

Nomination of James Hanlon to the U.S. District Court for the Southern District of Indiana
Questions for the Record
June 13, 2018

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 lower courts to depart from Supreme Court precedent?

Never - lower federal courts are obligated to follow Supreme Court precedent. If confirmed, I will faithfully follow all Supreme Court precedent.

b. Do you believe it is proper for a district court judge to question Supreme Court precedent in an opinion?

It would not be appropriate for a district court judge to question Supreme Court precedent in an opinion based on his or her personal views. Moreover, to promote respect for the law and stability in the law, it is ordinarily preferable for lower courts to adjudicate the issue before it based on the factual record and applicable law without extraneous commentary. There may be a circumstance, however, where it would be appropriate for a district judge to state that while a controlling Supreme Court precedent requires a certain outcome in the case before it, the result appears to be aberrant or inconsistent with other precedent and law.

c. When, in your view, is it appropriate for a district court to overturn its own precedent?

District courts are bound by precedent of the Supreme Court and the Circuit Court where the district court sits. Although district court decisions are not binding on that same court, to promote respect for the law and stability in the law, it is ordinarily preferable for lower courts to decide cases in a manner that is consistent with other, non-binding district court cases. The factual record before the court in a particular case or intervening controlling precedent, however, may lead a district court a result that is inconsistent with prior cases decided by the same court.

d. When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?

The Supreme Court has identified factors that it takes into account, such as reliance interests, workability and the doctrinal bases for a decision, when considering whether to overturn precedent. Beyond that, as a district court nominee it would not be appropriate for me to offer any view on when it may be appropriate for the Supreme Court to overturn its own 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 text book 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 Law of Judicial Precedent, Thomas West, p. 802 (2016).) 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”? Do you agree it is “superprecedent”?

All Supreme Court precedent, including *Roe*, is binding on district courts and it would not be appropriate for me to characterize, rank or categorize the relative precedential value of Supreme Court cases. If confirmed, I will faithfully follow all Supreme Court precedent.

b. Is it settled law?

Roe v. Wade is binding Supreme Court precedent so it would be considered “settled law” from the perspective of a district judge.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. Is the holding in *Obergefell* settled law?

Obergefell v. Hodges is binding Supreme Court precedent so it would be considered “settled law” from the perspective of a district judge.

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?

As a district court nominee, it would not be appropriate for me to offer any view or opinion regarding Justice Stevens' dissent in *Heller*. If confirmed, I would faithfully follow all Supreme Court and Seventh Circuit precedent relating to the Second Amendment and the regulation of firearms.

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

In *Heller*, the Court explained that the “right secured by the Second Amendment is not unlimited” and, although “not undertak[ing] an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in [the Court’s] 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 U.S. 570, 626-27 (2008).

Beyond that, it would be inappropriate for me to answer Question 4(b). See Canon 3(A)(6) of the Code of Conduct for United States Judges. Issues relating to the constitutionality of state and local statutes regulating possession and use of firearms are the subject of frequent and current litigation.

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

As evidenced by the lengthy discussions regarding precedent in the opinions in *Heller*, the meaning and interpretation of prior Supreme Court decisions involving Second Amendment jurisprudence are topics of debate. It would not be appropriate for me as a district court nominee to offer any view as to whether *Heller* was consistent or inconsistent with other Supreme Court cases.

5. When you were at DePauw University, you co-authored a letter to the editor of the student newspaper, which ran in the November 30, 1990 edition, entitled “An Apology offered for Monon Banner.” In that letter, you apologized for displaying “an offensive banner” during a football game against Wabash College. You wrote that you and a fellow student “were motivated by anger and disgust” related to “several incidents” between the two rival schools. Further, you wrote that you “did not consider the possibility of seriously offending people at the game or that [you] were misrepresenting DePauw sentiments.” (Letter to the Editor, *Apology offered for Monon banner*, THE DEPAUW (Nov. 30, 1990))

a. Please describe in detail the contents of the “offensive banner” that you displayed at a football game between DePauw University and Wabash College.

The banner said “in the Wabash locker room” and had a crudely spray-painted, cartoon depiction of a sexual act. This was a juvenile and misguided attempt to agitate Wabash in the context of the intense rivalry characterized by mutual taunting, name-calling and

fighting en masse. Although I did not make the banner, I was one of the students who held it up at the game.

b. Please describe how you came to be one of the co-authors of the apology letter in the newspaper.

Shortly after the game, having realized that displaying the banner was a stupid thing to do and bad decision, another student and I decided on our own initiative to write the letter. The DePauw community is small and close-knit, and we felt this was the right thing to do.

c. As a result of your role in displaying this banner, were you the subject of any discipline, formal or otherwise, from DePauw University or any subsidiary organization authorized by the school, including a student disciplinary committee?

I was informed by the University that I would be subject to a brief probationary period during which any violation of University rules would likely result in disciplinary action being taken.

d. If yes, was there any discipline reported in your permanent academic record? Was this matter disclosed to the Bars of Illinois and Indiana?

No discipline was reported in my permanent academic record.

I disclosed this matter in my respective applications to become a member of the bar in Illinois (1996) and Indiana (1998).

6. In an October 2009 interview with the Corporate Crime Reporter, you were asked about corporate criminal liability. In the interview, you said the following: “An English lawyer in the 1600s said — a corporate has no body to kick — no soul to damn. There are valid arguments to explore there. Assuming there is going to be some form of corporate criminal liability — which I believe there will be — what would be the equivalent of an affirmative defense in a civil case?” (23 CORPORATE CRIME REPORTER 40 (Oct. 19, 2009) (emphasis added))

What are the “valid arguments” to explore with respect to whether corporations should be subject to criminal liability?

The next sentence of the cited quote states, “In civil law we see cases where corporations are able to entirely avoid – if not substantially avoid – liability, by asserting an affirmative defense based on steps they have taken to prevent the misconduct from occurring in the first place. There is no equivalent in the criminal law.”

The point I was trying to make was not that corporations should be immune from criminal liability, but rather whether the law should give corporations the potential ability to avoid or mitigate corporate liability for the misconduct of individual employees by having effective compliance programs and taking steps to remediate after the misconduct has occurred. This is

essentially the principle embodied in the United States Sentencing Guidelines in the context of the punishment phase of criminal proceedings against a corporation, *see* U.S.S.G. § 8B2.1 (“Effective Compliance and Ethics Program”), and in the DOJ’s FCPA Corporate Enforcement Policy. *See* United States Attorney’s Manual at 9-47.120. The related point I was trying to make related to the question of whether charges against individuals who engage in misconduct have greater deterrent effect than charges against corporations. *See* United States Attorney’s Manual at 9-28.210.A (“Because a corporation can only act through individuals, imposition of individual criminal liability may provide the strongest deterrent against future corporate wrongdoing.”)

7. On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), White House Counsel Don McGahn told the audience about the Administration’s interview process for judicial nominees. He said: “On the judicial piece ... one of the things we interview on is their views on administrative law. And what you’re seeing is the President nominating a number of people who have some experience, if not expertise, in dealing with the government, particularly the regulatory apparatus. This is different than judicial selection in past years...”

- a. Did anyone in this Administration, including at the White House or the Department of Justice, ever ask you about your views on any issue related to administrative law, including your “views on administrative law”? If so, by whom, what was asked, and what was your response?**

During my interview with lawyers at the White House Counsel’s Office, I was asked generally about the topic of deference to administrative agencies. To the best of my recollection, I stated that I did not have any particular views on that topic and if a case involving the issue of agency deference came before me as a judge, my analysis and decision-making would be based on applicable Supreme Court and Seventh Circuit precedent and the factual record.

- b. Since 2016, has anyone with or affiliated with the Federalist Society, the Heritage Foundation, or any other group, asked you about your views on any issue related to administrative law, including your “views on administrative law”? If so, by whom, what was asked, and what was your response?**

No.

- c. What are your “views on administrative law”?**

Please see my answer to Question 7(a).

8. At any point during the process that led to your nomination, did you have any discussions with anyone — including, but not limited to, individuals at the White House, at the Justice Department, or any outside groups — about loyalty to President Trump? If so, please elaborate.

No.

9. Please describe with particularity the process by which you answered these questions.

I received the above questions on June 14, 2018, and immediately began preparing responses. I then shared draft responses with representatives of the Department of Justice, Office of Legal Policy. After receiving comments back, I finalized my answers. While I have authorized the Office of Legal Policy to submit these answers to the Committee on my behalf, each of the answers provided in response to these and questions from other members of the Committee is my own.

**Nomination of James Patrick Hanlon
United States District Court
For the Southern District of Indiana
Questions for the Record
Submitted June 13, 2018**

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?

Yes. Like an umpire, the fundamental role of a judge is to be impartial with no stake in the outcome other than ensuring the rules are followed and the proceedings are fair to the participants.

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

Usually none - a judge is obligated to faithfully apply the law and binding precedent regardless of the result or consequence. There are limited circumstances, however, where the consequence of a ruling has relevance to judicial decision-making, such as the duty to avoid an absurd result when construing a statute or when considering an application for a preliminary injunction.

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?

Empathy has a place within the boundaries of a district judge’s duty to faithfully decide cases based on the facts and applicable law. Empathy can be helpful in terms of a judge’s ability to appreciate and understand the perspective of those who appear in court.

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

A judge’s life experiences can assist with a judge’s ability to effectively communicate with and relate to people, and make factual findings. During high school, college and law school I worked in a variety of jobs, such as house painter and waiter. In 22 years as a practicing lawyer, I have had a wide range of experiences as a federal prosecutor, a government lawyer defending the interests of the United States, and in private practice representing a diverse range of clients, including individuals from all walks of life and businesses of all sizes. My life experiences will inform my perspective as a judge, if confirmed.

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?

No, a district judge is obligated to follow precedent and orders from appellate courts and the Supreme Court. If a judge believes he or she is not capable of fully and fairly following precedent or orders from a superior court in a particular case, the judge should consider whether recusal is appropriate under 28 U.S.C. § 455, the Code of Conduct for United States Judges, and other applicable authorities.

4. What assurance can you provide this committee and the American people that you would, as a federal judge, equally uphold the interests of the “little guy,” specifically litigants who do not have the same kind of resources to spend on their legal representation as large corporations?

My track-record over 22 years as a lawyer demonstrates my commitment to equal justice. I have represented individuals of limited financial means in critical matters where their liberty was at stake, such as refugees seeking political asylum in proceedings. As appointed counsel under the Criminal Justice Act, my clients have included an individual appealing a life sentence for drug-related offenses and a young, pregnant single mother who was charged with drug offenses. I would bring these experiences, which demonstrate my commitment to equal access to justice, with me to the bench, if confirmed.

- a. In civil litigation, well-resourced parties commonly employ “paper blizzard” tactics to overwhelm their adversaries or force settlements through burdensome discovery demands, pretrial motions, and the like. Do you believe these tactics are acceptable? Or are they problematic? If they are problematic, what can and should a judge do to prevent them?

Litigation tactics designed to simply overwhelm an adversary or force a settlement are not acceptable or consistent with the fundamental principle that justice must be fairly administered. Federal Rule of Civil Procedure 26(b) requires that discovery requests be proportional to the needs of the case in light of factors such as the parties’ resources and whether the burden or expense of the proposed discovery outweighs its likely benefits. While procedural rules like this help set a baseline of conduct for all cases, a district court is nonetheless obligated to manage all cases on an individualized basis in a manner that gives all litigants a full and fair opportunity to present their case and obtain evidence from their adversary.

5. How would your previous representation of individuals and municipalities against violations of the Clean Water Act impact your decision-making and judgement in environmental cases that would come before you?

Representing a party in a Clean Water Act case was one of many experiences I have had as a lawyer, each of which has added in a meaningful way to my perspective. I believe that the breadth and diversity of my experience will serve me, the court and public well, if I am confirmed.

6. Do you believe that discrimination (in voting access, housing, employment, etc.) against minorities—including racial, religious, and LGBT minorities—exists today? If so, what role would its existence play in your job as a federal judge?

Unfortunately, discrimination exists in our society. If confirmed, I would do everything

within my power to ensure there is fair and equal application of the law in chambers, the courtroom and the federal judicial system.

7. You have written that the “United States criminal justice system is in crisis,” referring specifically to the large number of people incarcerated. Do you believe that as a federal judge you would have a role combatting this crisis? How would you exercise sentencing discretion to potentially alleviate this crisis?

If confirmed, my goals in fashioning a sentence would be to ensure that the sentence imposed is “sufficient, but not greater than necessary” to achieve the sentencing purposes set forth by Congress, avoid unwarranted disparities, and base the sentence on a careful study of the unique facts and circumstances of the case and the unique characteristics of the defendant. *See Koon v. United States*, 518 U.S. 81, 113 (1996). In fashioning each individual sentence, I would consider all options, including the potential of a sentence that does not include incarceration.

Senator Mazie K. Hirono
Questions for the Record for J.P. Hanlon

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, 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 James Patrick Hanlon
United States District Court for the Southern District of Indiana
Questions for the Record
Submitted June 13, 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 familiar from my work as a criminal defense lawyer with studies conducted by the United States Sentencing Commission ("USSC") on demographic differences and sentencing outcomes. A recent report from the USSC found, among other things, "sentences of Black male offenders were longer than those of White male offenders for all periods studied." See *Demographic Differences in Sentencing: An Update to the 2012 Booker Report* (United States Sentencing Commission).

The administration of criminal justice must be fair and impartial without regard to race. Any facts suggesting potential bias in outcomes must be confronted and studied to ensure fairness, equality and impartiality. If confirmed, I will do everything in my power to guard against racial bias, including approaching each case with mindfulness and awareness of the issue of unconscious bias.

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

Yes.

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.

- 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.

I have attended presentations and training sessions on implicit bias sponsored by my law firm and at ABA conferences. Implicit racial bias in the criminal justice system is a critical issue that must be carefully considered especially by those who play a role in the criminal justice system.

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.

While I have not had the opportunity to study this issue, as an Assistant United States Attorney I served in leadership roles relating to combating violent crime and gang activity. This involved grassroots efforts and working closely with various community stakeholders, such as local law enforcement, community leaders and educational groups. My observation from these experiences is that many factors within and outside of the criminal justice system likely influence crime rates. I do not know to what extent, if any, incarceration population correlates to 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.

Please see my answer to Question 2(a).

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.

Yes.

4. Since *Shelby County, Alabama v. Holder*, states across the country have adopted restrictive voting laws that make it harder, not easier for people to vote. From strict voter

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.*

ID laws to the elimination of early voting, these laws almost always have a disproportionate impact on poor minority communities. These laws are often passed under the guise of widespread voter fraud. However, study after study has demonstrated that widespread voter fraud is a myth. In fact, an American is more likely to be struck by lightning than to impersonate someone voter at the polls.⁷ One study that examined over one billion ballots cast between 2000 and 2014, found only 31 credible instances of voter fraud.⁸ Despite this, President Trump, citing no information, alleged that widespread voter fraud occurred in the 2016 presidential election. At one point he even claimed—again without evidence—that millions of people voted illegally in the 2016 election.

- a. As a general matter, do you think there is widespread voter fraud? If so, what studies are you referring to support that conclusion?

While I have not had the opportunity to study the issue, I have no basis to believe there is widespread voter fraud.

- b. Do you agree with President Trump that there was widespread voter fraud in the 2016 presidential election?

As a district court nominee, it would not be appropriate for me to express any view or opinion regarding statements attributed to President Trump. See Canon 5 of the Code of Conduct for United States Judges.

- c. Do you believe that restrictive voter ID laws suppress the vote in poor and minority communities?

There is litigation currently pending in the Southern District of Indiana challenging the constitutionality of certain provisions of Indiana statutes relating to voter registration. See *Indiana State Conference of the National Association for the Advancement of Colored People and League of Women Voters of Indiana v. Lawson et al.*, Case No. 1:17-cv-02897-TWP-MPB, and *Common Cause Indiana v. Lawson et al.*, Case No. 1:17-cv-3936-TWP-MPB. It would be inappropriate for me to answer Question 4(c). See Canon 3(A)(6) of the Code of Conduct for United States Judges.

5. The color of a criminal defendant plays a significant role in capital punishment cases. For instance, people of color have accounted for 43 percent of total executions since 1976 and 55 percent of those currently awaiting the death penalty.⁹

⁷ JUSTIN LEVITT, THE TRUTH ABOUT VOTER FRAUD, BRENNAN CENTER FOR JUSTICE 6 (2007), available at <http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf>.

⁸ Justin Levitt, *A comprehensive investigation of voter impersonation finds 31 credible incidents out of one billion ballots cast*, THE WASHINGTON POST, Aug. 6, 2014, available at https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?utm_term=.4da3c22d7dca.

⁹ The American Civil Liberties Association, *Race and the Death Penalty*, <https://www.aclu.org/other/race-and-death-penalty> (Last visited June 13, 2018).

- a. Do those statistics alarm you?

Yes. Any data suggesting potential bias in outcomes in capital punishment cases must be taken seriously and studied to ensure the administration of criminal justice is fair and impartial without regard to race.

- b. Do you believe it is cruel and unusual to disproportionately apply the death penalty on people of color in compared to whites? Why not?

It would be inappropriate for me to answer Question 5(b). *See* Canon 3(A)(6) of the Code of Conduct for United States Judges. Issues relating to the constitutionality and use of the death penalty are often the subject of litigation, and there is currently at least one federal death penalty case pending in the Southern District of Indiana. *See United States v. Rogers*, Case No. 2:16-cr-00018 (S.D. Ind.). If confirmed and assigned a case involving the death penalty, I would carefully study the factual record and applicable precedent of the Supreme Court and the Seventh Circuit, and do everything within my power to ensure the fair and impartial administration of justice without regard to race.

- c. The color of the victim also plays an important role in determining whether the death penalty applies in a particular case. White victims account for about half of all murder victims, but 80 percent of all death penalty cases involve white victims. If you were a judge, and those statistics were playing out in your courtroom, what would you do?

While charging decisions in criminal cases are within the exclusive power and discretion of the Executive Branch through the Department of Justice, there may be circumstances where it could be appropriate and permissible under the law and consistent with ethical obligations for a district judge to confer with DOJ officials regarding charging decisions to make them aware of such a statistical disparity and the potential erosion of public confidence in the criminal justice system that such a disparity may cause.

Questions for the Record from Senator Kamala D. Harris
Submitted June 13, 2018
For the Nominations of

- Holly A. Brady, to be U.S. District Judge for the Northern District of Indiana
 - Andrew Brasher, to be U.S. District Judge for the Middle District of Alabama
 - James Patrick (“JP”) Hanlon, to be U.S. District Judge for Southern District of Indiana
 - David Steven Morales, to be U.S. District Judge for the Southern District of Texas
 - Lance Edward Walker, to be U.S. District Judge for the District of Maine
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?

I would follow the process set forth in Fed. R. Crim. P. 32 and 18 U.S.C. § 3553, and carefully study the materials specific to the case, such as the Presentence Investigation Report, arguments of counsel, letters and other materials submitted in support of the defendant, and any victim impact statement or related materials. I would consider the advisory Guidelines calculation, determine whether any variance or departure from the Guidelines was warranted, and consider the factors under 18 U.S.C. § 3553(a). I would ensure that the government, defendant and any victim had the opportunity to make presentations at a sentencing hearing, and follow Supreme Court and Seventh Circuit precedent instructive to sentencing.

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

Having represented both the government and defendants in the context of sentencing, I have a solid understanding of the parties’ perspectives, the relevant factors to be considered and sense of fairness and proportionality. In a letter submitted to the Committee, the Federal Defender for the Southern District of Indiana observed that I have a reputation for “fairmindedness.” My experience and track-record of fairness will help me as a judge, if confirmed, in fashioning fair and proportional sentences that are “sufficient, but not greater than necessary” to achieve the sentencing purposes set forth by Congress, *see* 18 U.S.C. § 3553(a)(2), and ultimately based on a careful study of the unique facts and circumstances of the case and the unique characteristics of the defendant. *See Koon v. United States*, 518 U.S. 81, 113 (1996) (“It has been uniform and

constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.”).

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

While the Guidelines are no longer mandatory, a district judge must carefully consider the advisory Guidelines calculation in each case. A district judge may determine a departure from the Guidelines is warranted based on the facts and circumstances presented in a particular case as informed by 18 U.S.C. § 3553 (a) and (b). I would also carefully study the caselaw relating to departures and faithfully apply controlling Supreme Court and Seventh Circuit precedent.

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?

As a district court nominee, it would not be appropriate for me to express any view with respect to the wisdom of having or efficacy of using mandatory minimum sentences as these are political questions and policy choices within the exclusive purview of the Executive and Legislative branches. *See* Code of Conduct for United States Judges, Canon 2.A; Canon 5.

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. above.

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.ii. above.

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

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>

an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:

1. Describing the injustice in your opinions?

Sentences that are unjust, in addition to being simply wrong, erode public confidence in the criminal justice system. If I were required to impose a sentence that I believed was unjust, I would consider including commentary in the opinion explaining why the sentence imposed is not the sentence that I would have fashioned through application of the 3553(a) factors.

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

While charging decisions in criminal cases are within the exclusive power and discretion of the Executive Branch through the Department of Justice, there may be circumstances where it may be appropriate for a district judge to confer with DOJ officials regarding charging decisions. I would consider conferring with DOJ officials if appropriate under the circumstances, permissible under the law and consistent with my ethical obligations.

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

Please see my answer to Question 1.d.iv.2 above.

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?

In fashioning an individualized sentence that is sufficient but not greater than necessary to achieve the sentencing purposes as defined by Congress, I would consider all options, including the potential of a sentence that does not include incarceration.

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 am familiar from my work as a criminal defense lawyer in federal cases with studies conducted by the United States Sentencing Commission (“USSC”) on demographic differences and sentencing outcomes. A recent report from the USSC found, among other things, “sentences of Black male offenders were longer than those of White male offenders for all periods studied.” See *Demographic Differences in Sentencing: An Update to the 2012 Booker Report* (United States Sentencing Commission).

The administration of criminal justice must be fair and impartial without regard to race. Any facts suggesting unwarranted disparities in outcomes must be confronted and studied to ensure fairness, equality and impartiality. If confirmed, I will do everything in my power to guard against racial disparities in cases that come before me and in the criminal justice system more generally.

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?**

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.