

**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.<sup>1</sup> 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.

---

<sup>1</sup> *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.

**Responses of Lucy H. Koh  
Nominee to the U.S. District Court for the Northern District of California  
to the Written Questions of Senator Tom Coburn, M.D.**

- 1. In 1996, you made a speech regarding proposed efforts to reform our nation's immigration laws. You said:**

**“[t]he progression, or more accurately the regression, of the immigration debate nationwide is very disturbing. The immigration debate is a perfect example of the slippery slope – targeting illegal immigrants at first, then moving to legal immigrants, then moving to legal permanent residents, then moving to naturalized citizens, and now to birthright citizens.”**

**What did you mean by that comment?**

Response: I was noting the expansion of the scope of immigration legislation in 1996. Since that time I have worked on the enforcement of our immigration laws. As an Assistant United States Attorney, I prosecuted immigration cases. As a Special Assistant to the United States Deputy Attorney General, I worked on strengthening enforcement of our nation's borders and on implementing the restrictions on benefits for aliens set forth in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. If confirmed, I would faithfully enforce our immigration laws.

- a. Do you believe the national immigration debate is regressing? Please explain your answer.**

Response: For nearly a decade and a half I have not kept abreast of the debates on immigration policy. Therefore, I cannot comment on the state of the national immigration debate. My last involvement with immigration issues consisted of my efforts to enforce our immigration laws as an Assistant United States Attorney and as a Special Assistant to the United States Deputy Attorney General.

- b. I do not believe there is an automatic right to citizenship for children born to illegal immigrants residing in our country because I believe that the intent of the authors of the Fourteenth Amendment, and records from the Congressional Globe of May 30, 1866, indicate that the citizenship clause was never meant to be applied to children of non-citizens. Further, there are public policy concerns with allowing birthright citizenship to continue. Today, expectant mothers often put themselves in danger crossing our border to ensure their children are born in America. These babies can then act as anchors to eventually pull a large number of extended family members into the country legally.**

- i) Do you believe children born to illegal immigrants residing in our nation should receive automatic citizenship? Why or why not?**

Response: Under existing Supreme Court precedent the United States-born children of certain aliens temporarily present in the United States are automatically United States citizens. If confirmed, I would follow existing and future Supreme Court precedent on this and related issues.

- ii) **Did you consider the original intent of our Founders when reaching your conclusion? Why or why not?**

Response: No, I was relying on existing Supreme Court precedent. If confirmed, I would follow existing and future Supreme Court precedent on this and related issues.

- c. **In the same speech, you also remarked that “[a]nother way to attack legal and illegal immigrants is to attack their languages. The anti-immigrant sentiment is certainly related to the push for English Only.”**

- i) **Why do you believe English only laws are anti-immigrant?**

Response: I do not believe that English Only laws are anti-immigrant. I was merely referring to the tenor of the debate as expressed by some people at the time.

- ii) **If confirmed, you may be asked to rule on whether English Only laws are constitutional. Are you prepared to apply the law to the facts before you, despite your own personal feelings about these laws??**

Response: Yes.

2. **Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No. The Constitution does not change unless amended.

3. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. **Generally speaking, are *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

**b. Why or why not?**

Response: In *Gonzalez v. Raich*, 545 U.S. 1, 23 (2005), the Supreme Court held that *Lopez* and *Morrison* preserved the “larger context of modern-era Commerce Clause jurisprudence.”

- 4. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy’s analysis?**

Response: Justice Kennedy’s analysis is controlling precedent, which I am bound to follow as a Superior Court judge and, if confirmed, as a federal district judge.

**a. How would you determine what the evolving standards of decency are?**

Response: I would apply the analysis of controlling Supreme Court precedent.

**b. Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in *all* cases?**

Response: The Supreme Court has found that capital punishment is constitutionally permissible. As a Superior Court judge, I am bound to follow Supreme Court precedent when interpreting the U.S. Constitution, and if confirmed, I would do the same.

**c. What factors do you believe would be relevant to the judge’s analysis?**

Response: The factors identified by the Supreme Court in its controlling precedent would be relevant to a judge’s analysis.

- 5. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: The United States Supreme Court has never relied on foreign or international laws or decisions in determining the meaning of the United States Constitution. All judges must follow the United States Supreme Court in determining the meaning of the United States Constitution.

**a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: The Supreme Court has never relied on foreign law. If this issue arises, I would follow Supreme Court precedent.

- b. Would you consider foreign law when interpreting the Eighth Amendment?  
Other amendments?**

Response: No, unless the Supreme Court directs otherwise.