

Response of Beverly R. O'Connell
Nominee to be United States District Judge for the Central District of California
to the Written Questions of Senator Amy Klobuchar

- 1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

Response: Over the course of my seven years as a judge, my judicial philosophy has been to be prepared, to respect all litigants who enter my courtroom, and to fairly and impartially judge the cases that come before me. It is my role to apply the law to the facts in a fair and impartial way and decide only the issues properly before the court.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: I have, over the course of my seven-year judicial career, earned the reputation of being fair and impartial to both sides of every dispute. If confirmed, I will continue to fairly and impartially decide cases, regardless of the political beliefs of the litigants and regardless of whether the litigants are plaintiffs, defendants, rich or poor.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: Stare decisis is a bedrock principle of our justice system. Courts are bound to follow all applicable precedent. The Supreme Court and Circuit Courts may re-visit their precedent in limited circumstances. District courts remain bound by all applicable precedent and if confirmed, I would continue to follow all applicable decisional authority.

Response of Beverly R. O'Connell
Nominee to be United States District Judge for the Central District of California
to the Written Questions of Senator Chuck Grassley

- 1. You indicated in your questionnaire that you were unable to find notes, transcripts, or recordings for your June 1, 2005 panel discussion on misconceptions of the United States Patriot Act. Could you provide the committee with a more detailed description of the points covered in that presentation?**

Response: The primary point of the presentation was that the United States Patriot Act did not provide unfettered discretion to law enforcement to intercept telephone conversations. The United States Patriot Act provided for judicial oversight and required applications before a judge in order to intercept telephone conversations.

- 2. You indicated that you were involved in Fetchik v. Circuit City Stores, Inc. as counsel for Circuit City. You wrote that "Circuit City retained new counsel prior to disposition." Please explain the circumstances of why new counsel was retained.**

Response: I was an associate at the time and was not included in those discussions. As a result, I do not know why new counsel was retained.

- 3. The majority of your career has been spent handling criminal cases. If confirmed, how will you prepare yourself to preside over the complicated civil matters that would come before you?**

Response: As an associate at Morrison & Foerster, I participated in complicated civil matters. If confirmed, I would have to re-familiarize myself with the relevant areas of law, including reviewing the Federal Rules of Civil Procedure, but presiding over complicated matters transcends subject matter. I would, as I do in criminal matters, work with the parties to identify the issues truly in dispute, set clear timelines for resolving those issues, make myself available to resolve disputes and rule clearly so that the parties understand the rulings. I am prepared to work hard to educate myself.

- 4. In October, 2012 you taught a class on California's Basic Felony Sentencing. One slide of your presentation was entitled "What Doesn't Work" and listed several factors that do not help prisoners from reoffending. One factor listed is "Drug education programs". Will you please explain why, in your opinion, drug education programs do not work?**

Response: This slide regarded "Evidence Based Principles" which courts in the State of California are implementing to focus limited resources on those who have the highest rate of recidivism. The point I was making in the presentation was that the studies have shown that drug education, when it consists solely of lectures, is not extremely effective. The studies have shown that a combination of factors is required, including active participation by the offender.

5. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is to fairly and impartially apply the law to the facts without regard to personal views. I believe that I possess that attribute and that the litigants who come before me believe that I will fairly and impartially render my decisions.

6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge should be even-tempered, respectful, free from bias, open-minded, courteous, patient and decisive. I believe that I meet this standard.

7. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: I believe that it is essential that a judge follow the precedents of the higher courts faithfully, regardless of personal beliefs. If confirmed, I will continue to follow all applicable precedents, regardless of my personal views.

8. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: I would apply the canons of statutory construction. First, I would start with the plain language of the provision in question. Only if the provision was ambiguous would I go any farther in the analysis. If it was ambiguous, I would examine analogous precedent from the Supreme Court and the Ninth Circuit. If those courts did not provide any guidance I would then turn to other Circuit and District Courts concerning the statute.

9. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: I would follow the Supreme Court or the Court of Appeals without regard to my personal opinion.

10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: One must first determine whether the case could be decided without reaching the constitutional issue. If the matter could be resolved without reaching the constitutional issue, it should be decided on that basis. If the dispute could not be resolved without addressing the question of constitutionality, the statute then enjoys a presumption of constitutionality. A statute should only be found unconstitutional if Congress clearly exceeded its powers or if the statute clearly violates the Constitution. In analyzing the constitutionality of a statute, a court should look to apply all precedents from higher courts.

11. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution?

Response: No.

12. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: As a judge in one of the busiest courts in the United States, I have a heavy docket of criminal cases. In addition, I supervise three courthouses and 24 judges. I frequently meet with judges to discuss efficient case management techniques. I would continue to employ the techniques I have found successful. I would assess the complexity of each case, prepare myself for each matter prior to the hearing, set realistic deadlines and trial dates, work with the parties to narrow the issues in dispute, explore settlement, make myself available to rule upon disputed matters, and rule promptly and clearly to avoid re-litigating issues. If confirmed, I intend to continue these practices.

13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: I believe that it is my responsibility to actively manage my docket. I would continue to employ the case management techniques discussed above to control the pace and conduct of litigation in my court.

14. Please describe with particularity the process by which these questions were answered.

Response: On December 20, 2012, I received these questions. On that same day, I responded to the questions and submitted them to a representative of the Department of Justice. On December 21, 2012, I finalized my responses with a representative from the Department of Justice. I then gave my authorization to forward the responses.

15. Do these answers reflect your true and personal views?

Response: Yes.

Response of Beverly R. O'Connell
Nominee to be United States District Judge for the Central District of California
to the Written Questions of Senator Tom Coburn, M.D.

- 1. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No.

a. If not, please explain.

Response: The principles of the Constitution do not change over time. Only through the amendment process does the Constitution change.

- 2. Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

Response: No.

a. If not, please explain.

Response: A lower court confronted with a Constitutional issue must follow all binding precedent. The principles of the Constitution don't change over time.

- 3. What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

Response: First, I would examine the plain language of the statute. If the plain language of the statute can be interpreted as constitutional, that would end the inquiry. If not, I would then look to apply precedent from the Supreme Court, the Ninth Circuit, and other Circuit and District Courts (in that order) concerning the statute. If that did not resolve the issue, I would then look to apply precedent of analogous statutes from the Supreme Court, and the Ninth Circuit.

- 4. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter and you are obliged to follow it, but do you agree with Justice Kennedy’s analysis?**

Response: I have not read *Roper v. Simmons*, 543 U.S. 551 (2005) or analyzed Justice Kennedy’s opinion. Regardless of whether I agreed or disagreed with Justice Kennedy’s analysis, I would follow all applicable Supreme Court precedent if I were confirmed.

- a. When determining what the “evolving standards of decency” are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states, in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries. Do you believe either standard has merit when interpreting the text of the Constitution?**

Response: Foreign law should not be used to interpret the Constitution. As a district court judge, I would follow all applicable Supreme Court and Circuit Court authority.

- i. If so, do you believe one standard more meritorious than the other? Please explain why or why not.**

Response: Not applicable.

- 5. In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: No.

- a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: Not applicable.

- b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

Response: No. The bedrock of our American judicial system is stare decisis, relying upon our binding precedent in the interpretation of our laws.