

**Responses of Beverly Baldwin Martin  
Nominee to the U.S. Court of Appeals for the Eleventh Circuit  
to the Written Questions of Senator Tom Coburn, M.D.**

- 1. In your questionnaire submitted to the Committee for your 2000 district court nomination, you were asked for your views on judicial activism. You stated:**

**“Once a case is properly before a court, a judge is obligated to follow the United States Constitution, statutory law, and the doctrine of stare decisis to adhere to legal precedent. This precept is paramount because it is necessary to the stability of our system for individuals and commercial concerns to find predictability in our judicial system and anticipate what actions are legally permissible. . . .”**

- a. Do you reaffirm your earlier statements?**

Response: Yes. Although I have not reviewed this statement in quite some time, it is a good description of how I have decided cases over the last nine years as a federal trial judge. I will continue to follow this approach if confirmed for a position on the Eleventh Circuit Court of Appeals.

- b. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: When interpreting the Constitution, a judge is bound by its words, which do not change or evolve. The text of the Constitution and the binding precedents of the United States Supreme Court and the Eleventh Circuit will control my decisions if I am confirmed.

- c. In *Roper v. Simmons*, Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. Do you agree with Justice Kennedy’s ruling? Do you agree with his reasoning?**

Response: In *Roper v. Simmons*, Justice Kennedy wrote for five of the Justices of the United States Supreme Court. Therefore his ruling constitutes precedent that binds me as a judge on a lower court, and I will follow that precedent.

Justice Kennedy’s reasoning in *Roper v. Simmons* resulted in a ruling that constitutes the law of the land, and I will respect and follow this precedent.

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

Response: No. If individual judges decided cases based upon their personal values, there would be no certainty or predictability in our judicial system, and our courts and system of justice could not maintain their legitimacy.

**e. If so, under what circumstances.**

Response: I do not think it is proper.

**2. President Obama has 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. Do you agree with President Obama’s quote?**

Response: President Obama has provided this description of what is important to him in carrying out his constitutional role of selecting judges. As a judge, my constitutional role is quite different from that of the President. I decide individual cases that come before me based upon the facts presented by the parties, and the legal precedent that governs the dispute.

**b. Do you believe that you fit President Obama’s standard as described in his quote?**

Response: I make every effort to treat all parties that appear before me with respect, and to carefully consider their legal arguments in the context of the facts of their cases. I do not, however, decide cases based upon my emotions, or sympathies for or against various groups or types of people.

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

Response: I do not believe that cases should be decided based upon empathy or emotional responses. Rather, each individual case must be decided on its particular facts, as required by binding precedent. It is also true that as a trial judge, I have spent much of my time in the courtroom with the parties litigating cases before me. I believe that it is important to treat them, as well as their lawyers, with respect and consideration, and I try to do so.

3. In *United States v. Miranda*,<sup>1</sup> a jury convicted the defendant of conspiring to distribute methamphetamine and cocaine, possession with intent to distribute, and possession of firearms in relation to a drug trafficking crime. The police found the defendant at a home with guns, drugs, and drug paraphernalia. The defendant was present when the police raided the home and ran into a bedroom with two guns and the drug evidence. After the jury found the defendant guilty, you granted the defendant's acquittal motion.

Likewise, in *United States v. Molina*,<sup>2</sup> the defendant was charged with knowingly participating in a drug trafficking conspiracy and possession of a firearm in furtherance of a drug trafficking crime. The police found the defendant and her common law husband in her bedroom, which contained cocaine and a digital scale. There was a second digital scale and cocaine in her bathroom, a gun and passports in her open nightstand, and a garbage bag and shoebox filled with nearly \$300,000 cash in her closet. A jury convicted the defendant of conspiracy to traffic drugs and possession of a firearm in furtherance of drug trafficking. Again, the jury found the defendant guilty and you overturned the jury's finding.

In both cases the Eleventh Circuit reversed, finding there was sufficient evidence and the jury convictions should not have been overturned.

- a. Do you still believe it was right to overturn the juries' verdicts in these cases?

Response: I fully accept the ruling of the Eleventh Circuit that there was sufficient evidence for the jury to convict both Mr. Miranda and Ms. Molina.

- b. If you were given the chance to handle these cases again, would you have handled them differently? If so, how?

Response: Upon receiving the ruling of the Eleventh Circuit in these two cases, I realized that my understanding of the "mere presence" rule was too expansive. Neither of these two defendants had been identified by law enforcement as members of the conspiracy during a lengthy investigation prior to their arrests, and both were found for the first time when law enforcement executed search warrants where they were located. In other words, neither had been seen at the scene of any drug transaction, nor had they been heard on the wiretaps which were a part of the evidence in each case. In Mr. Miranda's case, I concluded (wrongly, as it turns out) that the evidence of his participation in the conspiracy was no greater than others who were also in the home at the time of his arrest and who were not ultimately prosecuted by the government. However, I fully accept, understand, and respect the Eleventh Circuit's reversal of my ruling in both cases.

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<sup>1</sup>425 F.3d 953 (11th Cir. 2005).

<sup>2</sup>443 F.3d 824 (11th Cir. 2006).

Federal Rule of Criminal Procedure 29 allows judges to acquit defendants *before* submitting a case to the jury. I did not use this power given to me under the Rule. I submitted each case to the jury, which allowed the Eleventh Circuit to have available for review both the juries' findings, as well as my written Orders explaining my reasons for setting aside the jury verdict. Having the benefit of the juries' findings, the Eleventh Circuit rejected my reasoning.