

Responses of Robert Leon Wilkins
Nominee to be United States District Judge for the District of Columbia
to the Written Questions of Senator Jeff Sessions

1. **In 2004, prior to the Supreme Court’s decisions in *Booker* and *Fanfan*, you co-authored an article in the *Atlanta Journal-Constitution* entitled “Fix Sentencing Guidelines.” In that article, you urged Congress to “repeal the federal sentencing guidelines along with the mandatory minimum drug sentences,” and allow the Sentencing Commission to draft new guidelines.**

- a. **Now that the guidelines are advisory instead of mandatory, do you still hold the same criticisms?**

Response: No.

- b. **What level of deference will you show to the guidelines now that they are only advisory?**

Response: In several cases, including *Nelson v. United States*, 129 S.Ct. 890 (2009) (per curiam), the Supreme Court has explained that “the sentencing court must first calculate the Guidelines range, and then consider what sentence is appropriate for the individual defendant in light of the statutory sentencing factors, 18 U. S. C. §3553(a), explaining any variance from the former with reference to the latter.” I will follow that precedent.

- c. **Do you commit to follow the guidelines?**

Response: I will follow the framework established by the Supreme Court, as described above.

- d. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

Response: Yes.

2. **From 2001 to 2003, you served as counsel for a group of convicted sex offenders filing as plaintiffs in a class action suit challenging the District of Columbia Sex Offender Registration Act on constitutional and Privacy Act grounds. The plaintiffs received temporary, preliminary, and permanent injunctive relief in the district court. While the case was on appeal, the Supreme Court upheld sex offender registry statutes in Connecticut and Alaska. Based on those rulings, the U.S. Court of Appeals for the D.C. Circuit reversed the injunctions.**

- a. **Do you believe the law should provide greater protection for perpetrators of sexual assault rather than their victims and the communities in which they live?**

Response: No, I have never expressed or held such a belief.

- b. **Are you uncomfortable with the idea of a Megan's law?**

Response: No.

- c. **Are you concerned that Megan's laws may violate the rights of convicted sex offenders?**

Response: I am bound by and will follow the Supreme Court decisions and other precedent that have rejected constitutional challenges to Megan's laws. To the extent that there could be future litigation raising other challenges to Megan's laws in the future, it would be inappropriate for me to opine further.

- d. **Are you uncomfortable with the idea of requiring convicted sex offenders to register with the police or state administrative body?**

Response: No.

3. **According to your questionnaire, you are a member of the ACLU.**

- a. **What is your level of involvement with that organization?**

Response: I am currently a dues paying member. I have never held an official position in the organization. If confirmed, I intend to discontinue my membership.

- b. **Is it fair to say that you personally agree with the positions taken by the ACLU?**

Response: I am not familiar with all of the positions taken by the ACLU; of those which I am aware, I have agreed with some and disagreed with others.

- c. **According to their website, the ACLU believes that the death penalty inherently violates the constitutional ban on cruel and unusual punishment and the guarantees of due process and equal protection.**

- i. **Do you agree with the ACLU's position on the death penalty, as set forth on its website?**

Response: I am not familiar with this statement on the ACLU website. My understanding is that the ACLU often challenges alleged unfairness and arbitrariness in the application of the death penalty. Nonetheless, to the extent that the ACLU has articulated a position on the death penalty as characterized in the question above, I disagree.

ii. Do you have a personal objection to the death penalty?

Response: No.

d. If confirmed, how will your affiliation with the ACLU impact your judicial decision-making?

Response: If confirmed, my past affiliation with the ACLU will have no impact. I will be bound by and will follow the precedent of the United States Supreme Court and the Court of Appeals for the District of Columbia Circuit.

4. During the 2008 presidential campaign, President Obama described the types of judges that he will nominate to the federal bench as follows:

“We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”

a. Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit President Obama’s criteria for federal judges, as described in his quote?

Response: When President Obama announced my nomination, he stated that I and the others nominated that day were “distinguished individuals [who] have demonstrated an unwavering commitment to justice throughout their careers,” so I can only presume that those were the most important criteria to the President. I am an African American who was born to a teenage mother in modest financial circumstances, so one could say that I fit some of the criteria mentioned by President Obama in the quote mentioned above.

b. During her confirmation hearing, Justice Sotomayor rejected this so-called “empathy standard” stating, “We apply the law to facts. We don’t apply feelings to facts.” Do you agree with Justice Sotomayor?

Response: I agree with Justice Sotomayor that judges apply the law to the facts, not feelings to facts.

c. What role do you believe empathy should play in a judge’s consideration of a case?

Response: To the extent that empathy is defined as the ability to recognize the position and circumstances of others, that quality could enhance a judge's ability to listen to the parties, but it should not play a role in applying the law to the facts.

- d. Do you think that it is ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?**

Response: No.

- i. If so, under what circumstances?**

Response: Not applicable.

- e. When Justice Stevens announced his retirement, the President said that he would select a Supreme Court nominee with "a keen understanding of how the law affects the daily lives of the American people." Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?**

Response: I believe that a judge should not base his or her decisions on a desired outcome, but rather on the law and the facts.

- 5. Please describe with particularity the process by which these questions were answered.**

Response: I received the questions, via the Department of Justice, on August 4, 2010. I then reviewed the questions and drafted responses. I later had discussions with the Department of Justice, and subsequently I asked the Department of Justice to submit these responses to the Judiciary Committee on my behalf.

- 6. Do these answers reflect your true and personal views?**

Response: Yes.