

Responses of Mae A. D'Agostino
Nominee to be United States District Judge for the Northern District of New York
to the Written Questions of Senator Charles Grassley

- 1. In 2008, President Obama said,**

“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.”

Do you agree with the President’s statement?

Response: I do not believe that Judges can arrive at decisions based upon empathy. Judges must apply the law to the facts.

- 2. Have you ever expressed an opinion regarding whether the death penalty constitutes cruel and unusual punishment under the Constitution? If so, what opinion did you express?**

Response: I have never expressed an opinion regarding whether the death penalty constitutes cruel and unusual punishment under the Constitution.

- 3. What is your personal view regarding whether the death penalty is constitutional?**

Response: The Supreme Court has ruled that the death penalty does not constitute cruel and unusual punishment under the Constitution except under narrow circumstances as set forth in the cases of Roper v. Simmons; Atkins vs. Virginia and Kennedy vs. Louisiana.

- 4. Do you believe that the death penalty is an acceptable form of punishment?**

Response: The Supreme Court has stated the death penalty is constitutional and I would follow that precedent.

- 5. Do you hold any personal views that would preclude you from enforcing the death penalty?**

Response: I do not hold any personal views that would preclude me from enforcing the death penalty.

- 6. Do you believe that when Congress enacts a law that is contrary to the Constitution or takes action not authorized by some enumerated power therein, a court must either invalidate the Congressional action or, where appropriate, limit its application on an “as applied” basis?**

Response: Yes.

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

Response: I believe the most important attribute of a judge is the ability to objectively apply the law to the facts and to treat all litigants with respect and dignity. I do believe I have these attributes.

8. 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: I believe that a judge must always be objective and impartial. A judge must also have patience and a desire to treat all people who come before him or her with dignity and respect. I do believe I meet these standards.

9. 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.

10. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded 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, if there was no controlling precedent, I would look at prior rulings of the Supreme Court and Appellate Courts to see if analogies could be made from those cases to the case of first impression. I would look carefully at the wording of the Constitution and any statutes that could in any way reflect on the issue of first impression.

11. 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 own judgment of the merits, or your best judgment of the merits?

Response: I would apply the decision of the Supreme Court or the Court of Appeals and not use my own judgment of the merits.

12. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I would intend to utilize a scheduling order system to keep all of the cases before me on track to be resolved in a timely fashion. I would work closely

with the other judges in the Northern District of New York and the Court Clerks to move cases through the system expeditiously.

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: I do believe that judges have a role in controlling the pace and conduct of litigation. As mentioned above, I would use a scheduling order system so that attorneys and litigants are fully aware of certain deadlines in order to complete discovery, depositions and motions. Firm trial dates would be assigned following the completion of discovery.

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

Response: When Congress exceeds its authority, it is appropriate for federal courts to strike down an act of Congress.

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

Response: I received the questions on February 9, 2011. I prepared responses on February 10, 2011. I also consulted with representatives of the Department of Justice regarding my responses, and then finalized them before authorizing their transmittal to the Committee.

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

Response: Yes.