

**Nomination of Colm Felix Connolly
to the United States District Court
For the District of Delaware
Questions for the Record Submitted February 21, 2018**

QUESTIONS FROM SENATOR WHITEHOUSE

- 1. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”**

- a. Do you agree with Justice Roberts’ metaphor? Why or why not?**

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

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

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

- 2. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance “to recognize what it’s like to be a young teenage mom, the empathy to understand what it’s like to be poor or African-American or gay or disabled or old.”**

- a. What role, if any, should empathy play in a judge’s decision-making process?**

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

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

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

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

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

No.

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

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

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

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

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

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