

**Nomination of Paul Matey to the United States Court of Appeals for the Third Circuit**  
**Questions for the Record**  
**November 20, 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?**

It is never appropriate for a lower court judge to depart from a precedent of the Supreme Court. As the Supreme Court has long held, “it is this Court’s prerogative alone to overrule one of its precedents.” *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997); *see also Rodriguez de Quijas v. Shearson/American Exp., Inc.*, 490 U.S. 477, 484 (1989) (directing lower courts to “follow the [Supreme Court] case which directly controls, leaving to this Court the prerogative of overruling its own decisions.”).

**b. Do you believe it is proper for a circuit court judge to question Supreme Court precedent in a concurring opinion? What about a dissent?**

While it is never appropriate for a circuit judge to depart from precedent of the Supreme Court, a lower court judge may note issues of law that may be relevant for the Supreme Court to consider. *See, e.g., Agostini v. Felton*, 521 U.S. 203, 237-38 (1997). In such rare instances, “plainly expressing” doubts on an issue of law may “facilitate[]” later review. *Eberhart v. United States*, 546 U.S. 12, 19-20 (2005). In all cases, a circuit court judge is bound by existing Supreme Court precedent.

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

In the United States Court of Appeals for the Third Circuit, circuit judges must follow the decisions of prior panels unless the decision has been overruled by the en banc court, or the Supreme Court. *In re Cont'l Airlines*, 134 F.3d 536, 542 (3d Cir. 1998) (quoting *Nationwide Ins. Co. v. Patterson*, 953 F.2d 44, 46 (3d Cir. 1991)). While the en banc court is not bound to follow panel decisions, and may reconsider its prior rulings, en banc review is only granted in rare and exceptional circumstances pursuant to the standards of Federal Rule of Appellate Procedure 35, Third Circuit Local Appellate Rule 35.1, and Internal Operating Procedures of the Third Circuit 9.2 and 9.3.

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

As noted in my response to Question 1(a) above, it is the Supreme Court’s “prerogative alone to overrule one of its precedents.” *State Oil*, 522 U.S. at 20; *Rodriguez de Quijas*, 490 U.S. at 484. Lower court judges are bound to apply the

Supreme Court's precedent in all cases, and as a nominee to the circuit court, it is inappropriate for me to comment on how the Supreme Court exercises its prerogative.

2. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of the *Roe* case law as "super-stare decisis." One text book on the law of judicial precedent, co-authored by Justice 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"? "superprecedent"?**

Like all Supreme Court precedent, *Roe v. Wade* is binding on the inferior federal courts. If confirmed, I would apply the Supreme Court's decisions fully and fairly, without regard to how they have been labeled.

**b. Is it settled law?**

Yes. For inferior federal judges, *Roe*, like all other Supreme Court precedent, is settled law that must be followed fully and fairly.

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?**

Yes. For inferior federal judges, *Obergefell*, like all other Supreme Court precedent, is settled law that must be followed fully and fairly.

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?**

The Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008) is binding on inferior federal courts. If confirmed to serve as a circuit judge, I would be bound to apply the majority holding in *Heller*, and all Supreme Court precedent.

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

*Heller* held that “the right secured by the Second Amendment is not unlimited,” and articulated “longstanding prohibitions” on the possession and commercial sale of firearms. *Heller*, 554 U.S. at 626-27.

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

While the majority and dissenting opinions in *Heller* offered differing views on the Supreme Court’s precedent, if confirmed to serve as an inferior court judge, I would be bound to apply the majority holding fully and fairly.

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?**

The Supreme Court has held that “First Amendment protection extends to corporations.” *Citizens United v. Federal Election Comm’n*, 558 U.S. 310, 342 (2010). If confirmed to serve as an inferior federal judge, I would apply *Citizens United* and all other Supreme Court precedent fully and fairly. As the issue of the rights of corporations under the First Amendment is pending and impending in judicial proceedings, Canon 3(a)(6) of the Code of Conduct for United States Judges prohibits any additional comment.

**b. Do individuals have a First Amendment interest in not having their individual speech drowned out by wealthy corporations?**

Please see my response to Question 5(a) above.

**c. Do you believe corporations also have a right to freedom of religion under the First Amendment?**

The Supreme Court addressed the rights of closely held for-profit corporations under the Religious Freedom Restoration Act of 1993, 107 Stat. 1488, 42 U.S.C. § 2000bb *et seq.*, in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. \_\_\_, 134 S. Ct. 2751 (2014), but noted “our holding is very specific.” *Id.* at 2760. If confirmed to serve as a circuit judge, and presented with this question, I would apply *Burwell* and all other relevant Supreme Court precedent on this issue fully and fairly.

6. Your online LinkedIn page says that you were the “Chief Ethics Officer” for Chris Christie’s “entire Governor’s office” from 2010 to 2012, before being promoted to Deputy Chief Counsel. (<https://www.linkedin.com/in/paul-matey-77a705103/>). According to public reports, in

January 2013 you advised the staff in Governor Christie’s Office of Legislative and Governmental Affairs (“IGA”) that they could begin soliciting endorsements from mayors for Governor Christie’s reelection – as long as it was done after hours. (Michael Symons, *Did Christie’s office overstep electioneering laws?*, ASBURY PARK PRESS (May 11, 2014)). The head of IGA, Bridget Kelly, was later convicted and sentenced to 18 months in jail for her role in the George Washington Bridge lane closures (“Bridgegate”), after the mayor of Fort Lee declined to endorse Governor Christie’s reelection bid. At your nominations hearing, you stated that you and your colleagues “took steps to ensure at all times that the highest standards of propriety, ethics, and legality were followed in the office.” You added that, as the administration’s ethics officer, you had “a rigorous system of monitoring, training, and routine oversight on all members of the governor’s office.”

**a. What specific guidance did you give to the Governor’s staff about the extent to which they could consider whether a mayor was a political ally in the performance of their official duties as government employees?**

I am not aware that staff members were ever instructed to consider “whether a mayor was a political ally in the performance of their official duties as government employees.” Rather, as public employees, the staff’s work was performed pursuant to the standards administered by the New Jersey State Ethics Commission, which states that employees are permitted to engage in partisan political activities that use neither State time nor resources. See N.J.S.A. 11A:2-23 (2013); N.J.A.C. 4A:10-1.2(a).

**b. Did you advise IGA staffers that it would be impermissible for them to favor mayors who had endorsed Governor Christie and disfavor those who had not? If not, why not?**

All staff members were instructed to comply with the requirements of the state ethics code and the guidance promulgated by the New Jersey State Ethics Commission stating that employees are permitted to engage in partisan political activities that use neither State time nor resources. See N.J.S.A. 11A:2-23; N.J.A.C. 4A:10-1.2(a).

**c. What specific steps did you take to monitor and conduct oversight of the staff in IGA to ensure that they were following any guidance that you provided?**

Please see my responses to Questions 6(a) and 6(b) above.

7. During your nominations hearing, Senator Leahy asked whether you believe that *Marbury v. Madison* was a “bad ruling.” You declined to give a direct answer.

**a. Do you believe that *Marbury v. Madison* was a bad ruling?**

*Marbury v. Madison* is a landmark decision of the Supreme Court, and the leading case on whether the federal courts may subject the acts of both the legislature and the executive to judicial review. If confirmed to serve as a circuit judge, I would apply *Marbury* and all other relevant Supreme Court precedent on this issue fully and fairly.

**b. Was *Marbury v. Madison* correctly decided?**

*Marbury* is a landmark and leading decision of the Supreme Court, and is binding precedent on the inferior federal courts. As prior federal judicial nominees have noted, it is inappropriate for a nominee to offer views on prior cases of the Supreme Court. See Nomination of Elena Kagan to Be an Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary, 111th Cong. 64 (2010) (“I think that in particular it would not be appropriate for me to talk about what I think about past cases, you know, to grade cases.”). If confirmed to serve as a circuit judge, I would apply *Marbury* and all Supreme Court precedent fully and fairly.

8. While serving as U.S. Attorney in New Jersey, Chris Christie struck a deal with Bristol Myers Squibb in which he agreed not to charge the company for securities fraud in exchange for the company’s funding of a professorship at Seton Hall Law School, which is the alma mater of both you and Mr. Christie. According to *The Washington Post*, the \$5 million gift to the school made Bush administration officials so uneasy that the Department of Justice issued a ban in 2008 on requiring companies to make such special payments. (Carol Morello and Carol D. Leonnig, *Chris Christie’s Long Record Of Pushing Boundaries, Sparking Controversy*, WASHINGTON POST (Feb. 10, 2014)). At your nominations hearing, Senator Hirono asked whether you played any role in this matter, and you responded that you were only involved in “related and parallel matters that came up after.”

**Please detail the “related and parallel matters” that you referenced and explain the actions you took in those matters.**

In June 2005, the United States Attorney’s Office for the District of New Jersey filed charges against two Bristol-Myers Squibb executives alleging a scheme to commit securities fraud related to the company’s wholesale pharmaceutical distribution channels in violation of 15 U.S.C. § 78j(b) and Securities and Exchange Commission Rule 10b-5. I joined the United States Attorney’s Office in November 2005 and, in 2006, was one of several Assistant United States Attorneys assigned to work on the matter. My work involved pre-trial court appearances and motion practice. I left the office while the matter remained pending.

9. According to *Politico*, “In the wake of Hurricane Sandy, Christie awarded a \$150 million no-bid contract to AshBritt, a Florida-based firm. Just days after the deal was done, AshBritt donated \$50,000 to the Republican Governors Association, of which Christie was then vice chairman.” (Olivia Nuzzi, *15 Chris Christie Controversies You Missed*, POLITICO (Jan. 9, 2014)). During your nominations hearing, you acknowledged that you provided Governor Christie with counsel on this matter, but you declined to answer questions about the substance of your advice to Governor Christie, citing attorney/client privilege.

**a. Who was your client? Was it former Governor Christie? If not, who was it?**

As a member of the office of the counsel to the Governor, I provided “legal advice on such matters as the Governor may from time to time require,” and acted as a

“legal adviser, attorney or counsel for the Governor.” N.J.S.A. 52:15-8(B)(1). Under New Jersey law, the Governor was my client. N.J.S.A. 2A:84A-20 (defining a client as a person “securing legal service or advice from [a lawyer] in his professional capacity”).

**b. The attorney-client privilege can be waived. Have you asked your client to waive the claim so that you can answer our questions?**

I have provided candid, truthful, and accurate responses consistent with the obligations imposed by the Code of Conduct for United States Judges, and my duties to my former clients. I have not discussed my responses to any question posed during my nomination with any former clients.

**i. If so, did your client refuse to waive privilege? Over what specific questions or topics did your client refuse to waive privilege?**

Please see my response to Question 9(b) above.

**ii. If not, will you ask your client to waive privilege so that you can answer our questions?**

In any matter, it is the obligation of an attorney to recognize the existence of a potential privilege enjoyed by a former client. Likewise, it is outside the duties of an attorney to their former clients to solicit potentially privileged information for their own use. NJ. R. Prof'l Conduct 1.9. Consistent with the standards of past nominees, it is not appropriate for an attorney seeking the privilege of serving as a federal judge to make any pledges, promises, or commitments designed to further confirmation. *See* American Bar Association, Model Code of Judicial Conduct Canon 4.3.

**c. These are questions about high-profile, highly-publicized matters. Are you confident that the information has not already been disclosed by the client?**

Please see my responses to Question 9(b) and its subparts above. While it is inappropriate to discuss the content of any advice I may have given, there has been public reporting on the state’s contract for debris removal services in the aftermath of Superstorm Sandy. For example, a February 2014 report issued by the Department of Homeland Security’s Inspector General concluded that “New Jersey complied with applicable Federal and State procurement standards when procuring emergency contracts for statewide debris removal and monitoring activities related to Hurricane Sandy.” *See* Report of the United States Department of Homeland Security, Office of Inspector General, *New Jersey Complied with Applicable Federal and State Procurement Standards when Awarding Emergency Contracts for Hurricane Sandy Debris Removal Activities*, FEMA Disaster Number 4086 DR-NJ, Audit Report Number OIG-14-45-D (Feb. 27, 2014).

**d. Were any non-clients or non-attorneys present during discussions about this**

**information? Were any non-clients or non-attorneys copied on emails about it? If so, who?**

Please see my responses to Question 9(b) and its subparts above.

10. On your Senate Questionnaire, you indicated that you have been a member of the Republican National Lawyers Association (“RNLA”) since 2005. The RNLA’s “About Us” webpage states that “[e]ach member . . . must ascribe to the accomplishment” of the organizations missions, which include: “Advancing Republican Ideals. The RNLA further builds the Republican Party goals and ideals through a nationwide network of supportive lawyers who understand and directly support Republican policy, agendas and candidates.”

**a. Please detail the activities that your membership in this organization has entailed.**

My membership in this organization has consisted of occasional attendance at sponsored lectures and networking events.

**b. In what ways do you believe that you have “directly support[ed] Republican policy, agendas and candidates”?**

I am not familiar with this statement, and did not draft the quoted language. My membership in this organization has consisted of occasional attendance at sponsored lectures and networking events.

11. In response to several questions at your nominations hearing, you stated that you did not work on certain matters. In response to other questions, you stated that you “did not recall” working on the matters. Please refresh your memory and respond definitively as to (1) whether you were aware of the issues noted below; and (2) whether you did in fact work on any of the matters listed below:

**a.** In the aftermath of Hurricane Sandy, Governor Christie appeared in a \$23 million ad campaign – titled “Stronger than the Storm.” Some observers believed that this ad, which was paid for with federal grant money from the \$60 million Hurricane Sandy relief package, was Governor Christie’s best reelection campaign ad. (Olivia Nuzzi, *15 Chris Christie Controversies You Missed*, POLITICO (Jan. 9, 2014)).

**i. Were you aware of this \$23 million tourism ad campaign before it became public?**

While I do not have a specific recollection, it is likely that as a member of the Governor’s staff I was aware of the state’s plans to promote economic recovery in the aftermath of Superstorm Sandy before official public announcements.

**ii. If yes, did you offer any advice or counsel on this matter?**

To the best of my recollection, I do not recall working on this project.

**iii. Specifically, did you express any concerns about the propriety of using federal money, earmarked for disaster relief, to fund an ad that many viewed as campaign-related? If not, why not?**

To the best of my recollection, I do not recall working on this project. Further, the article referenced in this question appears to discuss political, rather than legal, concerns with the state's economic recovery programs. For that reason, Canon 5 of the Code of Conduct for United States Judges prohibits any additional comment.

**b. Were you aware of the Governor's decision to strip State Senator and former Governor Richard Codey of his security detail – allegedly as political retaliation?**

No. I was, and am not aware, of any alleged "political retaliation" by the Governor regarding the allocation of state security services for former governors.

**i. If yes, did you offer any advice or counsel on the matter? Specifically, what advice, guidance, or counsel did you provide?**

Please see my response to Question 11(b) above.

**c. In 2011, Governor Christie used a \$12.5 million state police helicopter to get to his son's baseball game. Governor Christie had no public events scheduled that day, but he had a private dinner planned with Iowa Republican donors.**

**i. Were you aware of the Governor's decision to use a \$12.5 million state police helicopter to go to his son's baseball game?**

I understand this question to refer to the cost of purchasing a helicopter for permanent use by the New Jersey State Police, and not the cost of a single helicopter trip. I also understand this question to ask my awareness about the Governor's means of travel, rather than the costs of purchasing a helicopter. With that clarification, to the best of my recollection, I do not know when I became aware of the Governor's travel on May 31, 2011.

**ii. If yes, did you offer any advice or counsel on the matter? What advice, guidance, or counsel did you provide?**

Please see my responses to Question 9(b) and its subparts above. While it is inappropriate to discuss the content of any advice I may have given, there has been public reporting discussing the statements of the Superintendent of the New Jersey State Police Superintendent that the Governor's helicopter flights were part of the normal training routines already scheduled for police pilots.



**d.** Rutgers political scientist Alan Rosenthal was chosen by New Jersey Republicans and Democrats to serve on a state redistricting commission. Governor Christie reportedly pressured Rosenthal to vote for the Republicans' preferred map, but Rosenthal chose the Democrats' plan. *The New York Times* reported that "[s]oon after, Mr. Christie used his line-item veto to cut \$169,000 for two programs at Mr. Rosenthal's institute at Rutgers." (Kate Zernike, *Stories Add Up as Bully Image Trails Christie*, NEW YORK TIMES (Dec. 24, 2013)).

**i. Did you offer any advice or counsel on Governor Christie's use of his line-item veto in this matter?**

No. I was, and am not aware, of any use of the state's annual appropriation act as described in this article. Further, the article referenced in this question appears to discuss political, rather than legal, concerns with legislative redistricting. For that reason, Cannon 5 of the Code of Conduct for United States Judges prohibits any additional comment.

**iv. If yes, what advice, guidance, or counsel did you provide?**

Please see my response to Question 11(d) above.

12. During the 2014-2015 NFL football season, Governor Christie attended several Dallas Cowboy football games. For at least three of them, the Cowboys' owner, Jerry Jones, supplied the tickets. Jones also provided a private plane flight to Texas for Christie and his family to get to at least one of the games. Governor Christie's spokesperson claimed that he could accept the gifts because New Jersey ethics rules allow governors to accept gifts from relatives and personal friends, so long as the gifts are paid for with personal funds and not intended to influence the governor's actions. Some have argued that the rules were meant to allow gifts from long-time personal friends, not people that the governor met in his professional capacity after taking office.

**a. Did you offer any advice, guidance, or counsel on Governor Christie decision to accept these gifts from Jerry Jones?**

Please see my responses to Question 9(b) and its subparts above. While it is inappropriate to discuss the content of any advice I may have given, the Attorney General of the State of New Jersey issued a formal advisory opinion regarding the acceptance of personal gifts not intended to influence the Governor's official actions. *See* Attorney Gen. Formal Op. 1-2015 (May 14, 2015).

**b. If yes, what advice, guidance, or counsel did you provide?**

Please see my response to Question 12(a) above.

13. *The New York Times* reported that Mr. Christie – while U.S. Attorney – often leaked information to reporters. (Kate Zernike, *On Blog, an Ex-Christie Ally Showed Approach to*

*Politics*, New York Times (Feb. 6, 2014)). One of his favored outlets was reportedly *PoliticsNJ.com*, a political blog that was anonymously run by David Wildstein. Wildstein was later appointed by Christie to the Port Authority of New York and New Jersey, where he was involved in the lane closures on the George Washington Bridge.

**a. While serving in the U.S. Attorney’s Office, did you ever provide nonpublic information to reporters?**

No.

**e. Were you ever aware of nonpublic information being provided to reporters?**

I am not aware of any nonpublic information being provided to reporters.

**i. If yes, did you ever offer any opinion, advice, or counsel on the propriety of providing such information to reporters? What was the opinion, advice, or counsel that you provided?**

N/A

14. You indicated on your Senate Questionnaire that you have been a member of the Federalist Society since 2001. You also indicated that you were the Federalist Society’s New Jersey Chapter Leader from 2001 to 2003 – and again from 2005 to 2009. The Federalist Society’s “About Us” webpage explains the purpose of the organization as follows: “Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law.” It says that the Federalist Society seeks to “reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community.”

**a. Could you please elaborate on the “form of orthodox liberal ideology which advocates a centralized and uniform society” that the Federalist Society claims dominates law schools?**

I did not draft the quoted language, and have never discussed this statement with any employee of the Federalist Society. My membership in this organization has consisted of attendance at sponsored lectures and networking events.

**b. How exactly does the Federalist Society seek to “reorder priorities within the legal system”?**

Please see my response to Question 14(a) above. I did not draft the quoted

language, and have never discussed this statement with any employee of the Federalist Society.

**c. What “traditional values” does the Federalist society seek to place a premium on?**

Please see my response to Question 14(a) above. I did not draft the quoted language, and have never discussed this statement with any employee of the Federalist Society.

**d. What did your role as New Jersey Chapter Leader entail?**

I have assisted in the scheduling and organization of legal lectures for law students and attorneys.

15. 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?**

I do not recall being asked my views on issues related to administrative law.

**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?**

I have not spoken on any subject at events sponsored by either the Federalist Society or the Heritage Foundation. While I cannot recall all informal conversations I have had with individuals who may have been members of either organization, I have no recollection of being asked for my views on administrative law by anyone.

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

The Supreme Court and the Court of Appeals for the Third Circuit have addressed matters involving administrative agencies. If confirmed to serve as an inferior court judge, I would apply these precedents fully and fairly.

16. 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 at outside groups — about loyalty to President Trump? If so, please elaborate.

No.

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

I reviewed the questions, conducted appropriate research, and drafted responses. I shared my answers with attorneys in the United States Department of Justice, and requested their comment. I then finalized my answers, and directed the Department of Justice to file this response. All answers are my own.

**Senator Dick Durbin**  
**Written Questions for Paul Matey**  
**November 20, 2018**

For questions with subparts, please answer each subpart separately.

1. You served as Governor Christie's Deputy Chief Counsel between 2012-2015. You said during your hearing that you "had no knowledge, involvement or participation" in the events involving the closure of the access lanes from Fort Lee to the George Washington Bridge, which began on September 9, 2013.

a. On what date did you first learn of the closure of these access lanes?

I likely learned of the lane closures when first publicly reported in September 2013.

b. On what date did you first learn of the involvement of Governor Christie's administration in the closure of the access lanes?

I first learned of the participation of state employees when publicly reported on January 8, 2014.

c. What, if any, specific actions did you take in response when you learned about the Christie Administration's involvement in the closure of the access lanes?

I participated in the initial stages of an internal investigation from January 8, 2014 through January 10, 2014. Thereafter, I did not have any formal involvement in the internal investigation, nor any external inquiries.

2.

a. **Do you believe that judges should be "originalist" and adhere to the original public meaning of constitutional provisions when applying those provisions today?**

All courts inferior to the Supreme Court are obligated to apply the interpretation of the law that has been reached by the Supreme Court. Questions of constitutional interpretation lacking any precedential guidance are exceedingly rare. In those limited cases, a lower court judge may appropriately consider the original public meaning of the constitutional text. *See, e.g., United States v. Booker*, 543 U.S. 220 (2005); *Crawford v. Washington*, 541 U.S. 36 (2004); *Kyllo v. United States*, 533 U.S. 27 (2001).

b. **If so, do you believe that courts should adhere to the original public meaning of the Foreign Emoluments Clause when interpreting and applying the Clause today?** To the extent you may be unfamiliar with the Foreign Emoluments Clause in Article I, Section 9, Clause 8, of the Constitution, please familiarize yourself with the Clause before answering. The Clause provides that:

...no Person holding any Office of Profit or Trust under [the United States], shall, without the Consent of the Congress, accept of any present, Emolument, Office, or title, of any kind whatever, from any King, Prince, or foreign State.

Cases involving Article I, Section 9, Clause 8, of the Constitution are currently pending in judicial proceedings. Accordingly, Canon 3(a)(6) of the Code of Conduct for United States Judges prohibits comment.

3. You say in your questionnaire that you have been a member of the Federalist Society intermittently since 2001.

a. **Why did you join the Federalist Society?**

I first attended lectures sponsored by the Federalist Society as a law student, and enjoyed the robust exchange of ideas and viewpoints presented by the speakers. As an attorney, I continued to attend Federalist Society debates, lectures, and seminars in New Jersey, which provided an opportunity for continuing legal education and professional development.

b. **Was it appropriate for President Trump to publicly thank the Federalist Society for helping compile his Supreme Court shortlist?** For example, in an interview with Breitbart News' Steve Bannon on June 13, 2016, Trump said "[w]e're going to have great judges, conservative, all picked by the Federalist Society." In a press conference on January 11, 2017, he said his list of Supreme Court candidates came "highly recommended by the Federalist Society."

Article II, Section 2, clause 2 of the Constitution provides the President the power to appoint both the Justices of the Supreme Court, and the judges of the inferior courts, with the advice and consent of the Senate. As a nominee, I am prohibited from commentary on political matters pursuant to Canon 5 of the Code of Conduct for United States Judges.

c. **Please list each year that you have attended the Federalist Society's annual convention.**

While I do not have records, I have attended portions of the annual conventions from in or about 2001 through 2005, and from 2010 through 2018.

d. On November 17, 2017, Attorney General Sessions spoke before the Federalist Society's convention. At the beginning of his speech, Attorney General Sessions attempted to joke with the crowd about his meetings with Russians. Video of the speech shows that the crowd laughed and applauded at these comments. (See <https://www.reuters.com/video/2017/11/17/sessions-makes-russia-joke-at-speech?videoId=373001899>) **Did you attend this speech, and if so, did you laugh or**

**applaud when Attorney General Sessions attempted to joke about meeting with Russians?**

I do not recall attending this portion of the convention.

4.

**a. Is waterboarding torture?**

I have not had occasion to study this specific legal question. I understand federal law to define torture an “act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering.” 18 U.S.C. § 2340(1). Federal law also prohibits “cruel, inhuman, or degrading treatment or punishment” of any person in the custody of the federal government. 42 U.S.C. § 2000dd(a). Finally, no person in the custody or under the control of the federal Government may be legally subjected to any interrogation technique not authorized in the Army Field Manual which does not authorize waterboarding. 42 U.S.C. § 2000dd-2(a)(2). As the issue of torture is pending and impending in judicial proceedings, Canon 3(a)(6) of the Code of Conduct for United States Judges prohibits any additional comment.

**b. Is waterboarding cruel, inhuman and degrading treatment?**

Please see my response to question 4(a) above.

**c. Is waterboarding illegal under U.S. law?**

Please see my response to question 4(a) above.

**5. Was President Trump factually accurate in his claim that three to five million people voted illegally in the 2016 election?**

I am not familiar with the factual basis for this statement and, in any event, prohibited from commentary on political matters pursuant to Canon 5 of the Code of Conduct for United States Judges.

**6. Do you think the American people are well served when judicial nominees decline to answer simple factual questions?**

I agree that nominees should provide candid, truthful, and accurate responses consistent with the obligations imposed by the Code of Conduct for United States Judges, and their duties to their former clients.

7.

a. **Do you have any concerns about outside groups or special interests making undisclosed donations to front organizations like the Judicial Crisis Network in support of your nomination? Note that I am not asking whether you have solicited any such donations, I am asking whether you would find such donations to be problematic.**

I have never solicited any donations from any organization or individual in support of my nomination, and I am unaware of any such donations. The propriety of such donations is a political matter, and I am prohibited from additional comment pursuant to Canon 5 of the Code of Conduct for United States Judges.

b. **If you learn of any such donations, will you commit to call for the undisclosed donors to make their donations public so that if you are confirmed you can have full information when you make decisions about recusal in cases that these donors may have an interest in?**

If confirmed, I would regularly consult and apply the recusal requirements for federal judges stated in 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, Internal Operating Procedure of Third Circuit 11.2, and all other relevant laws and rules. Otherwise, as noted in my response to Question 7(a) above, the propriety of such donations is a political matter, and I am prohibited from additional comment pursuant to Canon 5 of the Code of Conduct for United States Judges.

c. **Will you condemn any attempt to make undisclosed donations to the Judicial Crisis Network on behalf of your nomination?**

Please see my responses to Questions 7(a) and 7(b) above.

8.

a. **Do you interpret the Constitution to authorize a president to pardon himself?**

I have not had occasion to study this specific legal question, and Canon 3(a)(6) of the Code of Conduct for United States Judges prohibits comment.

b. **What answer does an originalist view of the Constitution provide to this question?**

As noted in my response to Question 8(a) above, I have not had occasion to study this specific legal question, and Canon 3(a)(6) of the Code of Conduct for United States Judges prohibits any additional comment.



Senate Judiciary Committee  
“Nominations”  
Questions for the Record  
November 13, 2018  
Senator Amy Klobuchar

Questions for Mr. Matey, nominee to be U.S. Circuit Judge for the Third Circuit

- During your time as Assistant U.S. Attorney in New Jersey, then-U.S. Attorney Chris Christie agreed not to charge Bristol Myers Squibb for securities fraud after the company agreed to fund a professorship at the law school he had attended. After that agreement was reached, the Department of Justice issued guidance to U.S. Attorneys banning settlements requiring companies to make special payments to unrelated outside groups or entities. Do you believe that the settlement agreement with Bristol Myers Squibb was appropriate, and do you agree with the guidance later issued by the Justice Department?’

This matter occurred before my service in the Department of Justice. On or about June 15, 2005, the United States Attorney’s Office for the District of New Jersey and Bristol-Myers Squibb entered into a deferred prosecution agreement to resolve an investigation relating to various accounting matters. I joined the United States Attorney’s Office as an Assistant United States Attorney in November 2005. In 2006, I was one of several Assistant United States Attorneys assigned to work on a related matter against two Bristol-Myers Squibb executives alleging a scheme to commit securities fraud related to the company’s wholesale pharmaceutical distribution channels in violation of 15 U.S.C. § 78j(b) and Securities and Exchange Commission Rule 10b-5. My work involved pre-trial court appearances and motion practice. I left the office while the matter remained pending. It is my understanding that all actions of the United States Attorney’s Office comported with the applicable guidance of the Department of Justice, and that deferred prosecution agreements continue to be used by federal prosecutors. Accordingly, as issues related to these agreements are either pending or impending in judicial proceedings, Canon 3(a)(6) of the Code of Conduct for United States Judges prohibits further comment.

- In 2005, you published an article about class actions in securities fraud cases. In the article, you criticized “frivolous securities fraud class actions” that you argue “prompt corporate defendants to pay dearly to settle such claims.” What types of securities fraud class actions would you categorize as “frivolous” and do you believe that there is a role for class actions in holding companies accountable for illegal behavior?

I have had the opportunity to represent both public and private plaintiffs and defendants in securities fraud actions. In private practice, I successfully represented clients advocating for a proximate loss-causation standard, a position adopted by the Supreme Court in a unanimous opinion by Justice Breyer. *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005). I have also represented investors suing for losses allegedly caused by fraudulent investments and material omissions. As a federal prosecutor, I obtained guilty verdicts in numerous cases of financial frauds. Moreover, the value of securities fraud class actions, and other forms of aggregate investor litigation, has been repeatedly recognized by the courts and Congress. *See Cyan, Inc. v.*

*Beaver Cty. Emps. Ret. Fund*, 583 U.S. \_\_\_, No. 15-1439, slip op. at 1-3 (Mar. 20, 2018) (recounting legislation enacted to “promote honest practices in the securities markets”); *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. \_\_\_, 134 S. Ct. 2398, 2413 (2014) (discussing legislation modifying the elements of securities fraud class actions). These decisions, like all precedent of the Supreme Court, are binding authority. If confirmed to serve as a circuit judge, I would apply these cases guiding the resolution of securities fraud class actions fully, fairly, and without exception.

**Nomination of Paul Brian Matey, to be United States Circuit Judge for the Third Circuit  
Questions for the Record Submitted November 20, 2018**

**QUESTIONS FROM SENATOR COONS**

1. With respect to substantive due process, what factors do you look to when a case requires you to determine whether a right is fundamental and protected under the Fourteenth Amendment?

The Supreme Court has directed federal judges to consider the factors articulated in cases such as *Obergefell v. Hodges*, 576 U.S. \_\_\_, 135 S. Ct. 2584 (2015); *Washington v. Glucksberg*, 521 U.S. 702 (1997); *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261 (1990); *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925); and *Meyer v. Nebraska*, 262 U.S. 390 (1923). I would apply these binding precedents fairly and fully.

a. Would you consider whether the right is expressly enumerated in the Constitution?

Yes.

b. Would you consider whether the right is deeply rooted in this nation's history and tradition? If so, what types of sources would you consult to determine whether a right is deeply rooted in this nation's history and tradition?

Yes, as directed by the Supreme Court's decision in *Glucksberg*, I would consult "our Nation's history, legal traditions, and practices." 521 U.S. at 710.

c. Would you consider whether the right has previously been recognized by Supreme Court or circuit precedent? What about the precedent of another court of appeals?

Yes. Decisions of both the Supreme Court and the Third Circuit would be binding authority, while decisions from other circuit courts provide persuasive guidance.

d. Would you consider whether a similar right has previously been recognized by Supreme Court or circuit precedent?

Yes.

e. Would you consider whether the right is central to "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life"? See *Planned Parenthood v. Casey*, 505 U.S. 833, 581 (1992); *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Casey*).

The decisions of the Supreme Court in both *Casey* and *Lawrence* are binding precedent that, if confirmed to serve as a circuit judge, I would apply fully and fairly.

f. What other factors would you consider?

If confirmed to serve as a circuit court judge, I would be bound by the precedents of the Supreme Court and the Third Circuit in the resolution of all cases, and would apply those decisions fully and fairly.

2. Does the Fourteenth Amendment's promise of "equal protection" guarantee equality across race and gender, or does it only require racial equality?

The Supreme Court has held that the Equal Protection guarantee of the Fourteenth Amendment applies to classifications based on both race and gender. See *United States v. Virginia*, 518 U.S. 515 (1996).

a. If you conclude that it does require gender equality under the law, how do you respond to the argument that the Fourteenth Amendment was passed to address certain forms of racial inequality during Reconstruction, and thus was not intended to create a new protection against gender discrimination?

As a circuit court judge, the historical character of the Fourteenth Amendment is not relevant to the binding authority of the Supreme Court's decision in *United States v. Virginia*. Rather, the Court's holding that the guarantee of Equal Protection applies to classifications based on gender is precedent that I would apply fully and fairly.

b. If you conclude that the Fourteenth Amendment has always required equal treatment of men and women, as some originalists contend, why was it not until 1996, in *United States v. Virginia*, 518 U.S. 515 (1996), that states were required to provide the same educational opportunities to men and women?

I have not studied the history of the litigation leading to the Court's decision.

c. Does the Fourteenth Amendment require that states treat gay and lesbian couples the same as heterosexual couples? Why or why not?

The Supreme Court has held that the Fourteenth Amendment requires that same-sex couples be afforded the right to marry "on the same terms accorded to couples of the opposite sex." *Obergefell*, 135 S. Ct. at 2607.

d. Does the Fourteenth Amendment require that states treat transgender people the same as those who are not transgender? Why or why not?

As matters addressing this issue are pending and impending in judicial proceedings, Canon 3(a)(6) of the Code of Conduct for United States Judges prohibits any comment.

3. Do you agree that there is a constitutional right to privacy that protects a woman's right

to use contraceptives?

Yes, the Supreme Court recognized a constitutional right to privacy that protects the use of contraceptives in *Eisenstadt v. Baird*, 405 U.S. 438 (1972) and *Griswold v. Connecticut*, 381 U.S. 479 (1965).

a. Do you agree that there is a constitutional right to privacy that protects a woman's right to obtain an abortion?

Yes, the Supreme Court recognized this right in *Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), and *Whole Woman's Health v. Hellerstedt*, 579 U.S. \_\_\_, 136 S. Ct. 2292 (2016).

b. Do you agree that there is a constitutional right to privacy that protects intimate relations between two consenting adults, regardless of their sexes or genders?

Yes, as recognized in the Supreme Court's decision in *Lawrence v. Texas*, 539 U.S. 558 (2003).

c. If you do not agree with any of the above, please explain whether these rights are protected or not and which constitutional rights or provisions encompass them.

Please see my responses to Questions 3(a) and 3(b) above.

4. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, "[h]igher education at the time was considered dangerous for women," a view widely rejected today. In *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600-01 (2015), the Court reasoned, "As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser." This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.

a. When is it appropriate for judges to consider evidence that sheds light on our changing understanding of society?

A circuit court judge must follow both the precedents of the Supreme Court and the circuit. If confirmed to serve, I would fully and fairly apply these decisions and follow their guidance on when such evidence is appropriately considered.

b. What is the role of sociology, scientific evidence, and data in judicial analysis?

Under both Federal Rule of Evidence 702, and the Supreme Court's decisions in

cases including *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 148 (1999), *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), and *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), relevant scientific or similar technical evidence may be considered by courts when based on a reliable methodology.

5. In the Supreme Court's *Obergefell* opinion, Justice Kennedy explained, "If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied. This Court has rejected that approach, both with respect to the right to marry and the rights of gays and lesbians."

a. Do you agree that after *Obergefell*, history and tradition should not limit the rights afforded to LGBT individuals?

If confirmed to serve as a circuit judge, I would apply the Supreme Court's decisions in *Obergefell* and *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 584 U.S. \_\_\_, 138 S. Ct. 1719 (2018), as well as all precedent from the Third Circuit on this issue, fully and fairly.

b. When is it appropriate to apply Justice Kennedy's formulation of substantive due process?

Please see my response to Question 5(a) above.

6. In his opinion for the unanimous Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Warren wrote that although the "circumstances surrounding the adoption of the Fourteenth Amendment in 1868 . . . cast some light" on the amendment's original meaning, "it is not enough to resolve the problem with which we are faced. At best, they are inconclusive . . . We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws." 347 U.S. at 489, 490-93.

a. Do you consider *Brown* to be consistent with originalism even though the Court in *Brown* explicitly rejected the notion that the original meaning of the Fourteenth Amendment was dispositive or even conclusively supportive?

As a circuit court judge, the historical character of the Fourteenth Amendment is not relevant to the binding authority of the Supreme Court's decision in *Brown*. Rather, the Court's holding that the guarantee of Equal Protection applies to classifications based on race is precedent that I would apply fully and fairly.

b. How do you respond to the criticism of originalism that terms like "the freedom of speech," 'equal protection,' and 'due process of law' are not precise or self-defining"? Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution Center, <https://constitutioncenter.org/interactive-constitution/white-papers/democratic->

constitutionalism (last visited Nov. 16, 2018).

While I have not studied this article, I am familiar with the robust scholarly debate surrounding originalism. As a circuit court judge, however, academic writings on the law do not alter the binding authority of the Supreme Court, or circuit precedent. I will apply both fully and fairly regardless of how these cases comport with a legal philosophy.

c. Should the public's understanding of a constitutional provision's meaning at the time of its adoption ever be dispositive when interpreting that constitutional provision today?

All courts inferior to the Supreme Court are obligated to apply the interpretation of the law that has been reached by the Supreme Court. Questions of constitutional interpretation lacking any precedential guidance are exceedingly rare. In those limited cases, a lower court judge may appropriately consider the original public meaning of the constitutional text. *See, e.g., United States v. Booker*, 543 U.S. 220 (2005); *Crawford v. Washington*, 541 U.S. 36 (2004); *Kyllo v. United States*, 533 U.S. 27 (2001).

d. Does the public's original understanding of the scope of a constitutional provision constrain its application decades later?

See my response to Question 6(c) above.

e. What sources would you employ to discern the contours of a constitutional provision?

I would be guided by the relevant decisions of the Supreme Court and the Third Circuit identifying appropriate sources to discern the contours of a constitutional provision.

7. Did you provide legal guidance to New Jersey government employees regarding their solicitation of endorsements for Chris Christie's gubernatorial campaign from mayors in New Jersey? If so, please describe your role.

As public employees, the staff's work was performed pursuant to guidance promulgated by the New Jersey State Ethics Commission, which states that employees are permitted to engage in partisan political activities that use neither State time nor resources. *See N.J.S.A. 11A:2-23 (2013); N.J.A.C. 4A:10-1.2(a)*.

8. After Gibson Dunn attorneys interviewed you as part of an internal investigation into the "Bridgewater" matter, the summary of your interview was made publicly available. It states in part: "Matey served as Chief Ethics Officer and Ethics Liaison Officer ('ELO') for the State Ethics Commission (SEC) from August 2010-December 2011. In that position, Matey was responsible for advising the Governor on ethics issues. When he became Deputy Chief Counsel he no longer served as ELO, although retained ELO status with the SEC." Letter from Randy M.

Mastro to Christopher J. Christie, Governor of New Jersey (Apr. 14, 2014), [https://web.archive.org/web/20141117154713/http://gdcreport.com/pdf/Interview\\_Memoranda.pdf](https://web.archive.org/web/20141117154713/http://gdcreport.com/pdf/Interview_Memoranda.pdf) (last visited Nov. 20, 2018).

- a. Did you serve as Chief Ethics Officer during Governor Christie's administration? If yes, please provide a description of your responsibilities in that position.

During my service, the Governor's Office designated a Chief Ethics Officer within the Chief Counsel's Office, an Ethics Liaison Officer, and an Advisory Ethics Panel to advise the Governor and the Lieutenant Governor on the Governor's Code of Conduct. For a period of time, I served as both ethics officer and ethics liaison. My responsibilities including assisting the State Ethics Commission (the "Commission"), an independent body created in 1973 to administer and enforce the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 *et seq.*, rules promulgated by the Commission, N.J.A.C.19:61-1.1 *et seq.*, and administrative acts granted by state governors. *See* Executive Order 189 (1989); 41 (2005); 68 (2005); 14 (2005); and 64 (2011). The Commission prepares and distributes a plain language ethics guide designed to provide a clear and concise summary of the laws, regulations, codes, orders, procedures, advisory opinions, and rulings concerning applicable ethical standards to all State employees. The Commission also conducted training for all state employees on these guidelines.

- b. Did you serve as Ethics Liaison Officer during Governor Christie's administration? If yes, please provide a description of your responsibilities in that position.

Please see my response to Question 8(a) above.

- c. Did your responsibilities in either role include providing ethics trainings to employees of the governor's office?

Yes, in conjunction with the Commission as discussed in my response to Question 8(a) above.

- d. Did your responsibilities in either role include ensuring that employees of the governor did not engage in political activities using official government resources?

All state employees were counseled on the standards administered by the New Jersey State Ethics Commission, which states that employees are permitted to engage in partisan political activities that use neither State time nor resources. *See* N.J.S.A. 11A:2-23 (2013); N.J.A.C. 4A:10-1.2(a).

- e. Did your responsibilities in either role include ensuring that employees of the governor did not improperly give rewards to political allies of the governor or punish political adversaries of the governor?

All staff members were instructed to comply with the requirements of the state



ethics code and the guidance promulgated by the New Jersey State Ethics Commission stating that employees are permitted to engage in partisan political activities that use neither State time nor resources. *See* N.J.S.A. 11A:2-23; N.J.A.C. 4A:10-1.2(a).

f. When did you first learn of the George Washington Bridge lane closures, and how did you respond?

I first learned of the participation of state employees when publicly reported on January 8, 2014. I participated in the initial stages of an internal investigation from January 8, 2014 through January 10, 2014. Thereafter, I did not have any formal involvement in the internal investigation, nor any external inquiries.

9. In response to a question from Senator Leahy about the “Bridgewater” matter, you testified during your nomination hearing, “[W]e certainly took steps to ensure at all times that the highest standards of propriety, ethics, and legality were followed in the office. Regrettably, that did not appear to happen in this case.” You further testified, “There was a rigorous system of monitoring, training, and routine oversight on all members of the governor’s office. . . . [A]s I understand, what I know of the [Bridgewater] case from public reports as well as the charges that were brought by the United States Attorney for the District of New Jersey, this was the unfortunate act of several individuals who decided to take matters outside the law and into their own hands.”

a. Please describe in detail the “rigorous system of monitoring, training, and routine oversight” you referenced during this exchange, including the roles you played in it.

Please see my response to Question 8(a) above.

b. The Gibson Dunn interview summary states that you “regularly interacted with Bill Stepien and Bridget Kelly,” before Stepien was fired and Kelly was indicted. Is that accurate? If so, please describe your interactions with Stepien and Kelly.

Both Mr. Stepien and Ms. Kelly served as members of the Governor’s staff and, like most in the office, I considered them both colleagues and friends. My interactions were the sort common to any office, consisting of both personal and professional conversations.

c. In retrospect, should you have done more to ensure “the highest standards of propriety, ethics, and legality were followed in the office” during your time working in Governor Christie’s administration? If so, what more should you have done?

Based on publicly available information, the violations of federal law related to the George Washington Bridge in 2013 constituted a lapse of ethics by the individuals charged by the United States Department of Justice. While I had no involvement in this matter, and was never a target or subject of any investigation, I regret that this matter arose during my service as counsel to the Governor.

10. On May 7, 2010, a judge unsealed an indictment against a county sheriff and two deputies in Hunterdon County, New Jersey. According to reports, New Jersey Attorney General Paula Dow took over the Hunterdon prosecutor's office the following day. Under Dow's supervision, the indictment was dismissed, evidence in the case was shipped to Trenton, and a lead prosecutor, Bennett A. Barlyn, was fired. *See, e.g., Michael Powell, Quashed Case in New Jersey Was an Omen*, N.Y. TIMES, May 6, 2014, at A18, <https://www.nytimes.com/2014/05/06/nyregion/quashed-case-against-christie-ally-was-foretaste-of-scandal.html> (last visited Nov. 20, 2018).

a. When did you first learn of this indictment?

To the best of my recollection, I learned of this indictment when it was publicly reported.

b. Did you have any communications with anyone regarding decisions to transfer responsibility for the prosecution, dismiss the indictment, relocate the evidence, and/or remove the prosecutor?

No.

c. Did you have any other involvement with this incident? If so, please describe your role.

I did not have any other involvement with this matter.

11. Did you have any communications with anyone regarding the decisions to withdraw former Governor Codey's security detail, dismiss Christopher Hartwyk from the Port Authority, or remove Lawrence DeMarzo from the Division of Consumer Affairs? Please describe any involvement you had with these incidents.

I did not have any involvement with these matters.

12. During the hearing on your nomination, in response to a question regarding Governor Christie's exercise of a line-item veto, you testified that you had conversations with Governor Christie regarding his budget while working in the administration. Using the line-item veto, Governor Christie eliminated \$800,000 in funding for a program to raise awareness about women's mental health issues, an initiative that had been spearheaded by former Governor Codey's wife.

a. Did you have any discussions with Governor Christie about this program, or Governor Christie's exercise of the line-item veto in this case?

I did not provide any counsel on this issue.

b. In your view, would it be ethical to use a line-item veto to eliminate funding for a deserving program because the program is championed by a political adversary?

While I did not provide any counsel on this issue, I was, and am not aware, of any use of the state's annual appropriation act as described in this Question.

13. In your testimony before the Senate Judiciary Committee, you referred to a program at the University Hospital that helps people who served criminal sentences re-enter society. Please describe your involvement with this program and any other involvement you had with criminal justice reform initiatives in New Jersey.

To help improve employment opportunities for individuals released from federal prison, I initiated a partnership between University Hospital and *ReNew*, a program for individuals released from federal prison to serve a term of supervised release. *ReNew* is a collaborative team led by federal judges and magistrates, and supported by the United States Attorney's Office for the District of New Jersey, the Federal Public Defender's Office, and the United States Probation Office. Program participants received a variety of social services, and the opportunity to reduce their term of supervised release. Working with the *ReNew* program, University Hospital was able to extend employment opportunities to individuals seeking to enter the health care profession. Seeing individuals formerly convicted of federal crimes thriving as colleagues forcefully illustrated the importance of collaborative solutions to reducing crime and preventing recidivism. If honored to serve as a circuit judge, I hope to continue working with the *ReNew* program in New Jersey.

14. Materials for the 2018 New Jersey State Bar Association Annual Meeting and Convention list you as a panelist for a session entitled, "Navigating Internal Investigations and Fraud Prosecutions in Healthcare and Beyond."

a. Please indicate whether this presentation is provided in your Senate Judiciary Committee Questionnaire, and if it is not, please explain why this presentation was not included.

While initially scheduled to serve as a panelist, I did not participate in this event.

b. Are there additional commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and/or question-and-answer sessions that were not listed in your Senate Judiciary Committee Questionnaire but should be included?

Please see my response to Question 14(a) above clarifying that I did not participate in the event discussed. To the best of my knowledge, my responses in my Senate Judiciary Questionnaire are true, accurate, and complete.

Questions for the Record for Paul Matey  
Senator Mazie K. Hirono

1. Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "[e]very lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged." But your Senate Judiciary Questionnaire stood out because you listed no pro bono work since you became a lawyer, even when you worked in private practice.

a. How many hours of pro bono work have you done since you became a lawyer?

My work on behalf of public entities, including the State of New Jersey, the United States Department of Justice, and the United States Courts has precluded the acceptance of pro bono assignments. Nonetheless, throughout my career, I have been dedicated to working on behalf of the public. As a student at Seton Hall University School of Law, I represented an inmate in a suit against prison officials alleging discrimination and retaliation for exercise of religious freedoms under the Constitution of the United States. The suit, filed in federal court in Pennsylvania, claimed that prison officials retaliated against the plaintiff by cutting his wages and denying him parole when he declined to participate in prison programs based on his firmly held religious beliefs. The trial court dismissed the suit, and the plaintiff engaged Seton Hall to file an appeal. In a unanimous precedential opinion, the United States Court of Appeals for the Third Circuit reversed the dismissal, and accepted our formulation for a new test specifying the elements of a prisoner's cause of action for retaliation and the burden of proof needed to succeed on a retaliation claim. The Third Circuit's precedential opinion in *Rausser v. Horn*, 241 F.3d 330 (3d Cir. 2001), has now been cited by courts over 1,400 times.

Later, as a federal prosecutor, I worked extensively on an international investigation into an organized network of child pornography production and distribution. Using confidential sources, we worked to develop electronic evidence of the network's activities using a combination of court-ordered surveillance, search warrants, banking records, and cooperator testimony. The investigation uncovered a commercial website offering access to videos and images of hardcore child pornography involving children and infants engaged in sexual activities with adults. At the conclusion of the investigation, more than 125 individuals in more than twenty-two states were arrested, and more than 225 search warrants (drafted off of a template I created) were executed. The arrests included a significant number of individuals previously convicted of sex offenses against minors. The investigation has led to the conviction of more than 600 individuals in forty-seven states, making the investigation one of the most successful child sexual abuse investigations in the nation's history.

Later, during my service in New Jersey state government, I led the reform of the State's criminal justice detention standards, including an approved constitutional amendment establishing an alternative pre-trial release system to avoid the unnecessary incarceration of individuals unable to post bail. As a result, the State's pretrial jail

population was reduced by an estimated 20%.

At University Hospital, I helped improve employment opportunities for individuals released from federal prison by initiating a partnership between University Hospital and *ReNew*, a program for individuals released from federal prison to serve a term of supervised release. *ReNew* is a collaborative team led by federal judges and magistrates, and supported by the United States Attorney's Office for the District of New Jersey, the Federal Public Defender's Office, and the United States Probation Office. Program participants receive a variety of social services, and the opportunity to reduce their term of supervised release. Working with the *ReNew* program, University Hospital was able to extend employment opportunities to individuals seeking to enter the healthcare profession. Seeing individuals formerly convicted of federal crimes thriving as colleagues forcefully illustrated the importance of collaborative solutions to reducing crime and preventing recidivism. If honored to serve as a circuit judge, I hope to continue working with the *ReNew* program in New Jersey.

I was similarly gratified by a partnership I created between the New Jersey Reentry Corporation and community health centers in Newark allowing previously-incarcerated individuals to be connected to health care and related services. Finally, while serving at University Hospital, I was particularly pleased to assist a couple receiving treatment fulfill a two-decade dream of marriage. The ceremony, which took place in the Hospital's medical intensive care unit, united a seriously-ill patient and the patient's partner following an emergency court hearing I requested to obtain a waiver of the state's seventy-two hour waiting period for a marriage license. I was honored to represent the couple, and facilitate their nuptials.

b. When Senator Booker asked you about your pro bono work, you appeared to cite paid work you did as a lawyer. Please list any pro bono work you have done to serve the disadvantage.

Please see my response to Question 1(a) above.

2. At your hearing, I asked you about your involvement in then-Governor Chris Christie awarding a no-bid contract to benefit a donor. According to Politico, "[i]n the wake of Hurricane Sandy, Christie awarded a \$150 million no-bid contract to AshBritt, a Florida-based firm. Just days after the deal was done, AshBritt donated \$50,000 to the Republican Governors Association, of which Christie was then vice chairman." You confirmed that you worked on this matter, but you claimed you could not respond to other questions regarding the guidance you provided to Governor Christie regarding this matter because of attorney-client privilege.

a. To be clear, are you formally invoking a claim of attorney-client privilege to refuse to answer the question of what guidance you provided to Governor Christie regarding his decision to award a \$150 million no-bid contract to a donor?

As a member of the office of the counsel to the Governor, I provided "legal advice on such matters as the Governor may from time to time require," and acted as a

“legal adviser, attorney or counsel for the Governor.” N.J.S.A. 52:15-8(B)(1). Under New Jersey law, the Governor was my client. N.J.S.A. 2A:84A-20 (defining a client as a person “securing legal service or advice from [a lawyer] in his professional capacity”). While it is inappropriate to discuss the content of any advice I may have given, there has been public reporting on the state’s contract for debris removal services in the aftermath of Superstorm Sandy. *See, e.g., Report of the United States Department of Homeland Security, Office of Inspector General, New Jersey Complied with Applicable Federal and State Procurement Standards when Awarding Emergency Contracts for Hurricane Sandy Debris Removal Activities*, FEMA Disaster Number 4086 DR-NJ, Audit Report Number OIG-14-45-D (Feb. 27, 2014) (finding New Jersey complied with Federal and State procurement standards).

b. What is the scope of the privilege, if any, you are asserting?

Please see my response to Question 2(a) above.

c. If you are not formally invoking a claim of attorney-client privilege, please answer the question of what guidance you provided to Governor Christie regarding his decision to award a \$150 million no-bid contract to a donor.

Please see my response to Question 2(a) above.

3. I also asked you at the hearing about several allegations of unethical or improper conduct by Governor Christie when you worked for him in various senior roles, including Chief Ethics Counsel and Deputy Chief Counsel.

a. While working for Governor Christie, did you ever find any of his conduct so troubling or questionable ethically that you tried to resign or formally report such conduct?

No. Respectfully, I disagree with the characterization suggested in this Question. As I stated in my remarks at the Committee Hearing, I consider myself privileged to have worked with Governor Christie, who first gave me the chance to represent the people of my state, and whose leadership as a public servant inspires me to do more.

b. While working for Governor Christie as his counsel, Chief Ethics Counsel, or Deputy Chief Counsel, did you ever advise him that any of the actions he took were improper or unethical?

As noted in my response to Question 2(a) above, I provided legal advice on such matters as the Governor may from time to time require, and acted as a legal adviser, attorney, or counsel for the Governor. N.J.S.A. 52:15-8(B)(1). Governor Christie was my client, and it is inappropriate to discuss the content of any advice I may have given. Nonetheless, to the extent this Question suggests the existence of “improper or unethical” actions, I have no knowledge of either.

c. Given that you worked for Governor Christie as his counsel, Chief Ethics Counsel, or Deputy Chief Counsel, when you learned of the allegations of unethical or improper conduct by Governor Christie, what actions, if any, did you take to address them?

Please see my responses to Questions 3(a) and 3(b) above. To the extent this Question references the allegations in Question 2(a) above, while it is inappropriate to discuss the content of any advice I may have given, there has been public reporting confirming the propriety and legality of the State's efforts to remediate the damage caused by Superstorm Sandy. *See, e.g., Report of the United States Department of Homeland Security, Office of Inspector General, New Jersey Complied with Applicable Federal and State Procurement Standards when Awarding Emergency Contracts for Hurricane Sandy Debris Removal Activities*, FEMA Disaster Number 4086 DR-NJ, Audit Report Number OIG-14-45-D (Feb. 27, 2014) ("New Jersey complied with applicable Federal and State procurement standards when procuring emergency contracts for statewide debris removal and monitoring activities related to Hurricane Sandy.").

4. In your Senate Judiciary Questionnaire, you reported that you have been a member of the Knights of Columbus since 2014. Previously, the Knights of Columbus was reported to be one of the top contributors to California's Proposition 8 campaign to ban same-sex

a. Do you share that view that marriage should not be allowed for same-sex couples?

In *Obergefell v. Hodges*, 576 U.S. \_\_\_, 135 S. Ct. 2584 (2015), the Supreme Court held that the Fourteenth Amendment protects the right of same-sex marriage. If confirmed to serve as a circuit judge, I would apply this case, and all Supreme Court precedent, fully and fairly.

b. If confirmed, do you intend to end your membership with this organization to avoid any appearance of bias?

My membership in the Knights of Columbus has consisted of participation in charitable and community events in local parishes. I have never drafted any policies or positions on behalf of the organization. If confirmed to serve as a circuit judge, I will abide by all standards in the Code of Conduct for United States Judges, including the guidance in Canon 4 concerning extrajudicial activities that are consistent with the obligations of judicial office.

c. If confirmed, will you recuse yourself from all cases in which the Knights of Columbus has taken a position?

If confirmed, I would regularly consult and apply the recusal requirements for federal judges stated in 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, Internal Operating Procedures of Third Circuit 11.2, and all other relevant laws and rules.

5. In May of this year, the Knight of Columbus issued a statement in support of the Trump administration's efforts to bar clinics that provide abortion services or referrals from receiving federal family-planning funds under Title X funds. In 2016, the Knights of Columbus online magazine published an article claiming that contraceptives have "potentially dangerous side effects related to women's health" and that "[a] growing body of research indicates that contraception even alters a woman's ability to choose a more genetically suited spouse" because "contraception suppresses fertility and its corresponding hormones."

a. You have been a member of the Knights of Columbus when they published these kinds of statements. Reproductive health providers who receive Title X funds provide a critical service to women. Do you believe federal funds should not be given to these providers who support abortion services?

As noted in my response to Question 4(b) above, my membership in the Knights of Columbus has consisted of participation in charitable and community events in my local parish. I have never drafted any policies or positions on behalf of the organization, including the statement referenced in this question. If confirmed to serve as a circuit judge, I would apply the precedents of the Supreme Court and the Third Circuit independently, fairly, and fully. As the issue of funding for abortion services is pending and impending in judicial proceedings, Canon 3(a)(6) of the Code of Conduct for United States Judges prohibits any additional comment.

b. Do you believe contraceptives may be dangerous to a woman's health and may "even alters a woman's ability to choose a more genetically suited spouse"?

As noted in my response to Question 5(a) above, I have never drafted any policies or positions on behalf of the organization, including the statement referenced in this question. If confirmed to serve as a circuit judge, I would be bound to apply all precedents of the Supreme Court concerning contraception, including *Eisenstadt v. Baird*, 405 U.S. 438 (1972), and *Griswold v. Connecticut*, 381 U.S. 479 (1965), fully and fairly.

c. If these are not your views, what steps have you taken to make clear that you do not hold these views?

As noted in my response to Question 4(a) above, my membership in the Knights of Columbus has consisted of participation in charitable and community events in local parishes, and not the drafting or dissemination of policy positions. If confirmed to serve as a circuit judge, I would adhere fully to the Code of Conduct for United States Judges, including the guidance in Canon 4 concerning extrajudicial activities that are consistent with the obligations of judicial office.

d. Given your membership in this organization, what assurances can litigants have that you will deal with reproductive rights and abortion issues fairly and impartially?



If privileged to serve as a circuit judge, I would work to emulate the principles of humility, diligence, and independence that I have seen exemplified in the women and men I have appeared before as an attorney. These duties are specifically stated in the oath of judicial office, and require all judges to “administer justice without respect to persons,” to “do equal right to the poor and to the rich,” and to decide cases “faithfully and impartially” under the laws of our nation. 28 U.S.C. § 453. As a judge, I would be guided not by my associations, but only by the law.

6. In 2004, you co-signed a Supreme Court amicus brief with now-Justice Gorsuch. You argued that plaintiffs should have to prove a causation connection between the fraud and the alleged drop in share price, which would make it harder for plaintiffs to bring securities fraud lawsuits. You and Justice Gorsuch then wrote an article making similar arguments so these were not just the views of a client. You argued that these lawsuits “impose[] an enormous toll on the economy, affecting virtually every public corporation in America at one time or another and costing businesses billions of dollars in settlements every year.”

In writing the article, what steps did you take to consider the costs and burdens that would be imposed on plaintiffs in bringing valid claims – instead of just the costs to the corporations – by the more stringent causation standard you advocated for?

I have had the opportunity to represent both public and private plaintiffs and defendants in securities fraud actions. In private practice, I successfully represented clients advocating for a proximate loss-causation standard, a position adopted by the Supreme Court in a unanimous opinion by Justice Breyer. *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005). I have also represented investors suing for losses allegedly caused by fraudulent investments and material omissions. As a federal prosecutor, I obtained guilty verdicts in numerous cases of financial frauds. Moreover, the value of securities fraud class actions, and other forms of aggregate investor litigation, have been repeatedly recognized by the courts and Congress. *See Cyan, Inc. v. Beaver Cty. Emps. Ret. Fund*, 583 U.S. \_\_\_, No. 15-1439, slip op. at 1-3 (Mar. 20, 2018) (recounting legislation enacted to “promote honest practices in the securities markets”); *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. \_\_\_, 134 S. Ct. 2398, 2413 (2014) (discussing legislation modifying the elements of securities fraud class actions). These decisions, like all precedent of the Supreme Court, are binding authority. If confirmed to serve as a circuit judge, I would apply these cases guiding the resolution of securities fraud class actions fully, fairly, and without exception.

**Nomination of Paul B. Matey**  
**United States Court of Appeals for the Third Circuit**  
**Questions for the Record**  
**Submitted November 20, 2018**

**QUESTIONS FROM SENATOR BOOKER**

1. From 1979 until the start of the Trump Administration, the Senate confirmed just three judicial nominees—out of more than 2,000—without positive blue slips from both of their home-state Senators.<sup>1</sup> Even those three nominees, all from the 1980s, had the support of one home-state Senator.<sup>22</sup> During this time, the Senate *never* confirmed a judicial nominee over the objections of *both* home-state Senators.<sup>33</sup> As you know, Senator Menendez and I have not returned blue slips on your nomination.

a. Do you think it was appropriate for President Trump to nominate you, despite the lack of any meaningful consultation by the Administration with the two Senators who represent your home state?

Article II, Section 2, clause 2 of the Constitution provides the President the power to appoint both the Justices of the Supreme Court, and the judges of the inferior courts, with the advice and consent of the Senate. As a nominee, I am prohibited from commentary on political matters pursuant to Canon 5 of the Code of Conduct for United States Judges.

b. Do you think it was appropriate for the Committee to hold a hearing on your nomination last week, despite the lack of any meaningful consultation by the Administration with the two Senators who represent your home state?

Please see my response to Question 1(a) above. Under Article II, the prerogative of considering nominees to the federal courts is reserved to the Senate alone, and I am prohibited from commentary on political questions pursuant to Canon 5 of the Code of Conduct for United States Judges.

c. At any time prior to your nomination in April 2018, did you express to anyone in the Administration that you wished to meet with New Jersey's Senators?

Please see my responses to Questions 1(a) and 1(b) above. While I am deeply honored by the privilege of being nominated to serve our nation, the Senate's process for discharging its duty to advise and consent is a political question inappropriate for my comment under Canon 5 of the Code of Conduct for United States Judges.

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<sup>1</sup> BARRY J. MCMILLION, CONG. RESEARCH SERV., R44975, THE BLUE SLIP PROCESS FOR U.S. CIRCUIT AND DISTRICT COURT NOMINATIONS: FREQUENTLY ASKED QUESTIONS 8 & n.47 (2017), <http://www.crs.gov/Reports/pdf/R44975>.

<sup>2</sup> *Id.* at 8.

<sup>3</sup> *Id.*

d. At any time prior to your hearing before this Committee last week, did you express to anyone in the Administration that you wished to meet with New Jersey's Senators?

Please see my response to Question 1(c) above.

e. Did you indicate any objection or concerns to anyone in the Administration or on the majority side of the Committee about the lack of any meaningful consultation with New Jersey's Senators?

Please see my response to Questions 1(b) and 1(c) above.

f. When I asked you at the hearing whether you would have met with me regarding your nomination, you said, "I would absolutely have followed whatever guidance was given to me." Were you, *personally*, willing to meet with me about your nomination?

As noted in my response to Question 1(a) above, as the nomination and confirmation powers are divided between the executive and legislative branches, I believe it has been appropriate throughout the course of my nomination to defer to the elected officials charged with the selection of federal judges. Out of respect for the work of the Senate and the President in jointly effectuating the requirements of Article II, and mindful of the prohibition on political matters under Cannon 5 of the Code of Conduct for United States Judges, additional commentary is inappropriate.

g. I also asked you at the hearing whether you understood that a duly elected Senator would probably want to meet with a prospective judicial nominee for a seat in that Senator's home state, for a conversation beyond a timed five-minute hearing exchange. You answered that you had "great and unyielding respect for the work of this body and the important work that you do on behalf of our state." Do you understand why it would be problematic for a prospective nominee not to have such a meeting?

I reiterate my testimony, and my enormous respect for the work you have done for the state I have called home since birth, and the city of Newark, where I have been privileged to study and work for more than a decade. As the process of consultation involves political considerations, I am prohibited from further comment under Cannon 5 of the Code of Conduct for United States Judges.

h. Given that you did not meet with me or Senator Menendez, do you have any reason to believe that there was meaningful consultation about your nomination with New Jersey's Senators?

Please see my responses to Questions 1(a) through 1(g) above.

2. What is the most difficult experience you have had making an oral argument before a federal court of appeals, and why?

While I have had the opportunity to appear in federal and state courts on countless occasions to argue on behalf of private clients and public entities, and have represented both individuals and the United States in matters before the United States Court of Appeals, I have not had the occasion to argue those appeals.

3. What is the most difficult experience you have had writing a brief for a federal court of appeals, and why?

Approaching nearly two decades as an attorney, I continue to seek opportunities to sharpen my written advocacy. While each legal argument presents unique challenges, I believe that clarity and brevity are both the most important, and most daunting, tasks in legal writing. Unnecessary string citations often weigh down briefs, while clever turns of phrase are substituted for analysis. The better approach is simple, concise writing in language understandable by all. If honored with confirmation to serve as a circuit judge, I would strive to build on these principles.

4. Please describe your most significant experiences litigating before the Third Circuit.

I have appeared in two matters before the United States Court of Appeals for the Third Circuit. As a student at Seton Hall University School of Law, I represented an inmate in a suit against prison officials alleging discrimination and retaliation for exercise of religious freedoms under the Constitution of the United States. The suit, filed in federal court in Pennsylvania, claimed that prison officials retaliated against the plaintiff by cutting his wages and denying him parole when he declined to participate in prison programs based on his firmly held religious beliefs. The trial court dismissed the suit, and the plaintiff engaged Seton Hall to file an appeal. In a unanimous precedential opinion, the United States Court of Appeals for the Third Circuit reversed the dismissal, and accepted our formulation for a new test specifying the elements of a prisoner's cause of action for retaliation and the burden of proof needed to succeed on a retaliation claim. The Third Circuit's precedential opinion in *Rausser v. Horn*, 241 F.3d 330 (3d Cir. 2001), has now been cited by courts over 1,400 times.

As an Assistant United States Attorney, I represented the government in *United States v. Wynn*, 214 Fed. Appx. 118 (3d Cir. Jan. 25, 2007), a case raising the novel question whether, in light of the Supreme Court's emerging jurisprudence on the constitutional right of confrontation and its then-recent decisions in *Crawford v. Washington*, 541 U.S. 36 (2004), and *United States v. Booker*, 543 U.S. 220 (2005), the Confrontation Clause of the Sixth Amendment applies at sentencing. In a unanimous opinion, the panel accepted my argument that the Supreme Court's decisions on the applicability of the Confrontation Clause did not alter the long-standing conclusion that the Sixth Amendment does not prohibit a sentencing court from considering reliable and reasonable hearsay in determining an appropriate sentence.

5. From 2015 to 2018, you were Senior Vice President and General Counsel at University Hospital in Newark, New Jersey. In 2016, you also became Corporate Secretary in addition to those roles. In your Questionnaire you wrote, "At University Hospital, I directed the development of all legal guidance, served as counsel for the hospital's internal compliance

program and corporate code of ethics, and managed all litigation.”<sup>4</sup>

In 2014, the year before your arrival at University Hospital, a patient safety organization that evaluates hospitals based on their safety records gave the hospital a “C” grade.<sup>5</sup> The following year, in 2015, after you first joined University Hospital, it maintained its “C” grade. However, in the fall of 2016, University Hospital’s safety grade fell to a “D.” In 2017, it received a “D” again. And in the spring of 2018, right before you left, the patient safety organization gave University Hospital an “F” safety grade.<sup>6</sup>

a. Did mitigating risk fall within your purview in your roles at University Hospital?

As General Counsel, I supervised several areas collectively referred to as enterprise risk, including the hospital’s insurance lines, the workers’ compensation program, the corporate compliance program, and litigation.

b. Did ensuring patient safety fall within your purview in your roles at University Hospital?

Not directly. While the care and treatment of patients was always the priority for all hospital employees, the safety of patients was primarily a clinical matter overseen by the hospital’s physicians and nurses. These dedicated medical professionals possess not only specialized technical and professional training, but a constant focus on the clinical practices and procedures that directly relate to patient care. Reflecting this need for expertise, clinical risk and patient safety were overseen by the hospital’s chief physician and chief nurse, as well as two separate committees of the Board of Directors, both chaired by physicians.

c. When I asked you about risk mitigation at your hearing, you said, “Certainly, Senator, we tried to get ahead of risks wherever possible.” So, to be clear, wouldn’t an important part of your job at University Hospital be to ensure that patient safety, at a bare minimum, stayed out of failing-grade territory?

Unquestionably, the care and treatment of patients was always the priority for all hospital employees. Clinical risk and patient safety were overseen by the hospital’s chief physician and chief nurse, as well as two separate committees of the Board of Directors, both chaired by physicians. This organizational structure, which was created by the Board, reflects the highly technical nature of the factors evaluated by ratings agencies including topics such as antibiotic stewardship, medication reconciliation, early elective deliveries, and pediatric radiation doses.

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<sup>4</sup> SJQ at 13.

<sup>5</sup> Leapfrog Grp., *Fall 2016 Leapfrog Hospital Safety Grades*, NJ SPOTLIGHT (2016), <https://assets.njspotlight.com/assets/16/1031/2325>.

<sup>6</sup> *University Hospital*, LEAPFROG HOSPITAL SAFETY GRADE, <http://www.hospitalsafetygrade.org/h/university-of-medicine-and-dentistry-of-new-jersey-the-university> (last visited Nov. 13, 2018).

d. At your hearing, you said, “The healthcare industry is a challenging environment to maintain. And oftentimes, as a result of that, there needs to be a greater calibration of resources and an attention to the most fundamental questions of import, which is patient safety. That was largely outside of my area as a counsel—that’s really more of a medical, technical issue. But without question, it’s something that we were always focused on as hospital administrators, and trying to improve to the best of our abilities.” Why was patient safety, an issue with important legal implications, “largely outside of [your] area” as the hospital’s chief legal counsel?

Please see my responses to Questions 5(b) and 5(c) above.

e. When University Hospital’s rating dropped to a “D” in the fall of 2016, what *specific* actions did you take to address this evident decline in patient safety at your institution?

Primarily, University Hospital responded by creating a new set of clinical practices administered by newly recruited health care professionals. The hospital added a new chief medical officer, and created new offices focused solely patient safety, quality measures, physician accreditation, care coordination, patient relations, analytics, and patient experience. These new functions, staffed by physicians and nurses, established new processes and protocols under the hospital’s physician-led quality and medical Board committees. Reflecting this effort, the hospital’s ranking in the survey referenced in this Question raised a full letter grade for the second-half of 2018.

f. When University Hospital’s rating remained at a troubling “D” level in 2017, what *specific* actions did you take to improve patient safety at your institution?

Please see my response to Question 5(e) above.

g. Out of the approximately 2,500 hospitals nationwide evaluated in this patient-safety report, University Hospital was one of only 22 institutions in the spring of 2018 to receive an “F.” No other hospital in New Jersey received an “F” safety grade.<sup>7</sup> When University Hospital’s rating fell to this failing grade in the spring of 2018, what *specific* actions did you take to address this continued and alarming decline in patient safety at your institution?

Please see my response to Question 5(e) above.

h. Why do you think patient safety at University Hospital continued to decline during your tenure, despite the mitigating steps you detailed in your responses to the preceding questions?

While the measure and analysis of the clinical data used by the survey referenced

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<sup>7</sup> Leah Mishkin, *NJ Hospitals Slip in Safety Rankings*, NJTV NEWS (Apr. 26, 2018), <https://www.njtvonline.org/news/video/nj-hospitals-slip-safety-rankings>.

in this Question was not part of my legal duties as the hospital's counsel, the hospital has publicly discussed the need for more advanced and aggressive quality practices. In response, the hospital added a host of new clinical departments focused solely on patient safety and quality measures and staffed by physicians and nurses. Consistent with this approach, the hospital's ranking in the survey referenced in this Question was raised a full letter grade for the second-half of 2018.

i. Speaking specifically about University Hospital, the director of operations for the patient safety organization said in the spring of 2018: "We see that they had a very high rate of foreign objects left in after surgery. They had a high rate of some of the infections that we look at, particularly central line associated bloodstream infections. These are infections that patients can acquire in a hospital that can very often be fatal if they're not caught and treated immediately." She also indicated that University Hospital had communications challenges with issues such as medications and discharge instructions.<sup>8</sup> During your tenure at University Hospital, were you aware of problems like these, and, if so, what concrete steps did you take to address them?

As a member of the hospital's administration, I was aware of the results of the survey referenced in this Question. Addressing these clinical concerns was a matter overseen by the hospital's chief physician and chief nurse, and two separate committees of the Board of Directors chaired by physicians. This structure, designed by the Board, is consistent with the technical and medical character of the survey, including hospital-acquired infections and central line bloodstream infections.

j. Based on your experience, why do you think University Hospital's safety ratings fell during your time as General Counsel, ultimately to a failing grade? Please reference specific factors, to the best of your knowledge, in your response.

Please see my response to Question 5(h) above.

6. In your Questionnaire you stated that in your role at University Hospital you were "responsible for legal and policy support to the hospital's eleven-member Board of Directors, all Board committees, and served as a member of the hospital's Executive Leadership Group."<sup>9</sup> In December 2017, while you were serving as General Counsel, Senior Vice President, and Corporate Secretary, Donald DiFrancesco resigned as Chairman of the Board of University Hospital. News reports had revealed how he had hired a friend, Jill Cooperman, to serve as his assistant in a "low-show," six-figure-salary job. The Board reportedly hired an investigator in 2016 in response to a whistleblower complaint, and the investigation evidently found that "Cooperman held an inappropriately managed 'no-show' or 'low-show' job."<sup>10</sup> According to one

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<sup>8</sup> *Id.*

<sup>9</sup> SJQ at 13.

<sup>10</sup> Susan K. Livio, *Ex-Gov. Resigns from Hospital Board amid Questions About Friend's 'Low-Show' Job*, NJ ADVANCED MEDIA (Dec. 18, 2017), [https://www.nj.com/politics/index.ssf/2017/12/ex-gov\\_resigns\\_from\\_hospital\\_board\\_amid\\_questions.html](https://www.nj.com/politics/index.ssf/2017/12/ex-gov_resigns_from_hospital_board_amid_questions.html).

report, “The episode cost the financially struggling hospital more than \$500,000: \$266,100 for Cooperman’s salary from January 2014 through April 2016; \$60,000 for her severance package, \$175,000 in severance for the whistleblower, and \$12,000 for the law firm—Porzio Bromberg & Newman of Morristown—that investigated the claim . . . .”<sup>11</sup>

a. Ms. Cooperman had originally been hired as a staff attorney in the General Counsel’s office in 2013, and then Mr. DiFrancesco “quickly repurposed her job as his assistant.”<sup>12</sup> It was reported that “Cooperman’s salary at University Hospital rose from \$94,000 to \$125,000, and her title changed from senior staff attorney to assistant general counsel and secretary of the hospital’s foundation from January 2014 to April 2016.”<sup>13</sup> Although Ms. Cooperman was first hired before your arrival as General Counsel, it appears that this arrangement continued for part of your tenure. Prior to the whistleblower complaint that led to the Board’s investigation, were you aware of Mr. DiFrancesco’s arrangement with Ms. Cooperman to work as his assistant?

My support of the Board of Directors commenced when I was appointed by the Board to serve as corporate secretary in March 2016. Prior to that time, I was generally familiar with the Board’s administrative structures, including the practice of hospital employees reporting directly to Board members.

b. Before the Board hired an investigator to look into the whistleblower’s complaint, did you take any actions to investigate the unusual position of Ms. Cooperman?

The content of any advice I may have given and to whom it may have been given is a matter falling within the attorney-client privilege. Without violating that privilege, I note that in June 2016, the Board revised its administrative practices to eliminate direct reporting relationships by hospital employees.

7. You published two articles with now-Justice Neil Gorsuch in 2005.<sup>14</sup> In both articles, you favored the interests of corporate defendants in class actions alleging securities fraud.

a. In one of those articles, you talked about “[t]he free ride to fast riches enjoyed by securities class action attorneys.”<sup>15</sup> You said that “securities fraud litigation imposes an enormous toll on the economy.”<sup>16</sup> You quoted a Third Circuit opinion that said,

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Susan K. Livio, *Former N.J. Governor Supervised Friend in ‘Low-Show’ Job at Hospital, Investigator Says*, NJ ADVANCED MEDIA (Dec. 11, 2017), [https://www.nj.com/politics/index.ssf/2017/12/ex-gov-supervised\\_friend\\_in\\_low-show\\_job\\_at\\_nj\\_hos.html](https://www.nj.com/politics/index.ssf/2017/12/ex-gov-supervised_friend_in_low-show_job_at_nj_hos.html).

<sup>14</sup> SJQ at 5.

<sup>15</sup> Neil M. Gorsuch & Paul B. Matey, *No Loss, No Gain*, LEGAL TIMES, Jan. 31, 2005, at 52.

<sup>16</sup> *Id.*



“Settlement hearings frequently devolve into ‘pep rallies.’”<sup>17</sup> Although you sometimes talked about throwing out *frivolous* cases, at other points your articles with Justice Gorsuch were critical of using securities fraud class actions *at all*. When groups of people sue powerful corporations for securities fraud, and have valid arguments to back up their claims, what *positive* role do you think these suits can play in strengthening consumer protection?

I have had the opportunity to represent both public and private plaintiffs and defendants in securities fraud actions. In private practice, I successfully represented clients advocating for a proximate loss-causation standard, a position adopted by the Supreme Court in a unanimous opinion by Justice Breyer. *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005). I have also represented investors suing for losses allegedly caused by fraudulent investments and material omissions. As a federal prosecutor, I obtained guilty verdicts in numerous cases of financial frauds. Moreover, the value of securities fraud class actions, and other forms of aggregate investor litigation, has been repeatedly recognized by the courts and Congress. See *Cyan, Inc. v. Beaver County Emps. Ret. Fund*, 583 U.S. \_\_\_, No. 15-1439, slip op. at 1-3 (Mar. 20, 2018) (recounting legislation enacted to “promote honest practices in the securities markets”); *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. \_\_\_, 134 S. Ct. 2398, 2413 (2014) (discussing legislation modifying the elements of securities fraud class actions). These decisions, like all precedent of the Supreme Court, are binding authority. If confirmed to serve as a circuit judge, I would apply these cases guiding the resolution of securities fraud class actions fully, fairly, and without exception.

b. Many important business cases are decided by the Third Circuit, which includes my home state of New Jersey as well as Pennsylvania and Delaware. More than 1 million businesses are incorporated in Delaware alone, including about two-thirds of all the companies on the Fortune 500.<sup>18</sup> What assurances can you provide that, if confirmed, you will fairly adjudicate cases in which people file suit against powerful corporations, alleging fraud or other kinds of misconduct?

While my work as an attorney has included representation of both investors and corporations, my work as a circuit judge would be solely directed by the precedents of the Supreme Court and the Third Circuit. If honored with confirmation, I would apply all precedent fully and fairly.

8. In your Questionnaire, you were asked to describe any pro bono work you did as an attorney. As this question noted, “An ethical consideration under Canon 2 of the American Bar Association’s Code of Professional Responsibility calls for ‘every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged.’”<sup>19</sup> Your answer struck me as quite lacking. I understand that many of the

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<sup>17</sup> *Id.*

<sup>18</sup> *About the Division of Corporations*, DEL. DIV. OF CORPS., <https://corp.delaware.gov/aboutagency>.

<sup>19</sup> SJQ at 26.

positions you held in the past—including your job as an Assistant United States Attorney and Counsel in the Governor’s Office—prevented you from providing pro bono legal representation, but you were not just asked to list your pro bono cases. The question asked you to describe what you have done “in serving the disadvantaged.”

As one nominee wrote in response to the same question, “I have also volunteered at the University of Pittsburgh Law School to serve as a judge for the moot court competition . . . and judge for the mock trial competition.”<sup>20</sup> Another nominee said, “Outside of work, I formerly served as Scout leader for my sons’ Cub Scout pack and have coached in many of the sports leagues offered by our local YMCA.”<sup>21</sup> And another person in a similar position to yours wrote, “My role as an Assistant United States Attorney limits my ability to engage in the practice of law outside my government service. I do take time to talk with groups and with other attorneys, judges, and the public about my work and experiences, particularly with the victims and their families.”<sup>22</sup>

When I asked you at your hearing about pro bono activities and other work on behalf of the disadvantaged outside your time in government, you answered: “I agree with you completely that this is an important commitment, and it’s something that I tried to honor during my work, as you said, most recently at University Hospital. And there are two matters I would point to. First was the program of reentry for individuals who had been previously incarcerated—finding a pathway to bring people out of our nation’s jails, and into our hallways, where I was proud to call them my colleagues. Second, there were occasions that I had to represent the hospital in significant and personal patient interests.”

- a. What was the reentry program you referenced? Please provide more detail about this work, where and when it occurred, and your role. Please provide any supportive citations or materials about this program as appropriate.

To help improve employment opportunities for individuals released from federal prison, I initiated a partnership between University Hospital and *ReNew*, a program for individuals released from federal prison to serve a term of supervised release. *ReNew* is a collaborative team led by federal judges and magistrates, and supported by the United States Attorney’s Office for the District of New Jersey, the Federal Public Defender’s Office, and the United States Probation Office. Program participants received a variety of social services, and the opportunity to reduce their term of supervised release. Working with the *ReNew* program, University Hospital was able to extend employment opportunities to individuals seeking to enter the health care profession. Seeing individuals formally charged with federal crimes thriving as colleagues forcefully illustrated the importance of collaborative solutions to reducing crime and preventing recidivism. If honored to serve as a circuit judge, I hope to continue working with the

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<sup>20</sup> Peter Joseph Phipps, SJQ at 24, <https://www.judiciary.senate.gov/imo/media/doc/Phipps%20SJQ.pdf>.

<sup>21</sup> William Frederic Jung, SJQ at 34, <https://www.judiciary.senate.gov/imo/media/doc/Jung%20SJQ1.pdf>.

<sup>22</sup> Julius Ness Richardson, SJQ at 29-30, <https://www.judiciary.senate.gov/imo/media/doc/Richardson%20SJQ1.pdf>.

*ReNew* program in New Jersey.

b. What were the “occasions that [you] had to represent the hospital in significant and personal patient interests” while you were at University Hospital? Please provide more detail about this work, where and when it occurred, and your role. Please provide any supportive citations or materials about this program as appropriate.

While I was always privileged to work to help improve access to health care in Newark, I was particularly pleased to assist a couple receiving treatment fulfill a two-decade dream of marriage. The ceremony, which took place in the Hospital’s medical intensive care unit, united a seriously-ill patient and the patient’s partner following an emergency court hearing I requested to obtain a waiver of the state’s seventy-two hour waiting period for a marriage license. I was honored to represent the couple, and facilitate their nuptials.

c. During any of your private employment since graduating from law school, what activities have you engaged in to serve the disadvantaged?

As noted, my work on behalf of public entities, including the State of New Jersey, the United States Department of Justice, and the United States Courts has precluded the acceptance of pro bono assignments. Nonetheless, throughout my career, I have been dedicated to working on behalf of the public. As a federal prosecutor, I worked extensively on an international investigation into an organized network of child pornography production and distribution. Using confidential sources, we worked to develop electronic evidence of the network’s activities using a combination of court-ordered surveillance, search warrants, banking records, and cooperator testimony. The investigation uncovered a commercial website offering access to videos and images of hardcore child pornography involving children and infants engaged in sexual activities with adults. At the conclusion of the investigation, more than 125 individuals in more than twenty-two states were arrested, and more than 225 search warrants (drafted off of a template I created) were executed. The arrests included a significant number of individuals previously convicted of sex offenses against minors. The investigation has led to the conviction of more than 600 individuals in forty-seven states, making the investigation one of the most successful child sexual abuse investigations in the nation’s history.

Later, during my service in New Jersey state government, I led the reform of the State’s criminal justice detention standards, including an approved constitutional amendment establishing an alternative pre-trial release system to avoid the unnecessary incarceration of individuals unable to post bail. As a result, the State’s pretrial jail population was reduced by an estimated 20%.

At University Hospital, I worked to establish the *ReNew* program discussed in my response to Question 8(a), and created a partnership between the New Jersey Reentry Corporation and community health centers in Newark allowing previously-incarcerated individuals to be connected to health care and related services. Also, as noted in my

response to Question 8(b) above, I assisted a couple receiving treatment obtain a marriage license. Finally, as a member of the Knights of Columbus, I have volunteered time at a local homeless shelter, and assisted in charity events to raise funds for the Special Olympics.

d. During any of your private employment since graduating from law school, have you provided any form of pro bono legal representation?

Please see my response to Question 8(b) above.

e. During your tenure at University Hospital from 2015 to 2018, what specific activities did you engage in to serve the disadvantaged? Please describe any such work in detail, if not encompassed by your answers to the preceding questions.

Please see my response to Questions 8(a), 8(b), and 8(c) above.

f. From 2003 to 2005, you were an associate at the Washington, D.C., law firm now known as Kellogg, Hansen, Todd, Figel & Frederick PLLC.<sup>23</sup> Did you provide any pro bono services or engage in any other work for the disadvantaged during that period? If so, please describe that work.

I do not recall participating in any pro bono matters as an associate.

g. Since September of this year, you have been a partner at Lowenstein Sandler LLP in Roseland, New Jersey.<sup>24</sup> Have you provided any pro bono services or engaged in any other work for the disadvantaged since joining the firm? If so, please describe that work and when you began it.

I am not currently appearing in any pro bono matters.

h. When I asked you at your hearing about your current role at Lowenstein Sandler, you stated: "While I'm not currently providing any guidance as pro bono counsel, I am continuing my work on behalf of public matters, including matters regarding fraud against public institutions." Can you provide more detail about this work?

I am currently assisting the State of New Jersey in a matter involving a bank's allegedly unlawful actions involving residential mortgage backed securities.

i. As we discussed at your hearing, please provide any additional information that you would like to provide to amend your answer to question 25 of your Questionnaire regarding pro bono work and service on behalf of the disadvantaged.

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<sup>23</sup> SJQ at 2.

<sup>24</sup> SJQ at 12.

Please see my responses to the subparts of Question 8 above.

9. You have been a member of the Federalist Society since 2001, the year you graduated from law school, according to your Questionnaire responses. You were a New Jersey Chapter Leader for the Federalist Society for about 6 years—from 2001 to 2003, while you were a law clerk to two federal judges, and from 2005 to 2009, while you were an Assistant U.S. Attorney.<sup>25</sup> What did your work as a New Jersey Chapter Leader involve?

I first attended lectures sponsored by the Federalist Society as a law student, and enjoyed the robust exchange of ideas and viewpoints presented by the speakers. As an attorney, I continued to attend debates, lectures, and seminars in New Jersey. These events provided an opportunity for continuing legal education and professional development.

10. You have been a member of the Republican National Lawyers Association since 2005.<sup>26</sup> This organization has strongly supported strict voter ID laws<sup>27</sup>—even though study after study has shown that in-person voter fraud is extremely rare.<sup>28</sup> In the twenty-first century, voter ID laws are often considered the modern-day equivalent of poll taxes. These laws disproportionately disenfranchise people of color.

a. As a longtime member of the Republican National Lawyers Association, have you expressed any concerns to anyone in that organization about its advocacy for stringent voter ID laws?

My membership in this organization has consisted of occasional attendance at sponsored lectures and networking events.

b. In what ways do you believe that you have “directly support[ed] Republican policy, agendas and candidates”?

I am not familiar with this statement, and did not draft the quoted language. My membership in this organization has consisted of occasional attendance at sponsored lectures and networking events. I have never drafted any policies or positions on behalf of the organization, and have never discussed the organization’s policies.

c. Do you believe that in-person voter fraud is a widespread problem in American elections?

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<sup>25</sup> SJQ at 5.

<sup>26</sup> *Id.*

<sup>27</sup> Debbie Hines, *New Republican Data Shows No Need for Voter ID Laws*, HUFFPOST (Dec. 12, 2011), [https://www.huffingtonpost.com/debbie-hines/voter-fraud-statistics\\_b\\_1139085.html](https://www.huffingtonpost.com/debbie-hines/voter-fraud-statistics_b_1139085.html).

<sup>28</sup> *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

As the issue of voting fraud is pending and impending in judicial proceedings, including matters pending in courts within the Third Circuit, Canon 3(a)(6) of the Code of Conduct for United States Judges prohibits my comment.

d. Do you agree with the statement that voter ID laws are the twenty-first-century equivalent of poll taxes?

The Supreme Court has considered issues related to voter identification laws in cases including *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008). If confirmed as a circuit judge, I would be bound to apply all precedent applicable to this issue. As the issue of voting fraud is pending and impending in judicial proceedings, including matters pending in courts within the Third Circuit, Canon 3(a)(6) of the Code of Conduct for United States Judges prohibits additional comment.

11. President Trump nominated you for this position in April 2018. Then, in September of this year, you joined the law firm Lowenstein Sandler in Roseland, New Jersey.<sup>29</sup>

a. In your Questionnaire responses, you said you have been working on “matters involving commercial litigation, criminal defense, and health care.” Can you provide a more detailed, and up-to-date, account of your work at Lowenstein Sandler beyond these broad general categories?

I am currently representing individuals and organizations in a variety of regulatory and commercial matters in the areas of health care, criminal defense, and government contracting. As these matters, and my representation, are not public, I am precluded by the attorney-client privilege from additional commentary. I am also currently assisting the State of New Jersey in a matter involving a bank’s allegedly unlawful actions involving residential mortgage backed securities.

b. What significant activities have you undertaken since joining the firm in September?

Please see my response to Question 11(a) above.

12. According to a Brookings Institution 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.<sup>30</sup> Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.<sup>31</sup> These shocking statistics are reflected in our nation’s prisons and jails. Blacks are five times more likely than whites to be

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<sup>29</sup> SJQ at 12.

<sup>30</sup> Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

<sup>31</sup> *Id.*

incarcerated in state prisons.<sup>32</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.<sup>33</sup>

a. Do you believe there is implicit racial bias in our criminal justice system?

Yes. Both explicit and implicit racial bias continues to exist in private and public institutions including, regrettably, our criminal justice system.

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

Yes.

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.

While I am familiar with implicit bias, primarily through the work of Malcolm Gladwell in *Blink: The Power of Thinking Without Thinking* (2005), I have not studied its application in criminal justice systems. As an Assistant United States Attorney, I regularly encountered the challenges and impediments faced by both victims of crime, and offenders, who were disproportionately members of racial minorities.

13. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.<sup>34</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.<sup>35</sup>

a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

I have not studied this issue.

b. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct

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<sup>32</sup> Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

<sup>33</sup> *Id.*

<sup>34</sup> Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

<sup>35</sup> *Id.*

link, please explain your views.

I have not studied this issue.

14. 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.

15. Do you believe that *Brown v. Board of Education*<sup>36</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

*Brown v. Board of Education*, 347 U.S. 483 (1954) is a landmark decision of the Supreme Court, and the leading case on the right to public education without segregation under the Equal Protection Clause. As prior federal judicial nominees have noted, it is inappropriate for a nominee to offer their views on prior cases of the Supreme Court. See Nomination of Elena Kagan to be an Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary, 111th Cong. 64 (2010) (statement of the Hon. Elena Kagan) (“I think that . . . it would not be appropriate for me to talk about what I think about past cases, you know, to grade cases.”). If confirmed to serve as a circuit judge, I would apply *Brown* and all other Supreme Court precedent fully and fairly.

16. Do you believe that *Plessy v. Ferguson*<sup>37</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

*Plessy v. Ferguson*, 163 U.S. 537 (1896) was incorrectly decided, as confirmed by the landmark decision of *Brown* vindicating the dissenting view of Justice John Marshall Harlan. *Plessy*, 163 U.S. at 562 (“The arbitrary separation of citizens on the basis of race while they are on a public highway is a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the Constitution. It cannot be justified upon any legal grounds.”) (Harlan, J., dissenting).

17. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

No, and my answers to all questions throughout my nomination have been my own.

18. President Trump has stated on Twitter: “We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came.”<sup>38</sup> Do you believe that immigrants, regardless of status,

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<sup>36</sup> 347 U.S. 483 (1954).

<sup>37</sup> 163 U.S. 537 (1896).

<sup>38</sup> Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.



are entitled to due process and fair adjudication of their claims?

As the issue of constitutional rights for immigrants is pending and impending in judicial proceedings, Canon 3(a)(6) of the Code of Conduct for United States Judges prohibits my comment.

**Questions for the Record from Senator Kamala D. Harris  
Submitted November 20, 2018  
For the Nomination of**

**Paul Brian Matey, to the U.S. Court of Appeals for the Third Circuit**

1. In 2013, when you served as Deputy Chief Counsel to Governor Christie, New Jersey was awarded \$60 million to promote tourism in the wake of Hurricane Sandy. It was reported that \$23 million of those funds were used to produce a television advertisement, called “Stronger than the Storm.” The advertisement featured Governor Christie and his family, highlighted Governor Christie’s leadership in the wake of Hurricane Sandy, and ran repeatedly in New Jersey during Governor Christie’s reelection campaign.

a. **As Deputy Chief Counsel, were you aware that New Jersey had received \$60 million in federal grant funding to promote tourism after Hurricane Sandy?**

While I do not have a specific recollection, it is likely that as a member of the Governor’s staff I was aware of the state’s plans to promote economic recovery in the aftermath of Superstorm Sandy before official public announcements.

b. **Did you advise anyone in Governor Christie’s administration regarding appropriate uses of the \$60 million relief package?**

To the best of my recollection, I do not recall working the state’s plans to promote economic recovery through tourism.

i. **If the answer is “yes,” what was the nature and scope of your advice?**

c. **Did you advise anyone in Governor Christie’s administration regarding the cost or content of the “Stronger than the Storm” advertisement?**

To the best of my recollection, I do not recall working on this project.

i. **If the answer is “yes,” what was the nature and scope of your advice?**

d. **Do you believe it was appropriate for Governor Christie to use \$23 million in taxpayer dollars to fund his advertisement during an election year?**

To the best of my recollection, I do not recall working on this project. Further, the article referenced in this question appears to discuss political, rather than legal, concerns with the state’s economic recovery programs. For that reason, Cannon 5 of the Code of Conduct for United States Judges prohibits any additional comment.

2. When you served as Senior Counsel and Chief Ethics Officer to Governor Christie, there were multiple allegations that Governor Christie used his position to retaliate against his political opponents. For instance, in 2011, Governor Christie publicly accused former New Jersey

Governor Richard Codey of being combative and difficult. According to *The New York Times*, three days after Governor Christie made the accusation, Mr. Codey was informed that he would no longer receive the security detail that was routinely provided to former Governors as a courtesy. The same day, Mr. Codey's cousin was fired from the Port Authority of New York and New Jersey.

a. **Did you advise anyone in Governor Christie's administration regarding the denial of Mr. Codey's security detail?**

I do not recall providing advice or counsel on this matter.

i. **If the answer is "yes," what was the nature and scope of that advice?**

b. **Did you advise anyone in Governor Christie's administration regarding the firing of Mr. Codey's cousin?**

I do not recall providing advice or counsel on the staffing of the Port Authority of New York and New Jersey.

i. **If the answer is "yes," what was the nature and scope of that advice?**

c. **As Chief Ethics Officer, what affirmative steps did you take to promote ethics and compliance in Governor Christie's office? Please cite specific examples.**

All staff members were instructed to comply with the requirements of the state ethics code and the guidance promulgated by the New Jersey State Ethics Commission stating that employees are permitted to engage in partisan political activities that use neither State time nor resources. See N.J.S.A. 11A:2-23; N.J.A.C. 4A:10-1.2(a).

d. **Do you believe that, as Chief Ethics Officer, you share responsibility for ethical lapses that occurred during Governor Christie's administration?**

Respectfully, the phrase "ethical lapses" in this Question is ambiguous. Moreover, the use of the plural calls for conclusions that are inaccurate. I do believe that based on publicly available information, the violations of federal law related to the George Washington Bridge in 2013 constituted a lapse of ethics by the individuals charged by the United States Department of Justice. While I had no involvement in this matter, and was never a target or subject of any investigation, I regret that this matter arose during my service as counsel to the Governor.

3. In 2014, you joined an organization called the Knights of Columbus, which is comprised primarily of Catholic men. In 2008, the Knights of Columbus was the top contributor to the "Yes on Proposition 8" campaign, in support of a ballot initiative to ban same-sex marriage in California.

**a. Were you aware that the Knights of Columbus opposed marriage equality when you joined the organization?**

My membership in the Knights of Columbus has consisted of participation in charitable and community events in local parishes. I have never drafted any policies or positions on behalf of the organization, and have never discussed the organization's policies with any employee of the Knights of Columbus.

**b. Have you ever, in any way, assisted with or contributed to advocacy against LGBTQ rights?**

I have not assisted with or contributed to advocacy against LGBTQ individuals or organizations.

**i. If the answer is "yes," please explain the nature and scope of your assistance.**

**c. Do you believe the right to marry carries an implicit guarantee that everyone should be able to exercise that right equally?**

The Supreme Court has held that the Fourteenth Amendment protects the right to marry. *See, e.g., Obergefell v. Hodges*, 576 U.S. \_\_\_, 135 S. Ct. 2584 (2015); *United States v. Windsor*, 570 U. S. \_\_\_, 133 S. Ct. 2675 (2013); *Turner v. Safley*, 482 U.S. 78 (1987); *Zablocki v. Redhail*, 434 U. S. 374 (1978); *Loving v. Virginia*, 388 U. S. 1 (1967). If confirmed to serve as an inferior court judge, I would apply these cases, and all Supreme Court precedent, fully and fairly. As issues addressing the right of marriage are pending and impending in judicial proceedings, Canon 3(a)(6) of the Code of Conduct for United States Judges prohibits any additional comment.

**d. If a county or state makes it more difficult for same-sex couples to marry than for straight couples to marry, are those additional hurdles constitutional?**

Please see my response to Question 3(c) above.

4. The Knights of Columbus is also dedicated to what it calls "building a culture of life." In 2016, Carl Anderson, leader of the Knights of Columbus, said that abortion "is in reality a legal regime that has resulted in more than 40 million deaths." Mr. Anderson also described abortion as "the killing of the innocent on a massive scale."

**a. Were you aware that the Knights of Columbus opposed a woman's right to choose when you joined the organization?**

As noted in my response to Question 3(a) above, my membership in the Knights of Columbus has consisted of participation in charitable and community events in local parishes. I have never drafted any policies or positions on behalf of the organization, and

have never discussed the organization's policies with any employee of the Knights of Columbus.

**b. Do you agree with Mr. Anderson's description of abortion as "the killing of the innocent on a massive scale"?**

Please see my response to question 4(a) above. I did not draft this language and, if confirmed to serve as a circuit court judge, would not be guided by statements of others. See Canon 1 of the Code of Conduct for United States Judges (requiring judges to preserve the independence of the judiciary). Rather, I would be bound by the precedents of the Supreme Court and the Third Circuit in the resolution of all cases, and would apply those decisions fully and fairly.

**c. Do you agree with Mr. Anderson that legal abortion in the United States has "resulted in more than 40 million deaths"?**

Please see my response to Question 4(b) above.

**d. Do you believe that a fetus is entitled to any protection under the U.S. Constitution? If your answer is "yes," please provide citations.**

In *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court stated that a "person," as used in the Fourteenth Amendment, does not include the unborn." *Id.* at 158. Like all Supreme Court precedent, *Roe* is binding on all inferior courts and, if confirmed to serve a circuit judge, I would apply the decision fully and fairly.

5. In *Whole Woman's Health* in 2016, the U.S. Supreme Court invalidated two provisions of Texas law that imposed new restrictions on health care facilities that provide abortions. After the law passed, the number of those facilities in Texas dropped in half, severely limiting access to health care for the women of Texas.

**a. Did the Court in *Whole Woman's Health* change or clarify the "undue burden" test used to evaluate laws restricting access to abortion? If so, how?**

*Whole Woman's Health v. Hellerstedt*, 579 U.S. \_\_\_, 136 S. Ct. 2292 (2016) reaffirmed the undue burden test articulated in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). Like all Supreme Court precedent, *Hellerstedt* is binding on all inferior courts.