

Responses of Matthew W. Brann
Nominee to be United States District Judge for the Middle District of Pennsylvania
to the Written Questions of Senator Chuck Grassley

- 1. While you responded to questions at your hearing regarding your ability to be fair and objective, what further assurances or evidence can you give the Committee and future litigants that you will be fair to all who appear before you, if confirmed?**

Response: I have spent twenty-one years as an attorney engaged in the private practice of law. During my career, I have represented a diverse cast of clients, from large corporations, banks, and affluent individuals to the poor and disadvantaged. I have made every effort to treat all of my clients, as well as opposing counsel, witnesses, judges and court staff fairly and courteously and without regard to their political beliefs or social status. If I am confirmed as a federal district judge, I firmly intend to continue to treat all litigants, counsel, staff and my prospective colleagues with the same courtesy, and render decisions fairly and diligently.

- 2. You have spent your entire legal career as an advocate for your clients. As a judge, you of course will be asked to make decisions based on the law and facts before you. What do expect to be most difficult part of this transition for you?**

Response: My objective as an attorney is to persuade. As an advocate for clients during my twenty-one years at the bar, I have been compelled to review, consider and analyze issues from multiple vantage points, but then to persuade. If I am confirmed as a federal district judge, I will be required to review all cases before me in a neutral role, attempting to apply the law to the facts at issue, while looking beyond the advocacy of counsel. I am committed to upholding the impartiality of the federal judicial system, but it will be difficult to end my career as an advocate.

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

Response: I believe that the most important attribute of a judge is complete impartiality in the application of the law to the facts before the court. I firmly believe that I possess this trait.

- 4. 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 United States district judge should be fair, impartial, cordial, timely, calm and dignified. The parties in litigation before the court, their counsel, fellow jurists, and the court staff should be treated with courtesy. The litigants and the public in general should also reasonably expect that a federal district judge will pay attention to the facts of record, understand and apply relevant and precedential law, and then carefully explain decisions. I believe that I possess the appropriate temperament to effectively serve as a federal district judge.

- 5. 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. The Supreme Court and the Third Circuit Court of Appeals sitting en banc may change precedential decisions with appropriate justification. A federal district judge may not do so.

- 6. 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: When faced with a case of first impression, I would first consider any relevant Supreme Court decision, any germane decision of the Third Circuit, as well as examining the text of the governing law. In the examination of the constitutional or statutory provision or regulation, I would certainly consider what other courts, in decisions not binding on my court, have said about the issue at bar, and render a decision accordingly.

- 7. 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: As a prospective federal district judge, I would be bound by Supreme Court or Third Circuit precedent even if I believed it to be in error.

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

Response: It is presumed that a federal statute is constitutional. This is, however, a rebuttable presumption. A federal district court should declare a federal statute unconstitutional when that statute cannot be read to avoid inconsistency with the Constitution.

- 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?**

Response: No.

- 10. 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 intend to actively monitor the cases assigned to my docket, establish appropriate scheduling deadlines in both criminal and civil matters, conduct hearings on outstanding dispositive motions where warranted, and rule on all matters in a timely fashion. I would also intend to work with the United States magistrate judges in my district to expedite the settlement or trial of cases in my docket. Finally, I would always attempt to be available to the parties in civil actions to facilitate and encourage settlement.

11. 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 believe that federal district judges have a role in controlling both the pace and conduct of litigation. Specifically, if confirmed, I intend to regularly monitor the cases in my docket; establish reasonable and firm scheduling deadlines; promptly resolve dispositive motions; and make myself available to the parties to facilitate settlement in civil cases.

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

Response: I received these questions on July 5, 2012. I prepared my responses to the questions on July 5 and 6, 2012. I then forwarded my responses to representatives with the United States Department of Justice on July 6, 2012 and subsequently reviewed and discussed my responses with that representative. On July 9, 2012, I authorized the transmittal of my responses to the Committee.

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

Response: Yes.