

Follow-up Questions for the Record from Senators Cory Booker and Kamala D. Harris
Submitted March 28, 2018
For the Nomination of
Kari A. Dooley, to be United States District Judge for the District of Connecticut

1. In response to QFRs submitted by Senator Booker on March 14, 2018, about implicit bias in the criminal justice system, you stated:

“I have had the benefit of training on more than one occasion regarding implicit bias. It included implicit racial bias, but was not limited to implicit racial bias. I have also had the benefit of training on related phenomena which occur when strangers of different races and ethnicities interact. I understand that the social science research continues and I hope to stay abreast, through training or otherwise, of developments in this emerging area of social science. The training I have already received has undoubtedly made me a better judge as I make day to day decisions in the courtroom. It has reminded me to be committed to, and focused on, the issues that matter. **Race and ethnicity are not among those issues**” (emphasis added).

(a) **Please clarify what you mean when you say that “race and ethnicity are not among those issues”?** In my previous answer, I intended to convey my belief that a party’s race or ethnicity should never influence the court’s decision. The court must be neutral, regardless of the race or ethnicity of the persons appearing before the court.

(b) **Do you believe there is implicit racial bias in the criminal justice system?** I can only speak to the training I have received as I have not studied the issue of whether and to what extent implicit bias impacts our criminal justice system. The research of which I am aware is very compelling for the existence of implicit bias generally across all races and ethnicities. However, I have not reviewed any research that specifically discusses or attempts to measure the impact of implicit bias on our criminal justice system.

2. Racial disparities are laced throughout our criminal justice system. More than 60% of people who are imprisoned are people of color.¹ Black men are almost six times more likely to be incarcerated than white men while Hispanic men more are two times more likely to be incarcerated than white men.² In plea bargaining, white defendants are 25% more likely than black defendants to have their principal charge dropped or reduced to a lesser crime.³

These statistics and myriad others speak to the conclusion that racial bias is endemic in our judicial system. During your 2004 confirmation hearing to be a Superior Court Judge,

¹ Bonczar, T. (2003). Prevalence of Imprisonment in the U.S. Population, 1974-2001. Washington, DC: Bureau of Justice Statistics.

² Bonczar, T. (2003). Prevalence of Imprisonment in the U.S. Population, 1974-2001. Washington, DC: Bureau of Justice Statistics.

³ Berdejo, C. (2017) Criminalizing Race: Racial Disparities in Plea Bargaining. Boston College Law Review.

you stated that you have “never gotten any indication that a defendant was being treated disparately by virtue of his race or her race.”

- (a) **You served as a Superior Court Judge for 14 years and an Assistant U.S. Attorney for 12 years. Based on your experience and observations—do you believe racial disparities exist in the justice system?** Unfortunately, it is a sad and undeniable truth that racism persists in this country. It would be naïve to think that it does not affect our criminal justice system and, as I stated before, I am aware of studies which conclude that the prison population does not mirror the demographic makeup of the nation as a whole and that persons of color are disproportionately represented therein. At my confirmation hearing in 2004, I was reflecting on my own experience in our federal courts and my belief that, in that experience, the defendants appearing in federal court had not been the subject of disparate treatment.
- (b) **Do you believe that judges have a role in addressing racial disparities?** The issue of racial or ethnic disparities in our criminal justice system is multi-layered and very complex. Given the limited jurisdiction of federal courts and the non-political role of the judiciary, a judge’s role is necessarily limited in terms of potential impact on a systemic level. What a judge can do, and I have tried to do during my judicial career, is to be mindful of these issues so as to ensure that decisions are not influenced by race or ethnicity.
- (c) **If you are confirmed as a judge, what would you commit to doing to address racial disparities?** I commit that I will not make decisions based upon or influenced by a defendant’s race or ethnicity. I will make every effort to ensure that all defendants appearing before me receive equal treatment under the law.

3. According to the VERA Institute of Justice, 62 percent of people in jail have not been convicted of a crime, but are waiting for trial. Often, the pending cases involve misdemeanor crimes or lesser offenses. Low-risk defendants detained for the entire pretrial period are over 3 times more likely to be sentenced to prison than those who are released pretrial.

In your 2004 confirmation hearing to be a Superior Court Judge you asserted, “I think people do get fair trials even after having been incarcerated prior to trial.”

- (a) **In light of these statistics and your experience, do you still believe that pre-trial detention does not adversely impact sentencing outcomes?** My statement at my 2004 confirmation hearing was my belief that pretrial detention does not adversely impact a defendant’s constitutionally protected trial rights. I was not opining as to whether pretrial detention correlates to any particular outcomes. On this issue, I cannot offer an opinion as I have not studied the issue and am not familiar with research that ties pretrial detention to sentencing outcomes.

While the federal system no longer uses money bail the way that many state and local courts do, the issue continues to undermine the fair and equal treatment we should expect

from our criminal justice system. What, in your opinion, is the role of a judge in addressing these disparities? Should judges set forth recommendations to state bar associations or legislators based on their experiences with the system? A judge should determine the least restrictive pretrial bond, to include a promise to appear with or without conditions whenever reasonably possible, especially for nonviolent and less serious offenses. The judge's analysis must be the same regardless of a defendant's race or ethnicity. In terms of recommendations to a state bar or legislature, I would not weigh in on matters of policy and believe it would be inappropriate to do so.