

**Nomination of Dominic W. Lanza to the
United States District Court
For the District of Arizona
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?

No metaphor is perfect, but I believe Chief Justice Roberts’s baseball metaphor is a good one. Judges are duty-bound to fairly and impartially ascertain and apply the law, regardless of their personal views. Similarly, an umpire should apply the same strike zone to both teams’ pitchers, regardless of any rooting interests the umpire might personally harbor.

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

In our system of government, it is the role of the political branches to evaluate and weigh the practical consequences of different policy choices. The judiciary’s role is different—it is to fairly and impartially ascertain and apply the law, even if doing so generates an outcome the judge might not personally prefer. That said, the Supreme Court has stated that, at least in certain contexts and circumstances, “absurd results are to be avoided” when interpreting statutes. *United States v. Turkette*, 452 U.S. 576, 580 (1981). This canon of construction suggests that judges may sometimes consider the practical consequences of ruling in a particular fashion. Additionally, some equitable doctrines require judges to consider factors (*i.e.*, irreparable injury) that necessarily entail some consideration of the practical consequences of action or inaction. Finally, district judges are also vested with consideration discretion when it comes to certain case- and trial-management issues, and it is important that such rulings be practical.

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?

A judge’s role is to fairly apply the law regardless of the judge’s personal views. That said, I am well aware from my decade of experience as a federal prosecutor that 18 U.S.C. § 3553 contains provisions that may call for a judge to consider empathy as part of the sentencing calculus. For example, judges are required by subdivision (a)(1) to consider the “history and characteristics of the defendant.” This factor could lead a judge to consider imposing a lower sentence if the

defendant's crime represented an aberration from an otherwise law-abiding life. Such an approach—considering the entirety of the defendant's life instead of focusing narrowly and exclusively on the circumstances of the crime at issue—can be characterized as a statutorily-mandated exhibition of empathy.

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

On the one hand, judges are bound to apply the law fairly and impartially, regardless of their personal views and life experiences. It would be inappropriate for a judge to disregard the law, and tilt the scales in favor of a particular litigant, due to the judge's personal preferences. On the other hand, wisdom is often the byproduct of experience, and it would be entirely appropriate for a judge to draw upon such wisdom when engaging in certain types of judicial decision-making. For example, district judges are vested with consideration discretion when it comes to certain case- and trial-management issues. One would hope that a judge would draw upon his or her pre-judicial experience as a litigator when addressing such issues. A contrary approach would tend to generate impractical rulings.

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 should provide complete assurance to the Committee and the American people that all litigants will be treated fairly and equally in my courtroom, regardless of their power or wealth. During my five years in private practice, I engaged in extensive *pro bono* work and received my law firm's "Most Challenging Pro Bono Matter" award. After my time in private practice provided enough financial stability to address my student loans, I left to pursue a career in public service. In my decade as a federal prosecutor, I have focused primarily on white collar fraud and public corruption cases. This work has frequently led me to prosecute wealthy and powerful businesspeople and corporations (and, in the process, to protect the rights and interests of their relatively powerless victims). Finally, as noted during my hearing, my father was a solo practitioner whose work consisted almost exclusively of representing the "little guys" in personal injury, worker's compensation, and bankruptcy matters. Growing up in this environment, I witnessed first-hand the deep importance of treating all litigants with courtesy, respect, and fairness.

- 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 unacceptable. As noted above, district judges are vested with consideration discretion when it comes to case- and trial-management issues. Judges can and should utilize their discretion in these areas to thwart “paper blizzard” and other abusive tactics.

5. You have represented corporate clients against claims that they should be held liable for damages as a result of their contributions to climate change, and in your personal capacity you have advocated against such climate change-based tort litigation.
 - a. What assurances can you provide that you would be a fair and impartial arbiter of cases involving issues related to climate change?

Over ten years ago, while still in private practice, I helped assert good-faith legal arguments on behalf of a client. The district court agreed with those arguments and determined they were meritorious. Afterward, I helped co-author a law review article (which did not express any opinion concerning the existence or non-existence of climate change) that summarized several additional cases in which other courts had issued legal rulings similar to the district court’s ruling in our case. These factors, coupled with the vow I will take under 28 U.S.C. § 453 to “administer justice without respect to persons, and . . . faithfully and impartially discharge all duties incumbent upon me . . . under the Constitution and the laws of the United States,” should provide ample assurance that I will be a fair and impartial arbiter in future cases.

- b. Given your personal advocacy on this issue, and your conclusion that climate change-based tort lawsuits are a “nuisance,” will you agree to recuse yourself from such cases? If not, why not? Given your personal views on these cases generally, how could a plaintiff bringing such a claim have any confidence that you would be a fair and impartial adjudicator of his or her case?

See answer to question 5a.