

**Nomination of Rebecca Jennings to the
United States District Court for the
Western District of Kentucky
Questions for the Record
Submitted November 22, 2017**

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 do agree with Chief Justice Roberts’ metaphor. An umpire should call balls and strikes the same for all players. Similarly, I believe a judge should apply the law impartially and equally regardless of the party appearing before the court.

- 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, a judge should faithfully and impartially follow the law regardless of the judge’s opinion of the consequences of a particular ruling. A judge should not be invested in any particular outcome; a judge’s role is to apply the applicable law to the facts in any given case. It is the legislature’s role to create laws to garner a particular outcome. There are some circumstances, however, that call for a judge to consider the practical consequences for a particular ruling, such as when considering whether a failure to issue a restraining order or preliminary injunction would result in “irreparable harm.”

- c. Federal Rule of Civil Procedure 56 provides that a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact” in a case. Do you agree that determining whether there is a “genuine dispute as to any material fact” in a case requires a judge to make a subjective determination?

I do not. The determination of whether a fact is material and whether any issue of material fact is genuine should be made objectively. If the judge must make a subjective determination about the strength of the evidence, then the case is not one appropriate for summary judgment.

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?

While I do not believe that empathy should play a role in determining what the facts may be in a given case or what law applies to a particular situation, I do believe that empathy can play a role in continuing to remind a judge to treat each litigant and attorney that appears in court with respect and patience.

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

One's life experiences should not play a role in determining the facts of a given case or the appropriate law applicable to a situation before the court. But my prior life experiences from my career in private practice, if I am so fortunate as to be confirmed, will assist me in managing my docket, understanding the practical application of the law, and appreciating the experience of being a lawyer.

- c. Do you believe you can empathize with "a young teenage mom," or understand what it is like to be "poor or African-American or gay or disabled or old"? If so, which life experiences lead you to that sense of empathy? Will you bring those life experiences to bear in exercising your judicial role?

I believe I can and will have empathy for all people who appear before me and am able to treat all people with respect regardless of their backgrounds or personal life experiences. If I am confirmed, however, it will be my duty to apply the law independently, fairly, and impartially to all parties.

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. If confirmed, how do you plan to compensate your lack of criminal law experience? What resources will you consult or training will you undertake in preparing for your role?

Attorney malpractice actions traditionally require litigation of the underlying case. Through my experience representing various types of attorneys in legal malpractice cases, I have gained a great deal of experience in researching and learning each attorney's specific area of practice so I can properly defend their actions in the underlying case. It is not uncommon for the attorney's specialty to fall outside my traditional areas of practice. Whether the attorney practices bankruptcy law, mineral rights law, or something else, it is important to fully research the underlying practice. If confirmed, I intend to use those same research skills to aid in building my knowledge of criminal law.

Additionally, I am in the process of reviewing relevant materials provided by the Federal Judicial Center in preparation for criminal matters that may come before me, if I am fortunate enough to be confirmed. I have also reached out to the Judges of the United States District Court for the Western District of Kentucky, who are allowing me to sit in and observe various criminal proceedings. In addition to my current independent research, I will also rely on and draw from my experiences as a law clerk for Judge William J. Haynes, Jr. in the Middle District of Tennessee and the lessons I learned from the judge and his career clerk regarding criminal law and proceedings.