

Responses of James K. Bredar
Nominee to be United States District Judge for the District of Maryland
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: President Obama nominated me so I believe that I fit his criteria for federal judges.

- 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: I agree with Justice Sotomayor’s statements that judges properly apply law to facts, and not feelings to facts.

- 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.

- 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: No.

2. What, in your view, is the role of a judge? Please describe your judicial philosophy.

Response: A judge's role is to apply the law to the facts. It is not the judge's role to make the law. I believe that judges should conduct careful research to determine the applicable law and precedents, and then apply the law and governing precedents to the facts.

3. How do you define "judicial activism"?

Response: "Judicial activism" is not a term that I use. I believe that a U.S. District Judge must follow the law as defined in the Constitution and statutes and must follow precedent as established in the rulings of the U.S. Supreme Court and the Courts of Appeals.

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: "Judicial activism" is not a term that I use and, therefore, I am unable to define it. I am unable to identify any recent Supreme Court case that would be an example of what is commonly referred to as "judicial activism."

5. How do you define "judicial restraint"?

Response: "Judicial restraint" is also not a term that I use. I believe that U.S. District Judges are constrained to follow the law as set out in the text of the Constitution and statutes and as established in precedents set in rulings of the U.S. Supreme Court and the Courts of Appeals.

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: "Judicial restraint" is not a term that I use. I am unable to identify any recent Supreme Court case that is an example of "judicial restraint."

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: U.S. District Judges are to apply law to facts. The determination of policy is for the other, elected branches of government.

- 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: There is no proper role for foreign law in U.S. court decisions, nor may there be reliance on foreign law in interpreting the U.S. Constitution and U.S. statutes, unless U.S. law or a precedent of the U.S. Supreme Court or a Court of Appeals so requires.

- 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: I cannot think of a circumstance when it would be appropriate to rely on foreign law in the absence of language in the Constitution addressing an issue.

- 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 Maryland.**

- a. In cases involving a close question of law, what would you look to when determining which way to rule?**

Response: I would look first to the plain language of the applicable statute. I would also rely on the applicable precedents of the U.S. Supreme Court and the U.S. Court of Appeals for the Fourth Circuit.

- 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: A statute should be given the meaning that flows from a plain reading of its words.

- 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: I would use legislative history to assist in interpreting a statute only if the statute's meaning could not be determined from a plain reading, and only if there were no precedents from the U.S. Supreme Court and/or the Courts of Appeals explaining the meaning. I would give legislative history no weight unless a plain reading of the statute and the precedents of the Supreme Court and the Court of Appeals failed to establish the meaning of the provision.