

**Nomination of Ryan T. Holte to the
United States Court of Federal Claims
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?

Yes. While the metaphor is not a complete description of the role of a judge, it does convey a fundamental responsibility of judicial work—impartially applying governing law to the facts of a case without regard to personal preferences or personal beliefs.

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

Practical consequences of a particular decision should only be taken into account if the law governing a case requires that consideration, for example decisions concerning equitable relief. In most decisions, a judge’s role is to apply the law to the facts of a case without regard to practical consequences, even consequences the judge may disfavor.

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?

I agree that a judge, and all people, can benefit from empathy to better listen and understand those they interact with personally or professionally, amongst other things. In the courtroom, a federal judge takes an oath to “administer justice without respect to persons, and do equal right to the poor and rich . . . [to] faithfully and impartially discharge and perform all the duties . . . under the Constitution and laws of the United States” 28 U.S.C. § 453. A judge is obligated to make decisions and apply the law without regard to an individual party’s circumstances.

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

A judge’s personal life experiences can assist them in better listening and understanding the particular facts or circumstances of a case. Decisions, however, must be based on impartially applying governing law to the facts of a case without regard to personal life experience or preference.

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?

I am committed to upholding the administration of justice “without respect to persons, and do equal right to the poor and rich . . . [to] faithfully and impartially discharge and perform all the duties . . . under the Constitution and laws of the United States” as required under the oath I would take as a judge. 28 U.S.C. § 453. This oath would require me, as a judge, to uphold the interests of the “little guy” with few resources just the same as a large corporation, or the United States government, the defendant in the Court of Federal Claims. As I quoted from Abraham Lincoln in my introductory statement at my Judiciary Committee hearing: “Concerning the original Court of Claims, President Lincoln said in his 1861 address to Congress, ‘It is as much the duty of Government to render prompt justice against itself in favor of citizens as it is to administer the same between private individuals.’ It is the honor of my legal career to receive nomination to serve that national justice, at the Court of Federal Claims, and have my nomination for a 15-year term considered by this Committee.”

Further, my legal background and experience should provide assurances that I would render decisions impartially with personal understanding and respect for all litigants that could come before me. As a law professor I have taught and mentored hundreds of law students from a myriad range of diverse educational and cultural backgrounds. My academic research has, in part, shined light through case studies on “little guy” (or gal) inventors attempting to compete against large competitors with patent rights. As a multiple small business owner, and most recently partner and chief counsel of a small defense technology company, I am well-acquainted with scarce resources in a field consisting almost entirely of large corporations. At the Federal Trade Commission, I focused my litigation practice on consumer protection actions working on behalf of consumers from around the country defrauded in schemes related to financial and sales fraud, working personally with hundreds of those individuals throughout my time at the Commission. In private practice, my clients included large and small entities equally and I devoted significant pro bono time to represent indigent criminal defendants (approximately 25% of my time at the firm). Finally, throughout my legal career, and teaching, I have assisted in advancing the programs of bar associations and small business development centers to provide legal and non-legal services to those without representation.

- 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?

The rules of federal courts have long recognized that such tactics are not

acceptable and are problematic. As notes to the Federal Rules of Civil Procedure proclaim, a judge should apply the rules of procedure “in an even-handed manner that will prevent use of discovery to wage a war of attrition or as a device to coerce a party.” Directly applicable to the Court of Federal Claims, in 2016, the Rules of the United States Court of Federal Claims, Rule 26(b) was amended (corresponding to FRCP 26 changes effective in 2015) to give judges additional means of ensuring the scope of discovery “proportional to the needs of the case, considering the importance of the issues at stake in the action.”

5. As a member of the Teneo Network, did you agree with its goal to “establish conservatism as the most relevant, most responsive and most effective political ideology”? If confirmed, will you maintain your membership in this network?

I did not author that statement nor do I recall having ever read it. As I noted in response to Ranking Member Feinstein’s Question 6, Teneo is a 510(c)(3) nonpartisan nonprofit organization that gathers members from a variety of professional backgrounds for dinners and social activities to discuss current events. As a member of Teneo, I was never asked to adopt a particular position on any issue and have actually encountered a wide range of opinions at Teneo events. If confirmed, I would evaluate my membership in this organization, and every organization I am a part of, under the Code of Conduct for United States Judges.

6. Do you believe it is the role of a judge to “establish conservatism as the most relevant, most responsive and most effective political ideology”? If confirmed, what steps will you take to assure litigants that you will make decisions based on the law and facts, and not a political ideology?

As stated in response to Question 5, I did not author that statement nor do I recall having ever read it. Further, I do not believe that statement reflects anything about the role of a judge. As stated in response to Question 4, I am committed to upholding the administration of justice “without respect to persons, and do equal right to the poor and rich . . . [to] faithfully and impartially discharge and perform all the duties . . . under the Constitution and laws of the United States” as required under the oath I would take as a judge. 28 U.S.C. § 453. This oath would require me, as a judge, to impartially apply governing law to the facts of a case without regard to personal preferences or personal beliefs. In addition to abiding by this oath, if confirmed, I would abide by the Code of Conduct for United States Judges and all Canons including avoiding impropriety or even the appearance of impropriety, fairness, impartiality, removal from engagement in extrajudicial activity that is not consistent with the office, and refraining from political activity.