

Senator Dick Durbin
Written Questions for John Nalbandian, Dominic Lanza, and Joseph Hunt
March 14, 2018

For questions with subparts, please answer each subpart separately.

Questions for Dominic Lanza

1. You say in your questionnaire that you joined the Federalist Society in 2015, which also appears to be the year that you became the Chief/Executive Assistant U.S. Attorney in the District of Arizona. **Why did you decide to join the Federalist Society that year?**

In the summer of 2015, a friend of mine who was a board member of the Phoenix lawyers' chapter of the Federalist Society asked if I would be interested in serving, in a personal capacity, as the co-presenter during the chapter's annual "Supreme Court Review" event. (As noted in my questionnaire, I frequently have been asked by other groups, including the Arizona State Bar, the Federal Bar Association, local schools, and various trade associations, to speak on legal topics.) I accepted the invitation and ended up greatly enjoying the event. I also enjoyed the intellectual stimulation of discussing current developments in the law with other attendees, who approached these issues from many different viewpoints and perspectives. As a result, I began regularly attending other Federalist Society programming events in Phoenix. I was also asked to serve as the co-presenter during the 2016 iteration of the "Supreme Court Review" event. Once again, I enjoyed this experience.

2. You published a law review article in 2008 entitled "Global Warming Tort Litigation: The Real Public Nuisance." **Do you believe, as a matter of scientific evidence, that human activity is causing the climate to change in ways that may be harmful to human health and our environment?**

It would be inappropriate for me, as a judicial nominee, to offer an opinion on this topic because it addresses an issue that is the subject of pending or reasonably anticipated litigation. I would further note that the 2008 article does not express an opinion on this topic.

3. **In your view, is there any role for empathy when a judge is considering a criminal case – empathy for the victims of the alleged crime, for the defendant, or for their loved ones?**

A judge's role in a criminal case is to fairly apply the law regardless of the judge's personal views. That said, I am well aware from my decade of experience as a federal prosecutor that 18 U.S.C. § 3553 contains provisions that may call for a judge to consider empathy as part of the sentencing calculus. For example, judges are required by subdivision (a)(1) to consider the "history and characteristics of the defendant." This factor could lead a judge to consider imposing a lower sentence if the defendant's crime represented an aberration from an otherwise law-abiding life. Such an approach—considering the entirety of the defendant's

life instead of focusing narrowly and exclusively on the circumstances of the crime at issue—can be characterized as a statutorily-mandated exhibition of empathy.

Separately, I am familiar from my work as a federal prosecutor with the Crime Victims' Rights Act, which is codified at 18 U.S.C. § 3771. Subdivision (b)(1) of this statute provides that, before excluding a victim from a public court proceeding, a judge “shall make every effort to permit the fullest attendance possible by the victim and shall consider all reasonable alternatives to the exclusion of the victim from the criminal proceeding.” This, too, can be characterized as a statutorily-mandated exhibition of empathy—recognizing the profound impact that crimes may have on victims and ensuring the needs and rights of victims aren't overlooked during the criminal process.