

**Nomination of
Mary M. Rowland, to be United States District Judge for the Northern District of Illinois**

Submitted August 29, 2018

QUESTIONS FROM SENATOR WHITEHOUSE

All judicial nominees listed above are directed to answer each of the following questions:

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 the Chief Justice. I think his metaphor accurately explains that a judge is not supposed to seek a specific outcome in litigation but to resolve disputes between parties who are the primary participants in a litigated matter.

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

The practical consequences of a particular ruling should be taken into account where the governing legal doctrine demands it. Otherwise, practical considerations are more appropriately reserved to the political branches. *See* Canon 5, Code of Conduct for United States Judges.

2. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy.

- a. What role, if any, should empathy play in a judge’s decision-making process?

A judge should strive to fairly apply the law dispassionately, regardless of emotion or the judge’s personal views. *See* 28 U.S.C. § 453. Nonetheless, it is often important for a judge to understand the position and motivations of other people—for example, when evaluating a witness’s credibility, determining how to sentence a criminal defendant, or interacting with counsel.

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

A judge should faithfully and impartially apply the law based on the legal authorities and evidence introduced before him or her. The rule of law requires that a judge set aside his or her personal life experiences.

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.

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?

Having served a federal public defender for 10 years, I have had experience representing the “little guy.” As a federal magistrate judge for the past 6 years, I have supervised discovery for dozens of cases with *pro se* litigants. I spend considerable time explaining the procedural requirements and opportunities for them. I am known for my demeanor in the courtroom toward these litigants. They, like all litigants, deserve our respect as they press their claims.

5. Do you believe that discrimination (in voting access, housing, employment, etc.) against minorities—including racial, religious, and LGBT minorities—exists today? If so, what role would its existence play in your job as a federal judge?

Discrimination against minorities still exists today. If confirmed, I will make every effort to ensure that invidious discrimination has no place in my courtroom.

**Nomination of Mary M. Rowland
United States District Court for the Northern District of Illinois
Questions for the Record
Submitted August 29, 2018**

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.¹ Notably, the same study found that whites are actually *more likely* to sell drugs than blacks.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?

Yes.

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

Yes.

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 attended presentations at judicial conferences about implicit bias, but I have not studied the issue as it relates to our criminal justice system. I have not read any books or articles on the subject.

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.⁵ In the 10 states that

¹ 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/>.

² *Id.*

³ 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/>.

⁴ *Id.* at 8.

⁵ THE PEW CHARITABLE TRUSTS, NATIONAL IMPRISONMENT AND CRIME RATES CONTINUE TO FALL 1 (Dec. 2016), available at

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

- 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.

I am not familiar with the Pew Charitable Trusts' fact sheet or other work in this area. This kind of study is outside my area of expertise. I cannot offer an informed opinion about the causal connection between rates of incarceration and crime rates.

- 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.

Please see my response to Question 2(a).

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.

Absolutely. As a magistrate judge in the Northern District of Illinois, I am fortunate to sit on a diverse bench.

4. The color of a criminal defendant plays a significant role in capital punishment cases. For instance, people of color have accounted for 43 percent of total executions since 1976 and 55 percent of those currently awaiting the death penalty.⁷

- a. Do those statistics alarm you?

These statistics are very concerning.

- b. Do you believe it is cruel and unusual to disproportionately apply the death penalty on people of color in compared to whites? Why not?

It is unconstitutional for a judge or jury to impose the death penalty or any criminal sentence because of a person's race. Whether a statistical racial disparity in the application of the death penalty renders a death sentence unconstitutional has been litigated in the Supreme Court, *see McClesky v. Kemp*, 481 U.S. 279 (1987), and is presented in a case pending before the Supreme Court, *Wood v. Oklahoma*, No. 17-6891 (U.S.). It would be inappropriate for me to comment on

[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).

⁶ *Id.*

⁷ The American Civil Liberties Association, Race and the Death Penalty, <https://www.aclu.org/other/race-and-death-penalty> (Last visited June 13, 2018).

that pending litigation under Canon 3(A)(6) of the Code of Conduct for United States Judges.

- c. The color of the victim also plays an important role in determining whether the death penalty applies in a particular case. White victims account for about half of all murder victims, but 80 percent of all death penalty cases involve white victims. If you were a judge, and those statistics were playing out in your courtroom, what would you do?

It would be inappropriate for me to express any views on this question because a similar issue might come before me as a district judge, should I be fortunate enough to be confirmed. *See* Canons 2 and 3, Code of Conduct for United States Judges. If confirmed, I will carefully scrutinize the facts and proceedings in each death penalty case for errors or bias, consistent with Supreme Court and Seventh Circuit precedent.

Questions for the Record from Senator Kamala D. Harris
Submitted August 29, 2018
For the Nominations of

Mary Margaret Rowland, to the U.S. District Court for the Northern District of Illinois

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?

I would approach each sentencing decision with the appreciation that it is one of the most serious and solemn duties of any trial judge. I would ensure that the applicable Sentencing Guidelines range for the offense conduct is correctly calculated. Then I would evaluate any applicable statutes, the presentence report, and any victim statements. Ultimately, I would attempt to impose a sentence “sufficient, but not greater than necessary, to comply” with the congressionally designated purposes of federal sentencing: “the need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; [] to afford adequate deterrence to criminal conduct; [] to protect the public from further crimes of the defendant; and [] to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” 18 U.S.C. § 3553.

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

In addition to my response to 1.a. above, if confirmed, I expect to discuss the issue of sentencing extensively with colleagues within the district to ensure that our sentencing practices are consistent and that like cases are treated alike regardless of which judge has the case.

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

Under Supreme Court and Seventh Circuit precedent, the Guidelines are not binding on trial judges. *See, e.g., United States v. Booker*, 543 U.S. 220, 246 (2005). The factors listed in 18 U.S.C. § 3553(a) may call for varying from the advisory Guidelines range. Part K of Section 5 of the Guidelines also lists specific circumstances that can justify a departure from the advisory Guidelines range.

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.¹

i. Do you agree with Judge Reeves?

I have represented criminal defendants subject to a mandatory minimum. But I have never studied whether mandatory minimum sentences are likely to deter certain types of crime, and I am not familiar with Judge Reeves' position on that issue.

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

The equity of mandatory minimums is a political question that is reserved for the judgment of Congress. *See* Canon 5, Code of Conduct for United States Judges. As a nominee to a federal court, it would be inappropriate for me to comment on legislative policy judgments.

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

Please see my answer to 1.d.ii

iv. Former-Judge John Gleeson has criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.² 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?

If confirmed, I would apply any mandatory minimum sentencing statutes to the extent such statutes are constitutional. I believe it is appropriate for a judge to state for the record that he or she would not have sentenced a particular defendant to a particular sentence if not compelled by a statute. But judges should not offer personal criticisms of Congress's decision to impose a mandatory minimum sentence.

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

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

² *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>

The question of what crime to charge is one that our Constitution leaves to the executive branch. I would raise charging decisions with federal prosecutors if I were concerned about ethical impropriety, lack of professionalism, or prosecutorial misconduct.

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

The clemency power is reserved to the Executive Branch. However, as explained above, I believe a judge may in an appropriate case, state on the record that he or she would not have imposed a certain sentence but for a statutory requirement so that executive branch officials are aware of the judge's views for the purposes of considering clemency.

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, to the extent consistent with applicable law. In the summer of 2015, Chief Judge Castillo requested that I serve on a committee to initiate a pre-trial diversion program in the Northern District of Illinois. I worked with representatives from the Pretrial Service Office, the U.S. Attorney's Office, the Federal Defender's Office, and a district court judge to establish Sentencing Options that Achieve Results (SOAR). I was involved in drafting the initial documents and establishing the parameters for participation. I have presided over the twice-monthly court sessions since the start of the Program.

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?

Yes.

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.

Yes. Racial minorities are statistically more likely to be imprisoned than whites. The crack cocaine and powder cocaine sentencing scheme is a recent example of sentencing contributing to this disparity.

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 I am confirmed to serve as a district court judge, I will seek applicants from a wide variety of backgrounds as I have been doing for the past six years as a magistrate judge. I will continue to give serious consideration to all applicants regardless of their age, gender, race, color, national origin, or religion.

U.S. Senate Committee on the Judiciary
August 22, 2018 Hearing: “Nominations”
Questions from Senator Ben Sasse

For the Hon. Mary Rowland:

According to the questionnaire you submitted to the Judiciary Committee, you have been a member of the National Lawyers Guild and have served as President of its Chicago chapter. According to the National Lawyers Guild Constitution, the organization “is an association dedicated to the need for basic change in the structure of our political and economic system” “seek[s] to unite the lawyers, law students, legal workers, and jailhouse lawyers of America in an organization which shall function as an effective political and social force in the service of the people, to the end that human rights shall be regarded as more sacred than property interests.” Furthermore, the organization’s “aim is to bring together all those who regard adjustments to new conditions as more important than the veneration of precedent.”

1. Please describe your view of what “the need for basic change in the structure of our political and economic system” is and what that change in your view would involve, particularly as applied to the federal judiciary.

I do not know the intent of the author(s) of the NLG Constitution, but to me, it means using lawful means to ameliorate economic disparities that affect so many American families. As a magistrate judge, and if confirmed as a district court judge, my first responsibility is to follow the law, including all binding precedent of the Supreme Court and the Seventh Circuit. I have proudly and faithfully done so for the past nearly 6 years.

2. Why should “human rights . . . be regarded as more sacred than property interests”? In your view, why are human rights and property rights in tension with each other, rather than mutually supportive? Are property rights not a subset of human rights? If you do not see a conflict between the robust protection of both property rights and (other) human rights, why did you serve in the leadership of an organization that maintains the above-quoted language as its central organizing principle?

I do not see a conflict between the robust protection of property rights and other human rights. I cannot address what the author(s) of this language meant. As a magistrate judge, I have mediated dozens of cases where business owners, large and small, are in a dispute involving a threat to their business. I have faithfully applied the law. I have seen first-hand how much heart and soul the individuals behind these businesses put on the line to build their businesses. Property interests deserve robust protections along with all other human rights. All who come before the court, rich and poor, are equal in the eyes of the law. As a district court judge, I would apply all precedent respecting property rights and uphold my judicial oath to “administer justice without respect to persons, and do equal right to the poor and to the rich.” 28 U.S.C. § 453.

At the time I was involved in the NLG 25 years ago, the Chapter was almost exclusively involved in providing “legal observers” at protests in Chicago. Volunteer attorneys

would be present to protect the public's First Amendment rights. If there were arrests, the volunteer attorneys would provide representation to arrestees. On occasion, the attorneys were able to diffuse situations so that arrests did not take place. I was involved in the NLG to diffuse arrest situations and to represent those arrested. As a magistrate judge, and if confirmed as a district court judge, my first responsibility is to follow the law, including all binding precedent of the Supreme Court and the Seventh Circuit. I have proudly and faithfully done so for nearly 6 years. I will continue to do so.

3. Please elaborate on what specific "adjustment to new conditions" are needed and why, especially as applied to the federal judiciary. What specific precedents are less important than those "adjustment[s]"?

I cannot know the intent of the author(s) of this language, and it is unclear to me what this phrase means. There are ongoing debates concerning Constitutional interpretation and the role of precedent in Constitutional interpretation. This is not an academic debate I have been or will be involved in as an inferior court. As a magistrate judge, and if confirmed as a district court judge, my first responsibility is to follow the law, including all binding precedent of the Supreme Court and the Seventh Circuit. I have proudly and faithfully done so for the past nearly 6 years, understanding that predictability in the courts is critical to upholding the rule of law.

According to the questionnaire you submitted to the Judiciary Committee, you have been a member of the American Constitution Society, which describes itself as "the nation's leading progressive legal organization."

4. Outside of supporting particular outcomes in the policymaking process, what does it mean to you to be a "progressive" in legal debates? Please both provide an affirmative definition and a comparison to other leading competing schools of thought.

My first responsibility as a magistrate judge for the last nearly 6 years, and if confirmed as a district court judge, is to follow the law. My former membership in the American Constitution Society (ACS) plays no role in my day-to-day judicial duties. *See* Code of Conduct for United States Judges, Canon 3(A)(6) & Canon 5. My understanding of ACS's use of the term "progressive" concerns the ongoing academic debate about the role of precedent in Constitutional interpretation. This is not a debate that I have been or will be involved in as an inferior court.

5. In your view, how consistent is a "progressive" approach to the law with the principle that—absent controlling vertical precedent—a district court should interpret and construe statutory and constitutional provisions according to the best understanding of the original public meaning of their text?

It is completely consistent. In most instances, there is precedent to follow or analogous cases in the Seventh Circuit and other circuits that a judge can determine, with a fair degree of accuracy, how her home circuit would rule. Explaining one's opinion is critical. If there is truly no precedent and no guideposts—and in 30 years of practice I

have not encountered such a case—there are well-established rules for conducting statutory construction, beginning with the plain text of the statute. None of this calls upon a judge’s personal beliefs. *See* Code of Conduct for United States Judges, Canon 3(A)(6) & Canon 5. As a lower court judge, I will faithfully apply all binding precedent and will “faithfully and impartially discharge and perform all the duties incumbent upon me ... under the Constitution and laws of the United States.” 28 U.S.C. § 453.