to be confirmed, I would generally determine what constitutes a fair and proportional sentence by applying the process discussed above in Question 1a.

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

The Guidelines Manual addresses upward and downward departures. If I am fortunate enough to be confirmed, I would faithfully and to the best of my ability apply the Guidelines Manual, all applicable statutes, and all precedent of the United States Supreme Court and the United States Court of Appeals for the Tenth Circuit on this issue.

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 reviewed and studied all of the data concerning the impact of mandatory minimum sentences on deterring crime. And, given that mandatory minimum sentences are set by statute, I believe that Congress must assess and determine whether such mandatory minimum sentences effectively further the policy of crime deterrence. If I am fortunate enough

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

to be confirmed, I would faithfully and to the best of my ability apply the Guidelines Manual, mandatory minimum sentences, all other statutes, and all precedent of the United States Supreme Court and the United States Court of Appeals for the Tenth Circuit on this issue.

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

Please refer to my response to Question 1(d)(i).

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

It would be inappropriate for me to comment on cases I worked on as a federal law clerk. And because I have not previously served as a judge or criminal prosecutor, I am not sufficiently familiar with the facts and circumstances of any other particular case to opine on whether the sentence imposed was just or unjust.

I am aware that a federal judge has the authority to impose a sentence below a mandatory minimum sentence in limited situations such as when the government files a substantial assistance motion under 18 U.S.C. § 3553(e). But, as a general matter, because mandatory minimum sentences are set by statute, regardless of whether I thought a mandatory minimum sentence was unjust, I would faithfully and to the best of my ability apply the Guidelines Manual, mandatory minimum sentences, all other statutes, and all precedent of the United States Supreme Court and the United States Court of Appeals for the Tenth Circuit.

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 am fortunate enough to be confirmed and was required to impose a sentence that I thought was disproportionate, a judicial opinion or commentary in a judicial hearing would be appropriate vehicles to describe my concerns.

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?

If I am fortunate enough to be confirmed and was required to impose a sentence that I thought was disproportionate, a judicial opinion or commentary in a judicial hearing would be appropriate vehicles to describe my concerns. I would refrain from communications with prosecutors regarding their charging policies outside the context of a judicial opinion or hearing.

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

Please refer to my response to Question 1(d)(iv)(2).

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?

If I am fortunate enough to be confirmed, I will faithfully and to the best of my ability consider alternatives to incarceration for first time offenders not convicted of a crime of violence or otherwise serious offense to the extent permitted by 28 U.S.C. § 994(j), all other applicable statutes, and all precedent from the United States Supreme Court and the United States Court of Appeals for the Tenth Circuit on this issue.

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, a judge has a role in ensuring that our justice system is a fair and just one. All judges take an oath to administer justice faithfully and impartially. 28 U.S.C. § 453.

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.

The United States Sentencing Commission issued a report in November 2017 on the *Demographic Differences in Sentencing: An Update to the 2012 Booker Report*. The report found that sentence length continues to be associated with some demographic factors and, as one example, found that black male offenders receive longer sentences than similarly situated white male offenders. Although I

have not reviewed the report and data in detail, I have no reason to doubt its findings.

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, I believe it is important to have a diverse staff and law clerks.

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, if I am fortunate enough to be confirmed, I will execute a hiring plan that ensures that all applicants including qualified minorities and women are given serious consideration for positions of power and/or supervisory positions.