

**Senator Chuck Grassley
Questions for the Record**

**Danny C. Reeves,
Nominee, Member of the United States Sentencing Commission**

1. Why do you want to serve on the Sentencing Commission?

Response: While many of my colleagues within the federal judiciary are qualified to serve on the Sentencing Commission, I believe I have the experience, time, and ability to address the important work of the Commission if confirmed as a member. Sentencing is a critical element of criminal justice and I hope to be able to improve federal sentencing policy so it achieves all the goals of sentencing and ensures justice for defendants and victims while providing safety to the public.

2. What unique skills, perspective or experience will you bring to the Commission – what do you hope to contribute?

Response: I have been a United States District Judge for nearly 15 years. In addition to handling a variety of criminal cases and sentencing hearings in the Eastern District of Kentucky, I have assisted other districts including the United States District Court in the Eastern District of Tennessee, the United States District Court for the Southern District of Texas and the United States District Court for the Western District of Texas. I also sit by designation with the Sixth Circuit and the Eleventh Circuit when requested. As a result of this experience, I have addressed varied and unique sentencing issues in multiple jurisdictions from the perspective of both a trial and appellate judge. As a result of my work on the border courts, I have also become very familiar with immigration and related issues facing those courts. Next, in addition to traditional drug and firearms offenses, I have handled matters ranging from complex fraud schemes to cases in which defendants insist on representing themselves. I am hopeful that my perspective and experience in all of these actions will assist the Sentencing Commission by providing a measure of reason and common sense to the very difficult and important work of that body.

3. What do you hope to accomplish as a result of your service on the Commission?

Response: Other than dedicating myself to the work of the Commission, I do not have any agendas. My hope is to improve federal sentencing policy and thereby promote greater public safety and justice for all participants.

4. According to the United States Sentencing Commission's 2010 Annual Report, the offense type with the highest within-guideline sentencing range was simple drug possession, with 94.9% of such cases resulting in a within-guidelines sentence. Manslaughter had the highest rate of above-average sentences based on *Booker*, at 10.9%. Conversely, child pornography offenses had the highest rate of below-range sentences, at 42.7%.

- a. I understand that many of these cases may have involved a government-sponsored departure, but do you think it is possible that the beliefs of judges about the nature and seriousness of particular offenses might be playing a role in the rates of above and below range sentencing, post-Booker?**

Response: Regarding below-guideline sentences that are not the result of a government-sponsored motion, several cases from my circuit would indicate that some judges feel strongly that guideline enhancements that often apply in child pornography and other cases are greater than necessary to accomplish the statutory purposes of sentencing as outlined in 18 U.S.C. § 3553(a). In reviewing the case law, however, it does not appear that personal beliefs often affect sentences imposed above a guideline range. Instead, such above-guideline sentences tend to reflect unique, case-specific reasons for variances.

- b. What actions do you think it would be appropriate for the Commission to take to ensure that judges understand the seriousness of all child exploitation offenses when they pass sentence on defendants convicted of these crimes?**

Response: The Commission should consider all relevant information in addressing and possibly revising sentencing guidelines for these offenses, not just information which favors reducing guideline enhancements. Sentencing judges should be aware and informed that all information has been considered on both sides of the issue by the Sentencing Commission. For example, in the area of child exploitation offenses, the Commission should consider information outlined in an article written by Alexandra Gelber, Assistant Deputy Chief of the Child Exploitation and Obscenity Section, Criminal Division of the United States Department of Justice, entitled "Response to 'A Reluctant Rebellion'". Ms. Gelber addresses and responds to specific criticisms of the guidelines applicable to child exploitation offenses discussed in an article written by Mark Hansen and appearing in the June 2009 issue of the American Bar Association Journal. According to Ms. Gelber, "when properly understood, the substance and structure of the criminal provisions and sentences for these pernicious crimes show an appropriate response to an exploding crime problem." Likewise, the Commission should consider information contained in an article written by Michael L. Bourke and Andres E. Hernandez entitled "The 'Butner Study' Redux: A Report of the Incidence of Hands-on Child Victimization by Child Pornography Offenders." J. Family Violence (2009) 24: 183-191.

- c. Are you concerned about the large number of downward departures given in white collar criminal offense sentencing? If so, what measures would you take if confirmed to increase the likelihood that judges would be more likely to sentence such offenders to sentences within the guidelines?**

Response: I am concerned with a large number of departures in any category of cases to the extent that such departures represent an unwillingness to impose sentences reflecting all statutory sentencing factors, including the need to avoid unwarranted

sentencing disparities among similarly-situated defendants who have been found guilty of similar conduct. If empirical evidence supports reducing guideline ranges or eliminating enhancements, the Sentencing Commission should consider such information. Otherwise, the Sentencing Commission should address the large number of departures with sentencing judges. In addition to publications by and meetings of the Sentencing Commission, this issue could be more effectively addressed at annual circuit judicial conferences.

5. Legal scholars generally recognize four purposes for imposing criminal sentences: retribution, incapacitation, rehabilitation and deterrence. Sometimes, these purposes may contradict one another. When such situations arise, the different purposes must be prioritized.

a. If deterrence and rehabilitation were in conflict such that both could not be emphasized equally, which would you emphasize in determining an appropriate sentencing range?

Response: All relevant statutory factors of 18 U.S.C. § 3553(a) should be considered when imposing a federal sentence. This includes rehabilitation as well as specific deterrence to the defendant and general deterrence to others who might commit a similar offense. Appropriate deterrence also provides a measure of protection to the public. However, if rehabilitation and deterrence conflict such that both could not be emphasized equally, deterrence is of greater importance in most cases when determining a proper and just term of imprisonment and conditions of supervised release.

b. If you would emphasize rehabilitation, what effect do you think that emphasis might have on potential future offenders?

Response: Not applicable.

6. Do you believe that mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing?

Response: Yes. Swift and certain are important elements of sentencing policy. Based on my experience, it would appear that mandatory minimum terms of incarceration provide deterrence to certain types of criminal activity and a corresponding level of protection to the public.