

**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.