

**Nomination of Kari A. Dooley to the
United States District Court
For the District of Connecticut
Questions for the Record
Submitted March 14, 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?
 - b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?

In terms of presiding over an adversarial proceeding I agree with Chief Justice Roberts. Ruling on evidentiary matters, overseeing discovery or addressing courtroom procedure is very akin to the role of an umpire. However, when performing adjudicatory functions or on those occasions where the judge is the trier of fact, the judicial role is more involved in terms of the case outcome.

In the majority of cases, the practical consequences of a ruling are not part of the court’s analysis in terms of the correct outcome under the law. However, there are circumstances where the practical consequences must be considered as they directly bear on the correct outcome under the law. For example, whether to grant temporary or permanent injunctive relief requires such an analysis.

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

Empathy, while an important human quality, is not a basis upon which the court should decide the legal and factual issues presented in any particular case. However, empathy does play a role in the court’s day to day interactions with people who come before the court, whether it is litigants, defendants, witnesses, victims or jurors. Empathy makes one a better listener and helps one to understand the competing viewpoints that may be presented.

A judge’s personal life experience is not a basis upon which the court should decide the legal and factual issues presented in any particular case.

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 confirmed, it shall be my oath that all persons coming before the court, regardless of race, ethnicity or socio-economic status shall receive fair, equal and impartial treatment. Our justice system is designed to level the playing field for all participants. The judge is entrusted with the task of ensuring that the system works as intended. Such is my commitment.

- 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?

Overly burdensome discovery demands, as a litigation strategy, are not acceptable. However, there are cases in which the discovery is necessarily burdensome due to the nature of the dispute and other factors. Discovery should be proportionate to the nature of the dispute and/or the amount in controversy. The court should assess the scope of discovery and the disputes regarding discovery with this in mind so that “strategic” burdening is avoided to the greatest extent possible.