

**Nomination of William F. Jung to the
United States District Court
For the Middle District of Florida
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?

Chief Justice Roberts’ metaphor is not one I would use, but I do not disagree with its sentiment. A judge must apply the law fairly, and rule promptly, following all controlling precedent and rules. The best judges are modest and exude an air of personal humility, permitting the litigants to have their personal issues to be fully and fairly heard and determine without interference by the judge’s personal views or predilections. Similarly, a baseball umpire does not involve himself or herself in playing the game. In other words, the judge must strive to make an impartial and efficient decision for the litigants that appear 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?

A judge must rule impartially and dispassionately, with the practical considerations of the particular ruling not paramount or controlling. In other words, the judge should make the ruling based on the law and facts, even if that is a ruling which the judge might not personally prefer. By the same token, the judge cannot rule in a vacuum, and must take into account the real-world consequences or effects of his or her ruling on the parties and issues. This is especially true in criminal sentencing matters, where impacts upon the defendant, the defendant’s family, and victims must be taken into account. Likewise this is true in an injunction setting, where “irreparable injury” (in absence of an injunction) is often an element to be adjudicated.

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?

Empathy should not control the facts or the law, but it does have a role in the decision-making process. A judge is not a robot, after all, and the court’s rulings have real, often life-altering consequences for the litigants before it. For example, case law cautions that consideration and leeway be given to pro se litigants who are struggling to present their cases but may be untrained in law or procedure. Another example is 18 U.S.C. § 3553(a) which augurs in favor of these types of consideration in sentencing. Considerations of empathy assist a judge in treating every litigant with courtesy, respect, and patience.

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

The law must be applied evenly across courtrooms, and evenly applied between and among judicial officers. The judge should strive to be neutral and detached, and consider the litigants' circumstances and cause within the facts and law, and not the judge's personal circumstances. Notwithstanding this, we are all products of our background and history. My experiences will lead me to treat every party and litigant before me with the respect and patience that I fortunately received from other judges I practiced before.

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. A U.S. district court judge must apply, and may not ignore or disregard, an order from a superior court. I will be bound by two levels of court precedent, from the U.S. Supreme Court, *Rodriguez de Quijas v. Shearson/American Express*, 490 U.S. 477, 484 (1989) and from the U.S. Court of Appeals for the Eleventh Circuit, *United States v. Vega-Castilla*, 540 F.3d 1235, 1236 (11th Cir. 2008).

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?

In many years of private practice I have often represented "the little guy" against larger or greater-resourced opponents. Whether this is representing a criminal defendant against the awesome power of the United States, or small "mom and pop" companies sued by larger corporations, I know well the feeling of being the "underdog" in federal court. I assure this Committee that if confirmed, I will faithfully uphold my oath to render equal justice to all, no matter size, power, or wealth of the litigant. All are equal under the law and all will be equal in my courtroom—no exceptions. This is the oath I will take under 28 U.S.C. § 453, and I will follow it.

- 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?

These tactics are not acceptable and, if confirmed, I would not permit them. A judge in the Middle District of Florida has ample powers pursuant to the Local Rules and Federal Rules of Civil Procedure to prohibit and prevent such practices. The court presently uses a set case management schedule that varies based on a lawsuit's size and complexity. It has worked well in managing an efficient yet very heavy docket. Practitioners and judges know them well and know what to expect. These rules help to create order and to avoid any issues such as "paper blizzards" or unconscionable strategic delay. I will apply these local practices that are time-tested and well known in this district.