

**Chairman Charles E. Grassley  
Additional Questions for the Record**

**Jeanne Davidson  
Nominee for U.S. Court of International Trade Nominee**

**Additional Follow up Questions to Answers submitted to Jeanne E. Davidson following the  
September 17, 2014 hearing entitled “Judicial Nominations.”**

**In your answer to Question A, you stated:**

**“I have no recollection of receiving the referenced email in this case,” an email from Mr. Dobyn’s attorney dated March 21, 2013, which alleged that ATF’s Office of Chief Counsel had obstructed justice by attempting to stop the arson investigation from being reopened because it would damage the Civil Division’s defense against Mr. Dobyns’ civil case.**

- 1. Why did you respond to a previous email from Mr. Dobyns’ attorney forming the basis of your February 8, 2013 letter regarding allegations of civil division misconduct but not to two subsequent emails with the subject lines that included the phrases “allegation of attempted obstruction of justice by Valerie Bacon” – both of which you sent read-receipt emails back to?**

Response: I have no recollection of receiving the March 21, 2013 email (or any second email) regarding Valerie Bacon (whom I did not know or supervise and who did not work in the Civil Division). For family reasons, I was required to be out of the office frequently during late March until mid-May 2013. While I endeavor to respond to communications, and did respond in my February 8, 2013 letter to some of Mr. Dobyns’ counsel’s complaints up to that time, I was unable to respond to every communication while fulfilling my other responsibilities as director of the National Courts Section. Correspondence about individual cases normally is handled by the assigned trial attorney or assistant director. My February 8<sup>th</sup> letter was intended to alleviate Mr. Dobyns’s counsel’s concerns, and hopefully to reduce the volume of emails, but because it did not have the intended effect, I did not respond further to his subsequent communications.

**In your answer to Question A, you noted that at the time you supervised 150 attorneys.**

- 2. In how many prior instances have you received from opposing counsel allegations of misconduct by one of those trial attorneys under your supervision?**

Response: I do not have data that would allow a quantified response to this question. The Civil Division requires and instructs attorneys to comport with the highest standards of professional conduct. Instances and even allegations of misconduct are rare. I inquired into all allegations of misconduct concerning National Courts attorneys, to the extent I was aware of such allegations, while serving as director of that section until my departure in October 2013.

**In your answer to Question C, “Did you know, prior to the trial, that Valerie Bacon ‘attempted to convince SAC Atteberry not to re-open the arson investigation’ so as not to ‘damage our civil case?’ If so, how and when did you learn of Bacon’s conversations with Atteberry?” you stated: “No.”**

- 3. Did you learn during the trial, or any time after the trial, that Valerie Bacon “attempted to convince SAC Atteberry not to re-open the arson investigation” so as not to “damage [the] civil case?”**

Response: I first learned of the allegations concerning Valerie Bacon after the conclusion of the first phase of the trial, in late June 2013.

- a. If you were made aware during the trial, or any time after the trial, what actions did you take upon learning of this information? If you were not made aware, would you have wanted to be informed of this information?**

Response: Upon becoming aware of these allegations, I immediately directed the assigned National Courts attorneys to investigate and report the relevant facts promptly to me and directly to the Court.

- b. At any time did you learn that Valerie Bacon attempted to, or actually influenced, ATF’s decision-making with respect to the handling of the arson investigation?**

Response: No. I learned that Mr. Atteberry alleged that Ms. Bacon made a comment that reopening an investigation could harm the civil case, but that Mr. Atteberry did not consider the comment to be improper, and that it had no effect on the decision to reopen the investigation.

**In your answer to Question E, subsection (a), you stated:**

**“Respectfully, I first would like to note that, at the time I sent my letter of February 8, 2013, the main complaint advanced by Mr. Dobyns’ attorney concerned a matter unrelated to the allegations that form the basis for these additional questions for the record.”**

**4. What was “the main complaint” you were referencing?**

Response: The “main complaint” to which I referred was the assertion that Government counsel had intentionally destroyed or withheld a recording of a discovery conference call between counsel. In fact, the Government produced as much of the recording as possible, as soon as possible.

**5. Were you kept apprised of important litigation matters that transpired over the course of the Dobyys suit?**

Response: Yes. I was apprised of important litigation matters that transpired in the *Dobyys* suit until October 2013, when I left the National Courts Section.

**In your answer to Question E, subsection (b), “Did you question Mr. Harrington as to whether he attempted to discourage an ATF investigator from bringing to the Court’s attention that he had been threatened by another witness?” you stated:**

**“No. I first learned of this allegation in September 2014...”**

**Judge Allegra’s opinion notes two instances of threats made against ATF investigator and plaintiff trial witness, Chris Trainor. The first was that Mr. Trainor had been threatened by Charles Higman, an ATF investigator and defense counsel witness in the trial. The second was that Mr. Harrington, the government’s trial counsel, threatened career repercussions against Mr. Trainor in an attempt to discourage Mr. Trainor from bringing to the court that he had been threatened by Mr. Higman.**

**6. By “this allegation,” did you mean to refer in your answer to the allegation of Mr. Higman’s threat or the allegation of Mr. Harrington’s threat?**

Response: I was referring to the allegation of Mr. Harrington’s threat in my answer to Question E(b), which asked whether I had questioned Mr. Harrington about his alleged conduct. As explained, I first learned of this allegation concerning Mr. Harrington in September 2014, when Judge Allegra issued an order about an *ex parte* call to chambers by Mr. Trainor. The opinion summarized above was not issued until several months later, in December 2014.

**7. Were you aware that a defense trial witness, Charles Higman, threatened a trial plaintiff witness, Chris Trainor?**

Response: No. On July 21, 2013, the Government’s litigation team sent me an email reporting about an alleged threat of one AFT agent by another, ATF’s prompt investigation and conclusion that no threat had been made, and the team’s resolution of the matter. The team explained that, after Mr. Trainor testified about his investigatory report, Mr. Higman called him and disagreed with some of the report’s

findings and complained that he was not interviewed prior to the preparation of the report. Mr. Trainor alleged that Mr. Higman made a veiled threat during the call. Mr. Higman vehemently denied making a threat. ATF had promptly investigated the allegation and found no basis for the charge of threatening a Federal agent, nor any attempt to affect or influence Mr. Trainor's testimony.

**a. If so, when and how were you made aware?**

Response: Please see response to Question 7 above.

**b. If so, what actions did you take upon learning of this particular threat? If not, would you have wanted to be informed of this threat?**

Response: Because the events concerning the alleged threat by Mr. Higman occurred over a short period of time (primarily, for the Civil Division, over a single weekend), and were not reported to me until after ATF had investigated and determined that no threat had been made, there was no action for me to take. It was not until 14 months later, in September 2014, that Mr. Trainor decided to report the alleged threat by Mr. Higman to the Court. By that time, I was no longer the Director of the National Courts Section, and had no authority over the matter.