

Responses of John E. Dowdell
Nominee to be United States District Judge for the Northern District of Oklahoma
to the Written Questions of Senator Chuck Grassley

- 1. On a few occasions, you have represented capital defendants on appeal. Do you hold any personal convictions or religious beliefs that inhibit you from enforcing the death penalty in appropriate cases?**

Response: No.

- 2. Do you believe that the death penalty is an acceptable form of punishment?**

Response: Yes, the Supreme Court has held the death penalty to be constitutional, except in limited circumstances. If confirmed as a district court judge, I would follow binding precedent of the Supreme Court and the United States Court of Appeals for the Tenth Circuit.

- 3. In *Roper v. Simmons*, the Supreme Court relied on foreign law in holding that the execution of minors violated the Eighth Amendment. Do you think it is proper to look to foreign law to determine the meaning of the Eighth Amendment to the United States Constitution?**

Response: If confirmed as a district court judge, I would not look to foreign law to interpret the Eighth Amendment unless directed to do so by binding Supreme Court precedent.

- a. Do you believe it is ever appropriate for a Judge to consult foreign law, when determining the meaning of the United States Constitution?**

Response: No. If confirmed, I would not consult foreign law to determine the meaning of the United States Constitution unless directed to do so by binding Supreme Court precedent.

- 4. Please explain your relationship with the organization Just Cause, Inc. What is the nature and purpose of this organization?**

Response: I was an incorporator and director of Just Cause, Inc. It was established as a not-for-profit corporation for the purpose of pursuing relief for persons who had been denied fundamental rights in criminal or civil matters.

- 5. What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is to render decisions fairly and impartially, applying the relevant law to the facts without bias or prejudice. I believe I possess this attribute.

- 6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should be patient, fair, open-minded, and prompt. Included within these traits should be a willingness to listen carefully to all of the parties' facts and arguments with a respectful but firm demeanor. It is important that the judge's temperament convey to the parties a clear sense that they have been heard and an understanding that, regardless of the outcome, the decision has been rendered in accordance with the rule of law. I believe I meet this standard.

- 7. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

- 8. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If faced with a case of first impression involving the interpretation of a statute or constitutional provision, I would first consider the statutory text or provision in the context of its plain and ordinary meaning. Where the language of the statute or constitutional provision is clear, it would be applied. If the language of a statute is unclear, I would consider the context of the statutory framework in which it appears to ascertain the provision's meaning. If the meaning of a constitutional provision or statute cannot otherwise be determined, I would then review Supreme Court, United States Court of Appeals for the Tenth Circuit, and other circuit court precedent for analogous cases.

- 9. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: As a district court judge, I would be bound by the precedent of the Supreme Court and the United States Court of Appeals for the Tenth Circuit. I would, in all instances, apply such precedent.

- 10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Federal statutes are presumed to be constitutional. However, a federal court must declare a federal statute to be unconstitutional if the issue is properly presented and the statute violates a constitutional provision or if Congress exceeded its authority under the Constitution in enacting the provision.

- 11. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I would continually monitor the cases on my docket; set firm, realistic scheduling deadlines in civil and criminal matters; enforce those scheduling deadlines; conduct hearings on dispositive motions and other significant case issues; encourage settlement as appropriate; work in conjunction with United States Magistrate Judges to expedite cases; and rule on matters in a timely manner. In addition, I would strive to be available to the parties with regard to issues that may arise in their cases.

12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, I believe judges have a role in controlling the pace and conduct of litigation. As noted in my response to Question 11, I would work to ensure that all motions are promptly determined; that reasonable scheduling is established early in the litigation process; and that cases are diligently monitored. As an additional tool to ensure the litigation process proceeds smoothly and efficiently, I would be accessible to parties by way of status conferences and other means.

13. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on May 16, 2012. I prepared my answers on May 16 and 17, 2012. I submitted them to a representative of the Department of Justice on May 17, 2012, and discussed those responses with that representative. On May 21, 2012, I authorized the transmittal of my answers to the Committee.

14. Do these answers reflect your true and personal views?

Response: Yes.

Responses of John E. Dowdell
Nominee to be United States District Judge for the Northern District of Oklahoma
to the Written Questions of Senator Amy Klobuchar

- 1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

Response: My judicial philosophy would be to approach each case with an open mind, a willingness to listen to all the facts, and a diligent effort to identify the relevant law and to apply that law to the facts without bias or prejudice. This process would, at all times, be undertaken with humility and with a recognition of the important role that federal judges play in our constitutional system of government. The role of a district court judge is limited under the Constitution to deciding actual cases or controversies. A judge must decide cases fairly and promptly, applying the binding precedent of higher courts in a manner which affords predictability to litigants.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: If confirmed, I will take an oath to administer justice equally to the poor and to the rich. I would fully abide by that oath. Throughout my career as a litigator in civil and criminal matters, I have represented clients both big and small, from large corporations to indigents. I have appeared before many judges in my practice, and I have gained an understanding that, regardless of a party's status or the issues at stake, all should be treated fairly and consistently in the eyes of the court. I also had the honor of serving as a law clerk for a judge on the United States Court of Appeals for the Tenth Circuit. There, I witnessed first hand the fair treatment and dignity accorded to all litigants before the Court, regardless of their status. That lesson has inspired me in the practice of law, and it serves as a model I would seek to replicate on the bench, if confirmed.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: District court judges are required to follow precedent of the Supreme Court and United States Courts of Appeals, and must be fully committed to the principle of stare decisis. The Supreme Court and United States Courts of Appeals sitting en banc overrule their own cases in limited circumstances. District court judges must always follow controlling precedent.

Responses of John E. Dowdell
Nominee to be United States District Judge for the Northern District of Oklahoma
to the Written Questions of Senator Tom Coburn, M.D.

- 1. 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: No.

- a. If not, please explain.**

Response: The Constitution changes only through the amendment process, as set forth in Article V of the Constitution. A court’s job is to interpret and apply the Constitution, not to add or amend the rights contained therein.

- 2. Justice William Brennan once said: “Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized.” Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

Response: No.

- a. Please explain.**

Response: The principles of the Constitution remain the same, unless and until the Constitution is amended, as set forth in Article V of the Constitution. If confirmed as a district court judge, I would apply the binding constitutional interpretations set forth by the Supreme Court and United States Court of Appeals for the Tenth Circuit.

- 3. In Federalist Paper 45, James Madison wrote: “The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State Governments are numerous and infinite.” Do you agree with Madison that the powers of the Congress are fundamentally limited?**

Response: Yes.

- 4. In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: No.

- a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: I would not consider foreign law when interpreting the Constitution unless required to do so by binding Supreme Court precedent.