

**Senator Chuck Grassley  
Questions for the Record**

**Jane Kelly  
Nominee, United States Circuit Judge for the Eighth Circuit**

- 1. In your hearing, you were asked about diversity on the bench. You indicated that it is helpful to have a variety of views, backgrounds and experiences. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.**

Response: Diversity in views, backgrounds, and experiences allows judges, collectively, to have a broader perspective when they consider cases presented to the court. An individual judge's gender, ethnicity, or other demographic factors, however, should have no influence in the ultimate outcome of a case.

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

Response: I believe a judge should possess a number of important attributes. Among these is the ability to be fair and impartial and to make decisions without regard to bias, prejudice, or favor. I believe I possess these attributes.

- 3. 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 should be open-minded and have the ability to listen carefully to the positions of all parties involved in a case. A judge should be respectful, patient, and courteous to the litigants, fellow judges, and the public generally. I consider these elements of judicial temperament to be very important, and I believe I could meet this standard if confirmed.

- 4. In general, Supreme Court precedents are binding on all lower federal courts, and Federal Circuit precedents are binding on the Court of International Trade. 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.

5. **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: I would first look carefully at the facts of the case and the relevant statutes. If the answer is not clear from the statute, I would apply standard rules of statutory construction in an effort to reach the proper result. I would also look to decisions in other Circuits that, while not binding, may provide persuasive authority.

6. **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: I would be bound by the decisions of the United States Supreme Court and would follow that precedent. One panel of the Eighth Circuit Court of Appeals is not permitted to overrule another panel, and thus I would be bound by Circuit precedent as well, unless and until the issue was considered by the entire Court of Appeals *en banc*.

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

Response: A federal court should declare a statute unconstitutional only if the court is convinced, after conducting a thorough analysis of the issue and considering any relevant precedent, that the statute infringes upon a right granted by the federal constitution or that the statute exceeds the authority granted to Congress by the federal constitution.

8. **Please describe your understanding of the workload of the Eighth Circuit. If confirmed, how do you intend to manage your caseload?**

Response: I understand the workload of the Eighth Circuit Court of Appeals is substantial. If confirmed, I would work diligently to resolve cases in a timely manner. I would also seek the assistance of support staff for monitoring deadlines and keeping case files organized and updated.

9. **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: Absent binding direction otherwise from the United States Supreme Court, the law of the United States is the only law to use when determining the meaning of the United States Constitution.

- 10. 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: I can assure the Committee that, if confirmed, I would base my decisions solely on the facts presented, the applicable statutes, and any relevant precedent. Political ideology or political motivation would have no place in the decision-making process. During the course of my professional career, I have relied on facts, statutes, and legal precedent in my efforts to represent my clients to the best of my ability. At no time has political ideology or political motivation affected my role as an advocate; and it would not affect my decision-making as a judge, if I were to be confirmed.

- 11. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?**

Response: If the United States Supreme Court modifies, alters, or overturns a prior precedent, the Court of Appeals may have to overturn or revisit some of its own prior precedent as a result. The Court of Appeals should not overturn precedent within the Circuit without an *en banc* consideration of the issue. Pursuant to Federal Rule of Appellate Procedure 35, such review is limited to decisions for which consideration by the full court is “necessary to secure or maintain uniformity of the court’s decisions,” and to decisions involving “a question of exceptional importance.”

- 12. You have spent your 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 as a judge, I would consider the facts of each individual case in light of relevant precedent in an effort to reach an objective and reasoned decision in accordance with the governing law. I would rely on applicable statutes, relevant legal precedent, and the United States Constitution in reaching these decisions. I would also consult with the other judges on the Court of Appeals for guidance. I recognize that the role of an advocate and the role of a judge are very different, but I believe both are vital to the administration of justice. I anticipate the most challenging part of the transition for me will be in the area of civil law.

- 13. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach working with your colleagues?**

Response: Yes, I believe collegiality is a very important element of the work of a Circuit Court. If confirmed, I look forward to working with a panel of judges in an effort to reach consensus on a given case. I would welcome the views of other judges and would anticipate respectful, engaging discussions regarding the cases presented to the court for resolution.

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

Response: I received these questions on March 6, 2013, and I prepared my answers to them. On March 9, 2013, I reviewed my answers with a representative of the Department of Justice.

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

Response: Yes.