

Responses of Jon E. DeGuilio
Nominee to the U.S. District Court for the Northern District of Indiana
to the Written Questions of Senator Tom Coburn, M.D.

- 1. While you were serving as U.S. Attorney for the Northern District of Indiana, an article in the North West Indiana Times remarked that “DeGuilio, a former Hammond city councilman, has been criticized for his close ties to the powerful Lake County Democratic Organization. He acknowledged seeking support from Gov. Evan Bayh, former state Democratic Chairman Michael Pannos, and East Chicago Mayor Robert Pastrick, the influential Lake County Democratic boss, to beat out the other top contender.” The same article stated that, as Lake County Prosecutor, “DeGuilio was chided for failing to bring charges against former Lake County Commissioner Steven Corey and for offering a lenient plea agreement to former Juvenile Court Judge Darlene Wanda Mears.”**

During the 110th Congress, this Committee spent significant time and resources investigating whether politics had influenced the dismissal and selection of certain U.S. Attorneys by the previous administration. While we all did not agree with some aspects of those investigations, I believe we all agree that the influence of politics on U.S. Attorneys is a serious concern. Given that concern, would you care to respond to the aforementioned statements and explain why they should not be cause for concern?

Response: I categorically reject any suggestion that I allowed politics to influence my conduct as United States Attorney or as Lake County Prosecutor. As United States Attorney I avoided political activity and political relationships of any kind, consistent with Department of Justice policies. Moreover, during my tenure as United States Attorney, and despite the unprecedented deployment of federal resources to street crime prosecutions conducted at the personal directive of Attorney General Reno, my office prosecuted several public corruption cases involving Democratic officials.

I believe that the comments in the article were borne out of misunderstanding. For example, during the time that I was Lake County Prosecutor and criticized by this reporter I was well aware that County Commissioner Corey was under investigation by a federal grand jury. I had been informed of the same by the then United States Attorney. Therefore, it would have been inappropriate for me to interfere with a pending federal investigation by taking action in my capacity as Lake County Prosecutor or to publicly disclose the reason for my inaction. County Commissioner Corey was ultimately indicted and convicted by federal authorities.

I believe strongly that politics must have no role in the decision-making process of law enforcement officials or members of the judiciary. As such, and if confirmed, I pledge to follow the law without personal bias or other improper influence and mindful of the need to avoid even the appearance of impropriety.

2. **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: No, I do not believe that the Constitution is a living document that is constantly evolving as society interprets it.

3. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. **Generally speaking, are *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. **Why or why not?**

Response: The United States Supreme Court concluded in *Gonzalez v. Raich* that its decisions in *Lopez* and *Morrison* were consistent with previous Commerce Clause rulings and that Congress has certain limitations in the enactment and enforcement of laws under that authority.

4. **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: As a United States District Court Judge I would be bound to follow and apply the law as established by the United States Supreme Court regardless of my personal or professional views.

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

Response: To whatever extent I might be required by precedent to determine “evolving standards of decency” I would be bound to apply the analysis established by the United States Supreme Court and the Seventh Circuit Court of Appeals.

- b. **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: No. The United States Supreme Court has ruled to uphold the constitutionality of the death penalty. As a United States District Court Judge it

would not be permissible for me to rule inconsistent with the precedent of the Supreme Court.

c. What factors do you believe would be relevant to the judge's analysis?

Response: I believe that the factors that would be relevant to such an analysis would be limited to those delineated by the United States Supreme Court in *Roper* and subsequent cases, as well as any Seventh Circuit Court of Appeals cases on the subject, including "pertinent legislative enactments and state practices" and "respective determinations" made by the Court.

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

Response: I would not rely on foreign or international laws or decisions to interpret the Constitution except to that extent required to do so by the United States Supreme Court or the Seventh Circuit Court of Appeals.

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

Response: Consistent with my above response, I would only do so as required by precedent.

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

Response: I would consider foreign law for this purpose only to the extent required by the precedent of the United States Supreme Court or the Seventh Circuit Court of Appeals. As a United States District Court Judge I would be bound to apply the standards established by these courts. Otherwise, I would not consider foreign law to interpret provisions of the Constitution.