

**Senator Grassley
Questions for the Record**

**Responses of Gary Richard Brown
Nominee, U.S. District Judge for the Eastern District of New York**

- 1. You have worked as both a federal prosecutor and Chief Compliance Officer for a Fortune 500 company, charged with conducting investigations in both roles. What experiences from each of these roles would be relevant to your work as a federal judge, if confirmed?**

Response: My work as an Assistant United States Attorney and as Chief Compliance Officer of CA Technologies, Inc. provided experience with and exposure to a broad range of legal and practical issues that arise in the context of investigation and litigation. These include assessing witness credibility, interpreting documentary and electronic evidence and understanding complex financial and commercial transactions. Additionally, my background has made me sensitive to the practical and economic impact of investigations and litigation on individuals and organizations. These experiences and the attendant skills that I have developed have proven highly relevant to my work as a magistrate judge and, if confirmed, would assist me in performing the functions of a district judge.

- 2. How will you handle the cases of litigants who are members of organizations to which you currently belong or once belonged to, or which you represented as an attorney?**

Response: Consistent with the Code of Conduct for United States Judges and 28 U.S.C. § 455, I review files assigned to me to ensure that no actual or apparent conflict of interest of any kind exists. I also maintain a standing recusal list with the clerk's office, which includes business entities that I once represented as an attorney. I recuse myself in any case where I have a significantly close relationship with any litigant and, in the event of uncertainty, I have erred on the side of recusal. In cases in which I believe that a relationship does not warrant recusal, I nevertheless advise counsel of such relationship and specifically inform them that I will entertain motions for recusal. If confirmed, I would continue these practices.

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

Response: The most important attribute of a judge is the ability to apply the law fairly and impartially. This requires integrity, knowledge of the law, careful and diligent research, and a strong work ethic. I believe that during my four years as a magistrate judge that I have demonstrated these qualities in presiding over proceedings and rendering decisions.

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 judge must demonstrate respect for all persons who come before the court. Respect encompasses patience, humility, balance and the ability to carefully listen to the facts and arguments presented, such that lawyers and litigants know that they have been heard, even if they did not prevail in a matter. I believe that my record as a magistrate judge reveals that I have adhered to this philosophy.

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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: A judge has a responsibility to apply binding precedent without any regard to personal beliefs. During my tenure as a magistrate judge, I have carefully followed this principle and, if confirmed as a district judge, would continue this practice.

6. **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: Upon encountering a case in which there were no applicable cases from the Supreme Court or the Second Circuit Court of Appeals, I would turn to several other sources for guidance. In the first instance, I would look to the plain language of the statute (or other provision), which will often resolve any issue. If there were ambiguity, I would study the statute in its entirety, which could provide guidance. I would then look to decisions from other circuits and other district judges, and also review cases involving analogous provisions. If these sources did not provide sufficient guidance, I would consider appropriate legislative history for further insight.

7. **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 best judgment of the merits to decide the case?**

Response: To quote the Honorable Jacob Mishler, for whom I clerked, a district court “is bound by the decisions of the Court of Appeals . . . and the Supreme Court.” *Ramos v. Boehringer Manheim Corp.*, 896 F. Supp. 1213, 1215 (S.D. Fla. 1994). If confirmed as a district judge, I would apply precedent irrespective of any contrary opinion I might hold.

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

Response: Declaring a Congressional statute unconstitutional may only be contemplated as a matter of last resort. Statutes enacted by Congress are presumed to be constitutional, and a judge may only declare a statute unconstitutional if it unequivocally is in conflict with the Constitution or otherwise exceeds congressional authority.

- 9. 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. Foreign law plays no role in interpreting the U.S. Constitution.

- 10. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: I believe that my decisions as a magistrate judge have carefully applied statutory and case law without regard to any political ideology or motivation. If confirmed as a district judge, I would continue these practices.

- 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: The best demonstration I can provide is the record of my decisions in the nearly four years I have served as a magistrate judge. If confirmed, I would continue to be fair to all who appeared before me without regard to any personal views.

- 12. If confirmed, how do you intend to manage your caseload?**

Response: During my tenure as a magistrate judge, I have learned about many of the tools available to help efficiently manage the docket. These include targeted discovery and motion practice, firm but reasonable trial dates, frequent status conferences and the effective use of magistrate judges. If confirmed as a district judge, I would employ all of these tools to help effectively manage the caseload.

- 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: Judges have an obligation to effectively and efficiently manage litigation, as such management inures to the benefit of litigants, the public and the court. As such, if confirmed as a district judge, I would rely on the

techniques outlined in response to Question 12 above to ensure speedy and fair resolution of disputes that came before me.

- 14. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?**

Response: While I am unfamiliar with the context of the above quote, a judge must make decisions based upon application of existing law. Personal feelings must be set aside in deciding cases.

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

Response: The Office of Legal Policy at the Department of Justice forwarded these questions to me on October 28, 2015. Following my review of the questions, I prepared draft responses, which I discussed with an attorney for the Office of Legal Policy. The answers were then finalized for submission to the Committee.

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

Response: Yes.

Written Questions of Senator Jeff Flake

U.S. Senate Committee on the Judiciary

Judicial Nominations

October 27, 2015

Responses of Gary Richard Brown

Nominee, U.S. District Judge for the Eastern District of New York

1. What is your approach to statutory interpretation? Under what circumstances, if any, should a judge look to legislative history in construing a statute?

Response: As a magistrate judge, my approach to statutory interpretation begins with the application of controlling precedent from the Supreme Court and the Court of Appeals for the Second Circuit. In the rare case in which no such precedent exists, I look to the plain language of the statute, which often resolves any issue. If there is ambiguity, I study the statute in its entirety, which can provide guidance. I then look to decisions from other circuits and other district judges, and also review cases involving analogous provisions. If these sources do not provide sufficient guidance, I examine appropriate legislative history for further insight. If confirmed as a district judge, I would employ this same approach.

2. What is the proper scope of the 10th Amendment to the Constitution? In what circumstances should a judge apply it?

Response: The 10th Amendment requires that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” While I have not had the opportunity to work on a matter involving the 10th Amendment, if presented with such a case, I would examine and apply controlling precedent of the Supreme Court and the Second Circuit Court of Appeals to determine the proper scope and application of the Amendment to the facts before me.

3. Does current standing doctrine foster or impede the ability of litigants to obtain relief in our legal system?

Response: The Constitution limits the power of the federal courts to the resolution of actual “cases” or “controversies.” U.S. Const. art. III, § 2, cl. 1. The Supreme Court has determined that “standing is an essential and unchanging part of the case-or-controversy requirement.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). As such, “plaintiff must have suffered or be imminently threatened with a concrete and particularized ‘injury in fact’ that is fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable judicial decision.” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1386 (2014). I hold no opinion on the question of whether this doctrine generally fosters or impedes the ability of litigants to obtain relief in our legal system. If confirmed as a district judge, I would apply precedential decisions of the Supreme Court and the Second Circuit to any matter concerning standing.