

**Nomination of Fernando Rodriguez to the
United States District Court
for the Southern District of Texas
Questions for the Record
Submitted December 6, 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?
 - b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?
 - 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?
 - a. While the metaphor that Chief Justice Roberts makes is not mine and, as a result, I cannot comment upon how Chief Justice Roberts would apply it to all aspects of the judicial role, I do agree with his explanatory comments surrounding the referenced quote. In particular, if I am fortunate enough to be confirmed, I will “confront every case with an open mind”, will “fully and fairly analyze the legal arguments that are presented”, will review controlling caselaw and will consult with my colleagues on the bench and with the law clerks of my chamber, and I will “decide every case based on the record, according to the rule of law, without fear or favor, to the best of my ability.” *See* Opening Statement of Chief Justice John G. Roberts, Jr., *as reported at* <http://www.uscourts.gov/educational-resources/educational-activities/chief-justice-roberts-statement-nomination-process> (last accessed on Dec. 7, 2017).
 - b. If I am fortunate enough to be confirmed, I would endeavor to apply the law to the facts before the Court, irrespective of the practical consequences of the ruling, unless binding precedent by the Supreme Court of the United States or the Court of Appeals for the Fifth Circuit required the consideration of public policy factors as part of deciding a case or controversy.
 - c. To the extent that a “subjective determination” refers to a decision based on a judge’s personal beliefs regarding matters outside of the record before the Court, I would disagree. Federal Rule of Civil Procedure 56 and caselaw regarding summary judgment standards require a District Court to decide whether a genuine dispute as to any material fact exists. The decisions of the Supreme Court of the United States and the Court of Appeals for the Fifth Circuit, along with the Federal Rules of Evidence, establish binding guidelines regarding the summary judgment evidence that a District Court may consider, and the presumptions afforded to that evidence. If I am fortunate enough to be confirmed, I will consider the arguments of the litigants, the summary judgment evidence, and will apply the controlling caselaw to decide the case or controversy, irrespective of my personal beliefs.
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?
 - b. What role, if any, should a judge’s personal life experience play in his or her decision-making process?
 - 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?
-
- a. In some circumstances, such as in some sentencing scenarios, controlling caselaw may allow the judge to consider the vulnerability of the victim as a factor. In such circumstances, the judge’s ability to empathize with the victim, so as to understand the severity of his or her vulnerability, may play a role in the judge’s sentencing determination. As a general proposition, if I am fortunate enough to be confirmed, I would endeavor to apply the law to the facts before the Court, irrespective of the consequences of the decision.
 - b. My personal life experiences as an attorney in Texas and in my work for International Justice Mission have prepared me for the position of a District Court judge. These experiences provide me with the ability to analyze the law appropriately, to apply that law to the facts before the Court in an impartial manner, and to treat all litigants equally. As a general proposition, if I am fortunate enough to be confirmed, I would endeavor to apply the law to the facts before the Court, irrespective of the consequences of the decision and without considering my personal life experiences as part of that decision.
 - c. My personal history and my professional career enable me to empathize with young teenage mothers and to understand what a life of poverty and vulnerability entails. I was born and raised in the Rio Grande Valley of Texas, a border community with a high rate of poverty. My mother gave birth to me when she was a teenager. She valiantly raised me as a young mother, and for many years as a single mother. At times, my family lived below or near the poverty line. I experienced firsthand the challenges that poverty presents to families.

As a teacher for three years in an elementary school of the Houston Independent School District, I interacted constantly with young mothers (and fathers), almost all of whom were poor, many of whom spoke no or very limited English, and some of whom became parents as teenagers. I talked with them regularly about the struggles they faced to provide a quality education to their children, and to overcome the hurdles that poverty and disenfranchisement create.

In my work for International Justice Mission, I have led teams that have facilitated services to scores of young victims of violence, all of whom have been poor, many of whom have lived in extreme poverty, and some of whom have been teenage mothers, both as a result of the violence they suffered or otherwise. These survivors have come from particularly vulnerable backgrounds. I have been in their homes and have heard their stories. I have seen firsthand the hard work required to restore these survivors to a life of dignity and hope, free from

vulnerability.

All these experiences enable me to empathize with the vulnerable, the poor, and the disadvantaged. If I am fortunate enough to be confirmed, I would seek to make the Court accessible to all, and to ensure that the Court treats all litigants fairly and impartially. I also believe and hope that my personal history may encourage other young men and women to aspire to help the poor and the vulnerable, and to understand that individuals can overcome difficult circumstances and backgrounds to achieve personal and professional success.

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?

A District Court judge should never ignore, disregard, refuse to implement, or issue an order that is contrary to an order and/or binding precedent from a superior court.

4. 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?

Civil litigants should utilize discovery to obtain discoverable information related to the case or controversy, and not as a weapon to unfairly overwhelm an opponent or force unreasonable settlements. The Federal Rules of Civil Procedure, along with the applicable local rules, place parameters on the permissible scope of discovery, and enable litigants to seek protection from abusive discovery practices. *See, e.g.*, FED. R. CIV. P. 26(b)(1) (limiting the scope of discovery: “. . . any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case . . .”). The Supreme Court of the United States, the Court of Appeals for the Fifth Circuit, and the Southern District of Texas have issued rulings regarding the scope of those rules.

If I am fortunate enough to be confirmed, I will apply the Federal Rules of Civil Procedure and relevant caselaw to any discovery dispute that comes before the Court, and would impartially consider any party’s request for protection from discovery that the party deems abusive. In addition, I will endeavor to maintain local rules that facilitate appropriate limits on discovery and that assist the parties in the resolution of discovery disputes without the Court’s intervention.