

Responses of Louis B. Butler, Jr.
Nominee to the U.S. District Court for the Western District of Wisconsin
to the Written Follow-up Questions of Senator Charles E. Grassley

- 1. In questions 6(a) and 7, you concluded your response by stating: “Different perspectives will help the judges to assess facts presented, as well as the scope of the decisions to be rendered and how those decisions will affect the public in general.” I am concerned about judges looking to opinion polls or issuing a ruling based on their view of how it might “affect the public in general.” Please explain the rationale behind a judge considering public impact, rather than simply applying the law to the facts.**

Response: My answer to question 6(a) stated: “Personal beliefs and personal policy decisions have no role in a judge’s decision-making. Judges on an *appellate court* (emphasis added) often disagree on how a case should be decided. As to backgrounds, it has been my experience that it is beneficial when a court has members on it that have civil experience as well as criminal experience, former prosecutors and defense lawyers, former plaintiff’s counsel as well as defense, liberals, moderates and conservatives, and judges from an urban setting as well as rural. Different perspectives will help the judges to assess facts presented, as well as the scope of the decisions to be rendered and how those decisions will affect the public in general.” My answer specifically referenced appellate courts with multiple judges. This is very different than being a United States District Court Judge. At the Wisconsin Supreme Court, one of the criteria for granting review is whether “the petition for review demonstrates a need for the supreme court to consider establishing, implementing or changing a policy within its authority.” Wis. Stats. (Rule) 809.62(1r)(b). Another criterion for granting review is whether “a decision by the supreme court will help develop, clarify or harmonize the law,” and the “question presented is a novel one, the resolution of which will have statewide impact.” Wis. Stats. (Rule) 809.62(1r)(c)2. Another criterion for granting review at that court is whether “due the passage of time or changing circumstances, such (supreme court or court of appeals) opinions are ripe for reexamination.” Wis. Stats. (Rule) 809.62(1r)(e). It is within this context as a former justice on the Wisconsin Supreme Court that I answered questions 6(a) and 7. I have said many times that judges should not make decisions based on popularity or opinion polls, and that judges should make decisions based on the facts and the law. For example, please see June 1, 2007 speech I gave at the State’s Mock Trial Championship. If I am confirmed as a United States District Court Judge, I will decide cases based on the facts and the law, following established precedent from the United States Supreme Court and the Seventh Circuit Court of Appeals.

- 2. In question 9(a), I quoted President Obama and asked whether you agreed or disagreed with the President's empathy standard. Please respond with a simple yes or no, followed by an explanation.**

Response: No. As I testified at my confirmation hearing, I agree with Justice Sotomayor's statement that "We apply the law to the facts. We don't apply feelings to the facts." As I also stated in my response to your question 9(c), "Empathy should play no role in deciding the law."

- 3. I want to make sure I understand your answer to question 9(b). By answering yes, are you indicating that you meet President Obama's empathy standard, or did you not read the question to include empathy as part of the standard?**

Response: Given the fact that I was nominated by President Obama, I can only assume that I indeed met all of the standards the President has established for appointment to the federal bench. That is what I was indicating when I answered question 9(b). Having said that, once again, let me reiterate that I agree with Justice Sotomayor that judges apply the law to the facts; judges do not apply feelings to the facts.