

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?**

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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.