

**Senator Grassley
Questions for the Record**

**Marilyn Jean Horan
Nominee, U.S. District Judge for the Western District of Pennsylvania**

1. What experiences have you had while serving as a judge in the Court of Common Pleas of Butler County that you will utilize, if confirmed?

Response: If confirmed, I will apply my collective judicial experiences from the past 19 ½ years. I have a very clear understanding of the role of a judge. I have honed my judicial skills of legal analysis, and my writing clearly communicates my reasoning and decisions. Furthermore, my courtroom and case management skills are well developed. I am familiar with and very capable of managing court proceedings, so that all parties, witnesses, attorneys, jurors, and the public, experience fairness and integrity through the judicial process. As a federal district court judge, I will utilize all of my experience and skills to effectively, efficiently and fairly administer cases assigned to me.

2. In the past, you have supported the use of alternative courts for juveniles. What impact did the establishment of these courts have on your judicial philosophy?

Response: From my past participation in the implementation of the juvenile justice concept of balanced and restorative justice (BARJ), I appreciate the positive impact that this approach can have upon society, victims, and juvenile offenders. BARJ strives to attain juvenile accountability for criminal acts, restores victims, and fosters positive behavior changes and life choices in juvenile offenders. Pennsylvania has taken a leading role in developing and implementing BARJ protocols and evidence-based programming for juveniles. Such programming for juvenile offenders can successfully accomplish positive social and vocational development goals. Through my experience with this juvenile justice concept, my practice and philosophy will be to strive to consider criminal justice accountability and rehabilitation, concern for victims' rights and restoration, society's interests including protecting against recidivism, and juvenile education.

3. Over the course of your judicial career you have emphasized the importance of judicial expediency. What role would judicial expediency play in your court if you were confirmed for this position?

Response: Maximizing efficiency in court and case administration can avoid the unfortunate result of the adage, justice delayed is justice denied. During my judicial career, I have endeavored to reduce delays and costs in case processing. Encouraging early focus upon solutions to the presenting litigation issues, efficient scheduling, conscientious attention to case preparation and process have been hallmarks of my judicial case management. If confirmed, I will continue to endeavor to provide for

effective and expedient case administration, while assuring, as a first priority, prompt and just attention to all matters assigned to my responsibility.

4. What is the most important attribute of a judge, and do you possess it?

Response: I believe the most important judicial attribute is to accept that judges are civil servants. A judge must focus upon the rights and responsibilities of all who come before the court, including society's interests, as established by the Constitution and legislation. Judges need to be principled in their actions, both personal and judicial. A principled judge must adhere to ethical responsibilities, be respectful and sensitive to all who come before the court, and act in a manner that ensures confidence and respect for the court. Judges must serve with neutrality, humility and patience. Judicial service requires preparation to know the law and procedure for each case that comes before the court. Judicial service also requires the judge to ensure that all participants in the judicial system adhere to their respective responsibilities. Judges set the bar for performance before the court. The interests of justice are best served when the judge performs with excellence and when he or she expects the same from all others. This has been my philosophy and work ethic since I have been a state court judge, and I plan to continue to serve with the same conviction as a federal court judge.

5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: To engender respect and confidence from the litigants and counsel, judges need to demonstrate competence and preparation for the matter at hand. Judges need to be willing to work to fully understand the issues, consider all arguments, and treat all with respect and patience. Judges need to be thoughtful and analytical and effectively communicate with all participants, both in writing and from the bench. I believe I meet these standards and requirements, and my years on the state court bench demonstrate that I have developed a reputation for all of the above.

6. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents.

Response: I agree with and I am fully committed to follow and apply all binding precedents to cases before me as a federal district judge. Application of precedent will prevail, regardless of any personal thoughts or feelings. My past decisions as a state court judge reflect this commitment and my steadfast adherence to respect the rule of law.

- 7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: When faced with a case of first impression, I carefully review the specific language of the statutory section at issue. I also carefully review and analyze the entire body of legislation concerning the statutory section. I then consider the plain meaning of the language and apply rules of statutory construction. I carefully review any stated statutory objectives or purposes concerning the legislation. I also consider any non-precedential decisions, to determine whether those decisions may be instructive. If none of those avenues provide resolution, I may look to similar laws that may provide parallel analysis for consideration. I may also review relevant legislative history, depending upon the clarity and uniformity of such history. In general, I carefully approach issues of first impression, and I rule only to the extent necessary to provide resolution of the matter at the trial court level.

- 8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: Judges are bound to follow precedent established by higher courts. I absolutely follow and apply precedent to decide issues before me.

- 9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: In general, federal statutes are presumed to be constitutional. A federal district court is to avoid addressing the constitutionality of federal statutes, unless such is required to resolve the case before it. I will adhere to this principle. If there are no other avenues available and if required to address the constitutionality of a statute, I will only declare a statute unconstitutional where there is a clear violation of a constitutional requirement or where congress exceeds its authority.

- 10. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.**

Response: Such reliance is not proper for a federal district court judge. Our judicial role is to consider and apply only the relevant federal or state law to each and every case that comes before the court.

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: The premise of the above question embodies the responsibility of a judge. As I have been a Common Pleas judge for the past 19 ½ years, my record of judicial conduct and decisions provides significant evidence that I understand, accept and follow the law and binding precedent.

12. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: My past performance as a judge and my reputation for fairness and for following the rule of law is the best evidence I can provide. Accepting the oath of office and my respect for that oath is assurance of my continued commitment to follow and apply the law and precedent in every case assigned to my responsibility.

13. If confirmed, how do you intend to manage your caseload?

Response: As I have always managed my caseload to remain current, I will continue to utilize active court management and oversight to ensure fair, judicious, efficient, and effective administration of all cases assigned to my responsibility.

14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, I believe that judges have an important role in this regard. Judges set the bar and lead by example. I have always and will continue to approach my case assignments with diligence and preparation. I will also expect the same level of diligence and preparation from counsel and parties appearing before me. I will continue my practice of establishing responsible deadlines for case movement and reasonably adhering to those schedules, once established. Predictability that cases are going to move and that they will not be easily continued ensures preparation and prompt resolution.

15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: In approaching judicial decisions, I read the pleadings, the applicable law and procedure to derive a full understanding of the legal issues. I then listen carefully to the evidence or arguments of counsel, as appropriate. Depending on the type of decision before me, I will either find facts from the evidence, if this is my role, or apply the law to the facts and reach a decision. I then clearly communicate, either orally or in writing as

each case dictates, to show my decision process and clearly explain the reasoning for my decision or disposition.

16. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?

Response: While I am not aware of the context in which this statement was made, judges are required to decide cases based upon the rule of law as applied to the facts of each case. This is how I have proceeded with regard to cases, and this is how I would continue to function as a federal district judge.

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

Response: I have carefully considered each question, reflected upon my past experiences and performance as a judge and considered my intentions for future performance. I then drafted these responses, which have been reviewed in cooperation with the Office of Legal Policy at the Department of Justice. The answers were then finalized and relayed to the committee.

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

Response: Yes.

Written Questions of Senator Jeff Flake

U.S. Senate Committee on the Judiciary

Judicial Nominations

December 15, 2015

Marilyn Jean Horan

Nominee, U.S. District Judge for the Western District of Pennsylvania

- 1. What is your approach to statutory interpretation? Under what circumstances, if any, should a judge look to legislative history in construing a statute?**

Response: When performing statutory interpretation, my first step is to ascertain whether there is any precedent that is directly on point with the issue before me. Binding precedent is applied to resolve the issue. If there is no precedent, the next step is to consider the specific language used in the statutory section. Plain meaning of the words and all rules of statutory construction are factored into the interpretive process.

Additionally, I review the entire text of the statute, and I carefully consider any statutory recitation of legislative purpose or objective. In addition, if the interpretation is still not clear, I consider any non-precedential decisions interpreting the statute. I also look to similar laws with similar legislative purposes or language for guidance by analogy.

Finally, legislative history, for the specific statute at issue, may be helpful, depending upon the clarity and uniformity of such history.

- 2. What is the proper scope of the 10th Amendment to the Constitution? In what circumstances should a judge apply it?**

Response: The Tenth Amendment to the United States Constitution reserves to the states those powers which are not constitutionally delegated to the federal government. Federal courts are bound by the Tenth Amendment – as well as any binding precedent issued by higher courts regarding the Tenth Amendment – to construe the federal government’s authority to legislate only for those matters which are constitutionally delegated to the federal government or which are prohibited to the states. The Tenth Amendment ensures that matters reserved for the states are legislated by the states and that those matters delegated to the federal government are federally legislated.

- 3. Does current standing doctrine foster or impede the ability of litigants to obtain relief in our legal system?**

Response: Courts are constitutionally structured to interpret and apply law in the context of the cases that come before them. As such, the Constitution, legislation and precedent establish standing parameters by which cases can come before the courts. This process ensures that laws will be applied or interpreted only in relation to actual controversies.

United States Senator Thom Tillis

Questions for the Record

Senate Judiciary Committee

On

Nominations

Marilyn Jean Horan

Nominee, U.S. District Judge for the Western District of Pennsylvania

Questions for All Nominees

- 1. One challenge you will face as a federal judge is managing a busy caseload. If confirmed, how will you balance competing priorities of judicial efficiency and due process to all litigants involved in the case?**

Response: I have effectively managed cases during my tenure as a state court judge. I intend to do the same if confirmed as a federal judge. Ensuring due process has always been foremost in my judicial management decisions. I expect the same will continue as I manage cases assigned to my responsibility as a federal judge.

- a. Will you give certain cases priority over others?**

Response: Where legislative or administrative rules direct prioritizing, I will afford priority. If there is no such direction for priority, I will use my discretion to afford priority in only those circumstances where considerations and resources suggest that justice will be best served by prioritizing. Examples of where I have exercised such discretion in my state court judicial management would include cases where a litigant has been terminally ill and prompt trial would bring timely resolution. In general, my efforts have always been to move all matters as promptly as possible through my courtroom such that all parties are afforded fair and equal access as a matter of course.

- 2. What is a fundamental right?**

Response: Fundamental rights are rights which have been guaranteed by the United States Constitution, and which require a high degree of protection from government encroachment.

- a. From where are these rights derived?**

Response: These rights derive from our United States Constitution and the Bill of Rights, and they have been interpreted by the United States Supreme Court through binding precedent.

3. What role, if any, should societal pressure or popular opinion play in interpreting legislation or the United States Constitution?

Response: Judicial interpretation should focus on the language of the legislation at hand, the United States Constitution, and upon all binding precedent in relation thereto. Societal pressure and popular opinion are not factors for consideration in any judicial decision-making process, including matters of legislative or constitutional interpretation.

Question for Judge Marilyn Jean Horan

1. When imposing sentences on young defendants, what types of mitigating factors do you feel necessitate a defendant serving a sentence other than active jail time?

Response: As a state court judge sentencing young defendants, I first look to the crime committed and the circumstances of that offense. I consider any specified legislative penalties and the guideline range of sentencing options for the specific offense. If the legislation or guidelines at issue direct active jail time, I comply with the legislative or guideline requirements. If there are ranges of options available, as alternatives to active jail time, I consider any mitigating factors outlined for the offense at issue. Other considerations that may impact my sentencing decision include the age of the offender, victim impact, restitution, and presentence investigation and risk assessment reports and recommendations. I also consider the educational, psychological and social needs of the offender, plus I attempt to select options that best ensure offender accountability and victim restoration. I focus upon accessing available, evidence-based, statistically successful, restrictive therapeutic programs, which promote education, counseling and vocational training.