

**Nomination of Colm Connolly  
to the United States District Court for the District of Delaware  
Questions for the Record February 21, 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 lower courts to depart from Supreme Court precedent.

**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?**

As a nominee for the district court, I have not had occasion to study and have no opinion as to whether it would ever be proper for a circuit judge to question Supreme Court precedent in a concurring or dissenting opinion.

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

As a nominee for the district court, I would defer to the rules and precedent of the particular circuit court in question as to when it is appropriate for that circuit court to overturn its own precedent.

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

Because a district court is bound by Supreme Court precedent, as a nominee for the district court, I believe it would be inappropriate for me to express a view or opinion as to when it would be appropriate for the Supreme Court to overturn its own precedent.

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

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

**“superprecedent”?**

I am not familiar with the concepts of “super-stare decisis” or “super-precedent.” I agree that *Roe v. Wade* is binding Supreme Court precedent.

**b. Is it settled law?**

Yes.

3. According to your Senate Judiciary Questionnaire (SJQ), from 1994 to 1996 you served as the president of the board of trustees of an entity called “Mom’s House, Inc. of Wilmington.” (SJQ at p. 4)

**a. What services did you provide to this organization in your capacity as president of the board of trustees?**

I ran the board meetings, helped with fundraising and strategic planning, participated in the hiring of staff, participated in the negotiations for the purchase of a day-care center, and helped build and clean the day-care facility.

**b. How did you choose to join the board of this organization?**

I cannot recall how I came to serve on the board. I know that I chose to become a board member because I believed in the organization’s mission.

**c. At the time that you served on the board, what was your understanding of the work that the organization performed?**

My understanding was that Mom’s House provided free day-care and support to unwed mothers so that they could complete their education.

4. Mom’s House, Inc. of Wilmington is affiliated with a national organization also called Mom’s House, which is headquartered in Johnstown, Pennsylvania. According to the organization’s website, “Mom’s House® offers single parents, facing an unplanned pregnancy, with a viable, practical alternative to the despair of abortion and the tragedy of welfare.” (<http://www.momshouse.org/momsstory.html>) And a page on the organization’s website entitled “Joys and Sorrows” states: “What sorrow there is in the immense unplanned-pregnancy and abortion tragedy in this country!” (<http://www.momshouse.org/joyssorrows.html>)

**a. At the time you chose to join the board of Mom’s House, Inc. of Wilmington, were you aware of the organization’s mission with respect to unplanned pregnancies and abortion?**

I was aware that, by providing free day-care, Mom’s House offered some single women with unplanned pregnancies an alternative to abortion.

**b. At the time you served on the organization's board, were you aware of the statements quoted above?**

No.

**c. Do you agree with these statements?**

As a nominee for the district court, I think it would be inappropriate for me to answer this question under the judicial canons.

5. 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.

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

I received these questions by email from the Office of Legal Policy on February 21, 2018. I reviewed the questions, personally drafted answers to them, and emailed my responses to the Office of Legal policy on February 23, 2018.

**Nomination of Colm Felix Connolly  
to the United States District Court  
For the District of Delaware  
Questions for the Record Submitted February 21, 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?**

I agree with the metaphor. Judges are to interpret and apply the law to the facts before them. They are not to act as advocates of a cause (*i.e.*, a pitcher or batter) and thus are not to rule based on their own predilections or policy preferences.

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

As a general matter, the practical consequences of a particular ruling should play no role in a judge’s rendering of a decision. A judge is bound by the law, regardless of whether the judge likes the law or the outcomes that result from the application of the law. The exception to this general rule occurs when the law itself requires the judge to consider the practical consequences of a decision. Thus, for example, in deciding whether to grant a motion for an injunction, the judge is required to consider, among other factors, whether the movant would suffer irreparable harm if the injunction were not granted.

- 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?**

As a general rule, empathy for a litigant should not play a role in a judge’s decision-making, as a judge is bound by oath to be impartial and “administer justice without respect to persons, and do equal right to the poor and to the rich.”

*See* 28 U.S.C. § 453. I can think of two circumstances, however, where empathy should play some role in a judge’s decision-making. First, I think it is appropriate under the sentencing factors set forth in 18 U.S.C. § 3553 for a judge to try to understand and consider the feelings, thoughts, and experiences of the defendant and the victims of the defendant’s crimes. Second, I think a sense of empathy is important to the extent it enables a judge to fulfill the judge’s obligation to be respectful to the parties and lawyers before the court and to listen carefully to the witnesses and lawyers who appear in court.

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

Although it is perhaps impossible to divorce personal life experiences from the thinking process, a judge should strive to ensure that his or her life experiences play no role in making decisions. A judge should be impartial and should apply the law to the facts before the court without regard to the judge's own biases, predilections, or policy preferences.

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

No.

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

My professional record and volunteer service should provide assurance for the Committee and the American people that I would fulfill the oath of a federal judge to "administer justice without respect to persons, and do equal right to the poor and to the rich." *See* 28 U.S.C. §453.

I have spent the majority of my career working as a federal prosecutor. In that role, I dedicated myself to protecting the rights of all of Delaware's citizens, regardless of their wealth. As a private practitioner, I have spent substantial time and effort representing individuals who could not afford a lawyer on a *pro bono* basis. My *pro bono* clients included, among others, a teenager from Cameroon who sought and won asylum, a house painter whom a sophisticated lawyer had refused to pay for extensive work done on the lawyer's house, and dozens of women who suffered from domestic abuse and sought court orders to prevent their abusers from having contact with them.

In addition to my legal work, I have served on a number of charitable boards, including the board of the Ministry of Caring, an organization dedicated to providing comfort and aid to the homeless, destitute, and those who suffer from AIDs. I have also volunteered every other Monday morning since 2009 at a dining hall run by the Ministry of Caring that serves free meals to the homeless.

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

I believe that such tactics are not acceptable. If I were fortunate enough to be confirmed, I would make clear to litigants that such tactics are not acceptable and I would actively manage my cases to ensure that parties and lawyers who pursue such tactics suffer an appropriate consequence, such as monetary sanctions or adverse evidentiary rulings.

**Questions for the Record for Colm F. Connolly**  
**From Senator Mazie K. Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees for a lifetime appointment to the federal bench, I am asking nominees to answer the following two questions:

- a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

No.

- b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

No.

2. In a 2008 article in *The News Journal*, as the United States Attorney for the District of Delaware, you defended use of what is commonly referred to as a “stop-and-frisk” policing strategy, after a district court found its use “troubling” in a case that your office handled. Such strategies have been criticized for being used in a racially discriminatory manner.

In an interview for the 2008 article, I took exception to the district court judge’s ruling that the police officers in question violated the defendant’s Fourth Amendment rights and to the statement by the court in its opinion that the officers’ conduct was “troubling.” The district court’s opinion was subsequently reversed on appeal by the United States Court of Appeals for the Third Circuit. *See United States v. Smith*, 575 F.3d 308, 311 (3d Cir. 2009).

- a. Are you aware of the data and cases showing how stop-and-frisk policies have been used in a racially discriminatory manner?**

I am aware that in 2013 a federal district court judge in New York held that a stop-and-frisk policy employed by the New York Police Department was unconstitutional.

- b. Given the risk of being used in a discriminatory manner, do you still support the use of “stop-and-frisk” as a policing strategy?**

Because “stop-and-frisk” tactics by Delaware police have frequently been an issue in criminal cases and could be an issue in future criminal cases in the District Court of Delaware, I believe the Judicial Canons, and particularly Canon 3(a)(6), preclude me from answering this question.

3. As Chair of the part of the Delaware Access to Justice Commission’s Policing Strategies Subcommittee, you noted that: “[W]e’ve got statistics that show a disproportionate number of

African Americans in the criminal justice system, but the cause of that has not been determined factually—and that’s one of the main missions of this commission—to find out what are the causes of that.”

**a. What do you think are practical ways judges can address this disparity?**

Although, as evidenced by my role in the Delaware Access to Justice Commission, I believe that the disproportionate number of African-Americans in Delaware’s criminal justice system is very troubling and requires both study and the development of policies to address it, I do not believe it would be appropriate for a federal district court judge to engage in policymaking from the bench. I believe that judges are required to treat fairly and impartially all criminal defendants, regardless of a defendant’s race.

**b. How do you think your work on the Commission will affect your practices and decisionmaking as a federal judge, if you are confirmed?**

In my work with the Commission, I saw how participants in, and observers of, the same civilian-police interaction sometimes viewed that interaction very differently. That experience drove home for me the importance of listening carefully to all sides when trying to determine exactly what occurred during a civilian-police interaction.



**Nomination of Colm F. Connolly to the  
United States District Court for the District of Delaware  
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**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.<sup>1</sup> Notably, the same study found that whites are actually *more likely* to sell drugs than blacks.<sup>2</sup> 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.<sup>3</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>4</sup>

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

I believe that, unfortunately, racial bias still exists in our country and that there are actors in the criminal justice system who harbor racist views. I have long believed that we must ensure that racial bias does not infect the criminal justice system. To that end, in 2014 I accepted an appointment by the Delaware Supreme Court to serve on Delaware's Access to Justice Commission, the purpose of which is to address and research the reasons for the disproportionate number of African Americans in Delaware's criminal justice system.

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

I believe that African-Americans and Hispanic Americans are disproportionately represented in our nation's jails and prisons.

- 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.

In connection with my service on Delaware's Access to Justice Commission, I participated in panel discussions that addressed the issue of implicit bias.

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<sup>1</sup> 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/>.

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

<sup>3</sup> 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/>.

<sup>4</sup> *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.<sup>5</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an 8.1 percent average.<sup>6</sup>

- 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.

I believe that crime rates are influenced by a number of factors, including the incarceration of individuals convicted of crimes. I have not studied and do not know if there is a direct link between increases of a state's incarcerated population and decreased crime rates in that state.

- 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.

As noted in my response to question 2.a., I believe that crime rates are influenced by a number of factors, including the incarceration of individuals convicted of crimes. I have not studied and do not know if there is a direct link between decreases of a state's incarcerated population and decreased crime rates in that state.

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.

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<sup>5</sup> 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](http://www.pewtrusts.org/~media/assets/2016/12/national_imprisonment_and_crime_rates_continue_to_fall_web.pdf).

<sup>6</sup> *Id.*

**Questions for the Record from Senator Kamala D. Harris**  
**Submitted February 21, 2018**  
**For the Nominations of**

**Colm Felix Connolly, to be a judge on the United States District Court for the District of Delaware**

**Maryellen Noreika, to be a judge on the United States District Court for the District of Delaware**

**William Frederic Jung, to be a judge on the United States District Court for the Middle District of Florida**

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

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

I would follow the rules and procedures required by the relevant statutes, binding case law, the Sentencing Guidelines, and the Federal Rules of Criminal Procedure. I would adhere in particular to the three-step process suggested by *Gall v. United States*, 552 U.S. 38 (2007) and confirmed in *United States v. Lofink*, 563 F.3d 232 (3d Cir. 2009). In engaging in that process, I would review carefully the Presentence Report and the relevant filings made by the government and the defendant. I would consult with the presentence officer, review the applicable sentencing guidelines and the case law interpreting and applying those guidelines, consider the factors set forth in 18 U.S.C. §3553(a), read and listen to any victim statements, and read and listen to the presentations made by counsel, the defendant, and other relevant parties. I would also consider any information collected by the Sentencing Commission about sentences received by similarly situated defendants in other cases.

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

Please see my response to Question 1(a).

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

In the Third Circuit, in which the District of Delaware lies, “a departure is based on reasons provided by the Guidelines themselves.” *United States v. Lofink*, 564 F.3d 232, 238 n. 14 (3d Cir. 2009). Accordingly, it would be appropriate to depart from the guideline sentencing range when a departure is warranted by one

or more factors set forth in the guideline commentary or policy statements in the *Guidelines Manual*.

- 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.<sup>1</sup>**

**i. Do you agree with Judge Reeves?**

The legislation of mandatory minimum sentences lies exclusively with Congress and therefore I believe it would be inappropriate for me under the Judicial Canons to express an opinion as to the merits or non-merits of mandatory minimum statutes.

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

Please see my response to Question 1(d)(i).

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

Please see my response to Question 1(d)(i).

**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.<sup>2</sup> 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?**

The power to legislate mandatory minimum sentences lies exclusively with Congress. The power to charge individuals with crimes punishable by mandatory minimum sentences lies exclusively with the Executive Branch. The separation of powers is a fundamental tenet of our constitutional framework and judges are not engage in political questions. Accordingly, as a general matter, a district court judge should refrain from including in opinions criticisms that encroach on matters that fall exclusively

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

<sup>2</sup> 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>

within the constitutional powers of Congress and the Executive branches of our government. Nonetheless, if I were fortunate enough to be confirmed and was required by statute to impose in a particular case what I considered to be a manifestly unjust sentence, I could envision describing that injustice in an opinion.

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

The power to charge individuals with crimes punishable by mandatory minimum sentences lies exclusively with the Executive Branch, and judges should be careful not to encroach upon the authority afforded exclusively to the Executive Branch by the Constitution. That said, in an extreme case and only in the presence of defense counsel if the case were pending before me, I could envision discussing with a representative of the U.S. Attorney's Office a particular charging decision.

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

The power to grant clemency lies exclusively with the Executive Branch, and judges should be careful not to encroach upon the authority afforded exclusively to the Executive Branch by the Constitution. That said, in an extreme case, I could envision discussing with a representative of the U.S. Attorney's Office possible considerations of clemency for a sentenced defendant.

**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.

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

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

Yes. A judge is bound by oath to be impartial and "administer justice without respect to persons, and do equal right to the poor and to the rich."  
*See* 28 U.S.C. §453.

- 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.**

Yes. I know, for example, that in my home state of Delaware there are a disproportionately high number of African Americans in the criminal justice system. In 2014, I accepted an appointment by the Delaware Supreme Court to serve on Delaware's Access to Justice Commission, the purpose of which is to address and research the reasons for the disproportionate number of African Americans in Delaware's criminal justice system.

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

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

Yes.

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

Yes..