

Questions for the Record from Senator Kamala D. Harris
Submitted July 1, 2020
For the Nomination of:

Iain D. Johnston, to be United States District Judge for the Northern District of Illinois

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?

The process that I would follow is outlined in 18 U.S.C. Section 3553 and Federal Rule of Criminal Procedure 32. I would also apply Supreme Court and Seventh Circuit precedent.

In this process, I would analyze the submissions by the government and the defendant as well as the Presentence Investigation Report. I would also consider any victim statements. I would also listen to the defendant's allocution. (My current practice is to step off the bench after a defendant's allocution to fully consider it before entering a sentence. I intend to continue that practice.) I would also consider any other appropriate material provided to me.

I would also calculate the Sentencing Guideline's advisory range and determine if there is a reason to depart from that range. I would then apply the factors identified in 18 U.S.C. Section 3553, with the goal of reaching a sentence that is sufficient, but not greater than necessary, to comply with the purposes of the statute.

Throughout this process, I would carefully listen to the arguments and statements of the crime victims and defendant and fully analyze the law and facts. It is important to keep an open mind about the sentence until all the arguments and evidence is introduced. Toward the end of the process, I would ask the government, the defendant and the probation officer if there were any issues that I failed to address. I would carefully state the judgment on the record and then, after the judgment order is entered, confirm that the verbal statement is consistent with the written document.

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

Please see response to Question 1.a. above. Additionally, I would examine any relevant sentencing data in the Northern District of Illinois.

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

The Sentencing Guidelines are advisory; they are not mandatory. *Booker v. United States*, 543 U.S. 220 (2005). Additionally, applicable Supreme Court and Seventh Circuit precedent may provide bases for departure from the guidelines. In addition to any precedent, Section 5, Part K,

of the guidelines provide when a departure may be warranted.

- 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 studied this issue in depth and am unfamiliar with Judge Reeves' views and the context in which he made these statements. Additionally, there are and have been numerous reforms to the Sentencing Guidelines and sentencing in general, which is part of the political and legislative process. Consequently, I do not believe it is appropriate for a judge and district court nominee to weigh the merits of this policy debate. *See* Code of Conduct for United States Judges, Canon 2(A); Canon 5(C).

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

Please see 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 response to Question 1.d.i.

- iv. Former-Judge John Gleeson has 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?**

Before including a description in my opinion, I would carefully consider whether I possessed the authority and discretion to do so. In this process, I would consider the law and my ethical obligations. In this process, I would likely confer with my chief judge and the ethical advisors at the Administrative Office of the U.S. Courts. Because our system of government is based upon, among other things, separation of powers (vesting the legislative power in Congress and the enforcement power in the Executive), I would be cautious before expressing a disagreement with legislation that resulted in a sentence I personally found to be inappropriate. But, because unjust

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>.

and disproportionate sentences lead to a loss of confidence in the judiciary, under a particular circumstance, it may be appropriate to identify the issue in an opinion.

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

Charging decisions are vested in the Executive branch of government. Because of principles of separation of powers, it would be very unusual to contact the U.S. Attorney about the charging policies. However, if a policy resulted in unjust and disproportionate sentences, I would again consult with my Chief Judge and the ethical advisors of the Administrative Office of the U.S. Courts to obtain guidance. But again, guided by my ethical obligations and my role in our constitutional system, it may be appropriate to raise the issue with the U.S. Attorney.

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

Although the clemency power is vested in the Executive branch, in an exceptional case, it may be appropriate to raise the possibility of clemency with the U.S. Attorney, provided, again, that it is consistent with my ethical obligations and my role in our constitutional system.

- 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. In fact, the U.S. District Court for the Northern District of Illinois possesses a program called Sentencing Options that Achieve Results (SOAR).

- 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 there are racial disparities in our criminal justice system? If so, please provide specific examples. If not, please explain why not.**

Yes. Based upon my personal experience and observations, as well as reviewing certain statistical information, I believe there are racial disparities in the criminal justice system.

- 3. If confirmed as a federal judge, you will be in a position to hire staff and law clerks.
 - a. **Do you believe it is important to have a diverse staff and law clerks?**

Yes.

- 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.