

Senator Thom Tillis
Questions for the Record

Mary McElroy

Nominee, U.S. District Judge for the District of Rhode Island

Questions for All Nominees

- 1. One challenge you will face as a federal judge is managing a busy caseload. If confirmed, how will you balance competing priorities of judicial efficiency and due process to all litigants involved in the case?**

Response: As an assistant public defender, I managed a busy caseload throughout my career. In my current position as Rhode Island Public Defender, I oversee the work of the entire office and its ninety-three full time employees. While judicial efficiency is a critical component of the delivery of justice, it must be balanced by the due process guarantee. If confirmed, I would consult with the other judges in the District of Rhode Island as to the best practices for maintaining the balance between judicial efficiency and due process.

- a. Will you give certain cases priority over others?**

Response: If I was fortunate enough to be confirmed, I would not unilaterally determine priority of cases. I would be guided by congressional demonstration of priority (for example the speedy trial act), guidelines from the Administrative Office of the United States Courts, and district-wide needs as determined by the chief judge and the Court of Appeals for the First Circuit.

- 2. What is a fundamental right?**

Response: A fundamental right is one that is guaranteed by the United States Constitution and which has been recognized by the United States Supreme Court as requiring vigorous protection from government encroachment.

- a. From where are these rights derived?**

Response: These rights are derived from the Constitution typically from the Bill of Rights and are incorporated to the States through the Fourteenth Amendment.

3. What role, if any, should societal pressure or popular opinion play in interpreting legislation or the United States Constitution?

Response: Neither societal pressure nor popular opinion should play any role in judicial interpretation of legislation or the Constitution.

Questions for Ms. Mary Susan McElroy

1. During your time as a Federal Public Defender, you wrote letters supporting and opposing proposed legislation by the Rhode Island General Assembly. Several letters opposed legislation that would have increased sentences for certain crimes. If confirmed, how will you facilitate the will of Congress when applying sentences that you personally believe do not fit the crime? In addition, what aggravating factors do you believe need to be present in a case before imposing a severe criminal sentence?

Response: I wrote letters to the Rhode Island General Assembly during my years as the Public Defender for the State of Rhode Island and never as a Federal Public Defender. In my current position as Rhode Island Public Defender, it is my responsibility to advocate for legislation that supports the policies of my agency. The role of advocate is very different from that of a judge. If confirmed I would faithfully follow all laws as passed by Congress and all binding precedent of the United States Supreme Court and the United States Court of Appeals for the First Circuit. In imposing sentences I would be bound to apply the law regardless of any opinion I may hold or position I may have taken when in the role of an advocate. Congress has established the factors that a court must consider in imposing sentences and I would faithfully apply the law. For example, 18 U.S.C. §3553 mandates consideration of several factors including the need for deterrence, the protection of the public and the seriousness of the offense.

2. If confirmed, how do you transition from a role of being a zealous advocate to a neutral arbiter?

Response: Most judges need to make the transition from the role of advocate to that of a neutral and detached arbiter of the law; I would be no different. Judges who have litigated on behalf of the government, corporations, organizations or criminal defendants all need to leave behind the role of advocate in order to faithfully fulfill their obligations once confirmed as judges. I greatly respect and appreciate the different roles in the legal system played by advocates and judges. I will be very mindful of the different roles and am committed to giving every litigant a fair hearing and approaching every case with an open mind.