

**Responses of Leslie E. Kobayashi
Nominee to be United States District Judge for the District of Hawaii
to the Written Questions of Senator Jeff Sessions**

1. **As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:**

“We need somebody who’s got the heart, the empathy, 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. And that’s the criteria by which I’m going to be selecting my judges.”

- a. **Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit President Obama’s criteria for federal judges, as described in his quote?**

Response: Due to President Obama’s nomination of me, I assume that I meet his criteria for federal judges based upon my legal, judicial and personal experiences during my 27 years as a prosecutor, civil litigator, and United States magistrate judge.

- b. **During her confirmation hearing, Justice Sotomayor rejected this so-called “empathy standard” stating, “We apply the law to facts. We don’t apply feelings to facts.” Do you agree with Justice Sotomayor?**

Response: Yes.

- c. **What role do you believe empathy should play in a judge’s consideration of a case?**

Response: Empathy is an important component of good judicial temperament. In deciding a case, however, empathy plays no role. A judge must apply the law to the facts dispassionately and without bias toward or against any person or party.

- d. **Do you think that it’s ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?**

Response: No.

- i. **If so, under what circumstances?**

Response: None.

- ii. **Please identify any cases in which you’ve done so.**

Response: None.

- iii. If not, please discuss an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.**

Response: The parties in a civil case consented to have me, as a United States magistrate judge, serve as the trial judge. The plaintiff was the mother of a disabled child who sued the State of Hawaii's Department of Education for intentionally discriminating against her and her son, and for retaliating against her for advocating for her child's special education services. Her testimony was compelling but the evidence presented did not meet what the law requires. As a result, I granted judgment as a matter of law in favor of the defendant, and against the plaintiff.

- 2. Please describe with particularity the process by which these questions were answered.**

Response: The questions were forwarded to me by the Department of Justice. I reviewed the questions, did research, and prepared the responses. I had discussions with the Department of Justice, and sent my final responses to them with a request that they file my responses with the Senate Judiciary Committee.

- 3. Do these answers reflect your true and personal views?**

Response: Yes.