

**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 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?

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.

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.

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 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.

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.*