

**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.