

Nomination of Timothy M. Reif
United States Court of International Trade
Questions for the Record
Submitted December 5, 2018

QUESTIONS FROM SENATOR BOOKER

1. What do you view as the special challenges facing lawyers who practice before the Court of International Trade?

There are several challenges that I believe face lawyers who practice before the Court of International Trade. For example, as the court's workload grows, as more businesses, unions and other entities become involved in international trade, legal representation may broaden to those who have less experience before the court. While broadening representation in general can bring positive benefits such as geographic and other diversity, there may also be special challenges in providing appropriate support to those litigating and ensuring that their questions about the court and its procedures are answered. Other challenges may include the highly technical nature of the statutes and administrative records that the court adjudicates, the court's particular role in the federal judiciary system, and the need for hearing cases outside of New York or Washington, given the court's national jurisdiction.

However, this is a subject that, if confirmed, I would seek to learn much more about. That is because, in all of the positions I have held, particularly in public service, I have considered it my responsibility to be accessible to and improve as necessary access to the institutions for which I worked — *e.g.*, the Office of the United States Trade Representative and the House Ways and Means Committee — so that the public, stakeholders and others can present their views most effectively. In this way, I believe that I have been able to serve the United States in the most effective way possible. Similarly, were I to become a judge on the Court of International Trade, I would consider it a core responsibility to inquire proactively of all who practice before or rely upon the court to understand their views of special challenges that exist, as well as, simply, ways that the court can improve the ways in which it functions. I am aware that the court has established channels of communication in this regard with the bar and perhaps others; however, I would consider it my responsibility to listen to anyone who had a concern or suggestion. In this way, the court can continue to make the adjudication process before the court as accessible and meaningful to all attorneys who appear before the court, so that they in turn can serve most effectively the interests of their clients.

2. You have served in several legal and policy roles in the Office of the United States Trade Representative. If you are confirmed, how will your experiences in the Office inform your approach to your work on the Court of International Trade?

If confirmed, my role as a judge on the United States Court of International Trade will be to apply appropriate U.S. statutes and regulations to the cases to which I am assigned. In my prior experiences in the Office of the United States Trade Representative (USTR), the House Ways and Means Committee, the United States International Trade Commission and in private law practice, I have become familiar with many of the statutes that fall within the jurisdiction of the Court of International Trade. In these contexts, I have observed the key role of the Court of International Trade and the Federal Circuit in

reviewing, as prescribed by U.S. law, decisions of agencies such as the United States Department of Commerce, International Trade Administration, the United States International Trade Commission, and Customs and Border Protection in the United States Department of Homeland Security. In my service as Associate General Counsel, General Counsel, and Senior Policy Advisor at USTR, I have come to understand the unique prerogatives of the executive branch under Article II of the United States Constitution in relation to working with Congress to amend U.S. law, implement U.S. law, and defend U.S. law from challenges by other countries in the World Trade Organization and, prior to that, in the General Agreement on Tariffs and Trade.

Accordingly, my roles as policy and legal advisor have helped to prepare me to serve as a judge on the Court of International Trade, if confirmed, by enhancing my familiarity with the statutes and regulations that fall within the jurisdiction of the court as well as by making clear the unique role that each branch of government has in relation to the laws. For the court, that unique role is to apply the law to a specific case or controversy. If confirmed, my sole responsibility will be to apply the pertinent statute(s), regulation(s) and court-made precedent according to precepts of law.

3. You have also served as international trade counsel on the House Ways and Means Committee. If you are confirmed, how will your experiences in Congress inform your approach to your work on the Court of International Trade?

Just as my work in the executive branch has helped me to understand its role in trade law under Article II of the Constitution, so my work at the House Ways and Means Committee has helped me to understand the role of Congress in trade law as set forth in Article I of the Constitution. That role is to enact bills that set and amend U.S. law. By understanding clearly that the Constitution provides for Congress to pass legislation to amend U.S. law, the Constitution makes it even more clear that my role at the Court of International Trade, were I to be confirmed, would be to *apply* U.S. law, not to make new law.

4. According to a Brookings Institution 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.¹ Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.² 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.³ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁴

- a. Do you believe there is implicit racial bias in our criminal justice system?

I have not studied the issue of implicit racial bias in the U.S. criminal justice system. Racial bias in any form — and, in fact, all forms of implicit or explicit bias — are repugnant and, in my view, antithetical to the core values for which the United States stands. Were I to be confirmed, I would want to study the subject of implicit racial bias more extensively.

- b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

I am aware generally that there have been studies of crime and incarceration rates that have concluded that various factors can contribute to these rates; however, I have not studied this specific issue.

- 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 the issue of implicit racial bias in the U.S. criminal justice system.

5. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.⁵ In the 10 states that saw

¹ Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

² *Id.*

³ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

⁴ *Id.*

⁵ Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.⁶

- a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

The issue of whether there is a causal relationship between state incarceration rates and crime rates in the same state is not one that I have studied. Accordingly, I do not have a well-formed view on this issue.

- b. Do you believe there is a direct link between decreases in 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.

Please see my response to Question 5a, above.

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

I believe that demographic diversity is important in the judicial branch, as in all contexts.

I have consistently worked over my career to broaden and diversify opportunities for attorneys, law students and others. To provide one example, starting more than 10 years ago, I began a special recruitment program with Howard Law School. I began the program during my tenure on the House Ways and Means Committee and have continued it during my tenure since 2009 at USTR.

In 2009, when I was appointed USTR General Counsel, there were no African-American attorneys serving in the Office of General Counsel. To the best of my knowledge, no Howard Law School attorney had ever served as an attorney in that office.

Currently, there are five African-American attorneys serving in the Office of General Counsel, four of whom are Howard graduates. These attorneys are now working with me and others in that office to recruit other attorneys from Howard and other law schools — such as the University of Texas, Brooklyn Law School and the University of California at Irvine — to ensure that the pool of attorneys considered for employment at USTR is as broadly representative as possible of the best and brightest legal talent in the United States.

My involvement in the program has encompassed all phases: (1) recruiting trips to campuses such as Howard Law to meet with interested students; (2) meetings with deans and professors of law schools to explain the USTR internship, externship and fellow programs and seek their support for our recruitment efforts; (3) recruitment and consideration of candidates; (4) working personally with students and attorneys who come to work at USTR, including by providing detailed feedback on written and other work product; and, (5) mentoring students and attorneys as they consider ways to develop their careers.

In other respects as well, I have sought consistently to hire and promote the finest legal talent in ways that recognize the full diversity of such talent.

I believe that the individuals that I have been fortunate enough to meet and be able to recruit and mentor have provided exceptional service to the United States. I have enjoyed at a personal level the challenges and rewards of the career steps that they have taken, and they are serving as exemplars of the best and brightest talent that the American people deserve from their civil servants. In sum, I believe strongly that diversity is an important goal in the judicial branch as in other contexts and have worked hard to promote it.

7. Do you believe that *Brown v. Board of Education*⁷ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Brown v. Board of Education, 347 U.S. 483 (1954) stands as an historic and landmark decision of the United States Supreme Court that during more than 60 years has been the cornerstone to help ensure civil rights and racial justice in the United States for all Americans, regardless of race. If confirmed, I will apply this decision and related decisions faithfully, as I will all precedent of the Supreme Court.

8. Do you believe that *Plessy v. Ferguson*⁸ was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

No — as found by the Supreme Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), when the Court overruled the repulsive doctrine of “separate but equal.”

9. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

In my answers, I have been guided by the Code of Conduct for United States Judges, my own experiences and my own views. Canon 2.10 provides that “a judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court.”

10. President Trump has stated on Twitter: “We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came.”⁹ Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

My view is that every litigant is entitled to due process and fair adjudication of his or her claims.

⁶ *Id.*

⁷ 347 U.S. 483 (1954).

⁸ 163 U.S. 537 (1896).

⁹ Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.

Questions for the Record from Senator Kamala D. Harris
Submitted December 5, 2018
For the Nomination of
Timothy M. Reif, to the U.S. Court of International Trade

1. 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?**

Yes, absolutely. The Code of Conduct for United States Judges, Canons 1 through 3 requires it. Beyond that, were I to be confirmed, I would work to ensure proactively that any issues that might arise for parties that come before me and attorneys that practice before the court be considered in a manner that fulfilled the highest standards of fair treatment, as I have sought to do in other contexts throughout my career. For example, in my interactions with the public and stakeholders, I have sought consistently to ensure due process, to listen carefully to concerns or proposals and respond in a fair and considered manner. Were I to be confirmed, I would take the same steps proactively to ensure that all litigants before me received fairness, justice, and due process.

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

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

Yes.

I have consistently worked over my career to broaden and diversify opportunities for attorneys, law students and others. For example, starting more than 10 years ago, I began a special recruitment program with Howard Law School. I began the program during my tenure on the House Ways and Means Committee and have continued it during my tenure since 2009 at USTR.

In 2009, when I was appointed as USTR General Counsel, there were no African American attorneys serving in the Office of General Counsel. To the best of my knowledge, no alumna or alumnus of the Howard Law School had ever served as an attorney in that office.

Currently, there are five African American attorneys serving in the Office of General Counsel, four of whom are Howard graduates. These attorneys are now working with me and others in that office to recruit other attorneys from Howard and other law schools — such as the University of Texas, Brooklyn Law School and the University of California at Irvine — to ensure that the pool of attorneys considered for employment at USTR is as broadly representative as possible of the best and brightest legal talent in the United States.

My involvement in the program has encompassed all phases: (1) recruiting trips to campuses such as Howard Law to meet with interested students; (2) meetings with deans and professors of law schools to explain the USTR internship, externship and fellow programs and seek their support for our recruitment efforts; (3) recruitment and consideration of candidates; (4) working personally with students and attorneys who come to work at USTR, including by providing detailed feedback on written and other work product; and, (5) mentoring students and attorneys as they consider ways to develop their careers.

In other respects as well, I have sought consistently to hire and promote the finest legal talent in ways that recognize the full diversity of such talent.

I believe that the individuals that I have been fortunate enough to meet and be able to recruit and mentor have provided exceptional service to the United States. I have enjoyed the challenges and rewards of the career steps that they have taken, and they are serving as exemplars of the best and brightest talent that the American people deserve from their civil servants. Accordingly, I expect fully to continue this approach to hiring and recruitment of clerks and staff in the years to come as a judge on the Court of International Trade, were I to be confirmed.

c. 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?

As explained in my answer to Question 2b., I have sought consistently to hire and promote the finest legal talent in ways that recognize the full diversity of such talent. These steps have included hiring and promoting qualified women and minorities to positions of power and supervisory positions. I fully expect to continue to give women and minorities serious consideration for positions of power as well as supervisory positions.

In sum, I believe strongly that diversity is an important goal in the federal judiciary as in other contexts and have worked hard to promote such diversity throughout my career.