

Senator Chuck Grassley
Questions for the Record
Valerie E. Caproni
Nominee, U.S. District Judge for the Southern District of New York

1. In your hearing I asked about any exigent letters issued by the FBI. You informed me that you had written many emails regarding exigent letters during your time at the FBI but you were unsure about why these emails had not been delivered to the Committee. Now that you have had time to review your records, let me ask the question again.

In March 2007, I requested copies of unclassified emails related to the exigent letters issued by the FBI. Director Mueller told this Committee that he thought the emails were probably fairly substantial. After seven months, the FBI produced a small batch of heavily redacted emails and said it would provide additional documents as its review continued. Fourteen months later, in June 2008, I asked Director Mueller for the remainder of the documents and an explanation for the delay. At some point, on a visit to my office, while briefing my staff on another issue, you were asked about the delay. At that time you said the documents were on your desk awaiting your review. You left the FBI in 2011, without delivering those documents. In fact, I still haven't received them.

Why did you tell my staff the documents were on your desk awaiting your review and why were the promised emails never delivered to me?

Response: I have no specific recollection of your March 2007 request or the ensuing production and no recollection why the production took so long. I also do not recall reporting to your staff that documents were on my desk awaiting review. My practice at the FBI was to give requests from Members of Congress high priority, so I am confident that the extended time this production took was not a function of documents needing to be reviewed by me.

I understand that on December 2, 2010, the FBI provided a CD of documents to Senator Leahy and you that responded to your request from March 19, 2007, for documents related to exigent letters. While there may have been some documents authored by me that were produced at that time, most of my involvement with the exigent letter situation post-dated your March 2007 request.

2. In your hearing, I asked you about inaccuracies reported in the National Security Letters. I asked you about the reported inaccuracies and you asked me if I was referring to the inaccurate numbers. I was. But this raises the question: Were there other inaccuracies regarding the NSL program, besides the numbers?

Response: Not to my knowledge.

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

Response: I believe the most important attribute of a judge is the ability to be impartial and fair, regardless of the issue presented to him or her. I believe I possess that attribute, as demonstrated by a long career in which I have developed a reputation for just such fairness.

- 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 district court judge needs to be patient and respectful of parties and attorneys while still maintaining control of the courtroom and of his or her docket. A judge needs to be decisive and capable of remaining focused on the critical issue presented by the particular case. I believe I possess all of those abilities.

- 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.

- 6. What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not be affected by any political, economic, or philosophical influences?**

Response: If I am fortunate enough to be confirmed, I can assure the Committee that I will decide issues presented to me based on the facts and the law and not on my personal opinions, potential biases or influences, and without regard to any political, economic or philosophical influence. I am confident I can do so because during the course of my legal career, I have represented a wide variety of clients and positions, not all of which matched my personal policy preferences.

- 7. Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.**

Response: Under controlling United States law, certain crimes carry a potential penalty of death. The Supreme Court has upheld the constitutionality of the death penalty as a sentence, except in certain circumstances. As a district court judge, if I were to preside over a death penalty case, I would apply the law and the facts fairly and in accordance with controlling precedent.

- 8. 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: In matters of statutory construction I would begin with the words of the statute. If the meaning is clear, then the inquiry stops at that point. If the language is ambiguous, then I would look to controlling precedent and the applicable rules of statutory construction to resolve the ambiguity. If there were no controlling precedent from the Supreme Court or the Second Circuit Court of Appeals, I would look for persuasive precedent from those and other federal courts.

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

Response: Established precedent requires a court to attempt to decide the case without reaching a constitutional question. If that is not possible, a court should endeavor to uphold the constitutionality of a duly enacted statute, if possible. A statute should only be declared unconstitutional if it clearly violates the Constitution or if Congress clearly acted beyond its constitutional authority.

10. 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? Please explain.

Response: No.

11. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: If I am fortunate enough to be confirmed I can assure the Committee and future litigants that I will decide issues presented to me based on the facts and the law and not on my personal opinions. During the course of my legal career, I have represented a wide variety of clients and positions, not all of which matched my personal policy preferences.

12. What is your understanding of the workload in the Southern District of New York? If confirmed, how do you intend to manage your caseload?

Response: My understanding is that the workload in the Southern District of New York is among the country’s heaviest. I would manage my workload to ensure that all cases are resolved in a timely fashion. Management techniques would include making judicious use of Magistrate Judges to manage discovery in civil matters and setting and maintaining reasonable schedules in all matters.

13. 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 judges have an important role in controlling the pace and conduct of litigation. I would make effective use of initial conferences in civil cases and initial appearances in criminal cases to set the schedule for the case, consistent with its complexity.

14. You have spent your entire legal career as an advocate or counselor for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

In a number of my jobs as an attorney, I have been required to ascertain facts and then apply the law to those facts in order to decide, for example, whether to indict a person or to seek authority to bring an enforcement action. While the role of the judge is obviously different, the basic process of fairly determining the facts and applying the law to those facts is a similar undertaking. I suspect the most difficult part of the transition will be moving from being a colleague of the attorneys in the courtroom to being a neutral judge who must decide who prevails in the case presented.

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

I received these questions on May 30, 2013, and I obtained the date of the production of documents to you from the Office of Congressional Affairs of the FBI on May 31, 2013. I drafted the answers to these questions on May 30 and May 31, and I reviewed them with personnel from the Department of Justice before they were submitted to Congress.

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

Yes.