

**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.

**Questions for the Record for William F. Jung  
From Senator Mazie K. Hirono**

As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees for a lifetime appointment to the federal bench, I am asking nominees to answer the following two questions:

- a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

No.

- b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

No.

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**QUESTIONS FROM SENATOR BOOKER**

1. According to a Brookings Institute study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.<sup>1</sup> Notably, the same study found that whites are actually *more likely* to sell drugs than blacks.<sup>2</sup> These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.<sup>3</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.<sup>4</sup>
  - a. Do you believe there is implicit racial bias in our criminal justice system?
  - b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

Our criminal justice system is comprised of humans who bring all the traits and flaws of humankind to this system. Two such flaws are racial prejudice and intolerance. These flaws are contrary to "Equal Justice Under Law." They have no place in our system, and must be identified and eliminated in whatever form they might be found. If I am confirmed, this flaw will not be countenanced in my courtroom or my chambers. I have not studied the root causes of the disproportionate incarceration rate of persons of color in this country, but I know that racial prejudice in all aspects of the criminal justice system must be identified and removed, not permitted to exist.

- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

I have not studied this issue directly, but agree that ongoing education and training about racial biases in our criminal justice system is appropriate and necessary. I will encourage and participate in this type of education and training as a U.S. district judge if confirmed. Our Middle District of Florida Federal Bar

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<sup>1</sup> JONATHAN ROTHWELL, HOW THE WAR ON DRUGS DAMAGES BLACK SOCIAL MOBILITY, BROOKINGS INSTITUTE (Sept. 30, 2014), available at <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/>.

<sup>2</sup> *Id.*

<sup>3</sup> ASHLEY NELLIS, PH.D., THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENTENCING PROJECT 14 (June 14, 2016), available at <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

<sup>4</sup> *Id.* at 8.

Association conducts such educational programs, and I attended one earlier this month.

2. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell an average of 14.4 percent.<sup>5</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an 8.1 percent average.<sup>6</sup>
  - a. Do you believe there is a direct link between increases of a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.
  - b. Do you believe there is a direct link between decreases of a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

I have not studied the criminology statistics concerning relative incarceration rates and their causative relationship to crime statistics.

3. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.

Yes.

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<sup>5</sup> THE PEW CHARITABLE TRUSTS, NATIONAL IMPRISONMENT AND CRIME RATES CONTINUE TO FALL 1 (Dec. 2016), available at [http://www.pewtrusts.org/~media/assets/2016/12/national\\_imprisonment\\_and\\_crime\\_rates\\_continue\\_to\\_fall\\_web.pdf](http://www.pewtrusts.org/~media/assets/2016/12/national_imprisonment_and_crime_rates_continue_to_fall_web.pdf).

<sup>6</sup> *Id.*

**Questions for the Record from Senator Kamala D. Harris**  
**Submitted February 21, 2018**  
**For the Nominations of**

**Colm Felix Connolly, to be a judge on the United States District Court for the District of Delaware**

**Maryellen Noreika, to be a judge on the United States District Court for the District of Delaware**

**William Frederic Jung, to be a judge on the United States District Court for the Middle District of Florida**

1. District court judges have great discretion when it comes to sentencing defendants. It is important that we understand your views on sentencing, with the appreciation that each case would be evaluated on its specific facts and circumstances.

**a. What is the process you would follow before you sentenced a defendant?**

The Eleventh Circuit, applying its own and Supreme Court precedent, has set forth a clear and set procedure for sentencings. The process begins with the preparation of a Pre-Sentence Report, with input and objections from both sides, and the computation of an advisory Guidelines level. Then, after notice and in open court: parties are allowed to give a full and complete allocution; the probation office and any victims are allowed input; disputed issues are resolved; variance, downward departures, and the factors set out in 18 U.S.C. § 3553(a) are considered; and a sentence is announced. I have participated in this procedure many times as a prosecutor and a defense lawyer. I will closely follow this process, and any further guidance from superior courts or Congress, as a U.S. District Judge.

**b. As a new judge, how do you plan to determine what constitutes a fair and proportional sentence?**

I would determine what constitutes a fair and proportional sentence by following the process described above. In doing so, I would ensure that I am hewing close to 18 USC § 3553(a).

**c. When is it appropriate to depart from the Sentencing Guidelines?**

The Guidelines are advisory only, but § 5K of the Guidelines contemplates a “within-Guidelines departure” and I would consult these provisions when considering such a departure.

Additionally, the sentencing judge may consider imposing a sentence outside of the advisory Guidelines range itself. Such a variance is appropriate, and necessary, when the always-controlling factors set forth in 18 USC § 3553(a) compel one. (That Section requires a sentence “sufficient *but not greater than* necessary to comply with” various statutory factors.) The findings made under that Statute and the case law interpreting it—which encompass a broad range of factors and considerations—control the appropriateness and extent of any variance.

Any departure or variance is not appropriate, however, without giving each party notice and an opportunity to be heard.

**d. Judge Danny Reeves of the Eastern District of Kentucky – who also serves on the U.S. Sentencing Commission – has stated that he believes mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing.<sup>1</sup>**

**i. Do you agree with Judge Reeves?**

I have never sentenced any one or had opportunity to impose a minimum mandatory or indeterminate sentence, and the respective deterrence effects of these penalties is not something I have knowledge of or have studied. Congress has imposed minimum mandatory sentences for some crimes. This is a power within the purview of Congress under Article I of the U.S. Constitution. I would be required to follow this law at sentencing, no matter what my agreement or personal view on the relative deterrent effects.

**ii. Do you believe that mandatory minimum sentences have provided for a more equitable criminal justice system?**

Please see my response to Question 1.d.i above.

**iii. Please identify instances where you thought a mandatory minimum sentence was unjustly applied to a defendant.**

Please see my response to Question 1.d.i above.

**iv. Former-Judge John Gleeson has previously criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to remedy unjust sentences that result from**

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<sup>1</sup> <https://www.judiciary.senate.gov/imo/media/doc/Reeves%20Responses%20to%20QFRs1.pdf>

**mandatory minimums.<sup>2</sup> If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:**

**1. Describing the injustice in your opinions?**

Yes. Although as a sitting judge duty-bound to apply the law, I would be careful not to encroach upon the purview of Congress to make such policy determinations.

**2. Reaching out to the U.S. Attorney and other federal prosecutors to discuss their charging policies?**

Decisions as to what charges to bring before a grand jury are committed to the authority and discretion of the Executive, pursuant to Article II of the U.S. Constitution, and judges must be careful not to encroach upon this authority and the deference afforded prosecutors to make such decisions. In extreme cases, however, I believe doing so could be appropriate.

**3. Reaching out to the U.S. Attorney and other federal prosecutors to discuss considerations of clemency?**

Federal clemency is exclusively a function of the Executive. *Harbison v. Bell*, 556 U.S. 180, 187 (2009)(Stevens, J.). A sitting district judge contacting the United States Attorney about clemency would have to do so with substantial deference to the Executive's authority and discretion over clemency matters.

**e. 28 U.S.C. Section 994(j) directs that alternatives to incarceration are "generally appropriate for first offenders not convicted of a violent or otherwise serious offense." If confirmed as a judge, would you commit to taking into account alternatives to incarceration?**

Yes.

2. Judges are one of the cornerstones of our justice system. If confirmed, you will be in a position to decide whether individuals receive fairness, justice, and due process.

**a. Does a judge have a role in ensuring that our justice system is a fair and equitable one?**

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<sup>2</sup> See, e.g., "Citing Fairness, U.S. Judge Acts to Undo a Sentence He Was Forced to Impose," NY Times, July 28, 2014, <https://www.nytimes.com/2014/07/29/nyregion/brooklyn-judge-acts-to-undo-long-sentence-for-francois-holloway-he-had-to-impose.html>



Yes. A judge takes an oath to administer justice faithfully and impartially without respect to persons, and do equal right to the poor and to the rich. 28 U.S.C. § 453. This is a template for my conduct that I will follow without fail were I to be confirmed.

- b. Do you believe that there are racial disparities in our criminal justice system? If so, please provide specific examples. If not, please explain why not.**

Please see my response to Question 1.b of Senator Booker.

3. If confirmed as a federal judge, you will be in a position to hire staff and law clerks.

- a. Do you believe that it is important to have a diverse staff and law clerks?**

Yes.

- b. Would you commit to executing a plan to ensure that qualified minorities and women are given serious consideration for positions of power and/or supervisory positions?**

If confirmed I intend to conduct a program for recruitment of minority and underrepresented persons. *All* persons should be given serious and fair consideration for any and all positions.