

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

1. **In 1996 remarks at Goucher College, you stated that if judges “necessarily enact into law parts of a system of social philosophy,” then “it is certainly appropriate that the judicial law makers reflect the composition and diversity of this great nation.”**

- a. **In your view, how do judges “enact into law parts of a system of social philosophy”? Please explain your answer.**

Response: In my speech to the Goucher College students, I used quotes from President Theodore Roosevelt’s 1908 State of the Union address in an attempt to underscore the important role of judges in our democratic society. In that same speech by President Roosevelt, he expressly recognized that legislators are “chosen to represent the people in enacting and administering the laws.” I fully recognize and abide by the principle that it is the legislature’s responsibility to enact the laws, and the duty of the judges to interpret them.

- b. **Do you think it is ever appropriate for a judge to indulge in their own policy preferences or values in determining what the law means?**

Response: No.

- c. **What did you mean by the term “judicial law makers”?**

Response: When I used this term in my speech, I was quoting President Theodore Roosevelt. I believe that he used the term to explain a judge’s role in interpreting the laws enacted by Congress.

- d. **How do you define the role of a judge?**

Response: The rule of law is the cornerstone of our democracy. It is the responsibility of a judge to decide cases by ascertaining the applicable law, under principles of *stare decisis*, and applying that law to the particular facts of the case. A judge must do so fairly and impartially, without bias, prejudice, or sympathy for or against any party. In addition, the judge must treat all who appear before the court with courtesy and respect.

- e. **Why do you think it is important for the judiciary to reflect diversity?**

Response: An independent and well respected judiciary is central to a robust democracy. Therefore, it is important to maintain public confidence in the

judiciary. In my view, the composition of the judiciary affects the public perception of the third branch of government.

i. What role, if any, do you think diversity should play in the composition of the judiciary?

Response: I believe that a diverse bench helps to inspire public confidence in the judiciary, and public confidence is essential to the authority of the court. Nevertheless, judges should be selected on the basis of their intellect, ability, integrity, work ethic, and experience.

ii. How can litigants know that they are being treated fairly if a judge's background, rather than the application of the law to the facts, affects legal decisions?

Response: A judge's background, such as race, gender, and ethnicity, must never influence his or her legal decisions. Judges must adhere to the rule of law, i.e., controlling legal precedent, and decide all cases by applying the applicable law to the facts of the case.

2. The Maryland Court of Appeals reversed your decision in a relatively non-controversial divorce proceeding, noting that you "did not rule on any of the four issues raised," but rather chose to rule on other issues not presented to the court.

a. Why did you believe it was proper to go outside of the record and determine issues not on appeal?

Response: It is not appropriate for any court to rule on matters outside the record. I believe your question refers to *Garg v. Garg*, 163 Md. App. 546 (2005), *rev'd*, 393 Md. 225 (2006), a complex international custody dispute for which I wrote the opinion for the Maryland Court of Special Appeals. In that opinion, I attempted to address all of the issues that the parties presented on appeal. For example, on behalf of the Court, I determined that the underlying divorce action could proceed in Maryland, and I addressed issues concerning jurisdiction and attorney's fees, all issues that were presented by the parties on appeal. The Maryland Court of Special Appeals was faulted by the Maryland Court of Appeals for addressing, *sua sponte*, the mother's request at trial for the appointment of an attorney for the child. The Court of Special Appeals considered that issue based on principles of equity law governing domestic cases in Maryland as well as state statutory law. I accept the criticism of the Maryland Court of Appeals for undertaking that analysis.

- b. **Part of your holding in that case was based on “fundamental fairness.” Why did you believe that you could ignore the applicable statute and impose your personal standard of fairness?**

Response: The Court of Special Appeals believed that the gravity and complexity of the case warranted appointment of an attorney for the child, which was permissible under Maryland statutory law. In writing the opinion for the Court of Special Appeals, I did not ignore applicable statutes, although I accept the Court of Appeals’ determination that I should not have reached the issue.

- c. **What role does fairness play in your judicial decisions?**

Response: Fairness comes into play in the way in which I treat the litigants and lawyers – fairly and impartially, with dignity and respect.

3. **Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit.**

- a. **Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

- b. **How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision of your own best judgment of the merits?**

Response: If confirmed, I would faithfully apply the decisions of the United States Supreme Court and the Court of Appeals for the Fourth Circuit, without regard to my personal beliefs.

4. **As you know, following the Supreme Court’s decision in *United States v. Booker*, the federal sentencing guidelines are advisory, rather than mandatory.**

- a. **If confirmed, how much deference will you afford the Sentencing Guidelines?**

Response: I will give the Federal Sentencing Guidelines great deference.

- b. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

Response: Yes.

- c. **Under what circumstances do you believe it appropriate for a district court judge to depart downward from the Sentencing Guidelines?**

Response: Only in rare circumstances, such as when part of a plea agreement includes a recommendation by the Government for a downward departure in exchange for the defendant's substantial cooperation.

5. Please describe with particularity the process by which these questions were answered.

Response: I received the Questions for the Record from the Department of Justice on May 20, 2010, by electronic transmission. I drafted my answers to the questions, and then consulted with representatives of the Justice Department. Thereafter, I finalized my answers and transmitted them to the Justice Department, with the understanding that the Justice Department would forward them to the Committee.

6. Do these answers reflect your true and personal views?

Response: Yes.