

**Responses of Susan Richard Nelson
Nominee to be United States District Judge for the District of Minnesota
to the Written Questions of Senator Jeff Sessions**

1. In a 2002 drug case, you recommended the suppression of physical evidence obtained before the defendant was given *Miranda* warnings. In addition, you recommended the suppression of the defendant's incriminating statement made after he waived his *Miranda* rights, citing the fruit of the poisonous tree doctrine. The district court judge adopted most of your report, but the Eighth Circuit reversed. Specifically, the court found that because there was no evidence of involuntariness as to the initial, unwarned statement, both the entire post-*Miranda* statement and physical evidence were admissible.

- a. When deciding whether to suppress a statement made by a defendant who has been given *Miranda* warnings and has waived his or her rights, what factors do you consider?

Response: If a defendant received *Miranda* warnings and then waived his rights, under the law of the Supreme Court and the Eighth Circuit in *Dickerson v. United States*, 530 U.S. 428, 120 S. Ct. 2326, 147 L. Ed. 2d 405 (2000) and *Simmons v. Bowersox*, 235 F.3d 1124, 1132 (8th Cir. 2001), I would only suppress such a statement if there was evidence that demonstrated the waiver was not voluntary.

- b. Do you believe that *Miranda* warnings provide adequate protection for the rights of the accused?

Response: Yes, if administered properly.

2. In your questionnaire, you indicated that you have no experience litigating criminal cases. You testified that in your district, magistrates are utilized mostly for settling civil cases. While I recognize that you also handle some non-dispositive criminal motions and issue reports and recommendations in some criminal cases, you do not preside over criminal cases, which account for a substantial portion of the federal docket.

- a. How has your experience prepared you for the criminal cases you will handle as district court judge?

Response: As a Magistrate Judge for the past ten years, I have conducted all preliminary criminal hearings (first appearances, preliminary hearings, detention hearings, arraignments, and preliminary revocation hearings) as well as all criminal motions, including evidentiary hearings on suppression issues, in every criminal case. I have become very familiar with the Federal Rules of Criminal Procedure, the criminal rules of evidence, and substantive federal criminal law.

- b. If confirmed, how do you plan to educate yourself with respect to federal criminal law and the federal sentencing guidelines?**

Response: If confirmed, I will attend the training sessions offered by the Federal Judicial Center, which provide in depth training on the federal sentencing guidelines and criminal trials. In addition, the Probation Office in our district has tailored an extensive training program for me on the guidelines, sentencing, and plea bargains.

- 3. Now that the guidelines are advisory rather than mandatory, a judge may impose any sentence ranging from probation to the statutory maximum.**

- a. What level of deference will you show to the guidelines now that they are only advisory?**

Response: If confirmed as a District Judge, I would give the guidelines great deference.

- b. Do you commit to follow the guidelines?**

Response: If confirmed as a District Judge, I would commit to giving them great deference.

- c. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

Response: Yes. I believe that the sentencing guidelines provide uniformity in sentencing, which is essential to a fair system of justice.

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

Response: After the Department of Justice forwarded the questions to me, I reviewed them and drafted my responses. I consulted with Justice Department representatives and then finalized my responses, and then forwarded them to the Justice Department to submit to the Committee on the Judiciary on my behalf.

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

Response: Yes.