

Responses of Jon E. DeGuilio
Nominee to the U.S. District Court for the Northern District of Indiana
to the Written Questions of Senator Jeff Sessions

1. What in your view is the role of a judge?

Response: In my view the role of a judge is to respect the “rule of law” and to interpret and apply the law consistent with the plain meaning of a statute and precedent, irrespective of personal beliefs or philosophies. I believe that a judge is a public servant who must act with integrity and impartiality, someone who must work hard to meet the great responsibilities of the position and be respectful of the parties and issues before the court.

2. What is your definition of “judicial activism?”

Response: I would characterize “judicial activism” as judicial decisions made contrary to precedent and/or the plain meaning of a statute, motivated by personal beliefs and philosophies. It might also be characterized by decisions or actions that go beyond the limited issues of a case or other instances in which decisions are made contrary to applicable legal standards in an effort to promote a particular personal view.

3. Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit.

- a. 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.

- b. How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision to the facts presented before you?**

Response: I would be bound to apply the law to the facts of the case consistent with the legal standards established by the United States Supreme Court or the Seventh Circuit Court of Appeals and regardless of my personal views.

4. As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:

“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.”

- a. While I understand that you cannot know what President Obama may or may not have meant by this statement, do you believe that you fit President Obama's criteria for federal judges, as described in his quote?**

Response: Yes, I believe that I possess empathy and respect for all people.

- b. What role do you believe that empathy should play in a judge's consideration of a case?**

Response: In this context, I believe that empathy speaks to the ability of a judge to understand the interests and motivations of the parties. Empathy may then be a valuable tool to aide in a better understanding of the facts of a case and to assess the credibility of witnesses. Having said that, empathy should not play a role in the analysis and interpretation of the law nor the application of the law to the facts of a case.

- c. Do you think that it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?**

Response: No.

- i. If so, under what circumstances?**

Response: None

- 5. Do you think it is ever proper for judges to indulge their own values in determining what the law means? If so, under what circumstances?**

Response: No. The law must be analyzed, interpreted and applied consistent with its plain meaning, precedent and the well-established rules of statutory construction, free from the consideration of personal beliefs. I believe to do less would be contrary to the oath of office, the Code of Conduct for United States Judges and the best traditions of our judiciary.

- 6. Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means? If so, under what circumstances?**

Response: No, I do not believe it is ever proper for judges to indulge their own policy preferences in determining what the law means.

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

Response: After receiving these questions I independently prepared a draft of my responses. I discussed my draft responses with representatives of the Department of Justice. I then made minor revisions. Upon completion of the responses I forwarded same to the Department of Justice for submission to the Senate Judiciary Committee.

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

Response: Yes.

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.