

**Nomination of Jill Aiko Otake to the  
United States District Court  
For the District of Hawaii  
Questions for the Record  
Submitted March 14, 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?

While I would have selected a different metaphor, I agree with Chief Justice Roberts’ message – that judges are to neutrally apply the law to the facts of a case, and not to act as advocates or as members of a particular team in the courtroom.

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

Generally, a judge should not consider the practical results of a particular ruling except in matters where the law requires it. For example, the law requires a judge evaluating a motion for injunction to consider, among other factors, whether the movant would suffer irreparable harm if the injunction were not granted. By contrast, a judge ruling on a motion for summary judgment should not consider the practical results of the ruling because the law does not allow for it.

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?

Generally, judges should make decisions based on the application of law to facts, and without regard to sympathy or prejudice. However, the law allows for empathy to play a role in certain decisions. For example, Title 18, United States Code, Section 3553(a) outlines sentencing factors for judges to take into consideration, including the personal history and characteristics of the defendant.

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

A judge should refrain from allowing his or her personal life experience to seep into his or her decision-making.

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?

I have the honor of serving as a volunteer attorney for Volunteer Legal Services Hawai'i, where I enjoy working with indigent individuals facing a range of legal problems. That experience has made me keenly aware of the imbalance between those litigants with unlimited resources and those without. If fortunate enough to be confirmed, I will always follow the oath to “administer justice without respect to persons, and do equal right to the poor and to the rich.” *See* 28 U.S.C. § 453.

I have also spent the majority of my career fighting for justice for violent crime victims, many of whom are poor and undereducated. I take as much time as necessary to listen to them carefully, and explain to them what they can expect in the criminal justice process. I am keenly aware of the power inequity that they faced at the hands of their perpetrators, and endeavor to treat them with kindness and respect in order to avoid re-victimizing them through the process.

- 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?

Such tactics are inappropriate. Fortunately, the December 2015 amendments to the Federal Rules of Civil Procedure provide judges with the ability to more actively “secure the just, speedy, and inexpensive determination of every action and proceeding[.]” Fed. R. Civ. P. 1, through the regulation of discovery that is proportional to the case. *See* Fed. R. Civ. P. 26(b)(2)(C)(iii). If fortunate enough to be confirmed, I would utilize these and other rules to limit the impact of such problematic tactics.

Senate Judiciary Committee  
“Nominations”  
Questions for the Record  
March 7, 2018  
Senator Amy Klobuchar

Questions for District Court Nominees

[For Mari Dooley, Nominee to be United States District Judge for the District of Connecticut; Dominic Lanza, Nominee to be United States District Judge for the District of Arizona; and Jill Otake, Nominee to be United States District Judge for the District of Hawaii]

- You all have experience working as an Assistant U.S. Attorney. As a former prosecutor, I would like to ask: What have you learned from your experience as a prosecutor, and how has that experience prepared you to serve as a federal judge?

In the course of my career as a state and federal prosecutor, I have had the honor of appearing before approximately 60 different judges. I have learned something from each of them. The best judges share four things in common: (1) they are well-prepared; (2) they follow the law and are thus predictable; (3) they listen to the parties and read the briefs submitted; and (4) they have a pleasant, judicious demeanor.

My work as a prosecutor has also humbled me and made me aware of the gravity of each decision I make. I am sensitive to the power I hold, and treat it with humility and respect. If fortunate enough to be confirmed, I would understand that the position is greater than I am and that the public confidence in the Judiciary is governed in large part by the behavior of judges.

- How would you view the importance of adhering to precedent – even precedent where you felt that the case was wrongly decided – if you are confirmed as a federal judge?

Judges should always follow the rule of law, even if they do not like it. If fortunate enough to be confirmed, I expect that there will be occasions when I do not like the precedent I am required to follow, but will faithfully apply such precedent.

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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?

Unfortunately, racial bias continues to affect our country despite our efforts to eradicate it from all areas of our society, including the criminal justice system. Judges and lawyers need to be aware of any inequity in our judicial system and vigilantly guard against it. If I am fortunate enough to be confirmed, I would do my best to ensure that such prejudice does not infect my courtroom.

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

Yes, based on the statistics that you cite.

- 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 taught other lawyers about how to address implicit racial bias in voir dire. I also presented on the topic of Cross Cultural Lawyering. During my preparation for these speaking engagements, I read articles that addressed racial bias in our criminal justice system and elsewhere but do not have a record nor a recollection of the names of those materials.

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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.

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.

I have not examined this topic but believe that increases and decreases in crime rates are influenced by a wide variety of factors.

- 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 answer 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.

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.*