

**John L. Sinatra, Jr.'s Responses
Questions for the Record
From Senator Mazie K. Hirono
For Diane Gujarati, Eric Komitee, John L. Sinatra, Jr., Rachel P., Kovner, Lewis J. Liman,
Mary Kay Vyskocil and Gary Brown**

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, 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 these hearings, when a Senator asks about a nominee's personal views on a topic, about their involvement in certain organizations or their decisions to advocate for certain points of view, they tell us that those parts of their records don't matter, that as judges they will simply "follow the law." But, cases are so infrequently decided by the direct application of legal precedent that at some point, as one nominee told us, "judging kicks in."

Do you acknowledge that there will be times on the bench, that a judge does bring personal experiences and views to bear on their decisions?

I believe that the justice system functions best when the public has confidence in it. That confidence depends on judicial impartiality and the notion that outcomes should not be affected by which judge is assigned to a case. If so fortunate as to be confirmed, I commit to — and am bound to — follow the law, apply it to the facts, and reach results so dictated. My personal views would have no role in those results. My personal views toward civility and the justice system, and my experience as a litigator, will play a role in my treatment of litigants, counsel, witnesses, victims, and the public with the utmost respect, decency, and fairness.

3. A recent nominee before the Committee spoke about the importance of training to help judges identify their implicit biases.

- a. Would you agree that training on implicit bias is important for judges to have?**

Yes.

b. Have you ever taken such training?

Yes. I have taken training twice in the last three years at my firm.

c. If confirmed, do you commit to taking training on implicit bias?

The training I have taken on implicit bias was valuable. I will consider participating in additional training in the future.

Nomination of John L. Sinatra, Jr.
United States District Court for the Western District of New York
Questions for the Record
Submitted August 7, 2018

QUESTIONS FROM SENATOR BOOKER

1. According to a Brookings Institution 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* than blacks to sell drugs.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?

I believe racial bias exists in America and remains a very real challenge for our country and many individuals and institutions. If so fortunate as to be confirmed, I would be committed to preventing any sort of bias from entering my courtroom or affecting my decision-making.

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

Yes.

- 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 have not studied implicit racial bias in depth. I am aware that the issue has received important attention in scholarly studies and broader public reporting. I have attended two training seminars within my law firm on issues of implicit bias, including implicit racial bias. I do not have any of the materials used at the training seminars.

2. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines

¹ Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <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, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

⁴ *Id.*

in their incarceration rates, crime fell by an average of 14.4 percent.⁵ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.⁶

- a. Do you believe there is a direct link between increases in 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 this issue and have not formed any opinion about it.

- b. Do you believe there is a direct link between decreases in 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).

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. Do you believe that *Brown v. Board of Education*⁷ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

It is improper for judicial nominees to opine on the correctness of — or to grade — Supreme Court cases. If I am so fortunate as to be confirmed, I would be bound to follow all Supreme Court precedent fully and faithfully. I believe that Canon 3(A)(6), Canon 2(A), and ABA Rule 2.10(B) speak generally to this issue.

5. Do you believe that *Plessy v. Ferguson*⁸ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

No. *Plessy* was overruled by *Brown*. Please also see my answer to Question 4.

6. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

Before the hearing, I met with individuals from the Department of Justice. We discussed the hearing, including questions that I might receive and possible responses. My responses, however, both during the hearing and to all questions submitted to me since the hearing, are all my own.

⁵ Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

⁶ *Id.*

⁷ 347 U.S. 483 (1954).

⁸ 163 U.S. 537 (1896).

7. President Trump stated recently on Twitter: “We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came.”⁹ Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

Every litigant is entitled to fair treatment in the courts. The merits of the question involving adjudication of immigrants’ claims raises matters that are either in litigation currently and/or are likely to come before the judiciary. Thus, under the Judicial Canons, it would be improper for me to comment on these matters. If so fortunate as to be confirmed, I would faithfully and fully follow Supreme Court and Second Circuit precedent on this and all other issues.

⁹ Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.

John L. Sinatra, Jr.'s Responses
Questions for the Record from Senator Kamala D. Harris
Submitted August 8, 2018
For the Nominations of

Gary Brown, to the U.S. District Court for the Eastern District of New York

Diane Gujarati, to the U.S. District Court for the Eastern District of New York

Eric R. Komitee, to the U.S. District Court for the Eastern District of New York

Rachel P. Kovner, to the U.S. District Court for the Eastern District of New York

Lewis J. Liman, to the U.S. District Court for the Southern District of New York

John L. Sinatra, Jr., to the U.S. District Court for the Western District of New York

Mary Kay Vyskocil, to the U.S. District Court for the Southern District of New York

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?

If I am so fortunate as to be confirmed, I would fairly and faithfully apply the law, rules, and Sentencing Guidelines, as construed by the Supreme Court and Second Circuit, to determine a fair and just sentence. Prior to imposing a sentence, I would thoroughly review any plea agreement or trial evidence; any allocution by the defendant; the presentence report and its recommendations; any objections to the presentence report; the applicable Sentencing Guidelines; any filings or arguments presented by the parties, including motions, memoranda, and letters; any victim statements; and the arguments of counsel. I would consider all of this in light of all applicable sentencing options. Ultimately, I would evaluate all the facts and circumstances in light of the factors set forth in 18 U.S.C. § 3553(a), and impose a sentence that is “sufficient, but not greater than necessary” to achieve the sentencing purposes established by Congress. A sentence imposed under that process would comport with the primary purposes of sentencing stated at 18 U.S.C. § 3553(a)(2), and the goal of avoiding sentencing disparities stated in 18 U.S.C. § 3553(a)(6).

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

I would follow the steps outlined in my answer to Question 1(a) and, in addition, I would avail myself of available sentencing data for comparative convictions, as needed.

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

Both the Guidelines themselves and Supreme Court precedent, including *U.S. v. Booker*, explain circumstances and considerations that can justify a departure from the range specified in the Guidelines. Those include the offense-specific bases in Chapter 2 of the Guidelines Manual, the criminal history-specific bases in Chapter 4, and additional bases in Chapter 5. I would carefully review those factors and U.S. Supreme Court and Second Circuit precedent interpreting them, provide the advance notice required by Federal Rule of Criminal Procedure 32(h), and consider arguments and evidence presented by the parties before departing from the Guidelines. In addition, separate from departures, after considering all applicable factors, courts should consider whether a variance, or a sentence outside of the applicable range, ought to be imposed.

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?

If so fortunate as to be confirmed, I would be required to follow the law of mandatory minimums regardless of personal views. I believe the issue of mandatory minimum sentences is a policy question reserved to Congress. Therefore, it would be inappropriate, under the Judicial Canons, for me to express an opinion on this matter.

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) above.

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) above.

iv. Former-Judge John Gleeson has criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to

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

remedy unjust sentences that result from mandatory minimums.² If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:

1. Describing the injustice in your opinions?

Under Article I of the Constitution, the enactment of a law that carries a mandatory minimum sentence is a power vested with Congress. Though some judges have commented on statutes that they believe can result in an unjust sentence in extremely limited circumstances, it is imperative to be mindful of the judiciary's role and not to violate the separation of powers. If I were fortunate enough to be confirmed, in the extreme circumstance where I was required to impose a sentence that resulted in manifest injustice, I would consider commenting about it in my opinion.

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

Decisions as to what charges to bring before a grand jury are committed to the authority and discretion of the Executive Branch pursuant to Article II of the Constitution, and judges must not encroach upon this authority. If I concluded that the law compelled imposition of an unjust and disproportionate sentence in a particular case, and if I concluded that the Executive's charging policies were a primary factor in causing the injustice, then I would consider, consistent with the Judicial Canons, raising the issue or commenting on the matter as part of the sentencing process or in a written opinion.

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

The clemency power is reserved to the President. As a judge, I would be bound to respect the Constitution's separation of powers.

- 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.

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>

- 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, I believe there are. Without studying this issue in depth, I cannot provide specific examples. If I am fortunate enough to be confirmed, all persons will be treated respectfully and fairly in my courtroom and in my decision-making.

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. If confirmed, I would ensure that qualified minorities and women are given serious consideration for all positions.

John L. Sinatra, Jr.'s Responses
Senate Judiciary Committee – Questions for the Record
August 1, 2018

Hearing entitled: “Nominations”

Panel I

Questions for Richard Sullivan, to be United States Circuit Judge for the Second Circuit

1. Can you name something that is constitutional that you think should be unconstitutional?
2. Why do you think it is okay for you to give your opinion about the death penalty?
 - a. If a death penalty case comes before you and you’ve already announced that you’re against the death penalty, doesn’t that violate your rule that you shouldn’t comment about constitutionality and unconstitutionality?
3. What does the ninth amendment mean?
 - a. What are those other rights in your opinion?
 - b. What’s a penumbra?
 - c. Are there other penumbras in the Constitution?
 - d. Can you see a penumbra?
 - e. Well if you can’t see it, how do you know it’s there?
 - f. What other penumbras are there in the Constitution?
4. A guy is walking down the street in a high crime area. We know statistically that it’s a high crime area, it’s not a subjective thing. It’s the middle of August and he’s wearing a really heavy coat and he’s got a big satchel with him. Every now and then he looks into a car.
 - a. Can the police stop and talk to him?
 - b. Is there reasonable suspicion?

Panel II

Questions for Diane Gujarati, to be United States District Judge for the Eastern District of New York, and

Questions for Eric Ross Komitee, to be United States District Judge for the Eastern District of New York, and

Questions for John L. Sinatra, Jr., to be United States District Judge for the Western District of New York, and

Questions for Rachel P. Kovner, to be United States District Judge for the Eastern District of New York, and

**Questions for Lewis J. Liman, to be United States District Judge for the Southern District of New York, and
Questions for Mary Kay Vyskocil, to be United States District Judge for the Southern District of New York:**

1. The following are yes or no answers.

In connection with each of my answers below, please also see the answers I gave at the August 1, 2018 hearing.

- a. Do you believe that retribution is a legitimate purpose of our penal system?

Yes. *See, e.g.*, Federal Sentencing: The Basics, at 2 (2015).

- b. Do you believe that adult incest is protected by the Bill of Rights?

No.

- c. If *Brown v Board of Education* were overruled and *Plessy v Ferguson* were reinstated, would you resign?

No; given the broad needs of our justice system, a wholesale abdication by the judiciary would do great harm to the country. I would expect the issue to be corrected short of a need for resignations. Segregation has no place in our society. If that unfathomable overruling occurred, I would expect Congress to fix the issue through legislation or the constitutional amendment process.

- d. Do you believe that the US Constitution should be interpreted in the context of an ever-changing world?

Yes.

- e. Do you believe that the founder's original intent is most important thing in interpreting the Bill of Rights?

No.

- f. Do you believe that the founder's original intent in drafting the Bill of Rights should determine today how the constitution is interpreted?

No. The text was enacted and, as such, governs. If the words are unclear, the original public meaning of them may be consulted, along with the structure of surrounding text. If so fortunate as to be confirmed, I would look to and faithfully and fully follow the guidance and direction on this issue provided by the Supreme Court and the Second Circuit.