

**Nomination of Arthur Quattlebaum, Jr., to the
United States District Court for the
District of South Carolina
Questions for the Record
Submitted October 11, 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?

Justice Roberts’ metaphor is helpful because an umpire does not make rules; he or she applies them. Likewise, a judge does not enact laws. He or she should apply the law as enacted by Congress. And in applying the law, the judge must follow precedent of the Supreme Court and, in the case of the United States District Court for the District of South Carolina, the Fourth Circuit.

An umpire should call balls and strikes the same for all players. Similarly, a judge should apply the law impartially and fairly regardless of the party.

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

It is difficult to answer this question in the abstract. In general, a judge may consider the practical consequences of a particular ruling, but any consideration of the consequences cannot control the outcome of the case. Judges are not policymakers. If confirmed, I will faithfully apply the laws enacted by Congress and I will follow the applicable precedent wherever the law takes the case.

- 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?

The determination of whether a fact is material and whether any issue of material fact is genuine should be made objectively. Materiality of a fact should be based on the applicable law in the case. Whether an issue of material fact is genuine should be based on an analysis of the record in the case, and whether any reasonable juror could view the record differently.

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?

Judges are human beings and may at times have empathy for certain parties or about the outcome of the cases they handle. But all federal judges take an oath to

“administer justice without respect to persons, and do equal right to the poor and to the rich.” 28 U.S.C. § 453. If I am confirmed, I will abide by that oath, and I will faithfully and impartially apply the law.

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

Any judge comes to the position with his or her life experiences and perspectives. However, the judge should do his or her best to put those perspectives aside and apply the applicable law to the facts of the case independently, fairly and impartially.

- 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?

As a human being, I believe I can and will have empathy for all people. If confirmed, I will apply the law independently, fairly, and impartially to all parties.