

**Response of Judge John Milton Younge**  
**Nominee, United States District Judge for the Eastern District of Pennsylvania**  
**To the Written Questions of Senator Grassley**

- 1. You have said that diversity on the bench is important because, though justice is colorblind, different points of view are crucial. Specifically, you have said, “I don’t think there is black justice, I don’t think there is white justice...But, it’s important to have that perspective.”**

- a. Please elaborate on why various perspectives are important.**

Response: I do not believe there is black justice or white justice. Every jurist takes an oath to defend the Constitution and apply the law fairly and understands there is an obligation to perform our duties in a manner that ensures that the public feels it receives justice when it enters the courthouse. The judiciary is responsible for instilling in the public at large a sense of confidence that its concerns are taken seriously and will be dealt with fairly. Our great country is a very diverse one and a diverse bench that reflects the public at large helps reassure the public that it will receive fairness. If confirmed, I will endeavor to conduct myself in a manner that ensures the public that I have rendered a decision that is consistent with precedent and fairness.

- b. Do you think empathy should play a role in judicial decision making?**

Response: My responsibility as a jurist is to faithfully and impartially apply the law according to precedent established by higher courts. As a state court trial judge for the last 20 years, there is a final instruction that I give to jurors that reflects my viewpoint: “. . . You should not allow sympathy or prejudice to influence your deliberations. You should not be influenced by anything other than the law and the evidence of the case. All the parties stand equally before this Court and each is entitled to the same fair and impartial treatment at your hands.”

- 2. You have served for the past 19 years as an elected state court judge, and have run for higher judicial office a few times as a Democrat. What assurances can you provide this committee, and any future litigants who may appear before you, that your political leanings and affiliations will have no bearing on decisions you may have to make as a federal district court judge, if confirmed?**

**Response of Judge John Milton Younge**  
**Questions of Sen. Grassley**  
**Page 2**

Response: My entire tenure as an elected jurist has been secured in primarily nonpartisan fashion and political ideology has played no part in my rulings. If confirmed, I will continue to perform my duties without regard to the political party of the litigants.

- 3. In response to a question asking you to describe your judicial philosophy on access to legal abortion, you stated “It is a settled matter of law that a woman has a right to choose and the ultimate right over what happens to her body, which I support.” Please describe your understanding of current federal law, with respect to abortion.**

Response: As a state court jurist, I have had no occasion to interpret or apply case law dealing with any aspect of abortion. I am aware that the United States Supreme Court has set forth the parameters for guidance for the review of abortion cases in *Gonzales v. Carhart*, 550 U.S. 124 (2007) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). If confirmed, I will faithfully apply the rulings handed down by the United States Supreme Court and the Third Circuit Court of Appeals.

- 4. At your hearing, Senator Tillis asked you about the death penalty. In response you said, “I have already presided over death penalty cases, and if confirmed, I will apply the law, as I have always.” Has the death penalty been imposed in any case over which you presided?**

Response: No.

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

Response: The most important attribute of a judge is personal integrity that carries with it an openness or transparency and honesty that demonstrates a commitment to fundamental fairness in the dispensing of justice and a respect for the rule of law as handed down by precedent. I believe that I possess these qualities.

- 6. 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: Respect for the litigants as well as the cases they bring before the court, courtesy, patience and civility are important to the proper judicial temperament that should be displayed by a jurist. I believe that I have displayed appropriate judicial temperament during my 20 years on the bench.

- 7. 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 am firmly committed to faithfully following the precedents of higher courts. Any personal opinion I might hold is irrelevant to my responsibility to faithfully give full force and effect to precedent.

- 8. 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: I would first look to see if the language of the statute was clear. If so, my analysis would end with the plain meaning of the language passed by Congress. If the language was unclear or ambiguous, I would consider the same type of statutory interpretation utilized by the United States Supreme Court and Third Circuit in similar cases as persuasive authority. Finally, if I found no guidance from either of those sources, I would look to opinions of the other Circuit Courts of Appeals and District Courts as persuasive authority.

- 9. 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: No matter my personal feelings, the only view to apply is the view handed down by the Supreme Court or the Court of Appeals. If confirmed, I will faithfully apply the law as handed down by the higher courts.

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

Response: All federal statutes are presumed to be constitutional. The only situations wherein the Court may declare a federal statute to be unconstitutional is if Congress has exceeded its authority or where the statute violates a constitutional right.

**11. 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. There are no situations wherein it would be appropriate to rely on foreign law or the views of the world community in the interpretation of our own United States Constitution.

**12. 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 state court trial judge for 20 years I am now and have been firmly committed to upholding, without qualification, my oath to protect and defend the Constitution of the United States as well as to protect and defend the Constitution of Pennsylvania. I assure the Committee that if confirmed, my decisions will remain grounded in precedent and the text of the law without any regard to political ideology or motivation.

**13. 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: Please see my answer to Question 12.

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

Response: Working with the Clerk of Court, I will be actively involved in the management of my caseload by employing policies and procedures that would ensure disposition of my caseload in an efficient manner. I will also consult with seasoned jurists from my district to learn of best practices that have been utilized with good results.

**15. 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, judges do have a role in controlling the pace and conduct of litigation. I would utilize early case management conferences to ensure that cases move ahead toward disposition in an orderly fashion. Additionally, I would take the steps mentioned in Question 14.

**16. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: When a case comes to me during the pretrial phase, I consider all controversies that arise during the discovery phase. I review and determine all pretrial discovery motions with an eye on pleadings, the applicable law and the applicable rules of civil procedure and rules of evidence. After the completion of discovery, I consider pretrial dispositive motions utilizing the pleadings, precedential case law and the arguments of counsel. Once the pretrial discovery stage is complete, I consider all pretrial motions in limine, case law and rules of evidence that may be implicated. I then issue rulings that apply to the conduct of the case. At the conclusion of the trial, I consider and weigh the issues that have been preserved for appeal, reviewing the pleadings, case law, arguments of counsel as well as the trial transcript. Thereafter, I issue my opinion.

**17. 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: I am not familiar with this quote or its context. I can reiterate the statement I made in Question 1b. That is, my responsibility as a trial judge is to apply the law without regard to sympathy or prejudice and to consider nothing but the law and the evidence adduced at trial and to ensure that all parties understand they have the absolute right to expect fair and impartial treatment in my courtroom.

**18. 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.

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

Response: On December 17, 2015, the Office of Legal Policy forwarded a series of Questions for the Record issued by members of the Senate Judiciary Committee. I personally drafted my answers to these questions. Thereafter, I reviewed a draft of my response with an official of the Office of Legal Policy before submitting these to the Committee.

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

Response: Yes, these answers reflect my true and personal views.

**Response of Judge John Milton Younge**  
**Nominee, United States District Judge for the Eastern District of Pennsylvania**  
**To the Written Questions of Senator Jeff Sessions**

**1. In a speech you gave in 2007, you stated the following:**

**“The challenge for me, and I believe for others as well, is to do justice, love mercy and walk humbly before God and society and to that end, to consider always, whether my rulings are technically sound but possibly at odds with my evolving understanding of notions of morality.”**

**a. Please explain what you mean by your “evolving understanding of notions of morality.”**

Response: When those remarks were made, I was speaking as a continuing legal education program panelist in a program that entailed watching a solo actor perform a one act play about the final hours in the life of Sir Thomas More. In the play the actor, in role, discusses the events that led to his decision to defy the King of England. The actor suggests that he (Sir Thomas More) would have silently accepted what he considered to be an immoral or unrighteous action by the king if that option was available. Because he was forced to make a public pronouncement, he defied the king and was beheaded. My comments during the ensuing ethics discussion were intended to convey the thought that as we gain more life experience, we may see past actions in a different light, and reconsider whether these actions were proper. Examples given were the institution of slavery and the exploitation of children in factories, actions that now are considered to have been improper. If confirmed, my responsibility will be to faithfully and fairly apply precedent, not to question whether precedent is moral.

**b. Please provide an example of a case which you have adjudicated where the outcome comported with your “evolving understanding of notions of morality.”**

Response: I have consistently applied the law in accordance with the principle of stare decisis and the evidence of the case before me.

**c. Do you believe a judge should consider his or her own values or policy preferences in determining what the law means? If so, under what circumstances?**

Response: No.

2. In an October 21, 2007, *Philadelphia Tribune* article titled “Rendell backs Younge for Judge”, you were quoted as follows: “Doing the right thing is politically unpopular. It’s usually left to the judges.”

- a. Please explain what you meant by your reference to “doing the right thing.”

Response: I have no notes, transcript or recording of the event in question nor do I have any recollection of speaking in the manner reported. However, I believe the role of a judge is to apply binding precedent even if the action taken will be unpopular.

- b. In light of your explanation, please explain why you believe doing what you have described “is usually left to judges.”

Response: Please see my response to Question 2a.

- c. Please provide an example of at least one case which you have adjudicated where you did “the right thing” even when it was “politically unpopular.”

Response: I have no examples to offer.

- d. Do you believe that it is a feature of the judiciary to serve as a counter-majoritarian check on the legislature?

Response: No, I do not. Each branch of government has its own constitutionally mandated role to play in serving our country and to check the other branches of government. The Federalist Papers, No. 51 is generally credited with establishing the principle of structuring government in such fashion as to ensure proper checks and balances exist between different departments as well as a separation of powers. It was therein noted: “...the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the other. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition...”



- e. If the legislature considers and refuses to act on a matter, do you consider that as clear a decision as if they had acted specifically?**

Response: There are many reasons why a Legislature may decide not to act and such inaction cannot be taken as indicative of any single specific intent. As a judge, the only legislative action that would be appropriate for my consideration would be duly enacted laws.

- 3. On March 20, 2009, you responded to a Judicial Primary Election Questionnaire provided by the Liberty City Lesbian, Gay, Bisexual and Transgender Democratic Club, in which you were asked “what qualities you believe you possess that would serve you especially well if you were elected to the Court.” You responded:**

**“As a jurist on an appellate court, I would advance all laws available to deter and, if possible, eliminate any instance of discrimination, harassment, or violence directed at any citizen, regardless of race, sexual orientation, ethnicity, ability, country of origin, or creed.”**

- a. Please explain what you mean by your statement that, as a judge, you would “advance all laws” towards ending the named instances of discrimination.**

Response: The statement was not well crafted and was an attempt to say that because the Pennsylvania Superior Court is the court of last resort for the overwhelming majority of cases that are appealed, I recognized a responsibility to carefully review and apply governing law in cases that come before me.

- b. Do you believe it is a better policy for a judge to “advance all laws” or to follow the law as it is?**

Response: As indicated in the previous answer, the statement in the questionnaire was not well crafted. The role of a judge is to review arguments advanced by litigants and apply established precedent.

- c. Do you believe judges should ever base their decisions on a desired outcome, or solely on the law and facts presented? If so, under what circumstances?**

Response: A jurist should make decisions based solely on the established law and the facts. From a jurist’s perspective, that decision is the only desired outcome.

- 4. In response to a question in the aforementioned Questionnaire that asked if “you support a woman’s right to choose,” you stated that “[i]t is a settled matter of law that a woman has the right to choose and the ultimate right over what happens to her body, which I support.” Does your statement apply in all instances where a woman seeks a late term or partial-birth abortion?**

Response: As a state court trial judge I have had no cases that deal with abortion, late term abortion or partial-birth abortion, nor have I studied the law or formed any opinions regarding the same. I am aware that the United States Supreme Court has set forth the parameters for guidance for the review of abortion cases in *Gonzales v. Carhart*, 550 U.S. 124 (2007) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

- 5. In an April 22-28, 2009, *New Pittsburgh Courier* article titled “Judicial candidate decodes the system,” you twice used the phrase “prison industrial complex.”**

- a. Please explain what you meant by “prison industrial complex”.**

Response: In the article, I indicated this phrase “prison industrial complex” is one employed by some with regard to mandatory sentencing in drug cases.

- b. As a trial judge who has sentenced many defendants over the years, how has your perception of the “prison industrial complex” shaped your sentencing philosophy?**

Response: It has not. As a state court jurist, I have always imposed lawful sentences consistent with the sentencing guidelines established by the state legislature of the Commonwealth of Pennsylvania.

- c. Please provide an example of at least one case which you have adjudicated where your perception of the “prison industrial complex” impacted your sentencing decision.**

Response: I have no such examples.

- d. **Do you believe that prisoners – violent offenders or otherwise – should be released from federal prison in order to reduce prison population levels?**

Response: Decisions concerning the release of prisoners and the prison population should be made by the Legislative and Executive branches.

6. **In December 18, 2009, *Philadelphia Tribune* article titled “Police deaths rise in Pa., nationwide,” you were quoted as follows:**

**“We have more mandatory sentencing in place than ever. If those efforts have not brought about changes in the moral values of these people, then they haven’t been that successful. We’re not going to incarcerate our way out of this.”**

- a. **Do you believe that there are benefits to mandatory minimum sentences?**

Response: Yes I do. I believe mandatory sentences were enacted for many valid reasons. Chief amongst them was the desire to equalize sentences to ensure the same conduct received the same punishment regardless of the location where the sentence is imposed, the background of the offender, or the judge who imposed the sentence. Regardless, as a judge I have applied duly enacted mandatory minimum sentences despite any personal views that I have.

- b. **Do you agree that mandatory minimum sentences have been critical to reducing crime levels in the United States?**

Response: I am not an expert on this issue and do not have enough information to offer an opinion.

7. **Under the Supreme Court’s decision in *United States v. Booker*, the federal sentencing guidelines are now advisory, rather than mandatory.**

- a. **If confirmed, how much deference will you afford the sentencing guidelines?**

Response: If confirmed, I will afford substantial deference to the guidelines as guided by Supreme Court and Third Circuit precedents.

- b. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

**Response of Judge John Milton Younge**  
**Questions of Sen. Sessions**  
**Page 6**

Response: Yes.

- c. Under what circumstances do you believe it appropriate for a district judge to depart downward from the sentencing guidelines?**

Response: Congress has established the circumstances under which a judge may consider departing from the guidelines in 18 U.S.C. 3553.

**Response of Judge John Milton Younge**  
**Nominee, United States District Judge for the Eastern District of Pennsylvania**  
**To the Written Questions of Senator Jeff Flake**

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- 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: In interpreting a statute, I would first look to its plain language and then proceed to resolve the issue before me in accordance with established precedent. If the language is unclear or ambiguous, I would consider the manner in which the Supreme Court and the Third Circuit have analyzed similar statutes as persuasive authority. When instructed by such precedents, I would consider legislative history, if necessary, to resolve the issue before me.

- 2. What is the proper scope of the 10<sup>th</sup> Amendment to the Constitution? In what circumstances should a judge apply it?**

Response: The 10<sup>th</sup> Amendment to the United States Constitution states: "The 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." I would apply Supreme Court and Third Circuit precedents in any case involving the 10<sup>th</sup> Amendment.

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

Response: While I am aware that one purpose of the standing doctrine is to ensure the Court utilizes its authority to resolve an active case or controversy and refrains from issuing advisory opinions, I do not have enough expertise or knowledge to express an opinion on this issue.

**Response of Honorable John Milton Younge**  
**Nominee, United States District Judge for the Eastern District of Pennsylvania**  
**To the Written Questions of Senator Thom Tillis**

**Questions for All Nominees**

- 1. One challenge you will face as a federal judge is managing a busy caseload. If confirmed, how will you balance competing priorities of judicial efficiency and due process to all litigants involved in the case?**

- a. Will you give certain cases priority over others?**

Response: Generally, cases should be disposed of in the order in which they are filed. However, cases of different complexity will have different discovery schedules. Complex cases will take longer to prepare for trial but will be moved toward disposition in an efficient manner.

- 2. What is a fundamental right?**

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 720-21, the United States Supreme Court held that the Due Process Clause protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and traditions.

- a. From where are these rights derived?**

Please see my response to Question 2.

- 3. What role, if any, should societal pressure or popular opinion play in interpreting legislation or the United States Constitution?**

Response: Societal pressure or popular opinion should play no role in interpreting legislation or the United States Constitution.

**Questions for Judge John Milton Younge**

- 1. A number of states, including North Carolina, have passed or introduced laws to protect women's health. You have characterized *Roe v. Wade* and its progeny as settled law. Please address whether you consider the following settled law:**

- a. That a state can require a consultation with a physician or qualified professional at least 24 hours prior to an abortion procedure,**

Response: This is an issue that is currently being debated in courts throughout this land. It would be inappropriate for me to offer an opinion in response to this question.

- b. That a state can forbid an abortion if a significant factor in the woman's decision is related to the gender of the unborn child,**

Response: Please see my response to Question 1a.

- c. That a state can require abortion facilities to meet the same standards as ambulatory surgical centers, and**

Response: Please see my response to Question 1a.

- d. That a state can require an ultrasound be made available to the woman before permitting an abortion.**

Response: Please see my response to Question 1a.

- 2. When running for a judicial seat in Pennsylvania, you sought an endorsement from the Planned Parenthood Pennsylvania Political Action Committee. As you are aware, Planned Parenthood has been accused of illegally selling fetal tissue and organs at some of its facilities. Had you known this behavior was an alleged practice of Planned Parenthood when you were seeking election for a judicial seat in Pennsylvania, would you still have sought an endorsement from the Planned Parenthood Pennsylvania Political Action Committee?**

Response: I have not studied this issue and can express no opinion as to how I would have responded if such accusations had been made in the past.