

Responses of Michael F. Urbanski
Nominee to be District Judge for the Western District of Virginia
to the Written Questions of Senator Charles E. Grassley

- 1. In February 2009, you held a training session for lawyers and judges on behalf of the Virginia Bar Association Foundation's "Rule of Law Project." In your notes from that presentation, you listed examples of circumstances where there is no rule of law. You included Jim Crow laws and Saddam Hussein's efforts to suppress a national vote in Iraq. But you also included the United States' detention of enemy combatant terrorists at Guantanamo Bay, Cuba.**

Response: I apologize if my inclusion of the Virginia Bar Association's Rule of Law Project training materials in response to Question 12(d) of the Committee's Questionnaire gave the impression that I conducted the training session or authored the training notes and discussion materials. In fact, I did not hold a training session for judges and lawyers on behalf of the VBA's Rule of Law Project or author the notes referenced above.

My participation in the VBA Rule of Law Project consisted of the following. In early February, 2009, I attended a volunteer training session conducted by G. Michael Pace, Jr., immediate past president of the Virginia Bar Association, concerning the Rule of Law Project. Mr. Pace outlined the goals of the program, presented a video to be shown to the students, provided instructions and handed out written materials to the assembled volunteer judges and lawyers. I played no role in the training, other than listening to the presentation. Nor did I author the training notes. These materials were provided by Mr. Pace to all of the volunteers participating in this project.

Following the training session, I was assigned to the R.E. Cook Alternative School and spoke to a group of students about the rule of law on February 18, 2009. Other volunteer lawyers and judges were assigned to different schools throughout the Roanoke Valley. In my talk to the students, I focused on my experience as a United States Magistrate Judge and on how the rule of law plays out in my courtroom on a daily basis. I did not speak from a prepared text and have no notes of my discussion with this class.

Again, I apologize for any confusion resulting from my inclusion of the VBA's training notes in the materials I sent to the Committee. Erring on the side of completeness, I provided the four pages from the training session to the Committee because I had been given them by the VBA at the training session and had them in my files.

- a. Do you believe the United States policy with regard to prisoners at Guantanamo Bay is analogous to Saddam Hussein's actions and Jim Crow laws?**

Response: No.

- b. Do you believe that criminal charges, provision of counsel, and some prospect of release is required by Due Process for foreign terrorists captured on the battlefield and detained outside the United States?**

Response: In my role as United States Magistrate Judge, I have not had occasion to consider this issue, nor have I formed a view on the subject. If confirmed as a district judge, I would follow Supreme Court and Fourth Circuit precedent and apply established law to the facts of the case before me.

- c. Do you believe that the detention of enemy-combatants at a United States military facility must be governed by civilian judges in order to conform to the Rule of Law?**

Response: In my role as United States Magistrate Judge, I have not had occasion to consider this issue, nor have I formed a view on the subject. If confirmed as a district judge, I would follow Supreme Court and Fourth Circuit precedent and apply established law to the facts of the case before me.

- i. If yes, how do you think the usual rules of criminal procedure, such as the rule requiring Miranda warnings, will be applied to these cases?**

Response: Not applicable.

- d. How did President Obama “apply” the rule of law by announcing he would close Guantanamo Bay?**

Response: In my role as United States Magistrate Judge, I have not had occasion to consider this issue, nor have I formed a view on the subject. If confirmed as a district judge, I would follow Supreme Court and Fourth Circuit precedent and apply established law to the facts of the case before me.

- e. Do you believe the rule of law “in effect” by virtue of the process going on now through Combatant Status Review Tribunals, the Military Commission charges, and even the *habeas corpus* proceedings allowed by the Supreme Court in *Boumediene v. Bush*?**

Response: In my position as United States Magistrate Judge, I have not had occasion to consider this issue, nor have I formed a view on the subject. If confirmed as a district judge, I would follow Supreme Court and Fourth Circuit precedent and apply established law to the facts of the case before me.

2. In 2008, President Obama said,

“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."

Do you agree with the President's statement?

Response: Judges should not make decisions based on empathy or heart. When I put on my robe as a United States Magistrate Judge, I put my personal feelings aside.

- 3. Have you ever expressed an opinion regarding whether the death penalty constitutes cruel and unusual punishment under the Constitution? If so, what opinion did you express?**

Response: No.

- 4. What is your personal view regarding whether the death penalty is constitutional?**

Response: The Supreme Court has held that the death penalty is constitutional. If confirmed, I would follow Supreme Court precedent.

- 5. Do you believe that the death penalty is an acceptable form of punishment?**

Response: The Supreme Court has held that the death penalty is constitutional. If confirmed, I would follow Supreme Court precedent.

- 6. Do you hold any personal views that would preclude you from enforcing the death penalty?**

Response: No.

- 7. Do you believe that when Congress enacts a law that is contrary to the Constitution or takes action not authorized by some enumerated power therein, a court must either invalidate the Congressional action or, where appropriate, limit its application on an "as applied" basis?**

Response: Yes.

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

Response: In my view, a judge must possess integrity and be dedicated to the impartial application of the law to the facts of the case before the court. I believe my track record as a United States Magistrate Judge demonstrates that I have the ability to do so.

- 9. 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: As a public servant, a judge must work hard to decide the case before the court in a timely, fair and impartial manner, and to treat all who appear before the court with dignity and respect. I believe my track record as a United States Magistrate Judge demonstrates that I meet this standard.

- 10. 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.

- 11. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded 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: Cases should be decided narrowly based on their facts. If there is no controlling precedent, I would look to the text of the constitutional or statutory provision involved and analogous Supreme Court, Fourth Circuit and other federal precedent.

- 12. 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 own judgment of the merits, or your best judgment of the merits?**

Response: It is the district court's obligation to follow binding precedent, and I would do so.

- 13. 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: As a United States Magistrate Judge, I keep track of all cases referred to me for decision or mediation through the court's electronic filing system and through monthly reports prepared by my staff. If confirmed, I will employ this docket management system along with pretrial scheduling orders to make sure that cases are resolved in a timely manner.

- 14. 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 judges have an important role in controlling the pace and conduct of litigation. If confirmed, I will continue my present practice of issuing a pretrial scheduling order in each civil case, setting deadlines for discovery, Rule 56 and other pretrial motions, and scheduling a timely trial date.

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

Response: It is appropriate for a federal court to declare an act of Congress unconstitutional when the statute contravenes the Constitution or if Congress exceeds its constitutional authority in enacting such a law. In making any such decision, I would be guided by Supreme Court precedent.

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

Response: I received the Committee's questions on February 23, 2011 and drafted my responses to them. I discussed my responses with a Justice Department official, finalized my responses and authorized their communication to the Committee.

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

Response: Yes.