

Responses of Denzil Price Marshall Jr.
Nominee to the U.S. District Court for the Eastern District of Arkansas
To the Written Questions of Senator Charles E. Grassley

1. What is your view of the role of a judge?

Response: A judge decides cases according to the governing law. He or she puts personal views aside, follows precedent, treats everyone in the judicial process respectfully, acts impartially, and works hard to do equal justice under law.

2. Do you believe it is ever appropriate for judges to indulge their own values in determining the meaning of statutes and the U.S. Constitution?

Response: No.

a. If so, under what circumstances?

Response: None.

b. Please provide an example of a case in which you have done so.

Response: I have done my best not to do so and know of no such case.

c. Please provide an example of a case where you have had to set aside your own values and rule based solely on the law.

Response: Grandparents and grandchildren have a natural and special relationship that, I believe, should be fostered. Arkansas has a statute governing grandparent visitation in the event of divorce. The statute establishes a rebuttable presumption that the custodial parent's decision denying or limiting grandparent visitation is in the child's best interest. I followed the statute and precedent in an opinion reversing a trial court's order that had approved grandparent/grandchild visitation. I did so even though, as a matter of my own values, I would have preferred that the law incline toward encouraging this relationship. A judge must strive to leave his or her personal views out of every case and follow the governing law wherever it leads.

3. Do you believe it is ever appropriate for judges to indulge their own policy preferences in determining the meaning of statutes and the U.S. Constitution?

Response: No.

a. If so, under what circumstances?

Response: None.

- b. Please provide an example of a case in which you have done so.**

Response: I have done my best not to do so and know of no such case.

- c. Please provide an example of a case where you have had to set aside your own policy preferences and rule based solely on the law.**

Response: In my view, some errors of law are so egregious that---in extraordinary and limited circumstances---an appellate court may consider them even though the appealing party did not object in the trial court. This plain-error doctrine is a settled aspect of federal law. But Arkansas law is equally clear that (with a handful of narrow exceptions) there is no such thing as a plain error. I have followed the governing Arkansas precedent even though I do not believe it embodies the best policy of judicial administration.

4. How do you define “judicial activism?”

Response: “Judicial activism” is a much-contested term, which I do not generally use. A judge who decides cases based on his or her own views instead of the governing law, does not respect jurisdictional limits, or ignores binding precedent would, in my view, be exceeding the proper judicial role.