

Responses of Lucy H. Koh
Nominee to the U.S. District Court for the Northern District of California
to the Written Questions of Senator Jeff Sessions

- 1. In several speeches in 2008 and 2009, you mentioned that there was a lack of Korean-American representation on juries and that it was a significant problem in the California judicial system. Do you believe a litigant is entitled to have a member of his or her ethnic group on the jury, even if the lack of a minority juror occurs by mere chance or without racial discrimination? Please explain your answer.**

Response: No. What has been disheartening to me as a judge is to see citizens of all races and ethnicities, but especially many Asian Americans, unwilling to serve on juries. As part of my outreach efforts on behalf of the Court, whenever I am asked to speak, I urge everyone to do their civic duty by serving on juries, and I try to explain why their jury service is important. The problem about which I try to raise awareness in my speeches is citizens' unwillingness to do their civic duty.

- 2. Do you think that it is ever proper for judges to indulge their own policy preferences in determining what the law means?**

Response: No.

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

Response: No circumstances.

- b. Please identify any cases in which you have done so.**

Response: There are no cases in which I have done so.

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

Response: Personal policy preferences play no role in my judicial decision making process. I decide every case based solely on the law and the facts.

- 3. When you were an undergraduate at Harvard, you sought to force Harvard to drop its challenge to a union election that the University claimed did not comply with all applicable rules. While at Harvard Law School, you were among students who protested a law firm's participation in on-campus interviews because of allegations that the firm had been involved in "union-busting" activities. If confirmed, you may have to preside over cases involving unionization efforts. Are you prepared to set aside any personal beliefs regarding unionization efforts and consider each party's case impartially?**

Response: Yes.

4. **I understand that as a judge on the Superior Court in California you handle a rather busy docket. As you know, federal district court judges are required to handle significant caseloads spanning a range of complex issues. If confirmed, how do you plan to prepare yourself for that transition?**

Response: If confirmed, I would review all the Federal Judicial Center publications for district court judges and avail myself of all the training and other resources available to district court judges. I would also ask colleagues for their advice as to how to best prepare myself and how best to manage the complex and wide-ranging caseloads. I would also draw upon my experience prosecuting federal criminal cases as an Assistant United States Attorney and litigating complex civil, and particularly intellectual property, cases in federal court.

5. **While at Harvard, you were a member of the Harvard Coalition for Civil Rights and one of the “Griswold Nine,” which, according to published reports, was a group of students who staged a “sit-in” outside a faculty office in 1990 to protest a perceived lack of female and minority faculty at Harvard Law School.**

- a. **I understand this protest was a violation of student conduct rules and led to a formal disciplinary hearing and a formal warning to the participants. Is that correct?**

Response: That is correct. An Administrative Board hearing was held, and a warning was placed in our student files. This warning was removed from our student files upon graduation.

- b. **After the protests failed to resolve the policy dispute about what affirmative action plans were appropriate, the Coalition filed suit in state court challenging the University’s hiring practices, which was apparently dismissed for lack of standing.¹ It appears there were also twelve named plaintiffs who were members of the Coalition.**

- i. **Were you aware of this lawsuit during your time at Harvard Law School?**

Response: Yes.

- ii. **Were you involved in this lawsuit? If so, how?**

Response: Pursuant to agreement between the Republican staff of the Senate Judiciary Committee and representatives of the Department of Justice, I understand that this question has been withdrawn.

¹ *Harvard Law School Coalition for Civil Rights v. President and Fellows of Harvard College*, 595 N.E.2d 316 (Mass. 1992).

6. **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. **While I recognize that you cannot know 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: Based on the fact that President Obama nominated me, I can only presume that I fit his criteria for selecting federal judges.

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

Response: Empathy should play no role in deciding the outcome of a case. A judge must decide cases based on the law and the facts alone. However, judges should treat parties and counsel with dignity and respect.

- c. **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: No circumstances.

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

Response: There are no cases in which I have done so.

- 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: I decide every case based solely on the law and the facts. Therefore, I have not had to set aside my own subjective sense of empathy in deciding a case.

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

Response: I received these questions from the Justice Department and drafted my responses. I discussed the responses with representatives of the Justice Department before finalizing them.

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

Response: Yes.