

**Senator Chuck Grassley
Questions for the Record**

**Christopher Reid Cooper
Nominee, U.S. District Court for the District of Columbia**

- 1. You have experience working with white collar criminal litigation, grand jury and other government investigations as well as internal corporate investigations. Please explain how this experience might affect your service as a federal judge, if confirmed?**

If confirmed, my experience practicing in the areas noted above would not affect my ability to be impartial and objective in cases involving corporate or other “white collar” litigants. I believe my practice experience in these areas would positively affect my service as a judge in several respects. First, my experience has exposed me to areas of substantive federal criminal law that arise frequently before the District Court of the District of Columbia. These areas include numerous types of fraud, conspiracy, money laundering, foreign bribery, and regulatory violations, among others. This background should enable me quickly to grasp and understand cases involving these areas of law. Second, through my practice experience I have become familiar with procedures that govern the litigation and trial of federal criminal cases, which I would have to apply as a judge. Third, district court judges have certain supervisory responsibilities over the use and conduct of federal grand juries. I believe my practice experience would enable me to exercise these responsibilities appropriately. Finally, my experience has included advising clients on the application of the Sentencing Guidelines in cases involving various corporate crimes. I believe this experience would serve me well in making sentencing decisions.

- 2. Your questionnaire indicates you were a member of the American Constitution Society for Law and Policy. There is nothing wrong with membership in such groups, but I do have a question about how the goals of that organization might affect your judgments, if confirmed. Peter Edelman, as chair of the board of directors for American Constitution Society for Law and Policy, stated he would help to engage a younger audience about how the law can improve the lives of everyday citizens. “What we want to do is promote a conversation — the idea of what a progressive perspective of the constitution is and what it means for the country.” He also indicated that a goal of the organization is “countering right-wing distortions of our Constitution.” Also, some of the stated goals and missions of the organization are “countering right-wing distortions of our Constitution” and “debunking conservative buzzwords such as ‘originalism’ and ‘strict construction’ that use neutral-sounding language but all too often lead to conservative policy outcomes.”**

- a. What is your view of the role of the courts on improving the lives of everyday citizens?**

Response: I am not familiar with the intended meaning of Mr. Edelman's statements. I believe that courts play an important role in promoting public confidence in our justice system. They can fulfill this role by ensuring that laws are applied evenly and impartially and by treating all participants in the system with respect and dignity. Judges, in my view, should also take advantage of appropriate opportunities to educate citizens, particularly young people, about the law and our justice system.

- b. Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered or why concepts such as originalism and strict construction need to be "debunked?"**

Response: I do not know what "distortions" or "concepts" Mr. Edelman might have been referring to. If confirmed as a district judge, my role would not be to counter any perceived distortions of the Constitution or to debunk any particular concepts of Constitutional interpretation.

- c. What does the idea of a progressive perspective of the constitution mean for the country, in your view?**

Response: I am not familiar with the intended meaning of the quoted passage. If confirmed as a judge, I would faithfully apply the law and controlling precedent without regard to any conceptions of constitutional interpretation that might be labeled "progressive" or "conservative."

- d. Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered?**

Response: I am not aware of any such "distortions."

- e. If you are confirmed as a federal judge how would you seek to promote a "progressive perspective of the Constitution; or counter "right-wing distortions of the Constitution?"**

Response: I would not seek to do either.

- 3. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

Response: No, a judge should never allow emotions such as empathy to cause him or her to favor one party over another.

4. 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 decide matters impartially based on applicable law and precedent rather than personal opinion or bias. I believe I possess that attribute.

5. 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: Judges should treat everyone who appears in their courtroom -- attorneys, litigants, witnesses, jurors, and court staff -- with patience, dignity, and respect. Judges should also comport themselves with decorum outside the courtroom. I believe I have those qualities and I would strive to demonstrate them if confirmed.

6. 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: I can assure the Committee that, if confirmed, I would fully and faithfully apply controlling Supreme Court and D.C. Circuit precedents to the cases and legal issues that come before me, without regard to any personal disagreements I might have with those precedents.

7. 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: If faced with a case of first impression, I would begin by examining the text of the statutory or regulatory provision at issue. I would anticipate that, in most cases, applying the plain language of the provision to the facts before me would enable me to resolve the case. If the meaning of the provision were not clear from its text, I would look to precedent from the Supreme Court and D.C. Circuit involving analogous provisions. If there were no such precedent, I would look to relevant cases from other circuits and district courts. Where appropriate, I would also examine the intent and history of the applicable provision.

8. 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: I would apply all controlling Supreme Court and D.C. Circuit precedent regardless of any opinion I might have about whether it was decided correctly.

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

Response: Statutes enacted by Congress are presumed to be constitutional. A federal court should declare a federal statute unconstitutional only in cases where (1) it is necessary to reach the question of whether the statute is constitutional, and (2) the court is convinced that Congress clearly violated a provision of the Constitution or exceeded the authority given to it by the Constitution.

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 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: As a practicing lawyer, I have represented clients who hold a wide range of political views and I have never allowed my own political or personal views to interfere with my role as an advisor or advocate. Similarly, if confirmed, I would not let my political or personal views interfere with my role as a judge. I can assure the Committee that I would base my decisions on law and precedent only, and not on any political ideology or motivation.

12. 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: At times as a practicing lawyer I have represented clients whose personal views were contrary to mine in various respects. However, I have never allowed my personal views to interfere with my zealous representation of those clients. If confirmed, I would likewise not permit any personal views that I might hold interfere with my obligation to treat fairly all parties who appear before me as a judge.

13. If confirmed, how do you intend to manage your caseload?

Response: I would promptly schedule a case management conference soon after each case is filed. I would also work with counsel for the parties to develop scheduling orders and permit extension of deadlines in those orders only for good cause. I would decide motions efficiently, including case dispositive motions in civil cases filed under Rules 12 and 56. Finally, I would actively monitor each of my cases at each stage of the proceedings.

- 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: Yes, I believe that judges should closely manage their dockets to ensure that cases proceed efficiently and that parties do not incur unnecessary costs associated with delay and judicial inaction. To control my docket, I would take the steps described in Question 13.

- 15. You have spent your entire legal career as an advocate 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?**

Response: While my role as practicing attorney certainly involved advocating particular positions on behalf of clients, it also involved advising clients on the merits of their cases based on an objective assessment of the law and facts. As a judge, I would apply the skills I have developed as an advisor to decide cases based solely on the facts before me and the law and precedent that are applicable to those facts. I anticipate that the most difficult part of the transition from private practice to the bench will be having to master areas of law and procedure that I have not encountered in my practice. To do so, I would dedicate myself to working hard and being prepared; take advantage of the many training and educational opportunities that are available to judges; and draw on the experience and expertise of my fellow judges.

- 16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: “To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator’s judicial selection committees”.**

- a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No.

- b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made**

the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

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

Response: I received the questions on November 13, 2013. I personally drafted my responses the following day and provided them to representatives of the Justice Department's Office of Legal Policy for review. After receiving comments from them, I authorized the Department to submit my responses to the Committee on my behalf.

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

Response: Yes.

Questions for the Record
Senator Ted Cruz

Christopher Reid Cooper
Nominee, United States District Court for the District of Columbia

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: If confirmed, I would not come to the bench with any pre-determined judicial philosophy other than to fulfill what I believe is the obligation of all U.S. District Judges, which is to faithfully and impartially apply the law and the precedent of the Supreme Court and their circuit to the facts of the cases that come before them. I have not studied the judicial philosophies of recent Supreme Court justices. There are, however, a number of qualities that I admire in judges before whom I have appeared. Among these qualities are intellectual rigor and integrity, preparation, efficiency, and respect for attorneys and litigants. Two judges whom I have observed demonstrate these qualities are Retired Judge James Robertson of the District Court for the District of Columbia and Chief Judge David Norton of the District of South Carolina.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

The Supreme Court has analyzed the original intent and original public meaning of constitutional provisions in deciding the constitutionality of statutes. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (examining the public meaning of the Second Amendment at the time of its passage). If confirmed, I will follow that precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: Under no circumstances would I overrule precedent.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If asked to determine whether a particular Federal statute or regulation unconstitutionally infringed upon State sovereign interests, I would assess the statute or regulation against the text and meaning of the relevant constitutional provision, and apply binding D.C. Circuit and Supreme Court precedent, including *Garcia* and other cases dealing with the relationship between Federal and State powers.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court has placed limits on the types of activities that Congress may regulate under the Commerce Clause. Apart from having the power to regulate and protect the channels and instrumentalities of interstate commerce, the Court has held that Congress has the authority to regulate only those activities that "substantially affect" interstate commerce. *See, e.g., United States v. Lopez*, 514 U.S. 549, 558 (1995). While the Court has considered the non-economic nature of the activity in question as a factor in determining whether the activity "substantially affects" interstate commerce, my understanding is that the Court has not held that Congress may never regulate non-economic pursuant to its Commerce Clause power. *See, e.g., Gonzales v. Raich*, 545 U.S. 1, 37 (1995) (Scalia, J., concurring) (noting that Congress may regulate non-economic activity that is an essential part of a larger economic regulatory scheme). If confirmed, I would apply *Lopez*, *Raich* and other binding Supreme Court and D.C. Circuit precedent if I were to confront a question in this area.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The President's ability to issue executive orders or take executive action is constrained by the authority granted to him by the Constitution or an act of Congress. *See Medellin v. Texas*, 552 U.S. 491, 524 (2008) (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)). These limits are judicially enforceable. In addition, the actions of Executive Branch agencies are limited by principles set forth in *Chevron v. Natural Resources Def. Council, Inc.*, 467 U.S. 837 (1984) and subsequent Supreme Court precedent involving challenges to federal agency action.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: In addition to the rights specifically enumerated in the Bill of Rights, the Supreme Court has "regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are objectively, 'deeply rooted in the Nation's history and tradition' and 'implicit in the concept of ordered liberty' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksburg*, 521 U.S. 702, 720-21 (1997) (internal citations omitted). If confirmed, I would follow that established precedent in deciding any cases involving fundamental rights.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has applied strict scrutiny to legislative classifications based on race, alienage, and national origin. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). It has applied heightened scrutiny to classifications based on gender and illegitimacy. *Id.* If confirmed, I would apply this established precedent.

Do you “expect that [15] years from now, the use of racial preferences will no longer be necessary” in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed, I would apply binding Supreme Court precedent concerning the use of racial preferences in university admissions, including *Grutter* and the Court’s more recent decision in *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013), regardless of any personal view or expectation I might have about the continued need for such preferences in the future.