

**Responses of Susan Richard Nelson
Nominee to be United States District Judge for the District of Minnesota
to the Written Questions of Senator Jeff Sessions**

1. In a 2002 drug case, you recommended the suppression of physical evidence obtained before the defendant was given *Miranda* warnings. In addition, you recommended the suppression of the defendant's incriminating statement made after he waived his *Miranda* rights, citing the fruit of the poisonous tree doctrine. The district court judge adopted most of your report, but the Eighth Circuit reversed. Specifically, the court found that because there was no evidence of involuntariness as to the initial, unwarned statement, both the entire post-*Miranda* statement and physical evidence were admissible.

a. When deciding whether to suppress a statement made by a defendant who has been given *Miranda* warnings and has waived his or her rights, what factors do you consider?

Response: If a defendant received *Miranda* warnings and then waived his rights, under the law of the Supreme Court and the Eighth Circuit in *Dickerson v. United States*, 530 U.S. 428, 120 S. Ct. 2326, 147 L. Ed. 2d 405 (2000) and *Simmons v. Bowersox*, 235 F.3d 1124, 1132 (8th Cir. 2001), I would only suppress such a statement if there was evidence that demonstrated the waiver was not voluntary.

b. Do you believe that *Miranda* warnings provide adequate protection for the rights of the accused?

Response: Yes, if administered properly.

2. In your questionnaire, you indicated that you have no experience litigating criminal cases. You testified that in your district, magistrates are utilized mostly for settling civil cases. While I recognize that you also handle some non-dispositive criminal motions and issue reports and recommendations in some criminal cases, you do not preside over criminal cases, which account for a substantial portion of the federal docket.

a. How has your experience prepared you for the criminal cases you will handle as district court judge?

Response: As a Magistrate Judge for the past ten years, I have conducted all preliminary criminal hearings (first appearances, preliminary hearings, detention hearings, arraignments, and preliminary revocation hearings) as well as all criminal motions, including evidentiary hearings on suppression issues, in every criminal case. I have become very familiar with the Federal Rules of Criminal Procedure, the criminal rules of evidence, and substantive federal criminal law.

- b. If confirmed, how do you plan to educate yourself with respect to federal criminal law and the federal sentencing guidelines?**

Response: If confirmed, I will attend the training sessions offered by the Federal Judicial Center, which provide in depth training on the federal sentencing guidelines and criminal trials. In addition, the Probation Office in our district has tailored an extensive training program for me on the guidelines, sentencing, and plea bargains.

- 3. Now that the guidelines are advisory rather than mandatory, a judge may impose any sentence ranging from probation to the statutory maximum.**

- a. What level of deference will you show to the guidelines now that they are only advisory?**

Response: If confirmed as a District Judge, I would give the guidelines great deference.

- b. Do you commit to follow the guidelines?**

Response: If confirmed as a District Judge, I would commit to giving them great deference.

- c. 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. I believe that the sentencing guidelines provide uniformity in sentencing, which is essential to a fair system of justice.

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

Response: After the Department of Justice forwarded the questions to me, I reviewed them and drafted my responses. I consulted with Justice Department representatives and then finalized my responses, and then forwarded them to the Justice Department to submit to the Committee on the Judiciary on my behalf.

- 5. Do these answers reflect your true and personal views?**

Response: Yes.

**Responses of Susan Richard Nelson
Nominee to be United States District Judge for the District of Minnesota
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: Although I cannot comment on what President Obama meant by this statement, because he nominated me, I believe I meet his criteria for a federal judge.

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: Yes.

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, impartiality is the hallmark of a good judge.

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: I believe that judges should base their decisions solely on the law and facts presented.

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

Response: I believe that the role of a District Judge is to apply the law, including Supreme Court and appellate court precedent to the facts of a particular case, with careful consideration and impartiality. As a United States Magistrate Judge, I have sought to do so, and would continue to do so, if confirmed as a District Judge. My judicial philosophy is to evaluate disputes based on legal precedent and the plain meaning of the applicable law, as guided by any relevant precedent.

3. How do you define “judicial activism”?

Response: While this is not a term that I use, I understand others interpret the phrase to refer to a judicial decision-making process whereby judges permit their personal views to influence their decision-making in order to reach a particular result.

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: No, I am not aware of any recent Supreme Court cases that are examples of “judicial activism.”

5. How do you define “judicial restraint”?

Response: My understanding is that “judicial restraint” refers to a philosophy of judicial decision-making whereby judges rule based upon established legal precedent and in deference to the law.

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: As a general principle, I believe that the Supreme Court has exercised judicial restraint and therefore I am unable to identify just three cases.

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. Each of our branches of government is designed to serve a different purpose. The courts apply the laws of the United States, enacted by Congress.

- 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: I believe that reliance upon foreign or international law in determining a Constitutional question is not appropriate unless controlling Supreme Court or appellate court precedent requires such an approach.

- 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: No, it is inappropriate to look to foreign law as authority for legal guidance, unless directed to do so by the Supreme Court or appellate court precedent.

- 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 Minnesota.**

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

Response: If confirmed as a District Judge, I would look to the plain meaning of the statute, then to the decisions of the Supreme Court and the Eighth Circuit, interpreting the statute.

- 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: I believe that the plain meaning of a statute governs.

- 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: If confirmed as a District Judge, I would refer to legislative history only when the statute in question contains ambiguities. In this context, I would afford careful consideration to the legislative history.

**Responses of Susan Richard Nelson
Nominee to be United States District Judge for the District of Minnesota
to the Written Questions of Senator Tom Coburn, M.D.**

- 1. 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 text of the Constitution is fixed, absent amendment through the Article V amendment process.

- 2. 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. Do you believe *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. Why or why not?**

Response: The Supreme Court stated in both *Lopez* and *Morrison*, and also in *Gonzales v. Raich*, 545 U.S. 1 (2005), that its recent decisions are consistent with earlier Commerce Clause precedent.

- 3. 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: As a United States Magistrate Judge, I have not had occasion to consider the analysis referenced here. In the event that I am confirmed and appointed to serve as a District Judge, I would follow the binding precedent of the Supreme Court and the Court of Appeals.

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

Response: If confirmed as a District Judge, I would apply Supreme Court and appellate precedent, including those cases that provide authority and guidance on this issue.

- 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 held that capital punishment is not unconstitutional per se, therefore, under current Supreme Court law, a District Judge could not so rule.

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

Response: The factors identified by the Supreme Court in its decisions on capital punishment, including *Roper*.

4. 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: If I am confirmed and appointed as a District Judge, I would not consider foreign or international law in determining a Constitutional question unless controlling Supreme Court or Court of Appeals precedent directed such an approach.

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

Response: If confirmed and appointed as a District Judge, I would only consider foreign or international law in interpreting the Constitution if the decisions of the Supreme Court or the controlling Court of Appeals required as much.

b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: If presented with such an argument, I would respond by referring to Supreme Court or controlling appellate court authority.

c. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: If confirmed and appointed as a District Judge, I would not consider foreign law in interpreting a Constitutional Amendment unless the Supreme Court or controlling appellate court authority directed such an approach.

5. In May 2009, you gave a speech at an Upper Midwest Employment Law Institute Seminar during which you said: "the quality of interpretation for non-English speakers other than Spanish speakers is of variable quality. There are a significant number of cases nation-wide which address this very troubling issue and it is very worthy of addressing today." You stated that as a judge, she is concerned about "the risk of inadequate interpretation in the context of significant cultural bias and misunderstandings in the courthouse." In addition, you commented that "[s]ocial mores of different cultures not only make the context of law and legal proceedings incomprehensible, social mores also prevent evidence from being fully explored" and that "language, despite the best of interpreters, can also be a barrier. Significantly, much of our legal process is not easily translatable into certain languages, such as African or Asian languages."

8 U.S.C.A. § 1423 of the United States Code requires citizens who are naturalized to have “an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language...” Do you have any concerns about this requirement?

Response: No.

- a. Do you believe translators and materials in legal proceedings and courts should be made available in every conceivable language to avoid “the risk of inadequate interpretation?”**

Response: Every criminal defendant should be afforded the opportunity to understand the charges brought against him and his rights under the Constitution.

- b. If not, what limits would you place on the number and variety of languages available.**

Response: The Court endeavors to find competent interpreters for every criminal defendant charged with a crime.

- c. Do you have any concerns about the cost to states and to the federal government if translators and materials are required to be made available in every language?**

Response: It is incumbent on courts to efficiently serve the public, including with respect to the use of interpreters. For example, where a competent interpreter is not available for a particular language, our court has used telephone interpretation as a back-up to meet the need at a reasonable cost.