

**Questions for the Record for Maryellen Noreika
From Senator Mazie K. Hirono**

As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees for a lifetime appointment to the federal bench, I am asking nominees to answer the following two questions:

- a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

No.

- b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

No.

**Nomination of Maryellen Noreika to the
United States District Court for the District of Delaware
Questions for the Record
Submitted February 21, 2018**

QUESTIONS FROM SENATOR BOOKER

1. According to a Brookings Institute study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.¹ Notably, the same study found that whites are actually *more likely* to sell drugs than blacks.² These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.³ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁴

- a. Do you believe there is implicit racial bias in our criminal justice system?

I am aware of studies, such as the one cited, showing racial disparities in the criminal justice system. If confirmed, I will undertake whatever steps I can to ensure that everyone who comes into my courtroom is treated fairly and equally, without regard to race or other personal characteristics.

- b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

I have not studied the issue, but I have reviewed statistics, such as those presented in the Nellis article in footnote 3, that have been found to reveal disproportion for people of color in the state prison population when compared to the general population.

- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

Prior to my nomination, I had participated in implicit bias training that explored issues of implicit bias generally. I had not, however, studied implicit racial bias in the criminal justice system.

¹ JONATHAN ROTHWELL, HOW THE WAR ON DRUGS DAMAGES BLACK SOCIAL MOBILITY, BROOKINGS INSTITUTE (Sept. 30, 2014), available at <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/>.

² *Id.*

³ ASHLEY NELLIS, PH.D., THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENTENCING PROJECT 14 (June 14, 2016), available at <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

⁴ *Id.* at 8.

2. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell an average of 14.4 percent.⁵ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an 8.1 percent average.⁶

- a. Do you believe there is a direct link between increases of a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

I have not studied the issue, but I have reviewed statistics, such as those presented in Pew Charitable Trusts fact sheet cited, that suggest that there are factors other than incarceration rate that influence state crime rates.

- b. Do you believe there is a direct link between decreases of a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

I have not studied the issue, but I have reviewed statistics, such as those presented in Pew Charitable Trusts fact sheet cited that suggest that there are factors other than incarceration rate that influence state crime rates.

3. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.

To the extent that this question is asking about judges, I cannot speak to what the goals should be of the President in nominating or the Senate in confirming judges. To the extent, it includes staff positions, I think it can be helpful to have people with a range of backgrounds, experiences and viewpoints. If confirmed, I would consider all qualified applicants for positions regardless of race, gender, orientation, age, national origin or religion.

⁵ THE PEW CHARITABLE TRUSTS, NATIONAL IMPRISONMENT AND CRIME RATES CONTINUE TO FALL 1 (Dec. 2016), available at http://www.pewtrusts.org/~media/assets/2016/12/national_imprisonment_and_crime_rates_continue_to_fall_web.pdf.

⁶ *Id.*

Questions for the Record from Senator Kamala D. Harris
Submitted February 21, 2018
For the Nominations of

Colm Felix Connolly, to be a judge on the United States District Court for the District of Delaware

Maryellen Noreika, to be a judge on the United States District Court for the District of Delaware

William Frederic Jung, to be a judge on the United States District Court for the Middle District of Florida

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 confirmed, I would follow the statutes, rules, and procedures the law requires. I would consider the Presentence Report and any written submissions and objections by the parties. I would consider the Sentencing Guidelines and the statutory factors set out at 18 U.S.C. § 3553(a). I would listen to arguments from the parties, including requests for leniency, and consider statements made by victims. If confirmed, I would do my best to impose a sentence that is “sufficient, but not greater than necessary” to achieve the purposes set out by Congress in 18 U.S.C. § 3553(a)(2).

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

If confirmed, I would follow the process set forth in my response to Question 1.a.

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

Part K of Section 5 of the Guidelines sets forth numerous circumstances where it may be appropriate for the sentencing judge to depart from the Guidelines by imposing a sentence below or above the sentencing range advised. If confirmed, I would review each case to determine whether any of the circumstances for departure exist. Additionally, I would consider whether any factors listed in 18 U.S.C. § 3553(a), which call for imposing a sentence above or below the Guideline range by way of a variance, apply. I would then do my best to impose a sentence that is “sufficient, but not greater than necessary” to achieve the purposes set out by Congress in 18 U.S.C. § 3553(a)(2).

- 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 am not familiar the statements of Judge Reeves that are referenced. I understand, however, that Congress has enacted certain statutes requiring that mandatory minimum sentences be imposed. As a prospective district judge, it would be inappropriate for me to comment on matters of legislative policy or political questions. If confirmed as a district court judge, I would be bound to follow that law.

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

Please see my response to Question 1.d.i.

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

Please see my response to Question 1.d.i.

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 confirmed as a district court judge, I would evaluate each case, and would consider taking any steps available to me consistent with the law and my ethical obligations.

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

Please see my response to Question 1.d.iv.1.

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

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?

Please see my response to Question 1.d.iv.1.

- 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. If confirmed as a district court judge, I would assess whether a sentence other than imprisonment is appropriate and warranted by the facts of the case and permitted by the applicable statutes.

- 2. Judges are one of the cornerstones of our justice system. If confirmed, you will be in a position to decide 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 equitable 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 have not conducted sufficient research or investigation to assess the prevalence of racial disparities today, but I have seen statistics indicating that such disparities exist, *e.g.*, in rates of incarceration in state prisons. If confirmed, I will undertake whatever steps I can to ensure that everyone who comes into my courtroom is treated fairly and equally.

- 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?**

I think it can be helpful to have people with a range of backgrounds, experiences and viewpoints. If confirmed, I would consider all qualified applicants for positions regardless of race, gender, orientation, age, national origin or religion.

- 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?**

Consistent with my response to Question 3.a, if confirmed, I would look to hire qualified candidates with a range of backgrounds, experiences and viewpoints, including women and minority candidates.