

Response of Sara Lee Ellis
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Amy Klobuchar

1. If you had to describe it, how would you characterize your judicial philosophy?

Response: My judicial philosophy is to adhere to the rule of law and apply the law in a fair and impartial manner to the facts presented to the court. Additionally, my judicial philosophy would call for treating all litigants with courtesy, respect, and an even hand. Finally, my judicial philosophy would call for resolving legal issues promptly, decisively, and after thorough application of the relevant legal principles to the facts at hand.

2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?

Response: Throughout my 19 year career, I have represented a variety of parties and litigants. I have represented criminal defendants and members of law enforcement, plaintiffs and defendants, corporations and individuals. I have been a zealous advocate for my clients regardless of their political beliefs, financial standing, or their role in the case as plaintiff or defendant. Though the role of a judge is different from the role of an advocate, what would not change is the respect and fairness with which I would approach every party. If I were fortunate enough to be confirmed, I assure this Committee that I would treat all parties who come before me fairly, impartially, and with respect.

3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?

Response: District court judges are bound, without exception, to the doctrine of *stare decisis*. In practice, this means that district court judges must follow the controlling precedent within their Circuit. Moreover, district court judges must adhere to controlling authority issued by the Supreme Court. While the Supreme Court or an *en banc* panel of a particular Circuit Court may overturn controlling legal precedent within that Circuit, district court judges do not have that authority. The doctrine of *stare decisis* is the basis on which our legal system operates in a just, fair and predictable manner.

Response of Sara Lee Ellis
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Chuck Grassley

- 1. In *Sparlin v. LaSalle County*, you represented a plaintiff in a civil rights lawsuit who challenged the use of extended solitary confinement. Is it your belief that prisoners who are placed in solitary confinement for their protection are being subjected to cruel and unusual punishment?**

Response: In *Sparlin*, I assisted a colleague from my law firm who was appointed by the judge to represent the plaintiff, and my personal belief, if any, did not play a role in that representation. The Seventh Circuit has held that it does not violate the Eighth Amendment to place prisoners in solitary confinement for their protection, as long as two conditions are met: first, that the prison conditions are not “sufficiently serious so that a prison official’s act or omission results in the denial of the minimal civilized measure of life’s necessities” and second, that the prison official did not act “with deliberate indifference to the conditions in question.” *Townsend v. Fuchs*, 522 F.3d 765, 771 (7th Cir. 2008) (internal citations and quotations marks omitted).

- 2. In *Mason v. County of Cook Illinois*, you represented the Cook County Public Defender’s Office when it challenged the practice of using video cameras in bond court. What is your view of the use of cameras in the federal courtroom?**

Response: Currently, the Northern District of Illinois is participating in a three-year pilot program, which began on June 18, 2011, to evaluate the effect of cameras in district court courtrooms, video recordings of proceedings, and publications of such video recordings limited to civil cases only. Proceedings may be recorded only with the approval of the presiding judge, and parties must consent to the recording of each proceeding in a case. Unless the presiding judge decides not to make the recordings publicly available, they will subsequently be posted on www.uscourts.gov, as well as on local participating court websites at the court's discretion. The results of the pilot program will be studied by the Federal Judicial Center, and I look forward to that study in informing my views on this important issue.

- 3. You have spent part of your career working as a criminal defense attorney, specifically with the Federal Defender Program.**

- a. How will you transition from the role of advocate to that of a judge?**

Response: If confirmed, I will be very aware of the differences between my new role and my former role. I would be diligent about conquering the learning curve through studying the materials provided to me from the Administrative Office of the U.S. Courts and consulting with other judges who have made a similar transition from advocate to judge. I am confident that I will be able to make this transition because I strongly believe in the rule of law and the role of a judge as a neutral arbiter who faithfully applies the law to the facts of each individual case without bias or favor.

- b. What assurances can you provide that will assuage any concerns that you will have a bias towards criminal defendants, especially in cases that involve the Federal Defender Program?**

Response: During my career, I have represented a wide variety of parties, both plaintiffs and defendants, from individuals to corporations, and criminal defendants to members of law enforcement. Specifically, I have represented members of law enforcement (both members of the Chicago Police Department and the University of California Police Department) in civil cases brought by criminal defendants. I zealously represented both criminal defendants and members of law enforcement alike, and have shown no bias toward one group of litigants over another. Although I am cognizant of the difference between the role of an advocate and the role of a judge, just as I showed no bias or favor toward any type of litigant represented by any of my former employers, such as the City of Chicago or Schiff Hardin LLP, I would likewise show no bias or favor toward any other type of litigants as a judge, including those represented by the Federal Defender Program. I would recuse myself in any case in which my impartiality could be reasonably questioned.

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

Response: A judge should possess many attributes including fidelity to the rule of law, diligence, fairness, decisiveness and efficiency. I possess all of these attributes.

- 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: A judge must be respectful of the parties and litigants, patient, hard-working, even-handed, and open-minded. If confirmed, I believe that I would meet this standard.

- 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. 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.

- 7. What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not be affected by any political, economic, or philosophical influences?**

Response: As an advocate, my actions have never been motivated by any political, economic, or philosophical influences. Instead, I have reviewed the facts at hand as well as any pertinent statutes, researched the applicable law, and formulated the best arguments in light of that process. Political, economic or philosophical influences have no place in a courtroom. A judge should faithfully apply the law to the facts before him or her. If

confirmed, I would base any legal decision on the facts presented, any applicable statutes, and the relevant legal precedent.

- 8. Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.**

Response: The Supreme Court has ruled that the death penalty is an appropriate form of punishment with limited exceptions. If confirmed, I would follow Supreme Court and Seventh Circuit precedent in imposing this sentence.

- 9. 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: In a case of first impression that involved a statute, I would first turn to the relevant statute. If I could not resolve the issue from the plain language of the statute, I would look to the standard rules of statutory construction and also examine Supreme Court and Seventh Circuit precedent from related contexts in order to reach a decision. If I could not decide the issue from Supreme Court and Seventh Circuit precedent, I would also review precedent from other Circuits that while not binding, could provide persuasive authority. Finally, I would review the legislative history of the statute if its meaning was still ambiguous.

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

Response: The circumstances under which a federal court can declare a Congressional statute unconstitutional are limited. A Congressional statute is presumptively constitutional and can only be declared unconstitutional where a federal court determines, after careful consideration, that the statute violates a right granted by the Constitution or exceeds the authority granted to Congress by the Constitution.

- 11. 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: No. Federal courts are to determine the meaning of the Constitution by looking to the language of the Constitution and applying relevant Supreme Court and Circuit Court precedent.

- 12. What is your understanding of the workload in the Southern District of New York? If confirmed, how do you intend to manage your caseload?**

Response: The Northern District of Illinois has a significant workload. If confirmed, I intend to manage my caseload by utilizing case management software to ensure that I am aware of

deadlines and can keep case files organized. Further, I would rule on issues promptly so that cases can be resolved in a timely manner. Finally, I would utilize the resources available to me, such as the Magistrate Judges and support staff, to make sure that cases are progressing through the judicial system in a just, prompt, and efficient manner.

13. 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. If confirmed, I would utilize regular status conferences, firm deadlines, and prompt, thorough rulings to ensure that cases efficiently progressed toward resolution through trial or settlement.

14. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: If confirmed, I will reach a decision in cases that come before me by reading the briefs that the parties present, listening carefully to any oral arguments that may be made, researching the legal issues, and then applying the relevant law to the facts of the case as a neutral arbiter. If it is an area of the law where I do not have familiarity, I will also look to treatises and scholarly articles to obtain a better understanding of the law and consult with other judges who have more experience. Although there will be a learning curve, I am confident that I will be able to make this transition.

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

Response: I received these questions on June 26, 2013. I reviewed them thoroughly, researched legal issues where necessary, and prepared my answers. I subsequently reviewed my answers with representatives from the Department of Justice.

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

Response: Yes.

**Response of Sara Lee Ellis
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Ted Cruz**

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is to adhere to the rule of law and apply the law in a fair and impartial manner to the facts presented to the court. Additionally, my judicial philosophy would call for treating all litigants with courtesy, respect, and an even hand. Finally, my judicial philosophy would call for resolving legal issues promptly, decisively, and after thorough application of the relevant legal principles to the facts at hand. I have not studied the judicial philosophies of the Supreme Court Justices and thus, could not identify the philosophy of any particular Justice that I would follow. However, the judicial philosophy I have identified above is one that I have admired and observed in many judges in the Northern District of Illinois. If fortunate enough to be confirmed, I would follow this judicial philosophy.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If confirmed, I would follow the Seventh Circuit and Supreme Court precedent in interpreting the Constitution. The Supreme Court has applied originalism in cases including *District of Columbia v. Heller*, 554 U.S. 570 (2008).

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: As a district court judge I would not have authority to overrule legal precedent and there is no circumstance where I would seek to do so.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: The Supreme Court's holding in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985) is binding on a district court judge and if confirmed, I would apply this legal precedent without regard to my personal feelings, if any, on the issue.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), the Supreme Court identified three categories of activity which Congress may regulate under the Commerce Clause. These

categories include: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce. *Id.* In those cases, where the Supreme Court struck down an act of Congress, the court noted the non-economic nature of the activities being regulated. If confirmed, I would apply the law as identified in *Lopez* and other Supreme Court and Seventh Circuit precedent to determine whether the regulation of a particular activity is covered under the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The proper analysis to use in determining whether the President has exceeded Executive authority is contained in the Supreme Court decision of *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, and if I were presented with this legal issue, I would apply this analysis to assessing the legality of any presidential executive orders or actions.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997), the Supreme Court defined rights and liberties as “fundamental” for purposes of Due Process Clause protection when the right or liberty is “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if [it was] sacrificed.”

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that a classification is subject to heightened scrutiny under the Equal Protection Clause when the classification involves a suspect class, such as race, alienage, national origin, or gender. Courts will also apply strict scrutiny where laws impinge on a fundamental constitutional right.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I have no expectation whether the use of racial preferences will no longer be necessary in public higher education, at any time in the future. If confirmed, I will follow the controlling precedent of the Supreme Court, including *Grutter* and *Fisher v. University of Texas at Austin, et al.*, 570 U.S. ____ (2013), on the appropriate use of racial preferences in public higher education.