

**Responses of Wilma A. Lewis  
Nominee to be Judge for the District of the Virgin Islands  
to the Written Questions of Senator Chuck Grassley**

**1. According to media reports citing Justice Department officials in 2000, you disagreed with then-Attorney General Janet Reno about the application of the death penalty to Carl Cooper, a man convicted under federal law of murdering three Starbucks employees here in Washington, D.C. You believed the death penalty was inappropriate because it had been rejected by D.C. voters, and because it would be unfair to apply it against a black man for the murder of two white victims and one black victim.**

**a. As I understand it, the Virgin Islands does not have a death penalty statute, however federal death penalty statutes still apply. If confirmed, will you apply the death penalty in appropriate cases?**

Response: If confirmed, I will apply the death penalty in appropriate cases.

While it is true that, during my tenure as United States Attorney for the District of Columbia, my recommendation to then Attorney General Janet Reno against seeking the death penalty in *United States v. Carl Cooper* was not accepted by the Attorney General, neither the issue of race nor the anti-death penalty sentiments of District of Columbia voters played any role in forming the basis for my recommendation. Rather, the recommendation in *Cooper* was based on a full review of the relevant facts and case law, as presented by both the prosecution and defense counsel, including an analysis of applicable aggravating and mitigating factors. The fact that I had no reservations about recommending the death penalty for a black defendant, and contrary to the anti-death penalty sentiments of the local populace, is evidenced by my submission of such a recommendation to the Attorney General in another federal death-eligible matter that followed in relatively close proximity to the *Cooper* case. As previously noted, if I am confirmed as a federal district judge, I will apply the death penalty in appropriate cases.

**b. Do you believe the defendant's race should be a factor when deciding whether or not to impose the death penalty in a first degree murder case?**

Response: I do not believe, nor have I ever believed, that the defendant's race should be a factor in deciding whether or not to impose the death penalty in a death-eligible first degree murder case. Please also see my response to Question No. 1(a).

**2. During your tenure as a United States Attorney for the District of Columbia, you expanded the "Operation Ceasefire" program to prosecute both violent and non-violent criminals in possession of handguns. Considering the Supreme Court's**

**recent decisions in *D.C. v. Heller* and *McDonald v. Chicago*, do you believe this program would be constitutional today?**

Response: During my tenure as United States Attorney for the District of Columbia, the Office prosecuted individuals in possession of firearms in accordance with applicable laws. A careful analysis of the Supreme Court precedent in *Heller* and *McDonald* and the particular law in question would be required to determine whether the prosecution of violent and non-violent criminals in possession of handguns would be constitutional today. In both *Heller* and *McDonald*, the Supreme Court noted that the right to keep and bear arms guaranteed by the Second Amendment is not without its limitations. In that regard, the Court cited certain prohibitions or restrictions on the possession of firearms that would be unaffected by the Court's ruling, including, for example, the possession of firearms by felons and the carrying of firearms in sensitive places such as schools and government buildings. In addition, the Supreme Court did not address the full scope of the Second Amendment right. If confirmed as a judge for the District of the Virgin Islands and presented with an issue regarding the constitutionality of a law prohibiting or restricting the possession of firearms, I will closely examine and follow the decision and reasoning in *Heller*, *McDonald*, and any other applicable Supreme Court and Third Circuit precedent in addressing the scope of the individual Second Amendment right.

- 3. In a speech to the 2001 Virgin Islands Judicial Conference, you criticized the Supreme Court's decision in *Bush v. Gore* and then said, "Courage is one of the qualities needed in all judges – including the courage to be a servant of the law and to pursue the cause of justice even when you stand alone."**

- a. Would you please explain to me what you meant by this statement?**

Response: The theme for the 2001 Virgin Islands Judicial Conference was "Continuing the Quest for Excellence: Public Trust and Confidence in the Courts." I used a widely quoted passage from Justice Stevens' dissent in the then-recent case of *Bush v. Gore* as an introduction to my remarks because of Justice Stevens' focus on the importance of public confidence in those who administer the judicial system as fundamental to the rule of law. As I noted, "[r]egardless of which side of the controversy one happens to be aligned," one could not help but be struck by Justice Stevens' strongly worded dissent that went to the core of our judicial system.

Later in my remarks and completely separate from the *Bush v. Gore* introduction, I discussed the importance of an independent judiciary, impartiality and integrity in fostering public trust and confidence in the courts. I made the statement referenced in this question in the following context:

The challenging climate in which judges operate also includes the precarious position in which elected judges must find themselves, subject as they are to the pressures, demands and necessities of election politics. ... Election politics would seem

to fly in the face of the expectation that judges should decide the legal issues before them – in the words of the 19<sup>th</sup> century jurist Judge William Cranch – “undisturbed by the clamor of the multitude.” The pressures, tensions and undue influences which sometimes infect the judicial environment threaten the independence and integrity of the judiciary and threaten to undermine the rule of law. Former Chief Judge of the District of Columbia Circuit Abner Mikva once noted that the quality most needed in federal judges is courage. I suggest that courage is one of the qualities most needed in all judges – including the courage to be a servant of the law and to pursue the cause of justice even when you stand alone.

(underlining supplied). The statement in question was intended to emphasize the importance to the integrity of the judicial process of judges who administer justice impartially and with a firm commitment to the rule of law, notwithstanding the clamor of the crowds, or public pressure, influence or sentiment.

- b. How does your view compare to Alexander Hamilton’s view, espoused in Federalist No. 78, that “it is indispensable that [the courts] should be bound down by strict rules and precedents”?**

Response: The view expressed in my remarks is entirely consistent with the quoted excerpt from Federalist No. 78 to the extent that they both speak to a firm commitment to the rule of law.

- 4. The Khobar Towers Case was transferred from the U.S. Attorney’s Office for the District of Columbia, which you headed at the time, because of the slow pace of the probe. You criticized the move and characterized then-FBI director Louis Freeh’s initiative to transfer the case as “ill-conceived and ill-considered.” *Time* magazine noted your comments “were not exactly the norm for a federal official.” Do you believe your reaction demonstrated the appropriate judicial temperament required to sit as a federal district court judge?**

Response: During the course of my almost 30-year professional career, the referenced incident represents the only occasion, of which I can recall, when I spoke out publicly and aggressively on an internal matter of concern. As I noted at the time: “[i]t is not my practice to respond to press inquiries on matters of this nature. However, the integrity and reputation of the United States Attorney’s Office and the prosecutors, who have worked diligently and capably for years on this sensitive and significant investigation, demand that I do.”

I do not agree with any contention or suggestion that the reassignment of the Khobar Towers matter was due to any problem with the manner in which the United States Attorney’s Office, in conjunction with the Department of Justice, had handled the matter. I also do not believe that the decision to reassign the case – which was made without any

substantive input regarding the facts and circumstances of the investigation from the U.S. Attorney's Office and Department of Justice prosecutors assigned to the matter – was the product of either informed deliberations or an objective review. Nonetheless, if I were faced with the same situation today – with ten years of additional seasoning – I would resort to my characteristically less public and more measured demeanor, an appropriate temperament that, if confirmed, I would bring to the federal bench.

**5. Do you believe it is proper for a judge, consistent with governing precedent, to strike down an act of Congress that it deems unconstitutional? If so, under what circumstances, and applying what factors?**

Response: Yes. I believe it is appropriate for a judge to strike down an act of Congress when Congress has exceeded its authority under the Constitution or enacted a statute that is in conflict with the Constitution. Any such ruling should be guided by and follow the governing precedent established by the Supreme Court and the applicable United States Court of Appeals.

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

Response: I believe that the most important attribute of a judge is the ability to be a fair and impartial adjudicator, with a strong commitment to the rule of law and its equal application to all parties. I believe that I possess this attribute.

**7. 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: I believe that a judge should have the kind of temperament that promotes confidence in, credibility, and respect for the judicial process and system. In this regard, the judge should: (1) preside over matters in a manner that is even-handed, fair and impartial, and exhibits respect for the rule of law and the right of parties to be heard; (2) be professional, dignified and respectful in his or her dealings with all who enter the courtroom, including the judge's staff, court staff, lawyers, litigants, witnesses, jurors, and the general public; and (3) be firm in maintaining the kind of order and decorum in the courtroom and fostering the kind of practices before the court that are in accordance with the high ethical and other standards that are critical to the integrity of the judicial process. I believe that I meet this standard.

**8. 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.

- 9. 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: If confirmed as a judge for the District of the Virgin Islands and faced with a case for which there is no dispositive controlling precedent from the United States Supreme Court or the United States Court of Appeals for the Third Circuit, I would review Supreme Court and Third Circuit cases for any analogous matters that might provide relevant guidance. I would also look to opinions from other circuits. In the absence of any persuasive authority, I would examine carefully the text of the statutory or other legal provision and construe it in accordance with the plain and ordinary meaning of the language. In the event of ambiguity, I would seek to discern legislative intent. I would be guided by the principles that my responsibility as a judge is to interpret and apply the law, not to make the law, and that I should address the matter as narrowly as possible.

- 10. 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: If confirmed as a judge for the District of the Virgin Islands, I would be bound by, and follow faithfully, the legal precedent established by the United States Supreme Court and the United States Court of Appeals for the Third Circuit. Accordingly, even if I believed that the Supreme Court or the Court of Appeals had seriously erred in rendering a decision, I would apply that decision.

- 11. 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: Recognizing the great value that comes from experience, I would, if confirmed, first consult with, and seek guidance from, more seasoned judges regarding their caseload management practices with an eye toward obtaining information regarding successful approaches to case management that would be helpful in managing my own docket. I also expect that, in managing my caseload, I would set and enforce reasonable, but firm deadlines; schedule and conduct status conferences designed to promote continuous forward progress toward the ultimate resolution of each case; and work diligently to resolve pending motions in a timely manner. I would also seek to effectively incorporate the Magistrate Judge into the work of the court, and encourage the use of alternative dispute resolution procedures.

- 12. 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: Yes, I believe that judges play a key role in controlling the pace and conduct of litigation. If confirmed, I would take the steps set forth in response to Question No. 11 to control my docket.

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

Response: I received the questions from the Department of Justice on May 31, 2011. I prepared responses and reviewed them with a representative of the Department of Justice. After finalizing the responses, I authorized their transmittal to the Senate Judiciary Committee.

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

Response: Yes.

**Responses of Wilma A. Lewis  
Nominee to be Judge for the District of the Virgin Islands  
to the Written Questions of Senator Tom Coburn, M.D.**

- 1. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: I do not agree with the proposition that the Constitution is constantly evolving as society interprets it. The Constitution can be altered only through the amendment process.

- 2. Justice William Brennan once said: “Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized.” Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

Response: No.

- 3. Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

Response: No. The text of the Constitution governs and district judges are bound by that text, as interpreted by the Supreme Court and the applicable Circuit Court.

- 4. Is any transaction involving the exchange of money subject to Congress’s Commerce Clause power?**

Response: In *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court ruled that Congress had broad, but not unlimited powers under the Commerce Clause. If confirmed as a judge for the District of the Virgin Islands, I would apply those precedents as well as any other applicable precedents from the Supreme Court and the Court of Appeals for the Third Circuit in addressing the reach of Congress’ power under the Commerce Clause.

- 5. The U.S. Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment of the United States Constitution “protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home.” As Justice Scalia’s opinion in *Heller* pointed out, Sir William Blackstone, the preeminent authority on English law for the Founders, cited the right to bear arms as one of the fundamental rights of Englishmen. Leaving aside the *McDonald v. Chicago* decision, do you personally believe the right to bear arms is a fundamental right?**

Response: I have not analyzed this area of constitutional law so as to form a personal view or belief regarding the issue of fundamental rights. Nor would any personal view or belief interfere with my ability and commitment, if confirmed, to faithfully follow governing precedent. In *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010), the Supreme Court ruled that an individual's right under the Second Amendment to keep and bear arms is enforceable against the States through the Fourteenth Amendment. In so ruling, the Supreme Court concluded that this Second Amendment right is a fundamental right. If confirmed as a judge for the District of the Virgin Islands, I will follow this and any other related Supreme Court precedent, as well as any applicable precedent of the United States Court of Appeals for the Third Circuit.

- a. Do you believe that explicitly guaranteed substantive rights, such as those guaranteed in the Bill of Rights, are also fundamental rights? Please explain why or why not.**

Response: I have not analyzed this area of constitutional law so as to form a personal view or belief as to whether explicitly guaranteed substantive rights are also fundamental rights. Nor would any personal view or belief interfere with my ability and commitment, if confirmed, to faithfully follow governing precedent. If confirmed as a judge for the District of the Virgin Islands, I will follow applicable Supreme Court and Third Circuit precedent.

- b. Is it your understanding of Supreme Court precedent that those provisions of the Bill of Rights that embody fundamental rights are deemed to apply against the States? Please explain why or why not.**

Response: I have not analyzed this area of constitutional law so as to be fully conversant with the entire body of Supreme Court precedent. However, in *McDonald v. City of Chicago*, 130 S.Ct. 3020, 3036 (2010), the Supreme Court ruled that the Second Amendment right to keep and bear arms is enforceable against the States through the Fourteenth Amendment, and in so doing analyzed whether the right was "fundamental" to our Nation's "scheme of ordered liberty" or "deeply rooted in this Nation's history and tradition."

- c. The *Heller* Court further stated that "it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right." Do you believe that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right? Please explain why or why not.**

Response: I have not analyzed this area of constitutional law so as to form a personal view or belief as to whether the First, Second and Fourth Amendments codified pre-existing rights. Nor would any personal view or belief interfere with my ability and commitment, if confirmed, to faithfully follow governing precedent. If confirmed as a judge for the District of the Virgin Islands, I will follow the *Heller* decision and any other applicable Supreme Court and Third Circuit precedent.



6. **Some have criticized the Supreme Court’s decision in *Heller* saying it “discovered a constitutional right to own guns that the Court had not previously noticed in 220 years.” Do you believe that *Heller* “discovered” a new right, or merely applied a fair reading of the plain text of the Second Amendment?**

Response: The decision in *Heller* was based on the Supreme Court’s reading of the text of the Second Amendment.

- a. **Similarly, during his State of the Union address, the President said the Supreme Court’s decision in *Citizens United v. FEC*, 558 U.S. \_\_\_ (2010), “reversed a century of law” and others have stated that it abandoned “100 years of precedent.” Do you agree that the Court reversed a century of law or 100 years of precedent in the *Citizens United* decision? Please explain why or why not.**

Response: I have not analyzed this area of law so as to form a personal view on this subject. Nor would any personal view interfere with my ability and commitment, if confirmed, to faithfully follow governing precedent. If confirmed as a judge for the District of the Virgin Islands, I will follow the Supreme Court’s decision in *Citizens United v. FEC*.

7. **What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?**

Response: In both *Heller* and *McDonald*, the Supreme Court noted that the right to keep and bear arms guaranteed by the Second Amendment is not without its limitations. In that regard, the Court cited certain prohibitions or restrictions regarding firearms that would be unaffected by the Court’s ruling, such as the possession of firearms by felons and the mentally ill, the carrying of firearms in sensitive places, and the placing of conditions on the commercial sale of firearms. However, the Court did not address the full scope of the Second Amendment, including all of the limitations to the individual right to keep and bear arms. If confirmed as a judge for the District of the Virgin Islands, I will closely examine and follow the decision and reasoning in *Heller*, *McDonald*, and any other applicable Supreme Court and Third Circuit precedent in addressing issues related to the scope of the individual Second Amendment right.

8. **Is the Second Amendment limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?**

Response: The Supreme Court in *Heller* and *McDonald* did not address the full scope of the individual right to keep and bear arms under the Second Amendment. If confirmed as a judge for the District of the Virgin Islands, I will closely examine and follow the decision and reasoning in *Heller*, *McDonald*, and any other applicable Supreme Court and Third Circuit precedent in addressing issues related to the scope of the individual Second Amendment right.

9. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy’s analysis?**

Response: If confirmed as a judge for the District of the Virgin Islands, I would be bound to follow governing precedent. I would therefore follow the Supreme Court’s decision and reasoning in *Roper v. Simmons* and any other applicable Supreme Court and Third Circuit precedent.

- a. **Do you agree that the Constitution’s prohibition on cruel and unusual punishment “embodies a principle whose application is appropriately informed by our society’s understanding of cruelty and by what punishments have become unusual?”**

Response: If confirmed as a judge for the District of the Virgin Islands, I would be bound to follow governing precedent. In determining what constitutes cruel and unusual punishment under the Eighth Amendment, I would therefore follow Supreme Court precedent on this issue, including *Roper v. Simmons*, as well as any applicable Third Circuit precedent.

- b. **How would you determine what the evolving standards of decency are?**

Response: If confirmed as a judge for the District of the Virgin Islands, I would follow the analytical approach adopted by the governing precedent in the Supreme Court and the Third Circuit.

- c. **Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in all cases?**

Response: I do not believe that a judge could find that the death penalty is unconstitutional in all cases in view of the Supreme Court precedent establishing that the death penalty is constitutional, except in certain discrete circumstances.

- d. **What factors do you believe would be relevant to the judge’s analysis?**

Response: I do not believe that any such analysis would be appropriate or warranted in view of the Supreme Court precedent establishing that the death penalty is constitutional, except in certain discrete circumstances.

- e. **When determining what the “evolving standards of decency” are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states,<sup>1</sup> in addition to foreign law, and in other cases have looked solely to the laws and traditions**

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<sup>1</sup> *Roper v. Simmons*, 543 U.S. 551, 564-65.

**of foreign countries.<sup>2</sup> Do you believe either standard has merit when interpreting the text of the Constitution?**

Response: If confirmed as a judge for the District of the Virgin Islands, the standards that would have merit for purposes of my decision making would be those standards sanctioned by Supreme Court precedent.

**i. If so, do you believe one standard more meritorious than the other? Please explain why or why not.**

Response: Please see my response to Question No. 9(e).

**10. In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: I do not believe it is proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution unless Supreme Court precedent so dictates.

**a. Is it appropriate for judges to look for foreign countries for “wise solutions” and “good ideas” to legal and constitutional problems?**

Response: I do not believe it is appropriate for judges to look to foreign countries for wise solutions or good ideas to legal and constitutional problems unless Supreme Court precedent so dictates.

**b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: If confirmed as a judge for the District of the Virgin Islands, I would not consider foreign law when interpreting the Constitution unless Supreme Court precedent so dictates.

**c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

Response: Regardless of whether foreign sources might be of assistance in discrete instances, I do not believe it is appropriate for judges to look to foreign sources to interpret our laws unless Supreme Court precedent so dictates.

**d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?**

Response: If confirmed as a judge for the District of the Virgin Islands, I would not consider foreign law when interpreting the Eighth Amendment or any other amendments unless Supreme Court precedent so dictates.

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<sup>2</sup> *Graham v. Florida*, 130 S.Ct. 2011, 2033-34.