

**Nomination of Kari A. Dooley to the
United States District Court
For the District of Connecticut
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?
 - b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?

In terms of presiding over an adversarial proceeding I agree with Chief Justice Roberts. Ruling on evidentiary matters, overseeing discovery or addressing courtroom procedure is very akin to the role of an umpire. However, when performing adjudicatory functions or on those occasions where the judge is the trier of fact, the judicial role is more involved in terms of the case outcome.

In the majority of cases, the practical consequences of a ruling are not part of the court’s analysis in terms of the correct outcome under the law. However, there are circumstances where the practical consequences must be considered as they directly bear on the correct outcome under the law. For example, whether to grant temporary or permanent injunctive relief requires such an analysis.

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?

Empathy, while an important human quality, is not a basis upon which the court should decide the legal and factual issues presented in any particular case. However, empathy does play a role in the court’s day to day interactions with people who come before the court, whether it is litigants, defendants, witnesses, victims or jurors. Empathy makes one a better listener and helps one to understand the competing viewpoints that may be presented.

A judge’s personal life experience is not a basis upon which the court should decide the legal and factual issues presented in any particular case.

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?

If confirmed, it shall be my oath that all persons coming before the court, regardless of race, ethnicity or socio-economic status shall receive fair, equal and impartial treatment. Our justice system is designed to level the playing field for all participants. The judge is entrusted with the task of ensuring that the system works as intended. Such is my commitment.

- 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?

Overly burdensome discovery demands, as a litigation strategy, are not acceptable. However, there are cases in which the discovery is necessarily burdensome due to the nature of the dispute and other factors. Discovery should be proportionate to the nature of the dispute and/or the amount in controversy. The court should assess the scope of discovery and the disputes regarding discovery with this in mind so that “strategic” burdening is avoided to the greatest extent possible.

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?
- 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?

As an Assistant U.S. Attorney I worked with and labored against some of the finest lawyers in Connecticut. I was vested with enormous authority to make very difficult decisions. I was held to the highest of ethical standards, both inside and outside the courtroom. All of this has served me very well as a Judge of the Superior Court and if confirmed, I expect it will continue to serve me well on the federal bench. As an Assistant U.S. Attorney, I was trained to seek justice. As a judge, I make decisions which I believe are fair and just based upon the facts presented and the applicable law. While the vantage point in the courtroom and the respective roles are different, the goal of a just result, remains.

As a district court judge, it would be my duty, as it is now as a judge of the Superior Court, to faithfully adhere to all binding precedent, regardless of any personal opinion I might have about the correctness of that precedent.

**Nomination of Kari A. Dooley to the
United States District Court for the District of Connecticut
Questions for the Record
Submitted March 14, 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?

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.

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

I am aware of studies which conclude that the prison population does not mirror the demographic of the nation as a whole and that persons of color are disproportionately represented therein. I have no reason to question those statistics or conclusions.

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.

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.

Please see my answer to Question 1(a) above. Aside from receiving this training, I have not studied implicit racial bias in our justice system.

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 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 have not studied this issue and cannot opine as to any causal link between decreased crime rates and prison population, whether increased or decreased. These inquiries are appropriate for the legislative branch to undertake, and depending upon the information gathered, to generate legislation which reflects the public policy of the state or nation. These inquiries are also appropriate for the executive branch to undertake in determining the manner and means by which the laws passed by the legislature are enforced.

- 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.

⁵ 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.

⁶ *Id.*