

**Nomination of John Broomes to the
United States District Court
for the District of Kansas
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 agree with Justice Roberts’ metaphor in the sense that it reflects the role of the judge in the adversarial process. Like an umpire, the judge’s role is not to assist or advance the cause of one party over another, but rather to oversee the proceeding as an unbiased, impartial arbiter.

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

In rendering a decision, a judge is not free to ignore or disregard the law simply because it yields what the judge might regard as an undesirable result. The role of the court is to fairly and impartially apply the law to the facts of each particular case. Generally speaking, the practical consequences of a court’s ruling represent a policy decision that should be left to the legislative body, which is better equipped to evaluate such factors when enacting legislation.

- 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 agree. Whether a fact is material, and whether a party has put forth any evidence on a material fact, are objective determinations. Even when a party attempts to create a dispute of fact, the Supreme Court has explained that a genuine dispute as to a material fact exists when a reasonable jury could find the fact in favor of the non-moving party. *See Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986). Whether a reasonable jury could find in favor of the non-moving party is also an objective inquiry.

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?

Under our system of laws, proof of certain facts generally yields particular legal conclusions and results, regardless of hardships and life experiences of the parties. Judges take an oath to “administer justice without respect to persons, and do equal right to the poor and to the rich,” and to impartially discharge judicial duties. 28

U.S.C. § 453. Similarly, a judge has a corresponding legal and ethical duty to recuse whenever “his impartially might reasonably be questioned.” 28 U.S.C. § 455; Code of Conduct of for United States Judges, Canon 3(C). Therefore, empathy must not be permitted to encroach upon a judge’s obligation of impartiality or the duty to abide by the rule of law.

- 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 should play no role in the decision-making process. People rightly expect that a judge should decide cases without regard to the judge’s personal experiences or beliefs, and differences in those life experiences should not yield different results from different judges under the same set of laws and facts. The judge’s obligations of fairness and respect for the law demand nothing less. Having said that, based on my personal life experiences, I will treat all parties with dignity and respect.

- 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 think each person brings with them a unique set of life experiences that no other person can completely understand. In that sense, I will never know exactly what it is like to be someone else. As I indicated above, I do not think any of my life experiences should bear on the decisions I would make as a judge because the law requires, and the people deserve, judges whose decisions are not dictated by their life experiences, but by the law. If confirmed I would abide by the rule of law and fulfill my oath of office.

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. See also my response to Question 5, below.

4. Can you describe your work defending the interests of oil and gas companies? Can you describe your position on fracking? Do you believe your work has advanced or regressed environmental rights?

My work representing oil and gas companies has generally fallen into two broad areas. First, a substantial part of my practice has been in essentially the role of outside general counsel. Most of my clients have their own in-house general counsel, with whom I worked closely. As outside general counsel, I frequently select, supervise, and coordinate the work of litigation attorneys in numerous states where my clients conduct business. I also develop and implement case strategies and legal theories, review and approve court filings, and assist my clients in directing the litigation attorneys on individual cases. The other substantial component of my work in this role involves advising my clients on commercial transactions, along with drafting and negotiating the associated agreements.

If confirmed, I am committed to abide by the rule of law regardless of my personal

beliefs on a particular matter. Therefore, my personal views on hydraulic fracturing (or any other oil and gas issue) are not particularly relevant to how I will fulfill my duties as a judge. However, with respect to your second question, I know that hydraulic fracturing has been an integral part of oil and gas exploration for almost seventy years, with similar well stimulation techniques extending back to the nineteenth century. For the most part, hydraulic fracturing has been a positive technological innovation that has greatly enhanced the volume of recoverable reserves in this country.

To the extent my work has had any effect on environmental rights, it has been to advance those rights. Energy is essential to the well-being of the people of the United States, and many of my clients have helped bring affordable energy resources to the American public. The availability of abundant, affordable energy helps support a level of economic prosperity that enables a country like the United States to promote environmental quality.

5. Given your public stances against abortion, how can you assure this committee that you will uphold Supreme Court precedent from the past 44 years protecting a woman's right to choose?

I believe that the rule of law transcends a judge's personal beliefs. Lower courts must follow the controlling decisions of higher courts in our judicial system. If confirmed, I will faithfully apply all controlling precedent of the United States Supreme Court and the United States Court of Appeals for the Tenth Circuit.