

**Responses of Ellen Lipton Hollander
Nominee to be United States District Judge for the District of Maryland
to the Written Questions of Senator Grassley**

- 1. During the 2008 presidential campaign, President Obama described the kind of judge that he would 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 the President’s criteria for federal judges, as described in this quote?**

Response: Because President Obama has nominated me, I believe that I fit his criteria for federal judges.

- 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: I agree with Justice Sotomayor that judges must apply law to facts and not feelings to facts.

- c. Do you believe that it is ever appropriate for judges to indulge their own subjective sense of empathy in determining what the Constitution and the laws mean? If so, under what circumstances?**

Response: No.

- d. Do you believe that it is ever appropriate for judges to indulge their empathy for particular groups or certain people? For example, do you believe that it is appropriate for judges to favor those who are poor? Do you believe that it is appropriate for judges to disfavor corporations?**

Response: No.

- e. After Justice Stevens announced his retirement, President Obama stated that he would select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.” Do you believe that judges should base their decisions on a desired outcome?**

Response: No.

2. What, in your view, is the role of a judge? Please describe your judicial philosophy.

Response: It is the responsibility of the trial judge to resolve cases and controversies by ascertaining the applicable law, under principles of *stare decisis*. The judge must then scrupulously apply that law to the particular facts – fairly and impartially, without bias, prejudice, or sympathy for or against any party. In addition, the judge should value and pursue legal scholarship, possess a keen work ethic, and treat those who appear before the court with dignity and respect.

3. How do you define “judicial activism”?

Response: This is not a term that I use. As I understand the common usage of the term, however, it refers to a judge who disregards established legal precedent that is applicable to the particular matter in order to achieve a desired result, based on personal or policy considerations. The phrase is sometimes used to imply that a judge has made law, rather than interpreted the law.

4. Could you identify three recent Supreme Court cases that you believe are examples of “judicial activism”? Please explain why you believe these cases are examples of “judicial activism”.

Response: I cannot characterize recent decisions of the United States Supreme Court. Trial judges are bound by the decisions of the United States Supreme Court.

5. How do you define “judicial restraint”?

Response: Although this is not a term that I use, I believe it is commonly used to refer to the principle that judges should not permit their personal beliefs to influence or dictate the outcome of any case.

6. Could you identify three recent Supreme Court cases that you believe are examples of “judicial restraint”? Please explain why you believe these cases are examples of “judicial restraint”.

Response: I cannot characterize recent decisions of the United States Supreme Court. Trial judges must adhere to the decisions of the United States Supreme Court.

7. Do you believe that it is ever appropriate for judges to indulge their own values and/or policy preferences in determining what the Constitution and the laws mean? If so, under what circumstances?

Response: No.

- 8. Should the courts, rather than the elected branches of government, ever take the lead in creating a more “just” society?**

Response: No. In our democratic system of government, it is the role of the legislative branch to make the laws and the role of the courts to interpret the laws.

- 9. In your opinion, what is the proper role of foreign law in U.S. court decisions, and is citation to or reliance on foreign law ever appropriate when interpreting the U.S. Constitution and statutes?**

Response: There is no proper role for foreign laws in interpreting the United States Constitution or statutes, unless directed to do so by the United States Supreme Court or the United States Court of Appeals for the Fourth Circuit.

- 10. Does the silence of the U.S. Constitution on a legal issue allow a federal court to use foreign law as an authority for judicial decision-making? When is it not appropriate to look to foreign law for legal guidance or legal authority?**

Response: I do not believe that the silence of the United States Constitution with respect to a legal issue permits a federal court to turn to foreign law as authority for resolution of a dispute.

- 11. I would like to get a better understanding of how you would interpret statutes and what your judicial method would be if you were confirmed to be a judge on the District Court of Maryland.**

- a. In cases involving a close question of law, what would you look to when determining which way to rule?**

Response: At the outset, I would review the plain text of the statute and look to applicable cases decided by the United States Supreme Court or the United States Court of Appeals for the Fourth Circuit.

- b. Would you agree that the meaning of a statute is to be ascertained according to the understanding of the law when it was enacted?**

Response: In the course of my judicial career, I have consistently endeavored to ascertain the meaning of various statutes by reference to well-honed principles of statutory construction. The primary goal is to reference the statutory text, ascribing to the words their plain meaning.

- c. How would you use legislative history when interpreting a statute? What kind of weight would you give legislative history, if any, when interpreting a statute?**

Response: In the ordinary course, I do not refer to legislative history to interpret a statute. Rather, I apply the well-settled principles of statutory construction, according the words of the statute their plain meaning. However, in the event of ambiguity in regard to the meaning of a statute, or some portion of the statute, it may be helpful to look to the legislative history, with a view to determining legislative intent.