Nomination of Roy Altman to the United States District Court for the Southern District of Florida
Questions for the
Record June 27, 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?

   Never.

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

   No.

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

   In the Eleventh Circuit, district court decisions are not binding on other district courts within the same district. *See, e.g.*, *Fishman & Tobin, Inc. v. Tropical Shipping & Const. Co.*, 240 F.3d 956, 965 (11th Cir. 2001) ("Unlike circuit court panels where one panel will not overrule another . . . district courts are not held to the same standard. While the decisions of their fellow judges are persuasive, they are not binding authority. As a result, the district court cannot be said to be bound by a decision of one of its brother or sister judges.") (citation omitted). A district court is therefore free to disagree with a prior district court precedent whenever it becomes clear that the prior precedent was wrong.

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

   The Supreme Court has reserved to itself the prerogative of deciding when to overturn its own precedents. *See, e.g., Crawford v. Washington*, 541 U.S. 36 (2004); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Agostini v. Felton*, 521 U.S. 203 (1997). As a private lawyer and a nominee to a lower federal court, I would not presume to opine on when that prerogative was, or was not, appropriately exercised.

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"?

From the perspective of a lower court judge, all Supreme Court decisions are binding. The holding of *Roe* has been upheld in subsequent cases. *See, e.g.*, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992); *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016). If I were fortunate enough to be confirmed, I would fairly and faithfully apply these precedents.

b. Is it settled law?

Yes.

3. 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?

Yes.

4. In Justice Stevens's dissent in *District of Columbia v. Heller* he wrote: "The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States.

Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms."

a. Do you agree with Justice Stevens? Why or why not?

As a nominee to a lower federal court, it would be inappropriate for me to provide my personal opinions about specific Supreme Court decisions or the dissents from those decisions. That is particularly true for matters that could come before me as a judge. *See* Code of Conduct for United States Judges, Canon 3(A)(6) *cf*. Canon 1, Commentary ("The Code is designed to provide guidance to judges and nominees for judicial office."). That said, *Heller* is controlling Supreme Court precedent, and, if I were fortunate enough to be confirmed, I would follow it and all other Supreme Court and Eleventh Circuit precedents.

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

In *Heller*, the Supreme Court pointed out that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." 554 U.S. 570, 626–27 (2008). The Court "also recognize[d] another important limitation on the right to keep and carry arms": "the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'" *Id*. at 627.

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

Please see my answer to Question 4.a., *supra*.

5. In 2016, you were interviewed by the legal journal *Judicature*. In your interview, you discussed the Supreme Court's holdings in *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal*. Together, these cases — which are frequently referred to as *Twiqbal* — heightened the pleading standard in civil cases. You claimed in relevant part that "whether we agree with *Twiqbal* or not — and reasonable minds can differ about this — the process by which the Court arrived at its holdings and the sequence of events that followed, in my view, served, rather than detracted from, the administration of justice." (*Plausibly a Plus? Two Attorneys Discuss the* Twiqbal *Effect*, JUDICATURE, Autumn 2016)

a. Please explain what you meant.

My views on this subject were set out in the article. In short, however, I meant precisely what I said on the last page of the article:

> I think it is relatively unhelpful to argue about whether *Twiqbal* has

> been "good" or "bad" for the administration of justice. They are decisions of the Supreme Court, and they are the law of the land. But I am not at all persuaded that judges—or justices—should be all that concerned with notional judgments of what may or may not be optimal for a given society at a given time. After all, we are, as John Adams famously said, "a government of laws, and not of men." To the extent that we agree with our second President—and I do—the administration of justice benefits whenever judges interpret, to the best of their abilities, the meaning of the laws and rules that are set before them. As I read *Twiqbal*, the justices in the majority did precisely that and concluded that the fairest reading of Rule 8 precluded judges from accepting as true all "legal conclusions," as opposed to factual averments, contained within the four corners of the complaint. The Court also found—again, based on its exegesis of the Rule itself—that "only a complaint that states a plausible claim for relief survives a motion to dismiss." Of course, because we are a "government of laws," Congress, as the elected representatives of the people, could have reversed the Court's decisions if it believed that they failed reasonably to extrapolate congressional intent. It has thus far elected not to do so. In sum, whether we agree with *Twiqbal* or not—and reasonable minds can differ about this—the process by which the Court arrived at its holdings and the sequence of events that followed, in my view, served, rather than detracted from, the administration of justice.

Point-Counterpoint, 100 Judicature 74, 76 (Aug. 2016).

b. What was the "sequence of events" that followed that "served . . . the administration of justice"?

My views on this subject were set out in the article. In short, however, Congress did not act to overrule *Twiqbal*.

6. In 2014, while you were serving as an Assistant United States Attorney, you wrote an article in the journal *Criminal Justice* in which you argued against a then-recent trend of court cases holding that police may not use a search incident-to-arrest to search an arrestee's cellphone. You urged the Supreme Court to "reimpose some much-needed uniformity to this area of the law by affirming the government's authority to conduct incident-to-arrest searches of cell phones." In doing so, you argued that "cell phones should not be treated differently [than an object like a large briefcase] simply as a result of the amount of information they are capable of storing." (*The Case for Incident-to-Arrest Searches of Cell Phones*, CRIMINAL JUSTICE, Spring 2014)

a. Please explain how cellphones and other similar devices are not different from physical objects like a large briefcase.

My views on this subject were set out in the article. After the Supreme Court's

decision in *Riley v. California*, 134 S. Ct. 2473 (2014), however, it is now clear that I was wrong, and that cellphones and other similar devices *are* to be treated differently from physical objects for purposes of the Fourth Amendment. If I were fortunate enough to be confirmed, I would fairly and faithfully apply this precedent.

b. Why is the amount of information stored by a cellphone not relevant to a determination of how much protection is afforded by the Fourth Amendment?

After the Supreme Court's decision in *Riley*, it is now clear that the amount of information stored by a cellphone *is* relevant to a determination of how much protection is afforded by the Fourth Amendment. If I were fortunate enough to be confirmed, I would fairly and faithfully apply this precedent.

7. In 2015, you wrote an article in *National Review* in which you argued against the Iran nuclear deal, more formally known as the Joint Comprehensive Plan of Action (JCPOA). You claimed that the deal would "alter the balance of power in the Middle East, condone the Islamic Republic's nuclear-weapons program, infuse the Iranian terror machine with hundreds of billions of dollars with which to finance its proxies, and, for all practical purposes, prevent the United States from castigating the ayatollahs for future violations of their nuclear obligations." (*Schumer Says the Right Thing on the Iran Deal – Now He Needs to Persuade Eleven More Senators*, NATIONAL REVIEW (Aug. 10, 2015))

a. The JCPOA forever prohibits Iran from developing or obtaining a nuclear weapon, both explicitly in the text of the agreement and by requiring Iran to ratify the Additional Protocol to its Comprehensive Safeguard Agreement. Please explain your statement that the JCPOA would "condone the Islamic Republic's nuclear weapons program." On what basis did you reach that conclusion? What is the evidenced supporting that statement?

My views at the time were set out in the article. In my role as a judicial nominee, however, it would be inappropriate for me to state any opinion one way or the other on matters of public or foreign policy. *See* Canons 2 and 3, Code of Conduct for United States Judges; *cf.* Canon 1, Commentary ("The Code is designed to provide guidance to judges and nominees for judicial office.").

b. Please provide a U.S. government source for your claim that the JCPOA would "infuse the Iranian terror machine with hundreds of billions of dollars with which to finance its proxies."

Please see my answer to Question 7.a., *supra*.

c. The JCPOA created a Joint Commission to evaluate potential violations of the agreement, and was structured in such a way as to allow the United States to automatically re-impose all U.N.-authorized sanctions against Iran in the event of Iranian non-compliance. Please explain your belief, citing

specific sections of the JCPOA, that the agreement would "prevent the United States from castigating the ayatollahs for future violations of their nuclear obligations."

Please see my answer to Question 7.a., *supra*.

8. As an undergraduate at Columbia University, you gave an interview in which you stated that Columbia Housing gave two residential housing suites "to the special interest people, and that sucks." (Myles Osbourne, *Housing*, DAILY SPECTATOR (Apr. 3, 2001))

a. What did you mean by "special interest people"?

Columbia University permits students to form Special Interest Communities ("SICs") for almost any articulable range of common interests. These SICs then receive preference in the housing lottery. Columbia's website defines the SICs as follows:

> Special Interest Communities (SICs) offer a unique residential experience by allowing upperclassmen students to embrace and explore common interests together. This living arrangement creates opportunities to impact the larger Columbia community by allowing students to connect with fellow students, faculty, administrators, alumni, and community leaders.
>
> These themed residential communities offer their residents the opportunity to immerse themselves in an engaging community with regular programs, events, and workshops, while living in a supportive environment in which all members can relate to each other. It is truly a unique experience as all members are encouraged to discover themselves while developing a shared community that comes together around similarities and differences alike.

Columbia University, Columbia College, *Undergraduate Student Life: Special Interest Communities*, available at https://www.cc-seas.columbia.edu/reslife/sic.

The list of current SICs includes, among many others, the "comedy" SIC, the "writers" SIC, and the "potluck" SIC. *Id*. This comports with my recollection of the SIC program, which, in my time as now, generally permitted any group of students to form an SIC for almost any thematic reason. *Id*.

b. Why did you oppose Columbia's decision to allocate two residential housing units "to the special interest people"?

I did not oppose Columbia's decision. Towards the end of my freshman year, a group of friends and I had entered the housing lottery together. We received a common number. A student reporter asked me what my lottery number was and wondered where my group hoped to live. When I answered these questions, the

reporter asked whether I thought our combined lottery number was good enough to obtain entry into our dorm of choice. I answered that I was not sure because two of the units in the building had already been allocated to SICs. But when the 18 year-old version of myself used the words "and that sucks" to refer to the situation, I was not opposing the SIC program as a whole—indeed, a close friend of mine was, at that same time, trying to form his very own "rugby" SIC—but rather bemoaning the fact that, with two fewer units available in our dorm of choice, our collective housing number may not have been good enough to get into the dorm we wanted.

9. 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 ever being asked about 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?

   I do not recall ever being asked about my views on administrative law.

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

   Given my experience as a federal prosecutor and as a commercial litigator, I have not had occasion to study administrative law in any great detail. Moreover, as a nominee to a lower federal court, it would be inappropriate for me to offer my personal opinions about specific areas of the law. That is particularly true for matters that could come before me as a judge. *See* Code of Conduct for United States Judges, Canon 3(A)(6). All of that said, if I were fortunate enough to be confirmed, I would approach any administrative law case in the same way that I would approach all other cases: by fairly and faithfully applying all applicable Supreme Court and Eleventh Circuit precedents.

10. When is it appropriate for judges to consider legislative history in construing a statute?

The Supreme Court has held that it is appropriate to consult legislative history whenever the meaning of a word or phrase is ambiguous. I would fairly and faithfully follow all Supreme

Court and Eleventh Circuit precedents.

11. 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.

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

First, I reviewed the questions. Second, I conducted my own research to refresh my recollection about certain writings or comments referenced in the questions. Third, I drafted answers to each question. Fourth, I sent my draft answers to members of the Office of Legal Policy and solicited their feedback. Fifth, I finalized my answers and submitted them to the Office of Legal Policy for transmittal to the Senate Judiciary Committee. My answers to each question are my own.

Nomination of Roy Kalman Altman to the
United States District Court
For the Southern District of Florida
Questions for the Record Submitted
June 27, 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. The Chief Justice's metaphor accurately comports with my understanding of the judge's role in our constitutional system, which is to interpret the laws neutrally and to apply those laws fairly to the facts.

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

    Generally, a judge should not take into consideration the perceived consequences of a ruling. Of course, in some circumstances, the law itself provides for a judge to account for the consequences of a ruling. For example, judges must consider whether a movant for a preliminary injunction has shown that irreparable harm will occur without a preliminary injunction.

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?

    Empathy—both for the victim of an offense and for the "history" of the defendant—may sometimes play a role in a judge's determination of the appropriate sentence. *See* 18 U.S.C. § 3553(a)(1). But judges should strive as much as possible to subordinate their empathy—along with other emotions—and to decide cases "without respect to persons" and only in accordance with "the Constitution and laws of the United States." 28 U.S.C. § 453.

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

    Please see my answer to Question 2.a., *supra*. A fair judge should strive as much as possible to subordinate his or her personal life experiences and to decide cases only in accordance with "the Constitution and laws of the United States." 28

U.S.C. § 453.

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?

If I am fortunate enough to be confirmed, I will take seriously my oath to "administer justice without respect to persons," to "do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties . . . under the Constitution and laws of the United States." 28 U.S.C. § 453. I should also emphasize that I have made a career out of looking out for the "little guy." In my criminal practice, for instance, I volunteered to join the U.S. Attorney's Office's Special Prosecutions Section, which handled all of the Office's major victim-related cases, including its major child exploitation, human sex trafficking, and first-degree murder cases. In the four years in which I served in that Section—first as a prosecutor and later as Deputy Chief—I worked, on a daily basis, with victims and their families to seek some measure of justice for the often terrible acts of aggression that had been perpetrated against them, usually by more powerful men. And, in my civil practice, I have served primarily as a plaintiffs' lawyer, representing hundreds of clients from all over the world whose family members have been killed in international plane crashes, defrauded by large financial institutions, or tricked into purchasing defective products. In each of these cases, I have fought hard for the "little guy," and I have found this work to be both righteous and rewarding.

   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?

   Because this question is being, and will continue to be, litigated in courts across the country, it would be inappropriate for me to express an opinion on this matter. *See* Canon 3(A)(6) & Canon 5 of the Code of Conduct for United States Judges; *cf*. Canon 1, Commentary ("The Code is designed to provide guidance to judges and nominees for judicial office."). To the extent, however, that the U.S. Supreme Court or the Eleventh Circuit has already found that the practice of "document dumping" or "paper blizzarding" is unacceptable and inconsistent with the Federal Rules of Civil Procedure, I would, if I am fortunate enough to be confirmed, fairly and faithfully apply that precedent.

5. You have spoken favorably about the federal civil pleading standards established by the

> Supreme Court in the *Twombly*/*Iqbal* line of cases, opining that they "served, rather than detracted from the administration of justice." In your view, do the *Twombly*/*Iqbal* pleading standards better serve the administration of justice than the previously controlling notice pleading standards? If so, why?

As a nominee to a lower federal court, it would be inappropriate for me to comment on whether a particular Supreme Court opinion served, or detracted from, the administration of justice. *See* Canons 2 and 3, Code of Conduct for United States Judges; *cf.* Canon 1, Commentary ("The Code is designed to provide guidance to judges and nominees for judicial office.").

To clarify, however, I did not write, as the question suggests, that the *Twombly/Iqbal* line of cases "better served the administration of justice than the previously controlling pleading standards." To the contrary, after noting my own experience as a plaintiffs' lawyer, I suggested that there was some (admittedly inconclusive) statistical support for the opposite proposition. As I explained:

> If this is true . . . the result would be, as the question implies, an increase in the cost of push cases through the motion to dismiss phase without any concomitant decrease in the percentage of cases that make it to costly discovery. I'm not at all suggesting that this is the case. I am merely noting that, taken to their logical conclusion, the results of the 2011 report raise the possibility that, at least in some cases, *Twiqbal* has made litigation somewhat more expensive for both sides.

Point-Counterpoint, 100 Judicature 74, 75 (Aug. 2016).

Nomination of Roy Kalman Altman, to be United States District Judge for the Southern District of Florida
Questions for the Record Submitted
June 27, 2018

QUESTIONS FROM SENATOR COONS

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

The Supreme Court has identified several factors that help judges determine whether a right is fundamental and thus protected under the Fourteenth Amendment. *See, e.g.*, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *Washington v. Glucksberg*, 521 U.S. 702 (1997); *Loving v. Virginia*, 388 U.S. 1 (1967); *Palko v. Connecticut*, 302 U.S. 319 (1937). If I were fortunate enough to be confirmed, I would review the parties' briefs, analyze the relevant Supreme Court and Eleventh Circuit precedents, and apply the appropriate legal standard to the facts in an effort to determine whether, in any individual case, a particular right is in fact fundamental.

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

Yes, but that is not all I would do. Please see my answer to Question 1, *supra*.

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. Please see my answer to Question 1, *supra*. The Supreme Court has focused this inquiry on historical practice under the common law, practice in the American colonies, the history of state statutes and judicial decisions, and long-established American traditions. *See Glucksberg*, 521 U.S. at 710-16.

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

Yes and yes.

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

Yes and yes.

e. Would you consider whether the right is central to "the right to define one's own

concept of existence, of meaning, of the universe, and of the mystery of human life"? *See Planned Parenthood v. Casey*, 505 U.S. 833, 581 (1992); *Lawrence v. Texas*, 539
U.S. 558, 574 (2003) (quoting *Casey*).

Yes.

f. What other factors would you consider?

Please see my answer to Question 1, *supra*.

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

The Supreme Court has repeatedly held that the Equal Protection Clause requires heightened scrutiny for gender-based classifications as well as for race-based classifications. *See, e.g.*, *United States v. Virginia*, 518 U.S. 515 (1996); *Craig v. Boren*, 429 U.S. 170 (1976).

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?

The subjective intentions of the drafters of the Fourteenth Amendment are irrelevant to the proper determination of the public meaning of the words in the Equal Protection Clause. If I were fortunate enough to be confirmed as a lower court judge, I would fully, faithfully, and fairly apply all Supreme Court and Eleventh Circuit precedent in this area.

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

I have no information as to why it took until 1996 for the Supreme Court to rule that states were required to provide equal educational opportunities to men and women.

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

Yes. The Supreme Court has repeatedly recognized this principle. *See, e.g.*, *Obergefell*, 135 S. Ct. 2584; *United States v. Windsor*, 570 U.S. 744 (2013); *Lawrence*, 539 U.S. 558.

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

The Supreme Court has not yet addressed this issue, and my understanding is that it is the subject of active litigation in the lower courts. As a judicial nominee, it would be inappropriate for me to comment on the merits of either side's position. *See* Canon 3(A)(6) of the Code of Conduct for United States Judges; *cf.* Canon 1, Commentary ("The Code is designed to provide guidance to judges and nominees for judicial office.").

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

Yes. The Supreme Court has repeatedly recognized this right. *See, e.g.*, *Eisenstadt v. Baird*, 405 U.S. 438 (1972); *Griswold v. Connecticut*, 381 U.S. 479 (1965).

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

Yes. The Supreme Court has repeatedly recognized this right. *See, e.g.*, *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992); *Roe v. Wade*, 410 U.S. 113 (1973).

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?

As I understand it, this question is asking about the existence of a constitutional right to engage in homosexual relations. If that is the question, then the answer is yes. The Supreme Court has recognized this right in, among other cases, *Lawrence*, 539 U.S. 558.

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.

Not applicable.

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?

The Supreme Court has, at times, considered the changing understanding of society. *See, e.g.*, *Obergefell*, 135 S. Ct. 2584; *Riley v. California*, 134 S. Ct. 2473 (2014); *United States v. Virginia*, 518 U.S. 515. If I were fortunate enough to be confirmed, I would consider any such evidence when appropriate in light of all applicable Supreme Court and Eleventh Circuit precedent.

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

Scientific and sociological evidence is often adduced, typically through expert witnesses, in a party's attempts to prove an element of its case or to rebut the expert testimony of the opposing side. There is a significant body of law and commentary relating to the admissibility of expert testimony. *See, e.g.*, *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999); *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993); Reference Manual on Scientific Evidence (Fed. Jud. Ctr., 3d ed. 2011). If I were fortunate enough to be confirmed, I would follow all laws enacted by Congress and precedents of the Supreme Court and the Eleventh Circuit concerning the role of such evidence in my judicial analysis.

5. You are a member of the Federalist Society, a group whose members often advocate an "originalist" interpretation of the Constitution.

a. 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. 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?

I have not had occasion to study the question of whether *Brown* is consistent with the original public meaning of the Fourteenth Amendment. I am aware that some commentators who have studied the issue closely have concluded that *Brown* is consistent with originalism. *See, e.g.*, Michael W. McConnell, *Originalism and the Desegregation Decisions*, 81 Va. L. Rev. 947 (1995). While this is an interesting academic question, if I were fortunate enough to be confirmed as a lower court judge, I would fairly and faithfully apply *Brown* in any case in which it applied.

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 June 27, 2018).

While this is an interesting academic question, if I were fortunate enough to be confirmed as a lower court judge, I would follow all applicable decisions of the U.S. Supreme Court and the Eleventh Circuit Court of Appeals on the meaning of these constitutional provisions.

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?

If I were fortunate enough to be confirmed, I would be a lower court judge. From the perspective of a lower court judge, the original public meaning of a constitutional provision would be dispositive if the Supreme Court or, in my case, the Eleventh Circuit, has held that it is dispositive. In either event, I would faithfully and fairly apply all binding Supreme Court and Eleventh Circuit precedent, regardless of the methodology employed.

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

Please see my answer to Question 5.c., *supra*.

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

If I were fortunate enough to be confirmed, I would first apply all binding precedent of the Supreme Court and the Eleventh Circuit Court of Appeals. If those precedents do not address the particular issue before me, then I would also consider persuasive opinions of other circuit and district courts, scholarly commentary, and the text and context of the relevant constitutional provision—together with historical sources bearing upon the original public meaning of the provision.

6. In a 2013 *Wall Street Journal* article, you criticized an en banc Ninth Circuit decision, which held that forensic searches of computers at the border require reasonable suspicion. In the article, you wrote that "a federal appeals court stripped U.S. border agents of one of their most effective tools – the power to search, at random and indiscriminately, the thousands of computers that people bring into the country every single day."

a. Why did you write this article?

I thought that it was an interesting subject about which courts across the country had disagreed.

b. Do you agree that some tools that would yield information that is useful to law enforcement would run afoul of the Fourth Amendment?

Yes.

c. Please explain how you weigh the privacy intrusion of random, indiscriminate border searches against the usefulness of border searches as a law enforcement tool.

My views on this subject were set out in the article. Recently, however, the Eleventh Circuit Court of Appeals held that border agents can continue to search electronic devices at the border without suspicion. *See United States v. Toucet*, 890 F.3d 1227 (11th Cir. 2018). If I were fortunate enough to be confirmed, I would faithfully and fairly apply this and all other applicable precedents.

d. Please describe why you believe that the requirement of reasonable suspicion "severely restrict[ed] the ability of federal law enforcement to protect America's borders."

Please see my answer to Question 6.c., *supra*.

e. Would removing the reasonable suspicion requirement for *Terry* stops or removing the probable cause requirement for search warrants enhance law enforcement's ability to protect the country?

It would be inappropriate for me to state my personal views on this subject because doing so would mistakenly suggest that I might decide a case based on something other than the relevant law and facts before me. *See* Canons 2 and 3, Code of Conduct for United States Judges; *cf*. Canon 1, Commentary ("The Code is designed to provide guidance to judges and nominees for judicial office."). Answering this question would also require me inappropriately to state my opinion on matters of public policy. *Id.* If I were fortunate enough to be confirmed, I would fairly and faithfully follow all relevant Supreme Court and Eleventh Circuit precedent on the Fourth Amendment.

7. In 2014, you authored an article in *Criminal Justice*, criticizing cases holding that police may not use a search incident-to-arrest to search an arrestee's cell phone.

a. Why did you write this article?

I thought that it was an interesting subject about which courts across the country had disagreed.

b. Please explain your concerns with requiring a warrant for cell phone searches.

Those concerns were set out in my article. After the Supreme Court's decision in *Riley v. California*, 134 S. Ct. 2473 (2014), however, it is now clear that I was wrong, and that law enforcement officers must, absent exigent circumstances, obtain a search warrant prior to searching an arrestee's cell phone. If I were fortunate enough to be confirmed, I would fairly and faithfully apply this precedent.

c. What is your understanding of when law enforcement may search an arrestee's cell phone?

After the Supreme Court's decision in *Riley*, law enforcement officers must, absent exigent circumstances, obtain a search warrant prior to searching an arrestee's cell phone. If I were fortunate enough to be confirmed, I would fairly and faithfully apply this precedent.

d. Have you written any articles or given any remarks supporting the expansion of privacy rights? If so, please summarize all of these materials.

Yes. I have supported the expansion of privacy rights in at least the following:

Plaintiffs' Memorandum of Law in Opposition to the Defendants' Joint Motion to Compel the Plaintiffs' Production of Damages Documents (ECF 388) pp. 13-18, *Katz v. Spiniello et al.*, 16-CV-11380-CASPER (D. Mass. June 13, 2018) (advocating the application of *Riley*'s privacy holding to civil discovery of litigants' personal devices).

e. Have you written any articles or given any remarks supporting constraints on law enforcement? If so, please summarize all of these materials.

Yes. I have supported constraints on law enforcement in at least the following public remarks:

August 23, 2017: Guest Speaker, *Bullying, Leadership, and Public Service*, Miami Country Day School, Miami, Florida.

2013 – 2014 (approximate): Career Day Speaker, *Life as a Lawyer*, Miami Edison Senior High School, Miami, Florida.

2011 – 2014 (approximate): Career Day Speaker, *Life as a Lawyer*, Paul Laurence Dunbar Elementary School, Miami, Florida.

November 13, 2014: Career Day Speaker, *Life as a Lawyer*, Miami Country Day School, Miami, Florida.

November 21, 2013: Career Day Speaker, *Life as a Lawyer*, Miami Country Day School, Miami, Florida.

March 6, 2013: Panelist, *E-discovery in Government Investigations and Criminal Litigation*, The American Bar Association's 27th Annual National Institute on White Collar Crime, Las Vegas, Nevada.

Senator Mazie K. Hirono
Questions for the Record for Roy Kalman Altman

1. In *Laird v. Tatum*, 409 U.S. 824 (1972), then-Justice Rehnquist stated the following:

> "Since most justices come to this bench no earlier than their middle years, it would be unusual if they had not by that time formulated at least some tentative notions which would influence them in their interpretation of the sweeping clauses of the Constitution and their interaction with one another.
>
> "It would be not merely unusual, but extraordinary, if they had not at least given opinions as to constitutional issues in their previous legal careers. Proof that a Justice's mind at the time he joined the Court was a complete tabula rasa in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias."

In the above statements, Chief Justice Rehnquist acknowledges that the notions and experiences that judges have developed over the course of their lives influence their interpretation of the Constitution.

a. Do you agree with Chief Justice Rehnquist's observations? Do you believe that there will be times on the bench that a judge will bring personal experiences and views to bear on their decisions?

As to the first question, yes. As to the second, while judges and justices may have personal opinions about various issues, they must nonetheless apply binding precedent to the facts of the case without regard to their own personal views.

b. If judicial nominees have set forth legal inclinations and interpretations in their work, do you believe that this naturally has to have a bearing on what they would do as a judge, and how they would apply the law?

Please see my answer to Question 1.a., *supra*.

c. What does Justice Rehnquist's observation suggest about reassurances from judicial nominees that they will simply apply precedent, particularly in areas where many have strong convictions, or in circumstances where the facts of a case don't line up precisely with a precedent and a judge has discretion in what precedent to apply and how it would apply?

While I cannot speak for the statements of other nominees, I can say that, if I am fortunate enough to be confirmed, I will faithfully apply all binding precedent, and I will fairly and neutrally apply the law to the facts without regard to my personal views on any subject.

2. You indicated that you have been a member of the Federalist Society from 2004 to 2007 and from 2015 to the present. The President has essentially outsourced the judicial selection process to two organizations with strong, ideologically-driven agendas – the Federalist Society and Heritage Foundation. The Federalist Society, for example, describes itself as "a group of libertarians and conservatives dedicated to reforming the legal order."

   Do you think it is proper for the President to outsource the judicial selection process to outside organizations?

   The Constitution leaves the process of nominating and confirming judges to the President and the Senate, respectively, and it is not my place, as a judicial nominee, to comment on that process.

Nomination of Roy Kalman Altman
United States District Court for the Southern District of Florida
Questions for the Record
Submitted June 27, 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?

    As I understand the concept of implicit bias, it is possible that all people have implicit biases of one form or another. This includes implicit racial bias. It also seems clear to me that, unfortunately, racism in various forms—both explicit and implicit—continues to exist in this country, including in some parts of the criminal justice system.

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

    Yes, the percentage of persons of color in custody in our nation's prisons exceeds the percentage of persons of color in the population as a whole.

    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.

    I believe so. During my time in law school, I sat in on a class called Convicting the Innocent, in which I believe that the subject of implicit racial bias was discussed. I have also read the Supreme Court's discussion of racial bias in *McCleskey v. Kemp*, 481 U.S. 279 (1987).

---

[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.

    I have not studied the statistics regarding the relationship between incarceration rates and crime rates, and I have not developed any well-formulated opinions 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., *supra*.

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. Since Shelby County, Alabama v. Holder, states across the country have adopted restrictive voting laws that make it harder, not easier for people to vote. From strict voter ID laws to the elimination of early voting, these laws almost always have a disproportionate impact on poor minority communities. These laws are often passed under the guise of widespread voter fraud. However, study after study has demonstrated that widespread voter fraud is a myth. In fact, an American is more likely to be struck by lightning than to impersonate someone voter at the polls.[7] One study that examined over one billion ballots cast between 2000 and 2014, found only 31 credible instances of voter fraud.[8] Despite this, President Trump, citing no information, alleged that widespread voter fraud occurred in the 2016 presidential election. At one point he even claimed—again without evidence—that millions of people voted illegally in the 2016 election.

---

[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] JUSTIN LEVITT, THE TRUTH ABOUT VOTER FRAUD, BRENNAN CENTER FOR JUSTICE 6 (2007), *available at* http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf.

[8] Justin Levitt, *A comprehensive investigation of voter impersonation finds 31 credible incidents out of one billion ballots cast*, THE WASHINGTON POST, Aug. 6, 2014, *available at* https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/?utm_term=.4da3c22d7dca.

a. As a general matter, do you think there is widespread voter fraud? If so, what studies are you referring to support that conclusion?

Because this question is being, and will continue to be, litigated in courts across the country, it would be inappropriate for me to express an opinion on this matter. *See* Canon 3(A)(6) & Canon 5 of the Code of Conduct for United States Judges; *cf*. Canon 1, Commentary ("The Code is designed to provide guidance to judges and nominees for judicial office.").

b. Do you agree with President Trump that there was widespread voter fraud in the 2016 presidential election?

Please see my answer to Question 4.a., *supra*.

c. Do you believe that restrictive voter ID laws suppress the vote in poor and minority communities?

Please see my answer to Question 4.a., *supra*.

5. 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.[9]

a. Do those statistics alarm you?

It would be inappropriate for me to state my personal views on this subject because doing so would mistakenly suggest that I might decide a case based on something other than the relevant law and facts before me. *See* Canons 2 and 3, Code of Conduct for United States Judges; *cf*. Canon 1, Commentary ("The Code is designed to provide guidance to judges and nominees for judicial office."). Answering this question would also require me inappropriately to state my opinion on matters of public policy. *Id.* If I were fortunate enough to be confirmed, I would follow all relevant Supreme Court and Eleventh Circuit precedent on capital cases fairly and without regard to person or race. Moreover, if I were fortunate enough to be confirmed, racial prejudice would have no place, and would play no role, in my courtroom.

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?

Please see my answer to Question 5.a., *supra*.

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

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

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 5.a., *supra*.

Questions for the Record from Senator Kamala D. Harris
Submitted June 27, 2018
For the Nominations of

Roy Kalman Altman, to be United States District Judge for the Southern 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?

    To begin with, I would approach each sentencing decision with the solemn appreciation that sentencing a criminal defendant is one of the most important and difficult jobs of a district court judge. I would also recognize that the ultimate sentence I impose will have consequences far beyond my courtroom—for the defendant and his or her family no less than for the community and any known victims of the offense. Initially, I would accurately calculate the applicable Sentencing Guidelines range for the offense. Then I would evaluate any applicable statutes, the presentence report, the allocution of the defendant, the arguments of counsel, any statements by the defendant's family and friends, and any victim impact statements. Finally, I would attempt to impose a sentence "sufficient, but not greater than necessary, to comply" with the congressionally designated purposes of federal sentencing: "the need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; [] to afford adequate deterrence to criminal conduct; [] to protect the public from further crimes of the defendant; and [] to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553.

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

    In addition to my answer to Question 1.a., *supra*, I would, if confirmed, continue to read and study all publications issued by the United States Sentencing Commission, as well as all sentencing decisions rendered by the U.S. Supreme Court and the Eleventh Circuit Court of Appeals. Moreover, I would discuss difficult questions of sentencing extensively with my colleagues within the district to ensure that our sentencing practices are consistent and that like cases are treated alike, regardless of which judge handles a particular case.

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

    Under Supreme Court and Eleventh Circuit precedent, the U.S. Sentencing Guidelines are not binding on trial judges; they are merely advisory. *See, e.g.*, *Booker v. United States*, 543 U.S. 220 (2005). Part K of Section 5 of the Sentencing

Guidelines lists the specific circumstances under which a trial judge may depart from the advisory Guidelines range. In addition, a judge may, consistent with the factors set out in 18 U.S.C. § 3553(a), vary either up or down from the advisory Guidelines range—so long as the ultimate sentence is reasonable.

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?

It would be inappropriate for me to state my personal views on this subject because doing so would mistakenly suggest that I might decide a case based on something other than the relevant law and facts before me. *See* Canons 2 and 3, Code of Conduct for United States Judges; *cf.* Canon 1, Commentary ("The Code is designed to provide guidance to judges and nominees for judicial office."). Answering this question would also require me inappropriately to state my opinion on a matter of public policy. *Id*. In either case, the question of which kind of sentencing regime better deters crime is one for the political branches. If I were fortunate enough to be confirmed, I would follow all relevant Supreme Court and Eleventh Circuit precedent on criminal sentencing, and I would work very hard to ensure that every sentence I impose is fair and reasonable in light of the factors set out in 18 U.S.C. § 3553(a).

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

Please see my answer to Question 1.d.i., *supra*.

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

Please see my ansswer to Question 1.d.i., *supra*.

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

[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

1. **Describing the injustice in your opinions?**

If I were fortunate enough to be confirmed, I would apply any applicable mandatory minimum sentence to the extent that the relevant statute was constitutional. That said, I do think it appropriate for a judge to state for the record that he or she would not have sentenced a particular defendant to a given sentence but for a statutory mandate to do so. But judges should not offer personal criticisms of Congress's decision to impose a mandatory minimum sentence.

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

The question of what crime to charge is one that our Constitution reserves to the Executive Branch. I would raise charging decisions with federal prosecutors only if I were concerned about ethical improprieties, a lack of professionalism, or prosecutorial misconduct.

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

The clemency power is one that our Constitution reserves to the Executive Branch. I do, however, believe that a judge may, in an appropriate case, state on the record that he or she would not have imposed a certain sentence but for a statutory mandate to do so. If an Executive Branch official later decides that the case merits clemency consideration, that official will then have the benefit of the judge's recorded view on the justness of the sentence in question.

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.

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. It is my understanding that racial minorities are statistically more likely to be imprisoned than whites.

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?

   If confirmed, I would ensure that qualified minorities and women are given serious consideration for all positions that I am in a position to fill.