

**Nomination of John Michael O'Connor to the United States District Court for
the Northern, Eastern, and Western Districts of Oklahoma
Questions for the
Record July 18, 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 not appropriate for lower courts to depart from Supreme Court precedent.

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

Under the Oath of Office for Judges, 28 U. S. C., Section 453, I am duty bound to set aside my personal beliefs and apply the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented in each case. This I will faithfully do, without regard to my personal beliefs.

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

Such action might be justified when (i) a binding precedent of a superior court or a new statute or regulation has intervened since the district court last decided the issue, or (ii) the district court determines that its previous reading of binding precedents was incomplete.

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

When a majority of the members of the Supreme Court determines that overturning its own precedent is constitutional and appropriate.

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

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

Under the Oath of Office for Judges, 28 U. S. C., Section 453, I am duty bound to apply the binding precedents of the U. S. Supreme Court to the facts presented in each case. When it comes to my duty, if confirmed, I am bound to follow both precedent and superprecedent.

b. Is it settled law?

Settled law, superprecedent and other binding decisions of the Supreme Court are to be followed by all lower courts. If confirmed, I will faithfully apply *Roe* and all other such precedents.

3. In 1989, you spoke at an anti-choice rally at Oral Roberts University on the 16th anniversary of the Supreme Court’s decision in *Roe v. Wade*. The organizers of the event said that the goal of the gathering was to “commemorate the lives of the unborn who lost their lives through abortion.” According to a local newspaper, “rally speaker John O’Connor, an attorney, said he believed the Supreme Court will gradually chip away at the *Roe* case. In that case, justices decided fetuses aren’t persons and allowed women to terminate pregnancy under the right of privacy, said O’Connor.” (Sonya Colberg, *Foes of Abortion Rally at ORU*, TULSA WORLD (Jan. 25, 1989); SJQ Attachment to 12(e) at pp. 184-87).

a. How did you understand the Supreme Court to be “gradually chip[ping] away at the *Roe* case”?

First, if confirmed, I am duty bound to set aside my personal beliefs and apply the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented in each case. This I will faithfully do, without regard to my personal beliefs. Second, at the time I made the referenced statement, it was a statement of future expectation, rather than a commentary on then-current decisions of the Supreme Court. I expected that state statutes attempting to impact the abortion right described in the *Roe* decision would continue to work their ways to the Supreme Court.

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

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

Obergefell is Supreme Court precedent binding on all lower courts. If confirmed, I will faithfully apply it and all other such precedents.

5. 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?

If confirmed, I am duty bound to follow the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented in each case. This I will faithfully do. This question calls for my personal belief on the meaning of the Second Amendment. Under the Code of Conduct for United States Judges, Canon 3(A)(6), I should not make a public comment on the merits of a matter pending or impending in any court.

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

Please see my response to Question 5(a).

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

As a nominee for a district court judgeship, it would not be appropriate for me to comment critically on a precedent that I may be required to consider in a case before me.

6. On page five of your Questionnaire, you identify yourself as a member of Brother House of Tulsa. According to a report in the *Tulsa World*, the organization is committed to developing male spirituality and fatherhood in response to "'male bashing' from the opposite sex." (Carolyn Jenkins, *Brother House Promotes Men's Spirituality*, TULSA WORLD (Feb. 18, 1990)). The report also explained that members participate in "wilderness retreat[s]" and "men's lodge[s]" in order to bond with one another. Some of these retreats include "loosely adopted Indian rituals, including sweat lodges" and drumming. You are identified as a Director or Adviser of the organization in the same newspaper article. In response to questioning by Senator Durbin, you explained that the organization "was a group that was started by a friend of mine ... It was principally a place for men to gather to talk about issues related to men's life." You confirmed having attended meetings but said that you participated "two or three times 25 or 30 years ago."

a. On your Questionnaire, you did not provide dates of your membership. When were you affiliated with Brother House? Are you still a member?

I was never a member, officer, director or employee of this organization. This was essentially a discussion group for men on spiritual issues. A woman is listed as a director of the organization in the attached copy of a brochure from Brother House of Tulsa. I attended two or three one-hour discussion group meetings

between 1990 and 1992. I never attended a retreat, lodge or ritual. The organization ceased operations in 1994.

- b. In response to a question from Senator Durbin, you explained that you were “not sure I was in the leadership at any time of that group.” The *Tulsa World* reported that you served as a Director or Adviser of the group. Were you ever in a leadership role at any time, and if so, what role(s) and when?**

I was never in a leadership role in that group.

- c. What specific issues did you discuss at the Brother House meetings you attended?**

Although those two or three meetings occurred over 25 years ago and I have no specific recollection of a particular meeting or discussion, I suspect that we discussed how to be better husbands and fathers.

- d. What role did “loosely adopted Indian rituals” play in the organization’s programming? Which rituals did you participate in during your attendance at Brother House meetings?**

I do not know. My entire involvement consisted of attending two or three one-hour discussion group meetings between 1990 and 1992. I never was present when any type of ritual, Indian or otherwise, occurred nor did I ever hear of a ritual of any type occurring. I never attended a retreat, lodge or ritual.

- e. Question 11(b) of the Questionnaire asks whether a nominee is a member of an organization which “currently discriminate[s] or formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.” At your hearing, Senator Durbin asked whether Brother House was a men-only organization. You responded, “I think so.” Confirm whether, at any time during your membership in Brother House, it excluded women, and if so when.**

A woman is listed as a Director of the Brother House in the attached copy of a brochure from Brother House of Tulsa. That fact would negative an assertion of gender discrimination.

7. On page 25 of your Questionnaire, you describe your role as lead counsel in a property dispute between Presbyterian Church USA and a local church affiliate, Kirk of the Hills. In 2006, Kirk of the Hills and others failed to persuade national church leaders to maintain their policy barring LGBT individuals from leadership positions, including as clergy members. Subsequently, Kirk of the Hills voted to leave the national Presbyterian Church and proceeded to litigate the ownership of the real property in Oklahoma on which the local church building was situated. The parties reached a settlement agreement in 2008, which allowed Kirk of the Hills to buy the property from Presbyterian Church USA.

a. How did you come to represent Kirk of the Hills in this dispute?

I cannot answer that question. I had several friends who were members in that church.

b. Was your representation on a *pro bono* basis, or were you paid for your representation?

My law firm was engaged on an hourly fee basis.

8. 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 anyone in the Administration asking me for my views on 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?

No.

c. What are your "views on administrative law"?

If confirmed, I will faithfully apply all Supreme Court and Tenth Circuit precedents relating to administrative law.

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

No.

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

I have answered each of these questions.

DIRECTORS AND ADVISORS

Rev. William Clark is a Pastor at Redeemer Covenant Church, Tulsa, Oklahoma.

Rev. Clyde Glandon is Associate Rector of Trinity Episcopal Church, Tulsa, Oklahoma.*

Dr. Ed Maillet is Executive Director of Catholic Charities, Tulsa, Oklahoma.

Rita McCarthy is a counselor at Christian Family Institute, Tulsa, Oklahoma.*

John O'Connor is an attorney and involved in lay ministry at Christ the King Church.

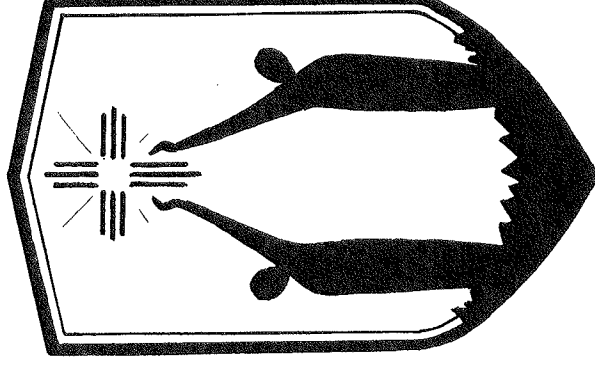
Tim Sullivan is an attorney and a member of the Church of St. Mary.*

Bill Yeakey, Jr., is an accountant and involved in lay ministry at Christ United Methodist Church.*

**Denotes Director*

BROTHER HOUSE OF TULSA

A CENTER FOR MALE SPIRITUALITY



**Norfolk Place
1443 S. Norfolk
Tulsa, Oklahoma 74120
(918) 592-3100**

There are many obstacles to spiritual growth which are peculiar to men. Men have been encouraged by our culture to concentrate on self-gratification and the acquisition of money and power. As a result of emphasis on independence and not showing vulnerability, men resist intimate relationships with others. All of these influences interfere with the ability of men to know and experience Christ and to follow God's will. Men must examine conventional notions of masculinity and arrive at a deeper, richer understanding of maleness and of the ways men can better serve God and their brothers and sisters.

PURPOSE

Brother House of Tulsa is a non-profit, ecumenical organization formed for the purpose of promoting the spiritual development of men in the Tulsa metropolitan area. The mission of the Brother House is to celebrate the presence of Christ in every brother.

SPECIFIC OBJECTIVES

The specific goals of the Brother House are:

1. Proclaiming the special need for promoting the spiritual development of men;
2. Gathering resources that focus on male spiritual formation;
3. Promoting the formation of men's sharing groups within individual church communities.

RESOURCES

1. Speakers who can address issues relating to male spirituality.
2. A library and reading room for sharing books, pamphlets, video tapes and cassette tapes on the subject of male spirituality.
3. Space for small discussions, night classes and private, individual discussions.
4. Seminars, conferences and retreats for men in the Tulsa metropolitan area.
5. The "Tulsa Brother" newsletter, presenting views on issues relating to male spirituality and containing information on resources and programs available to men in the Tulsa metropolitan area.

The Brother House hopes to offer counselling services for men in the future. Until such services can be provided by Brother House, the organization can make referrals to counsellors in the Tulsa area who share its Christian perspective.

God's plan is this: to make known his secret to his people, this rich and glorious secret which he has for all peoples. And the secret is this: Christ is in you, which means that you will share the glory of God.

Colossians 1:27

Senator Dick Durbin
Written Questions for Ryan Nelson, James Carroll, Stephen Clark, John O'Connor
July 18, 2018

For questions with subparts, please answer each subpart separately.

Questions for John O'Connor

1. At your hearing, you said you would provide the committee with additional information about the Brother House of Tulsa. **Please provide this information as well as further details on your involvement with this group.**

Please see attached articles from the Tulsa World relative to Brother House of Tulsa. I was never a member, officer, director or leader of this organization. This was essentially a discussion group for men on spiritual issues. I attended two or three one-hour discussion group meetings between 1990 and 1992. The organization ceased holding discussions in 1994.

2. I understand that in 1989 you gave a speech at Oral Roberts University on the anniversary of the Supreme Court's *Roe v. Wade* decision. According to a local newspaper, "John O'Connor, an attorney, said he believed the Supreme Court will gradually chip away at the *Roe* case."

- a. **Do you think it is appropriate for Supreme Court justices to "chip away" at the Court's precedents?**

The Supreme Court is the only court which can modify, narrow the scope, explain, distinguish or abandon its own prior decisions.

- b. **When in your view it is warranted for the Supreme Court to "chip away" at its precedents?**

In practical terms, whenever a majority of the members of the Court determines that it is constitutional and advisable to do so.

3. You say in your questionnaire that you were appointed by the City of Tulsa to serve as Human Rights Conciliator from 1985-1988. **What did you do in this capacity?**

I was available to be appointed to a panel of conciliators, but was never appointed to a case or a panel. I debated whether to list the appointment, but thought the question called for the reference.

NEWS

Brother House Promotes Men's Spirituality

Carolyn Jenkins Feb 18, 1990

Brother House of Tulsa is "a new ministry for men which has been organized in the Tulsa area."

It's a ministry, however, with a non-conventional approach.

"We're not interested in building an organization or counting the number of people involved," according to director Timothy Sullivan. The ministry offices will be at 1443 S. Norfolk Ave., where Sullivan's law office is also located.

The purpose of Brother House, Sullivan explained, is simply to promote the spiritual development of men. "The mission . . . is to celebrate the presence of Christ in every brother.

"There are many obstacles to spiritual growth which are peculiar to men. Men have been encouraged by our culture to concentrate on self-gratification and the acquisition of money and power. As a result of emphasis on independence and not showing vulnerability, men resist intimate relationships

with others.

"All of these influences interfere with the ability of men to know and experience Christ and to follow God's will.

Men must examine conventional notions of masculinity and arrive at a deeper, richer understanding of maleness and of the ways men can better serve God and their brothers and sisters."

Sullivan, the father of six children, said he had felt for a number of years that most of the men he knew spent their energy on work, and did not have much creativity or curiosity away from their jobs. Their family lives suffered, and they were even more inhibited in their relationship with God.

After doing a lot of reading and talking with other men, including the Rev. Clyde Glandon at Trinity Episcopal Church who had been having "lodge-type meetings" periodically, Sullivan said, he attended one of those meetings and began to share his ideas with Glandon and others. From those discussions, Brother House was organized.

Sullivan said Brother House will offer specific programs,

such as classes on male spirituality, seminars, workshops and an occasional conference. The facilities will be available for small group meetings and individual consultations. The reading room is available during business hours "for men to come by and have some quiet time for reading, listening to music or just unwinding," he said. "However, the focus of our efforts will be on the formation of small fellowship groups.

"We will also encourage men in their own church communities to form small sharing groups - preferably for men - with a commitment to love each other and bring Christ into their relationships." He emphasized, "We're not selling memberships (to Brother House), or pulling men away from their own churches."

At Brother House, Sullivan said, the focus of the group meetings will "depend on where the individuals are at that time. They may have father-son problems, spouse problems, their relationship to God - things men don't usually share together. We'll focus primarily on spiritual life, but you can't separate that from daily events."

But, Sullivan said, on the other hand, "If there are men

who have very healthy personal relationships with God; those without problems who have been blessed, then they have an obligation to also share with us."

One theme which Sullivan said "pops up every time you get men together," is a man's relationship with his father.

"A lot of counselors and psychologists . . . have noted that children perceive God in a sense the same way they see their parents. A lot of men in particular, have some unfinished business in being reconciled to their fathers."

The end result of the Brother House ministry, Sullivan said, "is to renew the church - the church in the broadest sense.

The church is never going to be renewed until men begin to participate in a dynamic way.

"Christ is the focus of this organization - and that's all. By getting men to focus on Christ through each other, our lives will be renewed. It crosses denominational lines."

For information about Brother House of Tulsa, call Sullivan at 592-3100.

Directors and advisers include:

The Rev. William Clark, pastor at Redeemer Covenant Church;

Dr. Ed Maillet, executive director of Catholic Charities;

Rita McCarthy, counselor at Family Christian Institute;

John O'Connor, attorney, involved in lay ministry at Christ

the King Church, Bill Yeakey Jr., accountant, involved in

lay ministry at Christ United Methodist Church, Glandon,

and Sullivan, who is a member of the Church of St. Mary.

NEWS

Brother House Spirituality Classes to Start Tuesday

Oct 4, 1992

Classes about men's spirituality will be offered by Brother

House of Tulsa, 1443 S. Norfolk Ave., a Christian men's

center. The program will begin at 7 p.m. Tuesday and continue

for five Tuesdays. To register or for more information call

Tim Sullivan at 592-3100.

Missionary to Speak at Woodlake Assembly of God

The Rev. Robert Cobb will speak at the 8:30 and 10:50 a.m.

services Sunday at Woodlake Assembly of God Church, 7100

E. 31st St. Cobb and his wife have spent more than 41 years

as missionaries. The Rev. James Eubanks will speak at 6

p.m. Sunday. He is the Oklahoma District Royal Ranger Commander.

The Royal Ranger organization is for youths. The church's

pastor, the Rev. H.A. Brummett, will be the keynote speaker

Monday through Thursday at a servicemen's retreat in Munich,

Germany, and will then travel to Moscow to teach in the

newly formed Assemblies of God Bible College Saturday through Oct. 15.

Discovery Weekend Set at First United Methodist

The Family Life and Singles Ministries of First United Methodist

Church will hold an Engaged Discovery Weekend beginning

at 7 p.m. Friday. Sessions will continue through Oct. 11

for engaged couples or those contemplating engagement. The

church is at 1115 S. Boulder Ave.

Central Church of Nazarene to Present Concert

Christian recording and television artist Gary McSpadden

will present a concert at 2:30 p.m. Sunday at Central Church

of the Nazarene, 7291 E. 81st St.

Putnam City Baptist Deacon to Sing at Gracemont

Mark Temple, a recording artist and deacon at the Putnam

City Baptist Church in Oklahoma City, will present a concert

at 7:30 p.m. Saturday at Gracemont Baptist Church, 145th

East Avenue and Broken Arrow Expressway. A citywide single-mingle

will follow. Admission is one or more canned goods for Tulsa

Baptist Ministry Center.

First United Methodist to Hold Blue Ribbon Bazaar

First United Methodist Church, 1115 S. Boulder Ave., will hold its annual Blue Ribbon Bazaar from 9 a.m. to 5 p.m. Saturday.

'Critical Issues Seminar' Set at First United Baptist

A "Critical Issues Seminar" is being held at 11 a.m. Saturdays during October at First United Baptist Church, 415 S. Memorial Drive, and at 11808 E. 121st St. North. The sessions are sponsored by the New Life Seventh-day Adventist Church and Owasso Seventh-day Adventist Church. For information call 664-0952 or 342-4761.

Brookside Baptist to Start New Singles Ministry

Bruce McDonald has been named to head a new singles ministry at Brookside Baptist Church, 3615 S. Peoria Ave. McDonald attended Southwestern Baptist Seminary in Fort Worth, Texas, and was the Oklahoma City community relations representative for Rapha Christian Psychiatric Hospitals. He is a first-year medical student at Oklahoma State University College of Osteopathic Medicine.

Organist to Give Recital at St. John's Episcopal

Organist Michael Bedford will present a recital at 4 p.m.

Sunday at St. John's Episcopal Church, 4200 S. Atlanta Place.

Group 4Him to Give Concert at Arrow Heights

The singing group 4Him will present a concert at 7 p.m.

Saturday at Arrow Heights Baptist Church, 3201 S. Elm Place

in Broken Arrow. For ticket information call the church office.

Former Pastor to Give Sermons at Woodland Hills

Former Tulsan James D. Watts Sr. will present a series of

sermons Sunday through Friday at the Woodland Hills Church

of Christ, 9119 E. 61st St. Services will be at 9:30 and

10:30 a.m. and 7:30 p.m. Sunday and 7:30 p.m. Monday through

Friday. Watts was minister of the East Central Church of

Christ before helping establish the Woodland Hills congregation

in 1977. He has been with the Stone Street Church of Christ

in Jonesboro, Ark., since 1989.

Bixby Christian Revival to Feature Kansas Minister

David Bycroft, preacher at the Tyro, Kan., Christian Church

for 23 years, will hold a revival at 7 p.m. Sunday through

Wednesday at the Bixby Christian Church.

Regency Park to Start Holding 2 Sunday Services

Regency Park Church of the Nazarene, 8707 E. 51st St., will

begin holding two Sunday morning worship services. Times will be 8:30 and 11 a.m.

Pair to Present Musical Introduction to Baha'i Faith

Dave and Helene Van Manen, of Beulah, Colo., will give a musical introduction to the Baha'i faith at 10:30 a.m. Sunday at the Tulsa Baha'i Center, 5424 S. Mingo Road.

Grace Fellowship to Present '60s Reunion Show

The Fine Arts ministry of Grace Fellowship, 9610 S. Garnett Road, will present "The Diary of Ann and Frank: A Sixties Reunion," at 8 p.m. Friday and Saturday. Dessert and coffee will be served at 7 p.m. The variety show will feature skits and songs from the '60s.

Series of Talks Set at Christ's Community Church

Christ's Community Church, 8321 E. 61st St., will present a three-week series at 10:45 a.m. Sundays. Titles include "God Talk," "What God Would Say to Murphy Brown," and "What God Would Say to Bart Simpson." The congregation meets in the Holland Hall School chapel, 5666 E. 81st St.

Metro Wesleyan to Start 5-Week Series on Family

Metro Wesleyan Church, 3901 E. 28th St., will begin a five-week series on "Family Spiritual Life," during the 9:30 a.m. Sunday service.

ORU Chamber Singers to Perform at Yale Avenue

The Oral Roberts University Chamber Singers will perform in the 10:45 a.m. service Sunday at Yale Avenue Christian

Church, 3616 S. Yale Ave.

Eastland Baptist to Open Family Center Friday

Eastland Baptist Church, 1835 S. 129th East Ave., will open

its new Family Center at 7 p.m. Friday. The former Plaza

3 Theater was acquired by the church last year and renovated

by church members. It will be used to show family and Christian

films each Friday. The Friday film will be "The Printing,"

a feature-length production by Unusual Films.

**Nomination of John M. O'Connor
United States District Court
For the Northern, Eastern and Western Districts of Oklahoma
Questions for the Record
Submitted July 18, 2018**

QUESTIONS FROM SENATOR WHITEHOUSE

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

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

Yes. If confirmed as a federal district court judge, I will faithfully adhere to my oath of office, which requires that I “administer justice without respect to persons, and do equal right to the poor and the rich.” 28 U.S.C. § 453. The impartiality which Justice Roberts describes is critical to the confidence litigants and counsel must have that they can get their “day in court.”

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

The Court’s first obligation is to read and follow the law. Often the law allows consideration of factors such as hardships on a party or others. Remedies can be fashioned in certain proceedings to avoid unnecessary consequences.

2. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance “to recognize what it’s like to be a young teenage mom, the empathy to understand what it's like to be poor or African-American or gay or disabled or old.”

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

Under the Oath of Office for Judges, 28 U. S. C., Section 453, a judge swears that the judge will administer justice without respect to persons, do equal right to the poor and to the rich, and faithfully and impartially discharge and perform all the duties incumbent upon the judge under the Constitution and laws of the United States. 28 U.S.C. § 453. The presentence report and responses particularly of defense counsel thereto, along with the adjustments, variances and departures allowed by the sentencing guidelines introduce opportunities to take into consideration specific circumstances relative to a person who is before the court as a criminal defendant.

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

Under the Oath of Office for Judges, 28 U. S. C., Section 453, I am duty bound to set aside my personal beliefs and apply the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented in each case. This I will faithfully do, without regard to my personal beliefs, which are grounded in my personal life experiences.

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

It is not appropriate for a judge to ignore an order from a superior court.

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

Under the Oath of Office for Judges, 28 U. S. C., Section 453, a judge swears that the judge will administer justice without respect to persons, do equal right to the poor and to the rich, and faithfully and impartially discharge and perform all the duties incumbent upon the judge under the Constitution and laws of the United States. This I will faithfully do.

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

Yes. If confirmed as a federal judge, my duty will be to apply the law to the specific facts and circumstances in each case, respecting each defendant who comes before me.

**Nomination of Michael O'Connor to be
United States District Court Judge for the Northern, Eastern, and Western
Districts of Oklahoma
Questions for the Record
Submitted July 18, 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?

I would refer to the factors considered in binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals when a case requires me to determine whether a right is fundamental and protected under the Fourteenth Amendment.

- 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. "The established method of substantive due process analysis has two primary features: First, the Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition. *E.g.*, *Moore v. East Cleveland*, 431 U.S. 494, 503 (1977) (plurality opinion). Second, the Court has required a "careful description" of the asserted fundamental liberty interest." *E.g.*, *Reno v. Flores*, 507 U.S. 292, 302. *Washington v. Glucksberg*, 521 U.S.702, 720-21 (1997). I would look to other binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals, as well as the decisions of other Court of Appeals for considerations found relevant or dispositive by those courts.

- c. Would you consider whether the right has previously been recognized by Supreme Court or circuit precedent?

Yes.

What about the precedent of a court of appeals?

Yes, particularly a precedent of the Tenth Circuit Court of Appeals.

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

Yes, particularly a precedent of the Tenth Circuit Court of Appeals.

What about whether a similar right had been recognized by Supreme Court or circuit precedent?

Yes, particularly a precedent of the Tenth Circuit Court of Appeals.

- 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. 552, 574 (2003) (quoting *Casey*).

Under the Oath of Office for Judges, 28 U. S. C., Section 453, I am duty bound to apply the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented in each case. This would include both the *Casey* and *Lawrence* decisions. This I will faithfully do. To the extent that this question calls for my personal belief on Supreme Court decisions relating to abortions or same sex marriage, under the Code of Conduct for United States Judges, Canon 3(A)(6), I should not make a public comment on the merits of a matter pending or impending in any court or upon which I may be called upon to make a decision.

What other factors would you consider?

I would consider the other factors considered in binding precedents of the U.S. Supreme Court and of the Tenth Circuit Court of Appeals.

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

The Fourteenth Amendment applies to race and gender.

- 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?

If confirmed, I am duty bound to follow the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented in each case. This I will faithfully do. Following the law would require that I start the analysis with the plain language of the Fourteenth Amendment, which does not limit equal protection to race.

- 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?

The judges on the district courts are required to apply the Constitution, the applicable laws and regulations, and the binding precedents of the U. S. Supreme Court and, in my case, the Tenth Circuit Court of Appeals to the facts presented in each case. How and when a case reaches the Supreme Court depends on many factors.

- 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, in *Obergefell*, concluded that the Fourteenth Amendment requires a State to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-State. The reasons for the decision are set forth in the Supreme Court's Opinion. To the extent that your question calls for my personal beliefs, under the Code of Conduct for United States Judges, Canon 3(A)(6), I should not make a public comment on the merits of a matter pending or impending in any court.

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

This question has not been answered by the Supreme Court. Once the issue is determined by the U. S. Supreme Court and of the Tenth Circuit Court of Appeals, I am duty bound to follow the decisions of those Courts. To the extent that this question is raised in a matter pending or impending in any court, or which could come before me, if I am confirmed, under the Code of Conduct for United States Judges, Canon 3(A)(6), I should not make a public comment thereon.

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

If confirmed, I am duty bound to follow the binding precedents of the U. S. Supreme Court, including *Griswold v. Connecticut*, 381 U.S. 479 (1965), and *Eisenstadt v. Baird*, 405 U.S. 438 (1972), and of the Tenth Circuit Court of Appeals. This I will faithfully do.

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

If confirmed, I am duty bound to follow the binding precedents of the U. S. Supreme Court, including *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*, 136 S. Ct. 22992 (2016), and of the Tenth Circuit Court of Appeals. This I will faithfully do.

- 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?

If confirmed, I am duty bound to follow the binding precedents of the U. S. Supreme Court, including *Lawrence v. Texas*, 539 U.S. 558 (2003), and of the Tenth Circuit Court of Appeals. This I will faithfully do.

- 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.

Under the Oath of Office for Judges, 28 U. S. C., Section 453, I am duty bound to set aside my personal beliefs and apply the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented in each case. This I will faithfully do, without regard to my personal beliefs.

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 to consider evidence that sheds light on our changing understanding of society?

As a district court judge, I would consider it appropriate to consider such evidence when binding Supreme Court and Tenth Circuit precedent allow consideration of such evidence.

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

When the issues in a case present questions calling for answers beyond the common knowledge of the trier of fact, expert testimony, scientific evidence and data, properly qualified, can be of assistance. With the court as the gatekeeper, such evidence must satisfy the requisite standard of reliability. The Reference Manual on Scientific Evidence is a resource for examining the role of expert testimony, scientific evidence and data in judicial analysis. If confirmed, I am duty bound to follow binding decisions of the Supreme Court and Tenth Circuit to determine whether sociological evidence, scientific evidence, and data should be considered in a particular case.

5. 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?

Whether or not *Brown* is consistent with originalism, it is inappropriate for a lower court judge to criticize a decision of the U. S. Supreme Court to which the lower court judge is bound. I have not studied the *Brown* decision in light of originalism or any other theory of constitutional construction. Under the Oath of Office for Judges, 28 U. S. C., Section 453, I am duty bound to follow the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals.

- 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 July 17, 2018).

The plain language of the U.S. Constitution generally had either a specific meaning or a reasonable range of meanings at the time it was adopted. I have been reviewing the federal and state constitutions, laws and court decisions for many years. I have also authored and litigated many contracts. I consider reliance on the public meaning of the plain language of a constitutional provision at the time of its adoption more reliable than speculation on the intentions of the author(s) of a constitution, law or court decisions which are not expressed in the text.

- 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?

No, but the public meaning of the plain language of a constitutional provision at the time of its adoption may be dispositive.

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

The public meaning of the plain language of a constitutional provision at the time of its adoption should not constrain its application decades later. The fundamental principles articulated in our constitution and its amendments are timeless and the arduous process by which the same are amendable respects and acknowledges that timelessness. The fundamental design of our system of government, calls for the popularly elected legislature to enact laws and the judiciary interpret the law. Delegating the authority to enact laws to life-tenured, unelected judges threatens the foundation of a representative democracy.

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

Please see my response to Question 5(b).

6. At a rally in 1989 marking the 16th anniversary of the Supreme Court's decision in *Roe v. Wade*, you are quoted by *Tulsa World*, a local newspaper, as saying "the Supreme Court will gradually chip away at the *Roe* case."

- a. Do you believe courts have since "chip[ped] away" at *Roe v. Wade*?

First, if confirmed, I am duty bound to set aside my personal beliefs and apply the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented in each case. This I will faithfully do, without regard to my personal beliefs. Second, at the time I made the referenced statement, it was a statement of future expectation, rather than a commentary on then-current decisions of the Supreme Court. I expected that state statutes attempting to impact the abortion right described in the *Roe* decision would continue to work their ways to the Supreme Court.

- b. Do you believe courts should "chip away" at *Roe v. Wade*?

Under the Oath of Office for Judges, 28 U. S. C., Section 453, I am duty bound to set aside my personal beliefs and apply the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented

in each case. This I will faithfully do, without regard to my personal beliefs. This question calls for my personal belief on the *Roe* decision. Under the Code of Conduct for United States Judges, Canon 3(A)(6), I should not make a public comment on the merits of a matter pending or impending in any court.

7. You list yourself as a member of Brother House of Tulsa, an organization that is restricted to men. However, you did not list your membership in Brother House in response to Question 11(b) of the Senate questionnaire, which asks whether a nominee is a member of an organization that presently or previously discriminated on the basis of race, sex, religion, or national origin.

a. Why did you omit Brother House of Tulsa in your answer to question 11(b), given that it does not admit female members?

Brother House of Tulsa did not fit within the response to Question 11(b) of the Senate questionnaire. Question 11(b) references the ABA's Commentary to its Code of Judicial Conduct statement regarding organizations that *invidiously* discriminate on the basis of race, sex, religion or national origin. Canon 2(C) relates only to membership in organizations that invidiously discriminate. Brother House did not engage in invidious discrimination.

First, I was never a member of this organization, but mentioned the organization out of an abundance of caution. Second, my involvement was insignificant. I attended two or three one-hour discussion group meetings. Third, my involvement was remote in time, between 1990 and 1992. Fourth, if the organization had members, I expect that it would have admitted women. A woman is listed as a director of the organization in the attached copy of a brochure from Brother House of Tulsa. Fifth, if the organization did not admit women, such policy did not constitute *invidious* discrimination. This was essentially a discussion group which focused on spiritual issues which men face. The organization ceased operations in 1994.

b. What responsibilities did you have as a director or adviser of the Brother House of Tulsa?

I had no responsibilities. I was not in the leadership of the organization. I was never a member, officer, director or employee of this organization. This was essentially a discussion group for men on spiritual issues. I attended two or three one-hour discussion group meetings between 1990 and 1992.

c. Did you ever take part in decisions that limited the ability of women to join the group?

No. Please see my response to Question 7(a).

DIRECTORS AND ADVISORS

Rev. William Clark is a Pastor at Redeemer Covenant Church, Tulsa, Oklahoma.

Rev. Clyde Glandon is Associate Rector of Trinity Episcopal Church, Tulsa, Oklahoma.*

Dr. Ed Maillet is Executive Director of Catholic Charities, Tulsa, Oklahoma.

Rita McCarthy is a counselor at Christian Family Institute, Tulsa, Oklahoma.*

John O'Connor is an attorney and involved in lay ministry at Christ the King Church.

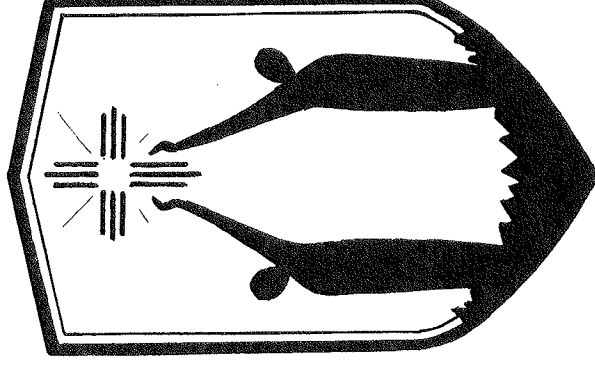
Tim Sullivan is an attorney and a member of the Church of St. Mary.*

Bill Yeakey, Jr., is an accountant and involved in lay ministry at Christ United Methodist Church.*

**Denotes Director*

BROTHER HOUSE OF TULSA

A CENTER FOR MALE SPIRITUALITY



**Norfolk Place
1443 S. Norfolk
Tulsa, Oklahoma 74120
(918) 592-3100**

There are many obstacles to spiritual growth which are peculiar to men. Men have been encouraged by our culture to concentrate on self-gratification and the acquisition of money and power. As a result of emphasis on independence and not showing vulnerability, men resist intimate relationships with others. All of these influences interfere with the ability of men to know and experience Christ and to follow God's will. Men must examine conventional notions of masculinity and arrive at a deeper, richer understanding of maleness and of the ways men can better serve God and their brothers and sisters.

PURPOSE

Brother House of Tulsa is a non-profit, ecumenical organization formed for the purpose of promoting the spiritual development of men in the Tulsa metropolitan area. The mission of the Brother House is to celebrate the presence of Christ in every brother.

SPECIFIC OBJECTIVES

The specific goals of the Brother House are:

1. Proclaiming the special need for promoting the spiritual development of men;
2. Gathering resources that focus on male spiritual formation;
3. Promoting the formation of men's sharing groups within individual church communities.

RESOURCES

1. Speakers who can address issues relating to male spirituality.
2. A library and reading room for sharing books, pamphlets, video tapes and cassette tapes on the subject of male spirituality.
3. Space for small discussions, night classes and private, individual discussions.
4. Seminars, conferences and retreats for men in the Tulsa metropolitan area.
5. The "Tulsa Brother" newsletter, presenting views on issues relating to male spirituality and containing information on resources and programs available to men in the Tulsa metropolitan area.

The Brother House hopes to offer counselling services for men in the future. Until such services can be provided by Brother House, the organization can make referrals to counsellors in the Tulsa area who share its Christian perspective.

God's plan is this: to make known his secret to his people, this rich and glorious secret which he has for all peoples. And the secret is this: Christ is in you, which means that you will share the glory of God.

Colossians 1:27

Questions for the Record for Mr. John O'Connor
Submitted by Senator Richard Blumenthal
July 18, 2018

1. You have listed yourself as a member of the Brother House of Tulsa. This organization does not admit women. Despite being specifically asked in your questionnaire whether you are or have been a member of an organization that discriminates on the basis of sex, you failed to indicate that this organization is restricted to men.

- **Why did you not include this organization in response to the question whether you are or have been a member of an organization that discriminates on the basis of sex?**

I was never a member of this organization. I do not know that it did not admit women. A woman is listed as a director of the organization in the attached copy of a brochure from Brother House of Tulsa. This was essentially a discussion group for men on spiritual issues. I attended two or three one-hour discussion group meetings between 1990 and 1992. The organization ceased operations in 1994.

- **Do you believe that an organization that does not admit women discriminates on the basis of sex?**

Under the Oath of Office for Judges, 28 U. S. C., Section 453, I am duty bound to set aside my personal beliefs and apply the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented in each case. This I will faithfully do, without regard to my personal beliefs.

- **Are there any other portions of your questionnaire in which you may have been less than forthcoming?**

I was not "less than forthcoming" on this or any other response.

2. You served as lead counsel on behalf of a church affiliate with a policy of barring LGBT individuals from leadership positions.

I do not know that such a policy exists.

- **Do you believe it is lawful for a church to have a policy of barring LGBT individuals from leadership positions?**

Under the Code of Conduct for United States Judges, Canon 3(A)(6), "A judge should not make public comment on the merits of a matter pending or impending in any court."

- **Do you believe that it is lawful to discriminate against people on the basis of their sexual orientation?**

Under the Oath of Office for Judges, 28 U. S. C., Section 453, I am duty bound to set aside my personal beliefs and apply the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented in each case. This I will faithfully do, without regard to my personal beliefs.

- **Do you believe that *Obergefell v. Hodges* was correctly decided?**

Obergefell is Supreme Court precedent binding on all lower courts. If confirmed, I will faithfully apply it and all other such precedents.

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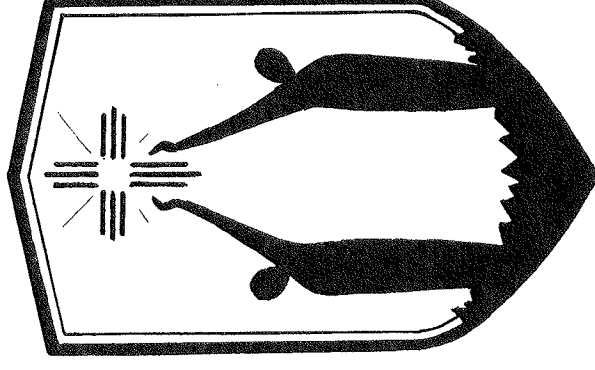
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Colossians 1:27

Nomination of John M. O'Connor
United States District Court for the Northern, Eastern, and
Western Districts of Oklahoma
Questions for the Record
Submitted July 18, 2018

QUESTIONS FROM SENATOR BOOKER

1. According to a Brookings Institute study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.¹ Notably, the same study found that whites are actually *more likely* to sell drugs than blacks.² These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.³ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁴

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

My duty will be to apply the law to the specific facts and circumstances in each case, respecting each defendant, without regard to the color of his or her skin.

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

My duty will be to apply the law to the specific facts and circumstances in each case, respecting each defendant, without regard to the color of his or her skin.

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.

My practice has focused on civil litigation. I have not had occasion to examine deficiencies in our criminal justice system. The statistics you cite should provoke further study of all the causes for apparently disparate treatment in our system.

¹ JONATHAN ROTHWELL, HOW THE WAR ON DRUGS DAMAGES BLACK SOCIAL MOBILITY, BROOKINGS INSTITUTE (Sept. 30, 2014), available at <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/>.

² *Id.*

³ ASHLEY NELLIS, PH.D., THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENTENCING PROJECT 14 (June 14, 2016), available at <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

⁴ *Id.* at 8.

2. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell an average of 14.4 percent.⁵ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an 8.1 percent average.⁶

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

The particular statistics you cite would support the conclusion that there is a direct link. I have not studied the issue and would want additional information to support any opinion I would form on this issue.

- b. Do you believe there is a direct link between decreases of a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

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

3. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.

Yes.

4. The color of a criminal defendant plays a significant role in capital punishment cases. For instance, people of color have accounted for 43 percent of total executions since 1976 and 55 percent of those currently awaiting the death penalty.⁷

- a. Do those statistics alarm you?

Yes, but, to form an opinion, I would have to see more information, such as a study demonstrating disparate sentencing following roughly equivalent crimes by defendants of generally similar criminal histories.

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

My duty will be to apply the law to the specific facts and circumstances in each case, respecting each defendant, without regard to the color of his or her skin.

⁵ THE PEW CHARITABLE TRUSTS, NATIONAL IMPRISONMENT AND CRIME RATES CONTINUE TO FALL 1 (Dec. 2016), available at http://www.pewtrusts.org/~media/assets/2016/12/national_imprisonment_and_crime_rates_continue_to_fall_web.pdf.

⁶ *Id.*

⁷ The American Civil Liberties Association, Race and the Death Penalty, <https://www.aclu.org/other/race-and-death-penalty> (Last visited June 13, 2018).

Under the Oath of Office for Judges, 28 U. S. C., Section 453, I am duty bound to set aside my personal beliefs and apply the referenced sentencing guidelines and the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented in each case. This I will faithfully do, without regard to my personal beliefs.

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

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

**Questions for the Record from Senator Kamala D. Harris
Submitted July 18, 2018
For the Nominations of**

Stephen Clark, to the U.S. District Court for the Eastern District of Missouri

John O'Connor, to the U.S. District Court for the Northern, Eastern, and Western Districts of Oklahoma

Joshua Wolson, to the U.S. District Court for the Eastern District of Pennsylvania

1. District court judges have great discretion when it comes to sentencing defendants. It is important that we understand your views on sentencing, with the appreciation that each case would be evaluated on its specific facts and circumstances.

a. What is the process you would follow before you sentenced a defendant?

Review the probation officer's presentence report.
Review the responses of counsel for the defendant and the prosecutor to the probation officer's presentence report.
Determine the applicable sentencing guideline.
Calculate the offense level under Chapter 2.
Re-calculate the offense level after any adjustments allowed under Chapter 3.
Determine the criminal history category.
Determine the guideline sentencing range, using the table.
Consider any grounds for a departure or variance from the applicable guideline range.

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

By reliance on the above process.

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

When the guidelines permit departure.

d. Judge Danny Reeves of the Eastern District of Kentucky – who also serves on the U.S. Sentencing Commission – has stated that he believes mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing.¹

i. Do you agree with Judge Reeves?

¹ <https://www.judiciary.senate.gov/imo/media/doc/Reeves%20Responses%20to%20QFRs1.pdf>

I do not have an opinion on this issue at this time. I will follow the sentencing guidelines and exercise the discretion I am allowed thereunder. Whether I agree with Judge Reeves calls for an expression of my personal beliefs on the issue. Under the Oath of Office for Judges, 28 U. S. C., Section 453, I am duty bound to set aside my personal beliefs and apply the referenced guidelines and the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented in each case. This I will faithfully do, without regard to my personal beliefs.

ii. Do you believe that mandatory minimum sentences have provided for a more equitable criminal justice system?

See my response above to section 1(d)(i).

iii. Please identify instances where you thought a mandatory minimum sentence was unjustly applied to a defendant.

My practice has focused on civil litigation. I am not in a position to opine from my practice or personal experience on the application of a mandatory minimum sentence in a particular case.

iv. Former-Judge John Gleeson has previously criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.² If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:

1. Describing the injustice in your opinions?

Yes, when appropriate.

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

Yes, when appropriate.

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

Yes, when appropriate.

² See, e.g., “Citing Fairness, U.S. Judge Acts to Undo a Sentence He Was Forced to Impose,” NY Times, July 28, 2014, <https://www.nytimes.com/2014/07/29/nyregion/brooklyn-judge-acts-to-undo-long-sentence-for-francois-holloway-he-had-to-impose.html>

- e. **28 U.S.C. Section 994(j) directs that alternatives to incarceration are “generally appropriate for first offenders not convicted of a violent or otherwise serious offense.” If confirmed as a judge, would you commit to taking into account alternatives to incarceration?**

Yes, to the extent such alternatives are permitted under the law.

2. Judges are one of the cornerstones of our justice system. If confirmed, you will be in a position to decide whether individuals receive fairness, justice, and due process.

- a. **Does a judge have a role in ensuring that our justice system is a fair and equitable one?**

Absolutely. More than a role, a judge has a duty to do so. Under the Oath of Office for Judges, 28 U. S. C., Section 453, a judge swears that the judge will administer justice without respect to persons, do equal right to the poor and to the rich, and faithfully and impartially discharge and perform all the duties incumbent upon the judge under the Constitution and laws of the United States.

- b. **Do you believe that there are racial disparities in our criminal justice system? If so, please provide specific examples. If not, please explain why not.**

My duty will be to apply the law to the specific facts and circumstances in each case, respecting each defendant, without regard to the color of his or her skin. This question calls for an expression of my personal beliefs, or for a comment on public policy. Under the Oath of Office for Judges, 28 U. S. C., Section 453, I am duty bound to set aside my personal beliefs and apply the binding precedents of the U. S. Supreme Court and of the Tenth Circuit Court of Appeals to the facts presented in each case. This I will faithfully do, without regard to my personal beliefs.

3. If confirmed as a federal judge, you will be in a position to hire staff and law clerks.

- a. **Do you believe that it is important to have a diverse staff and law clerks?**

Yes.

- b. **Would you commit to executing a plan to ensure that qualified minorities and women are given serious consideration for positions of power and/or supervisory positions?**

I will commit to considering qualified minorities and women for positions over which I have control or input.