

**Nomination of Terry Doughty to the  
U.S. District Court for the  
Western District of Louisiana  
Questions for the Record  
Submitted November 8, 2017**

**QUESTIONS FROM SENATOR FEINSTEIN**

1. Please respond with your views on the proper application of precedent by judges.

**a. When, if ever, is it appropriate for a district court to depart from Supreme Court or the relevant circuit court's precedent?**

It is never appropriate for a district court to depart from Supreme Court or the relevant circuit court's precedent.

**b. When, if ever, is it appropriate for a district court judge to question Supreme Court or the relevant circuit court's precedent?**

I do not believe it is ever appropriate for a district court judge to question Supreme Court or the relevant circuit court's precedent.

2. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as "super-stare decisis." A textbook on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a "super-precedent" because it has survived more than three dozen attempts to overturn it. The book explains that "superprecedent" is "precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation." (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

**a. Do you agree that *Roe v. Wade* is "super-stare decisis"? "superprecedent"?**

Those terms ("super-stare decisis" and "super-precedent") can mean different things to different people. However, no matter how it is described, as a district judge, Roe v. Wade would be binding precedent upon me.

**b. Is it settled law?**

Roe v. Wade is settled as binding precedent of the United States Supreme Court.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry.

**a. Is the holding in *Obergefell* settled law?**

Obergefell v. Hodges is settled as binding precedent of the United States Supreme Court.

- b. On Friday, June 30, the Texas Supreme Court issued a decision in *Pidgeon v. Turner* which narrowly interpreted *Obergefell* and questioned whether states were required to treat same-sex couples equally to opposite-sex couples outside the context of marriage licenses. The Texas Supreme Court stated that “The Supreme Court held in *Obergefell* that the Constitution requires states to license and recognize same-sex marriages to the same extent that they license and recognize opposite-sex marriages, but it did not hold that states must provide the same publicly funded benefits to all married persons, and... it did not hold that the Texas DOMAs are unconstitutional.” Is this your understanding of *Obergefell*?**

I have not read the Texas Supreme Court’s decision in this case. However, Canon 3(A)(6) of the Code of Conduct for United States Judges and Canon 3(A)(8) of the Louisiana Code of Judicial Conduct prohibits public comment on the merits of a pending case. Therefore, I am not able to comment on this case.

4. In Justice Stevens’s dissent in *District of Columbia v. Heller* he wrote: “The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature’s authority to regulate private civilian uses of firearms.”

- a. Do you agree with Justice Stevens? Why or why not?**

Whatever personal views I hold would not be relevant to my position as a district judge. Should I be fortunate enough to be confirmed, I would faithfully follow *District of Columbia v. Heller*, as well as all other precedent established by the United States Supreme Court and the relevant circuit.

- b. Did *Heller* leave room for common-sense gun regulation?**

The Supreme Court stated in *Heller* that the “right secured by the Second Amendment is not unlimited” and also stated that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” 554 US 570, 626-27 (2008)

- c. Did *Heller*, in finding an individual right to bear arms, depart from decades of Supreme Court precedent?**

I have not had the opportunity to study *Heller* and prior case law closely. However, *Heller* is binding United States Supreme Court precedent and I will faithfully follow it if I am fortunate enough to be confirmed as a district judge.

5. In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations' independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

**a. Do you believe that corporations have First Amendment rights that are equal to individuals' First Amendment rights?**

Whatever personal views I hold would not be relevant to my position as a district judge. *Citizen's United* is binding United States Supreme Court precedent and I will faithfully follow it if confirmed.

**b. What is the right way to balance individual's First Amendment rights when corporations can, in effect, silence an individual through monetary spending?**

It would be inappropriate for me to give my personal opinion on the proper way to balance an individual's First Amendment rights with those of a corporation. I would faithfully follow Supreme Court and the relevant circuit's precedent on this issue.

**6. Please explain your view of the appropriate temperament of a judge. Do you believe that you have the appropriate temperament to be a judge?**

I believe the appropriate temperament of a judge should include being fair, impartial, patient, hard-working, open-minded, having common sense, and a sense of humor. I believe I do have the appropriate temperament of a judge.

**7. You currently serve as a state court judge. What are the most important lessons you have learned about serving as a judge from your state court experience? How are you a different judge today than you were when you first became a judge in 2009?**

I believe the most important lessons I have learned in serving as a state district court judge is how to be fair and impartial and to decide cases based upon the law, without regard to the parties, attorneys or consequences. I believe today I am a more experienced and therefore a better judge than I was in 2009.

8. You previously served as an Assistant District Attorney in the Fifth Judicial District. You handled the post-conviction proceedings in *Gray v. Lynn*, where the defendant argued that he had received ineffective assistance of counsel because his lawyer had failed to object to an erroneous jury instruction. You filed a brief on behalf of the government arguing that the defendant's counsel was not ineffective, but the Fifth Circuit disagreed with you.

**a. Please say more about your involvement with this case.**

I did not become involved in *Gray v. Lynn* until 1987. I was therefore not

involved in the trial or the original appeal. I became involved in this matter after Mr. Gray filed a writ of habeas corpus in federal court. In my role as an Assistant District Attorney, I represented the State of Louisiana, whose position was that Mr. Gray's conviction was valid.

**b. As a judge, how do you ensure that criminal defendants are adequately represented?**

It is important for a judge to be attentive of the type of attorney representation a defendant is receiving throughout all portions of the case. By paying attention to the motions filed, hearings had, and representation at pretrial matters, a judge can ensure a defendant is being effectively represented and catch problems early in the case.

**c. If you were confirmed as a federal judge, how would you evaluate ineffective assistance of counsel claims?**

If I am fortunate enough to be confirmed, I will evaluate ineffective assistance of counsel claims under the standards set forth by the United States Supreme Court in Strickland v. Washington, 446 US 668 (1984), and precedent.

9. Questions have been raised about your recusal decisions (for example—whether you timely disclosed a business relationship with a defendant in *Stowe v. Jordan*, a case from which you ended up recusing yourself, and whether you should have recused yourself from another case, *KT Farms et al. v. Citizens Progressive Bank*).

**a. Please detail for the Committee the circumstances of these cases and the basis for decisions you made regarding whether to recuse yourself or not.**

I take recusal issues very seriously. As a state district judge, I am bound by standards set forth in Louisiana Code of Criminal Procedure Article 671 (in criminal cases), by Louisiana Code of Civil Procedure, Articles 151 and 152 (in civil cases), and by The Louisiana Code of Judicial Conduct.

Stowe v. Jordan was a civil claim for damages as a result of a landfill in the State of Texas. In preparing for a hearing in February, 2017, I realized that one of the defendants was a person I had been associated with as a result of a monogramming business my wife had in 2014. Prior to making any ruling on any of the issues involving that defendant, I immediately disclosed this potential recusal issue to all counsel. The attorney for the plaintiffs filed a Motion to Recuse due to that relationship. Although recusal was not required under Louisiana Code of Civil Procedure Article 151, I voluntarily recused myself in this case to avoid any potential appearance of impropriety.

KT Farms, et al v. Citizens Progressive Bank was an alleged breach of contract case by farmers and farming corporations against two banks that made farm loans to the petitioners. The Motion to Recuse me in this case was filed by the same

attorney in the Stowe v. Jordan case, who argued that my actions in Stowe v. Jordan showed I was biased against him. In accordance with Louisiana law, another judge—Judge James M. Stephens—was assigned to hear these recusal issues. After a hearing (in which I testified), Judge Stephens found there were no grounds for recusal.

**b. What is your understanding of the recusal standard for federal judges?**

The recusal standard for federal judges is set forth in 28 USC 455, in 28 USC 144 and in the Code of Conduct for United States Judges. I will faithfully follow those standards, if confirmed.

**c. What is the best evidence you can offer the Committee that, if confirmed, you intend to take recusal issues extremely seriously?**

I have voluntarily recused myself in numerous cases. Question 14 of my Questionnaire for Judicial Nominees sets forth cases in which I have recused since I became a district judge in 2009. The vast majority of those cases were voluntary recusals. Very few were requested by an attorney or party.

I assure the Committee that I take recusals (and any other ethical issues) very seriously. I will faithfully follow the standards regarding recusals and the Code of Conduct for United States Judge.

**10. District court judges often say that the most difficult aspect of their job is sentencing defendants. Judges also comment that one of the most complicated legal areas are decisions involving the United States Sentencing Guidelines. How do you plan to familiarize yourself with the Guidelines?**

Sentencing is a difficult aspect of being a judge. I have sentenced many defendants in the last nine years and I take every one seriously. I have already begun familiarizing myself with the factors to be evaluated in the United States Sentencing Guidelines. I intend to work closely with other judges, observe other judges sentencing defendants and attend seminars and training workshops to ensure I will be able to correctly apply the United States Sentencing Guidelines.

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

On Wednesday, November 8, 2017, I received the questions for the record from the United States Department of Justice, office of Legal Policy, (OLP). After reviewing the questions, I conducted research and drafted responses to the questions. On Thursday, November 9, 2017, I shared the draft responses with OLP. I discussed the question and my responses with OLP. After making edits and finalizing my responses, I authorized OLP to submit my responses to the Senate Judiciary Committee.

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**QUESTIONS FROM SENATOR WHITEHOUSE**

1. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”

**a. Do you agree with Justice Roberts’ metaphor? Why or why not?**

This is a good metaphor; like an umpire, a judge has to “call it like he sees it,” without allowing outside influence.

**b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?**

A judge should not be concerned with the consequences of his or her decision. The judge is bound to follow the law, despite the consequences.

**c. Federal Rule of Civil Procedure 56 provides that a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact” in a case. Do you agree that determining whether there is a “genuine dispute as to any material fact” in a case requires a judge to make a subjective determination?**

In a summary judgment proceeding, the judge is not to make a subjective determination of credibility, or weight the testimony of a witness. A judge is simply to make an objective determination of whether there are genuine issues of material fact based upon the affidavits or deposition testimony presented. If there are genuine issues of fact, the credibility issues must be decided at trial.

2. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance “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.”

**a. What role, if any, should empathy play in a judge’s decision-making process?**

I do not believe empathy should effect how a judge rules in a case, however it may help in understanding that person.

**b. What role, if any, should a judge’s personal life experience play in his or her decision-making process?**

I do not believe a judge’s personal life experiences should effect how a judge rules in a case. However, they do help the judge in understanding that person.

- c. **Do you believe you can empathize with “a young teenage mom,” or understand what it is like to be “poor or African-American or gay or disabled or old”? If so, which life experiences lead you to that sense of empathy? Will you bring those life experiences to bear in exercising your judicial role?**

Although I have never been in these persons' shoes, I believe my own life experiences, along with my experience as a district court judge and a drug court judge will help me in understanding the people who come before me. Life experiences don't have a role in deciding what the law is, but do have an effect on understanding the person.

3. **In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?**

It is never appropriate for a judge to ignore, disregard, refuse to implement or issue an order that is contrary to an order from a superior court.

4. **I commend you for your work starting the juvenile drug court in 2013. How has that experience shaped your views on rehabilitation, and to what extent will that play a role in your approach to sentencing as a federal judge?**

Thank you. This experience has really been rewarding for me. I understand how hard alcohol and/or drug addictions are to overcome. I also believe that for persons with those problems, rehabilitation must be a part of sentencing in order to enable the defendant to overcome these problems and live a productive life.