

Questions for the Record
Hearing: Nominations
May 8, 2013
Submitted by Senator Amy Klobuchar

Questions for Elaine D. Kaplan, nominated to be a Judge of the United States Court of Federal Claims:

- 1. If you had to describe it, how would you characterize your judicial philosophy?
How do you see the role of the judge in our constitutional system?**

My judicial philosophy is that every dispute must be approached with an open mind and resolved solely on the basis of a faithful application of the governing law to the facts as determined based on the evidence submitted by the parties. It is critical that a judge be respectful of all parties, a good listener, and an active questioner. A judge should be transparent—that is, he or she should clearly explain the thinking and analysis that forms the basis for his or her resolution of cases.

The role of the judge in our constitutional system, as expressed by the Supreme Court in Marbury v. Madison, is “to say what the law is.” Judges do not make the law; instead they interpret the laws enacted by Congress, based on statutory language and governing precedent, and then apply those laws to the facts before them.

- 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?**

My record as an attorney and as a government official demonstrates a history of neutrality and even-handedness. My legal career has been characterized by the representation of a variety of points of view. On the one hand, I have represented labor unions and individuals in employment disputes against the United States. On the other, I have been counsel for the United States as employer in such disputes. I also held a five year appointment as the head of the Office of Special Counsel where I was charged with being an advocate for the merit based civil service. In that role, I oversaw the investigation of complaints against federal agencies, sometimes in politically sensitive contexts. In some instances, I concluded that the complaints were meritorious and my office secured relief on behalf of the complainants. In others, I concluded that the complaints lacked merit, and they were dismissed. As Special Counsel, I applied the laws to individuals without any regard to their political beliefs, economic class, or any other irrelevant characteristic.

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?

Judges must faithfully apply the doctrine of stare decisis. It is a critical component of our system of justice, because it provides stability and certainty in the application of the law. District courts and the U.S. Court of Federal Claims are required to follow the binding precedent of their governing circuit, unless and until such precedent is overruled. The courts of appeals are similarly required to follow the rulings of the Supreme Court. The Supreme Court may overrule its own earlier precedent, but in doing so it follows well-established standards for determining whether it is appropriate to depart from principles of stare decisis.