

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

CONFIRMATIONS OF APPOINTEES TO THE FEDERAL JUDICIARY

JULY 18; AUGUST 3; SEPTEMBER 28; OCTOBER 24; NOVEMBER 30;
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Even a cursory reading of Judge McKinley's submitted case experience demonstrates that he understands the fundamentals as well as the intricacies of the law. He has diligently kept up with any new changes or trends in the law by earning 75 credits in three years, for which the Kentucky Bar Association gave him the 1994 Continuing Legal Education Award.

Since arriving on the bench in 1992, Judge McKinley has distinguished himself as an impartial and intelligent servant of the court whose carefully crafted opinions on a range of difficult issues have earned him the respect of his peers. When asked to describe the most important trait possessed by Judge McKinley, his colleagues invariably use the phrase "judicial temperament."

Finally, when I met with Judge McKinley, I was able to question him on his beliefs about the role of judges and their relationship with the other branches of our government. He does not believe it is the role of the judiciary to solve societal problems. This, he feels, is best left to the other branches of government. That is why he tries to limit handing down broad, far-reaching orders by ruling only on the issues necessary to resolve a case. Judge McKinley's impartiality and adherence to precedent is further evidenced by his belief that a judge must always decide a case or controversy based upon what the law is and not upon what the judge thinks the law ought to be.

Finally, Mr. President, my support of Judge McKinley can be summed up by the words he used to describe his judgeship when he said, "We are not law makers. We are not administrators. We are interpreters of the law." It is this type of display of understanding of the role of a federal judge that allows me to confidently say that the people of Kentucky and the nation will be well served by Joseph Henry McKinley, Jr. if he is confirmed as the federal judge for the Western District of Kentucky. Thank you.

Senator THOMPSON. Senator Reid.

STATEMENT OF HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator REID. Thank you, Mr. Chairman. It is with a great deal of pride and confidence that I introduce the nomination of Mr. Evan Wallach to be a judge on the International Trade Court.

As a Senator from Nevada, I take pride in the recognition Evan has brought to the State of Nevada through his many accomplishments. As a Senator who is introducing Evan to the Judiciary Committee, along with my colleague, Senator Bryan, I have, and I think I can speak for both of us, full confidence that Evan will serve on the Court of International Trade as a distinguished jurist.

Evan will bring to the Court both a scholarly approach to the law and a practical view of the world we live in, and this is consistent with the character traits one associates as being distinctively Evan Wallach. He is, in short, a scholar, a gentleman, and really a hero. His academic credentials both as a student and a professor demonstrate his commitment to scholarship. His passion for academic scholarship is best evidenced by his understanding of the telic relationship between academic performance and success as a person. Though a highly successful, nationally renowned practitioner, Evan taught graduate courses in international law.

There is another aspect of Evan's character that shows his accession to the bench is a natural progression—his willingness to honor his country by serving his Nation during times of unrest. In 1969, while an honor student at the University of California, and despite his student deferral from the draft, he enlisted in the United States Army and then volunteered for service in combat in Vietnam. He did so despite the fact that his elder brother had been severely wounded in Vietnam and his oldest brother was still in the Mekong Delta.

He served as a reconnaissance sergeant in the 8th Engineer Battalion of the 1st Cavalry Division. He participated in reconnaissance for the incursion into Cambodia. He was decorated with a Bronze Star, Air Medal, and Good Conduct Medal.

In 1991, as a captain in the Nevada Army National Guard, Evan Wallach again volunteered for service to his Nation, this time in Operation Desert Storm. He volunteered for combat duty, but his superiors put him in a desk job here in Washington as a Judge Advocate Officer specializing in international law in the Pentagon. He was decorated for his service with a Meritorious Service Medal. He has since been promoted to the rank of major.

In both conflicts—that is, the Desert Storm conflict and Vietnam—Evan chose the road less traveled. He honored the virtues and ideals embodied in our great Nation with his dedicated service. He answered the call of his Nation before that call even came. On both occasions, he acted with uncommon valor.

Accepting the nomination to the Court of International Trade is consistent with his willingness to once again serve his country that has given him so much, and so today I stand before the committee to urge favorable action on the nomination of Evan Wallach to be a judge on the Court of International Trade—a scholar, gentleman, and a war hero, Mr. Chairman. I am confident that these traits will allow Evan to continue serving his country with remarkable distinction.

[The prepared statement of Senator Reid follows:]

PREPARED STATEMENT OF SENATOR HARRY REID

It is with a great deal of pride and confidence that I introduce the nomination of Mr. Evan Wallach to be a Judge on the United States Court of International Trade. As a Senator from Nevada, I take pride in the recognition Evan has brought to the state of Nevada through his many accomplishments. As the Senator who is introducing Evan to the Judiciary Committee for his nomination hearing, I have full confidence that Evan will serve on the Court of International Trade as a distinguished jurist.

Evan will bring to the Court both a scholarly approach to the law and a practical view of the world we live in. And this is consistent with the character traits one associates as being distinctively Evan. He is, in short, a scholar, a gentleman and a hero. His academic credentials—both as a student and a professor—demonstrate his commitment to scholarship. His passion for academic scholarship is best evidenced by his understanding of the telic relationship between academic performance and success as a person. Though a highly successful nationally renowned practitioner, Evan taught graduate level courses in international law.

There is another aspect of Evan's character that shows his ascension to the bench is a natural progression: his willingness to honor his country by serving his nation during times of unrest. In 1969, while an honors student at college and despite his student deferral from the draft, he enlisted in the U.S. Army and volunteered for service in Vietnam. He did so despite the fact his elder brother had been severely wounded in Vietnam and his eldest brother was still in the Mekong Delta.

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In 1991, as a Captain in the Nevada Army National Guard, Evan again volunteered for service to his nation, this time in Operation Desert Storm. He served as a Judge Advocate Officer specializing in international law in the pentagon. He was decorated for his service with a Meritorious Service Medal. He has since been promoted to the rank of major.

In both conflicts, Evan chose the road less traveled. He honored the virtues and ideals embodied in our great nation with his dedicated service. Evan answered the call of his nation before that call even went out. On both occasions he acted with uncommon valor.

Accepting the nomination to the Court of International Trade is consistent with his willingness to once again serve the country that has given him so much.

And so today, I stand before the Committee to urge favorable action on the nomination of Evan Wallach to be a Judge of the United States Court of International Trade. Scholar, gentlemen, war-hero. I am confident that these traits will allow Evan to continue serving his country with remarkable distinction.

Senator THOMPSON. Thank you very much.
Senator Bryan.

**STATEMENT OF HON. RICHARD H. BRYAN, A U.S. SENATOR
FROM THE STATE OF NEVADA**

Senator BRYAN. Thank you very much, Mr. Chairman. May I associate myself with the comments of my senior colleague and join with him in urging the approval of Evan Wallach.

There are three points that I would like to make. First, Evan Wallach has the academic tools that one would expect of a lawyer. He is a superb scholar, a Phi Beta Kappa. He graduated from one of the premier law schools in America, the University of California at Berkeley. Second, he is not an ivory-tower practitioner. He has been in the trenches. He has been a litigator. He knows the judicial system and he is an experienced person.

Finally, in the highest tradition of our profession, and something we do not often see these days, he has given generously to his community in terms of the number of pro bono issues that he has taken on.

For all of these reasons and those mentioned by Senator Reid, I would urge his swift approval, and I thank you, Mr. Chairman, for your courtesy.

Senator THOMPSON. Thank you very much. We appreciate your participation and your comments, and your comments certainly will go a long way with this committee.

I believe we have Senators Kempthorne and Senator Craig.

Senator CRAIG. Mr. Chairman, we have a vote underway and we have back-to-back votes. How do you want to handle that?

Senator THOMPSON. What do we have? Are we about 5 minutes into a 15-minute vote?

Senator CRAIG. I would think we are.

Senator THOMPSON. Do you want to go for another 5 minutes?

Senator CRAIG. Mr. Chairman, could we ask Lynn Winmill to come forward and be with us?

Senator THOMPSON. Absolutely. Mr. Winmill, welcome.

Judge WINMILL. Thank you.

**STATEMENT OF HON. LARRY E. CRAIG, A U.S. SENATOR FROM
THE STATE OF IDAHO**

Senator CRAIG. Mr. Chairman, due to time, but also because I would be otherwise, let me be brief, but let me be thorough and let me say to the committee and to you, Mr. Chairman, that it is my honor to introduce to you the Honorable B. Lynn Winmill. He comes before you as the President's nominee to the Federal district court in Idaho.

I will request, Your Honor, to be brief, but I think it is important for this committee to understand how seriously Senator Kempthorne and I have taken our responsibility to advise and consent on the appointment of Federal judges in our State.

position. My job is to apply the law and not to set the policy or to determine what the law should be.

Senator THOMPSON. There has been quite a bit of criticism, including in my home State, with regard to certain Federal district court judges who are perceived to be opponents of capital punishment and just simply won't decide cases and just keep them pending for years. Again, with a lifetime appointment, that breeds a great deal of anger and cynicism among an awful lot of people. That is a bad situation that I hope you would be mindful of.

Judge WINMILL. I think that is what I am expressing, is some of that same concern that if we are to have a death penalty, that would be important, I think, to ensure that the legislative mandate, such as it is, is followed and that the courts not become indirectly through delay part of the policymaking process of the Government.

Senator THOMPSON. I have nothing further. Thank you very much for being here.

Judge WINMILL. Thank you, Senator.

Senator THOMPSON. We will consider this nomination expeditiously.

I believe our final nominee is Evan Jonathan Wallach.

Mr. Wallach, do you swear that the testimony you give today will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WALLACH. Yes, sir, I do.

Senator THOMPSON. Do you have any opening statement or introductions that you would like to make, Mr. Wallach?

**TESTIMONY OF EVAN JONATHAN WALLACH, LAS VEGAS, NV,
TO BE A JUDGE FOR THE INTERNATIONAL TRADE COURT**

Mr. WALLACH. Just very briefly, Senator, I am very conscious of the honor of being here today and very grateful for it, and my wife, Katherine Colleen Tobin, could not be here today, but I know I am in her thoughts and she is in mine.

Senator THOMPSON. She supports you for this? [Laughter.]

Mr. WALLACH. I certainly hope so, Senator.

QUESTIONING BY SENATOR THOMPSON

Senator THOMPSON. We will get that on the record.

We appreciate your being here. This is a different nomination. This is a nomination for judge for the Court of International Trade. Could you give the committee some insight into your legal background and qualifications to sit as a judge on a specialized court such as the Court of International Trade? Could you summarize any training or experience with regard to specific areas of the law or statutes which you are likely to be called upon to adjudicate as a judge on the International Trade Court, as well as the procedural rules of that court?

Mr. WALLACH. Senator, obviously, I have never been a judge and my practice has been a general practice, frankly, recently in the area of media law. I do have training in international law, in public international law. I have a degree from Cambridge University in that area, and I practiced in the area of public international law for the U.S. Army doing things like law of war.

As far as trade law, I am going to have a lot of learning, a very high learning curve to do. I am going to be going to the Federal Judicial Center, and obviously on pure spec, I have pulled down a lot of cases and law review articles and have been reading them.

Senator THOMPSON. Well, what conclusions have you come away with from your readings as far as your new position is concerned? How would you describe your new assignment, if you are the new judge for the Court of International Trade? How would you explain to someone what you do?

Mr. WALLACH. Senator, I think I would describe it as a court which, while it is specialized in its subject matter jurisdiction, is parallel to a U.S. district court in many ways. Obviously, much of what it does is hear appellate standard matters coming from Commerce or from Customs.

The principal types of matters that the court reviews are either customs or trade matters, and as I understand it from the reading, in recent years the percentage of trade cases has increased dramatically and the size of those cases has.

Senator THOMPSON. As we are becoming a global economy and trade continues to increase, hopefully, it will become more and more important as time goes by, and your caseload will increase appropriately, I am sure.

Mr. WALLACH. That is my expectation, Senator.

Senator THOMPSON. Do you, not having been a judge, have full confidence that you have the judicial temperament necessary to be a successful judge?

Mr. WALLACH. Well, I certainly hope so, Senator. I think that the essence of judicial temperament in a large way is following the Golden Rule and doing to folks who appear in front of you what you hoped the court would do when you appeared in front of a judge. We have some wonderful judges in Nevada, Federal judges, and I am thinking specifically of Judge Lloyd George and I would try to pattern myself after him.

Senator THOMPSON. Are you committed to following Supreme Court precedent faithfully and giving it full force and effect even if you personally disagree with that precedent?

Mr. WALLACH. Absolutely, Senator.

Senator THOMPSON. Mr. Wallach, thank you very much. I appreciate your being here, and this nomination will be considered expeditiously.

Mr. WALLACH. Thank you, Senator.

Senator THOMPSON. This, I believe, is our last nominee, and once again I want to express my appreciation to everyone for your attendance and your responses to the questions that we have. As I said, this is somewhat the end of a long process. You are all to be commended for such outstanding academic and professional and personal qualifications.

I am one of the people left around here who doesn't think "lawyer" is a bad word, and I think the same thing about judges. It is very, very important that we continue to have good judges come into our system. Congratulations to all of you for your nominations, and they will all be considered expeditiously.

Thank you very much. The committee is adjourned.
[Whereupon, at 3:41 p.m., the committee was adjourned.]
[Submissions for the record follow:]

Senator SPECTER. Thank you very much, Senator Simon. We appreciate your comments and we appreciate your coming.

Senator KOHL. Mr. Chairman.

Senator SPECTER. Senator Kohl.

Senator KOHL. I would like to make the comment that Connie Morella from the House of Representatives wanted to be here to speak in behalf of Merrick Garland. She is detained on the floor and I hope we can keep the record open for her statement, Mr. Chairman.

Senator SPECTER. Of course, we shall, Senator Kohl. We will reserve a spot in the record where it will be inserted, without objection.

I congratulate each of the nominees on the special honor of being nominated by the President for these important positions, and on behalf of the Judiciary Committee Senator Kohl and I welcome you and your families here. This hearing is the most public aspect in the process of becoming a Federal judge. It is one of the final stages in a long review process. After submission of the nomination by the President, then the backgrounds have been reviewed by the White House, the Department of Justice, and by this committee.

We will proceed now in the sequence of listing to the nomination of Mr. Garland, but before we do, Congressman Chambliss has just arrived. If you would care to make a comment, we would welcome you on behalf of the nomination of Judge Hugh Lawson.

**STATEMENT OF HON. SAXBY CHAMBLISS, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF GEORGIA**

Mr. CHAMBLISS. I appreciate it, Senator. Thank you. Senator Nunn tells me he has already taken care of me, so I defer to his great wisdom, but Judge Lawson is a good friend and an excellent superior court judge in the Georgia judicial system and he is going to make an outstanding Federal judge and I just lend my full support to him.

Thank you.

Senator SPECTER. Thank you very much, Congressman Chambliss. One of the most popular introductory statements of the second supporter is the previous person has said it all, but that never stops anybody from making a long speech. [Laughter.]

Mr. CHAMBLISS. I have sat where you are sitting and I understand that.

Senator SPECTER. I have done it myself.

Mr. Garland, if you would step forward, will you raise your right hand? Do you solemnly swear that the testimony you will give in this proceeding will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. GARLAND. I do.

Senator SPECTER. You may be seated. Mr. Garland, will you begin by introducing your family, please?

**TESTIMONY OF MERRICK B. GARLAND, CHEVY CHASE, MD, TO
BE U.S. CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA
CIRCUIT**

Mr. GARLAND. Thank you, Senator. This is my wife, Lynn, and my daughter, Becky. Also here, are my sister, Heidi, and her hus-

band, Mitchell Mirviss, and my mother-in-law, Elizabeth Rosenman.

Senator SPECTER. Thank you all for joining us on this very important and happy occasion for Merrick Garland.

Mr. Garland, would you care to make any statement before we proceed to the questions and answers?

Mr. GARLAND. I will take my cue from the chairman's last remark. I don't think I could improve on what Senator Sarbanes or Senator Simon said on my behalf.

Senator SPECTER. Well, I am not so sure about that. Senator Simon analogized your record to mine. [Laughter.]

QUESTIONING BY SENATOR SPECTER

Senator SPECTER. Mr. Garland, as you are no doubt aware, this committee has held hearings on whether the 12th seat on the District of Columbia Circuit for which you have been nominated should be filled because of the low caseload. What is your judgment as to whether this seat should be filled?

Let me say this is a question proposed by the committee staff. I have no doubt as to what your answer will be, but it is in the book so I am asking it.

Mr. GARLAND. Well, Mr. Chairman, obviously I am somewhat biased on this point. I do think the seat should be filled. The Associate Attorney General, John Schmidt, testified and I really don't have anything to add to his testimony before the subcommittee.

Senator SPECTER. In 1985, you wrote an article in the Harvard Law Review titled "Deregulation and Judicial Review," and in that article you argued that courts under the *State Farm* case, which you litigated, had to apply a "hard look" standard of review to agency decisions. What do you think of the *Chevron* doctrine which requires courts to defer to an agency's interpretation of a statute if the meaning of the statute is clear? Would you follow the law of the D.C. Circuit which calls for rigorous adherence to *Chevron*?

Mr. GARLAND. Yes, of course, I would, and I think *Chevron* was rightly decided.

Senator SPECTER. What would you do if you believed that the Supreme Court had seriously erred in rendering a decision? Would you apply the Court's decision or your own best judgment of the merits? Take, for example, the recent decision in the *Adarand* case involving affirmative action.

Let me rephrase that question to say that if you had strong differences with the Supreme Court, would you look at the case before you closely in an effort to distinguish that case from applying a precedent that you had substantial misgivings about?

Mr. GARLAND. The obligation of a judge in either the district or the circuit is to follow the Supreme Court's precedent. That is what following the law is about, Your Honor.

Senator SPECTER. Now, let's not get us mixed up. I'm not a "Your Honor."

Mr. GARLAND. Senator. Sorry. Too many hours in the trial court.

Senator SPECTER. Well, that is true as a generalization, Mr. Garland, but isn't there some temptation by judges to slice the apple away from holdings they don't like, distinguish the facts, try to circle the issue a bit?

Mr. GARLAND. There may be some tendency by some judges to do that. I think that is wrong.

Senator SPECTER. I will give you a 10 on a scale of 10 for that answer.

You have been a longtime member of the American Bar Association. Do you think it is appropriate for the ABA to take stands on political issues such as abortion and affirmative action?

Mr. GARLAND. Do I think it is appropriate for the ABA to take positions?

Senator SPECTER. Yes.

Mr. GARLAND. Well, that is an organization and every organization is free to take, under the first amendment, positions.

Senator SPECTER. Well, what is your intention with respect to maintaining membership in the ABA once you are confirmed?

Mr. GARLAND. Whatever the ethics rules are with respect to judges that the administrative office and its ethics people establish in that area I will certainly follow. I am not——

Senator SPECTER. Well, what is your judgment? Do you think you ought to stay a member?

Mr. GARLAND. Well, I really don't know. I haven't—except recently when I have been the Department's representative to some ABA matters, I have not been an active member of the ABA. It is a large membership organization with people who have lots of different views on lots of different things. It is a very educational association in other areas. But, you know, if this is an issue that the ethics people would rule on, I will, of course, follow any way they rule.

Senator SPECTER. Do you favor, as a personal matter, capital punishment?

Mr. GARLAND. This is really a matter of settled law now. The Court has held that capital punishment is constitutional and lower courts are to follow that rule.

Senator SPECTER. Well, I shall now push you on a direct response to my question. You are prepared to apply the law which supports capital punishment as a constitutional punishment?

Mr. GARLAND. Yes. Mr. Chairman, I have been a prosecutor. As a prosecutor, I have recommended that the Government seek the death penalty. I don't see any way in which my views would be inconsistent with the law in this area.

Senator SPECTER. What is your current evaluation of the current Federal law of habeas corpus? Do you think that in habeas corpus cases Federal courts should conduct reviews for all procedural and substantive error in State cases? I am going to ask the last part of the question so you can handle them all at once. What do you think of the habeas corpus provision of the Senate's anti-terrorism bill?

Mr. GARLAND. Well——

Senator SPECTER. Let me——

Mr. GARLAND. Oh, I am sorry.

Senator SPECTER [continuing]. Tell you before you answer that that is known as the Specter-Hatch bill. [Laughter.]

Mr. GARLAND. I appreciate the hint, Mr. Chairman. I have had no experience in this area and, in fact, were you to confirm me for this position, I will have little experience in this area because in

the District of Columbia there is no collateral review of what substitutes for a State court here, the Superior Court. The only kind of review that is even related to habeas is 2255, so I am really no expert in this area.

I think that there is room for streamlining of the procedures. Things take too long, get too many bites at the apple, but beyond that I am really not an expert in this area.

Senator SPECTER. You have worked, Mr. Garland, as independent counsel investigating into Wedtech. What is your evaluation of the constitutionality of the independent counsel statute?

Mr. GARLAND. Well, that, too, the Supreme Court in *Morrison v. Olson* upheld as constitutional and, of course, I would follow that ruling.

Senator SPECTER. Mr. Garland, when I first joined this committee, Senator Thurmond was the chairman and he asked a question that I thought was pretty obvious in terms of an answer and as I have reflected on it over the years, I think it is the most important question which you will be asked today by me—Senator Kohl will have some more important questions—and that is if you are confirmed, do you promise to be courteous?

Mr. GARLAND. Yes; I don't have to hesitate on that. As a trial lawyer, I have certainly seen judges who were not. Fortunately, overall, their ire was not directed at me, but whenever I saw it I swore that if I were ever to be in that position I would treat all sides with fairness and civility.

Senator SPECTER. Well, I will ask every one of the nominees that question, as I have asked all nominees where Senator Thurmond has not asked the question. Not unexpectedly, there is always an affirmative answer to that question and some of the people who have answered the question in the affirmative haven't followed it, to my personal chagrin.

Once you assume the black robe—and there are some nominees who are judges—in some cases there is a different attitude about one's own persona and it is something that you have to remind yourself on, and I hope that the five of you who are here will remind yourselves about it frequently about being courteous to people because, inevitably, with the power that a judge has, a lifetime appointment, there is enormous temptation not to be courteous, for whatever the reason.

It is not hard to be out of sorts with lawyers or with the witnesses or with anyone, and there is no reproach to a judge, especially a Federal judge. Some State court judges have to stand for election and that is a moderating factor to an extent, but I urge you and all who become judges to remember that assiduously.

Senator Kohl.

QUESTIONING BY SENATOR KOHL

Senator KOHL. Thank you very much, Senator Specter.

Mr. Garland, I believe that you are exactly the kind of nominee that both Republicans and Democrats can and should strongly support. You have outstanding credentials and a strong record as a prosecutor. Though questions have been raised as to the size of the District of Columbia court, as Senator Simon has pointed out, these questions, of course, have nothing to do with you or your qualifica-

tions, and I believe that once the political dust settles you will find yourself sitting as a distinguished member of the District of Columbia court.

Mr. GARLAND. Thank you, Senator.

Senator KOHL. Mr. Garland, what is it in your past history, going back as far as you want, your family, the things that you have learned and thought about all your life, that have led you to be sitting before us today as a nominee for the circuit court?

Mr. GARLAND. Well, Senator, my family is one which on a local level has always believed that public service is important. I went to law school thinking that I would at some point be able to serve the public. I have been very lucky to have been able to serve as a prosecutor and in private practice to have been able to do pro bono work. I think that this opportunity now would be one of a lifetime of public service, and I think that is what—that is the opportunity before me and the one that I hope you will confirm me for.

Senator KOHL. In the firmament, where do you put a circuit judge in the firmament of American life, public life?

Mr. GARLAND. Well, that is a very hard question to answer. You know, I think that the most important role that a judge plays is to decide the cases in front of him, to decide them both with justice and with the appearance of justice. I think that is really the bedrock of our society. It sounds like a small role, but each judge playing that role creates the sort of underpinnings of our democratic society and it is an important role, but no particular judge's role is any more important than any other's, obviously the Supreme Court aside.

Senator KOHL. Of the three branches of Government, Mr. Garland, how would you place the judicial branch, or where would you place the judicial branch?

Mr. GARLAND. Well, in terms of primacy there is no way to do that. The Constitution sets all three branches out as coequal. The obligation of the judicial branch as far back as the decision in *Marbury v. Madison* is to review the constitutionality and legality of actions by the other branches, and that is, its only job is to decide cases and controversies in front of it under article III.

Senator KOHL. Are there one or two Supreme Court Justices for whom you have great admiration, and why?

Mr. GARLAND. Well, of course, I have great personal affection for the Justice for whom I clerked, Justice Brennan. I would say the one for whom I have the most admiration is the one I just mentioned, Chief Justice John Marshall, who decided *Marbury v. Madison*, and in so deciding established that the Constitution is the supreme law of the land.

Everybody, I think, who hopes to become a judge would aspire to be able to write as well as Justice Oliver Wendell Holmes. None are going to be able to attain that, but I will try to at least, if confirmed, be as brief and pithy as he is.

Senator KOHL. All right. In the past few years, there has been an increase in the use of protective orders in product liability and environmental tort cases. Critics of this trend, and that includes myself and Senator Specter, believe that these orders sometimes prevent the public from learning about threats to public health and safety, so I would like to ask you this question. Should a judge con-

sider public health and safety when reviewing a request for a secrecy order, and should that be written into law?

Mr. GARLAND. Well, this is an area beyond my general expertise. I know that under rule 26 of the Federal Rules of Civil Procedure, which is the rule governing protective rules, the decision is to be based upon good cause, and that contemplates a weighing and, of course, a judge should weigh under that rule the effects of his actions on public health and safety, as well as the need for a settlement in a particular case. So, yes.

Senator KOHL. If you are confirmed as an appellate judge, you will be faced with cases involving issues on which the Supreme Court has not ruled. In many of these cases, however, you will have decisions from the District of Columbia Circuit on which to rely. Under what circumstances, if any, do you believe that an appellate judge should overturn precedent within his or her own circuit?

Mr. GARLAND. The obligation of the judge in the circuit is to follow the previous decisions in the circuit unless those decisions are overruled by an en banc panel of the court.

Senator KOHL. All right. Finally, Mr. Garland, you have worked as a Supreme Court law clerk, an associate independent counsel, an assistant U.S. attorney, a partner in a large Washington law firm, and now as an associate deputy attorney general. Which of these positions, if you need to point to one of them, has best prepared you for the job to which you now aspire?

Mr. GARLAND. I think being a prosecutor. The great joy of being a prosecutor is that you don't take whatever case walks in the door. You evaluate the case. You make your best judgment. You only go forward if you believe that the defendant is guilty. You may well be wrong, but you have done your best to ensure that as far as the evidence you are able to attain the person is guilty. It is the kind of even-handed balancing that a judge should undertake, although, of course, the judge has the advantage of having somebody speak for the other side. I think there is no greater job anybody can have than having been a prosecutor and it is one that I am very happy to have had.

Senator KOHL. All right, and my last question is not for you, but it is for your daughter, Becky.

Becky, could I ask you a question? Do you think your daddy would make a good judge?

You do, all right.

Mr. GARLAND. Could the record note she nodded affirmatively? [Laughter.]

Senator KOHL. Thank you, Mr. Garland.

Mr. GARLAND. Thank you.

Senator SPECTER. Well, thank you very much, Mr. Garland. You come to this position with an outstanding academic and professional record, very extensive legal writings. From all indications, you are very well qualified. I have had an opportunity to know your work to some extent personally and I have been impressed with it, and I know people who know you very well and you bear an excellent reputation and we will give your nomination very prompt and careful consideration. Thank you.

Mr. GARLAND. Thank you, Mr. Chairman. Thank you, Senator.

Senator SPECTER. We will put in the record a statement by Senator Grassley, without objection.

[The prepared statement of Senator Grassley follows:]

PREPARED STATEMENT OF SENATOR CHARLES E. GRASSLEY

Thank you, Mr. Chairman. I am on the congressional budget negotiating team, so I regret that I will not be able to remain throughout this hearing. But I have a few brief points to make and then I'll submit some written follow-up questions.

As many of you probably know, I do not believe that the 12th seat of the D.C. Circuit should be filled at this time. I chaired a hearing on the caseload of the D.C. Circuit before the Subcommittee on Administrative Oversight and the Courts. A number of different perspectives were represented there, some favoring abolishing the seat with others favoring filling the seat. As a result of that hearing, and other information I have concluded—as I think any fairminded person would—that the D.C. Circuit does not need 12 judges. Case filings in the D.C. Circuit are down from 1985, and the backlog of the court has hovered at around 2000 cases, which is the number necessary to ensure a ready docket. The burden is on the administration to demonstrate that the seat should be filled—and that burden hasn't been met.

During the entire history of the D.C. Circuit it has only had 12 judges for about a year. That court has functioned as an 11 judge court in reality, even if in theory the D.C. Circuit could have had 12 judges. Judge Silberman of the D.C. Circuit testified that most members of the D.C. Circuit have come to think of the D.C. Circuit as a de facto court of 11. In response to written follow up questions, Judge Silberman pointed out that the courtroom normally used for en banc rehearings seats only 11 judges. I think that says something about the necessity of the 12th judge.

One of the main counter-arguments which has been raised to justify filling the 12th seat relates to the speed of decision making in the D.C. Circuit. No one denies that the D.C. Circuit is slow in rendering decisions. But this is due to the complex nature of administrative type cases. For instance, a ruling on the validity on one agency rule may dispose of literally hundreds of cases at once. All the cases which could be disposed of in this way are deliberately held up until the D.C. Circuit passes on the agency rule. So you have to take a look at the speed on rendering decisions on these key cases upon which so many other cases depend. I don't believe anyone has provided statistics like that or that anyone has said that new judge will singlehandedly speed the D.C. Circuit up in any significant way.

When I met with Mr. Garland, he made another point. He stated that the Supreme Court has no backlog, and the D.C. Circuit should aspire to that. I find this argument wholly unpersuasive. The docket of the Supreme Court is overwhelmingly discretionary. That means the Supreme Court gets to determine its own caseload. The D.C. Circuit has a mandatory docket. Furthermore, there is something like a backlog in the Supreme Court. If cert is granted late in the spring, the Supreme Court will schedule oral argument for the next term.

I would like to point out that the judicial conference recently circulated a letter, listing the number of circuit judgeships by circuit. Under that formula, the D.C. Circuit only receives 9 circuit judges. That's 2 less than the D.C. Circuit has right now. So, even the judicial conference has reservations about filling the 12th seat. Under a previous formula, the D.C. Circuit is entitled to 9½ judges. In sum, the judicial conference has never been able to justify the 12 judges for the D.C. Circuit.

According to the judicial conference, it costs nearly a million dollars per year per circuit judge. I think that's a lot of money to spend on a judgeship for a court that even the judicial conference appears to indicate is already overstaffed. I am sure that if I were to ask any of my constituents what they think of adding yet another judge to a court which is already overstaffed at a cost of about a million dollars a year, they would say save our money. I believe that if the majority in the Senate is going to be true to its most basic, core values, we won't fill the 12th seat. I would like to add that the majority leader agrees with my assessment.

Up until now, I have not focused on the qualifications of the nominee, Mr. Garland. My position is based on economic and practical considerations.

But since the decision has been made to move Mr. Garland in committee, I have, as I mentioned earlier, some written questions I would like to submit to Mr. Garland to assess his judicial philosophy and his views on other important issues.

Senator SPECTER. We will also put in the record correspondence of a variety of sorts relevant to the nomination.

[Correspondence referred to above follows:]



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September 7, 1995

Honorable Barbara A. Mikulski
United States Senate
SH-709 Hart Senate Office Bldg.
Washington, DC 20510-2003

Re: Merrick B. Garland

Dear Senator Mikulski:

I just wanted to call your attention to the fact that Merrick B. Garland has been nominated by President Clinton for appointment to the United States Court of Appeals for the DC Circuit.

Merrick is an outstanding lawyer with a very distinguished career both in private practice at Arnold & Porter and in government service, first as a special assistant to me when I was Attorney General and then later as an Assistant United States Attorney for the District and, most recently, as Chief Associate Deputy Attorney General to Jamie Gorelick. Additionally, his academic background was outstanding, culminating in his clerkship to Supreme Court Justice Brennan. In every way, he is a superb candidate for that bench, and I just wanted you to know of my personal admiration for him.

Kindest regards.

Sincerely

Benjamin R. Civiletti

BRC:jb
cc: Merrick B. Garland, Esq.

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Margaret G. Gill
 Senior Vice President
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 and Secretary

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September 8, 1995

The Honorable Diane Feinstein
 United States Senator
 Hart Senate Office Building -- Room 331
 Washington, D.C. 20510

Dear Diane:


I am writing to warmly endorse President Clinton's recent nomination of Principal Associate Deputy Attorney General Merrick Garland to be a Judge on the Court of Appeals for the District of Columbia Circuit.

I came to know Merrick during his time at Pillsbury, Madison & Sutro, where he distinguished himself by his outstanding intellect and energy in working with me on a variety of business-law issues. His knack for quickly cutting to the heart of complex issues will serve him well on an appellate court that deals with so many vital issues of public policy.

The recent media profiles of him describing his role in coordinating the criminal and civil issues faced by the Department of Justice and overseeing the early stages of the Oklahoma City bombing investigation testify both to his abilities and to the degree to which both the Attorney General and Deputy Attorney General have come to rely on his counsel. As a former Assistant United States Attorney and a senior official in DOJ's Criminal Division, he is eminently familiar with criminal justice issues. At the same time, he has brought a balanced perspective to the issues before him, respecting civil liberties and the legitimate concerns of the defense bar.

In short, Merrick has precisely the qualities of acuity, energy, and fairness that will make for an exemplary jurist. While I understand that the coming presidential election may delay the handling of certain judicial nominations, I am optimistic that Merrick's nomination can be put on a fast track to confirmation. After you meet Merrick and review his outstanding qualifications, I hope very much that you will agree with my assessment and vote to confirm him both in the Judiciary Committee and on the Senate floor. Should you or your staff have any questions about Merrick's background, please feel free to give me a call.

Sincerely,


 Margaret G. Gill



TERRY E. BRANSTAD
GOVERNOR

OFFICE OF THE GOVERNOR

STATE CAPITOL
DES MOINES, IOWA 50319
515 281-5211

October 10, 1995

Senator Charles E. Grassley
135 Hart Senate Office Building
Washington, D.C. 20510-1501

Dear Chuck:

I am writing to ask your support and assistance in the confirmation process for a second cousin, Merrick Garland, who has been nominated to be a judge on the U.S. Court of Appeals for the District of Columbia.


Merrick Garland has had a distinguished legal career. He was a partner for many years in the Washington law firm of Arnold and Porter. During the Bush Administration, Merrick was asked by Jay Stephens, the U. S. Attorney for the District of Columbia, to take on a three year stint as an Assistant U. S. Attorney. As I'm sure you know, Jay Stephens is the son of Lyle Stephens, the Representative from Plymouth County that we served with in the Iowa Legislature.

Recently, he has been overseeing the federal investigation and prosecution efforts in the Oklahoma City bombing, having been sent there the second day after the blast occurred. He was serving in the position as principal Associate Deputy Attorney General.

I am enclosing a number of news clippings about Merrick Garland. I would especially encourage you to review the Legal Times and article entitled: Garland. A Centrist Choice.

As always, I appreciate all of your efforts. Hope all is going well for you.

Sincerely,


Terry E. Branstad
Governor of Iowa

TEB/mh

cc Cyril Garland
Doris Shukert



AMERICAN BAR ASSOCIATION

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NINTH CIRCUIT
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ELEVENTH CIRCUIT
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CONFIDENTIAL

September 21, 1995

Committee on the Judiciary
ATT: Hon. Orrin G. Hatch, Chairman
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

RE: Merrick Brian Garland
United States Court of Appeals
for the District of Columbia Circuit

Dear Senator Hatch:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Merrick Brian Garland for appointment as Judge of the United States Court of Appeals for the District of Columbia Circuit.

Our Committee is of the unanimous opinion that Mr. Garland is Well Qualified for this appointment.

A copy of this letter has been sent to Mr. Garland for his information.

Sincerely,

Carolyn B. Lamm
Chair

cc: Hon. Eleanor Dean Acheson
Merrick Brian Garland, Esq.
ABA Judiciary Committee Members

JONES, DAY, REAVIS & POGUE

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WRITER & DIRECTOR NUMBER

(202) 879-4689

October 10, 1995

Senator Orrin B. Hatch
U.S. Senate
Senate Russell Office Building
Constitution Avenue
Washington, D.C. 20510-4402

Re: Merrick B. Garland

Dear Senator Hatch:

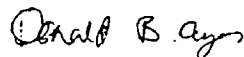
I first met Merrick Garland in the mid-1970's, when we overlapped as students at the Harvard Law School. While I have not known him well, I have been well aware that his academic background is impeccable, and that he is reputed to be a very bright, highly effective and understated lawyer.

During January of 1994, while he was serving in the Department of Justice, I had occasion to deal with him directly on a matter of some public moment and sensitivity. I was struck by the thoroughness of his preparation, the depth of his understanding of the matters in issue, both factual and legal, and his ability to express himself simply and convincingly. I was still more impressed with his comments, from obvious personal conviction, on the essential role of honesty, integrity, and forthrightness in government.

Our discussions at that time were followed by further conversations on several later occasions. I have also had an opportunity to observe from a distance his performance in the Department and to discuss that performance with people closer to the scene. I am left with a distinct impression of him as a person of great skill, diligence, and sound judgment, who is driven more by a sense of public service than of personal aggrandizement.

My own service in the Justice Department during the last two Republican Administrations convinced me that government suffers greatly from a shortage of people combining such exceptional abilities with a primary drive to serve interests beyond their own. Merrick Garland's nomination affords the Senate chance to place one such person in a position where such impulses can be harnessed to the maximum public good. I hope that the Senate will seize that opportunity.

Very Truly Yours,



Donald B. Ayer

WINSTON & STRAWN

FREDERICK H. WINSTON (1853-1898)
 ELIAS H. STRAWN (1871-1948)

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October 10, 1995

DAN K. WEBB
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The Honorable Orrin G. Hatch
 Chairman of the Judiciary Committee
 SR-131 Russell Senate Office Building
 Washington, D.C. 20510-4402

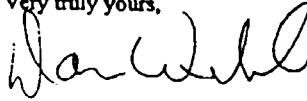
Dear Senator Hatch:

It is my understanding that Merrick Garland's name has been submitted to the Senate Judiciary Committee to fill a vacancy on the D.C. Circuit Court of Appeals. Merrick is a very talented lawyer, who has had an outstanding career in both the private and public sectors.

In particular, he has exhibited exceptional legal abilities during his recent term of office in the U. S. Department of Justice. Throughout the United States, Merrick has been recognized as a person within the Clinton Department of Justice who is fair, thoughtful and reasonable. He clearly possesses the ability to address legal issues and resolve them in a fair and equitable manner.

Accordingly, in my opinion, Merrick will be an outstanding addition to the D.C. Circuit Court of Appeals, and I strongly recommend his confirmation by your committee. If you have any further questions, please do not hesitate to contact me.

Very truly yours,



DKW:gaw

Dan K. Webb

O'MELVENY & MYERS

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October
11th
1995

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OUR FILE NUMBER

The Honorable Orrin G. Hatch
Chairman
Senate Committee on the Judiciary
United States Senate
135 Russell Senate Office Building
Washington, D.C. 20510-4402

Dear Orrin:

As you know, President Clinton has nominated Merrick B. Garland, Esquire, to fill the judicial vacancy on the United States Court of Appeals for the District of Columbia Circuit caused by the retirement of Chief Judge Mikva.

I write this letter to indicate my full support and admiration of Mr. Garland and urge that you soon have a hearing of the Senate Committee on the Judiciary and thereafter support him to fill the vacancy.

Mr. Garland has a first-rate legal mind, took *magna cum laude* and *summa cum laude* advantages of education at Harvard College and Harvard Law School. In private practice, he became and has the reputation of being an outstanding courtroom lawyer. In addition, on several occasions, he satisfied his urge to be a public servant by two law clerkships, one for Mr. Justice William J. Brennan and the other for the late Judge Henry J. Friendly. He has also served in the Justice Department on several occasions. I have known Merrick Garland as a lawyer and as a friend and greatly admire his personal integrity, learning in the law and his desire to be a great public servant. His legal, social and political views are those most American admire and are well within the fine hopes and principles of this country, which you have often expressed in conversations with me as to the type of person you would like to see on the federal judiciary, particularly on the appellate courts.

I first got to know Mr. Garland when he was Special Assistant to Deputy and then Attorney General Civiletti, as my daughter, Lovida, Jr., was the other Special Assistant. I still see him and his wife from time to time and they are the type of Americans whom I greatly admire.

As is stated at the outset of this letter, I hope you will see to it that Mr. Garland soon has his hearing and that you, at and after the hearing, will actively support him for confirmation. If you have any questions, please give me a call and I will walk over to see you.

Take care.

Sincerely,


William T. Coleman, Jr.

WTC,Jr:ead

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October 11, 1995

The Honorable Orrin G. Hatch
Chairman of the Judiciary Committee
United States Senate
SR-131 Russell Senate Office Building
Washington, D.C. 20510-4402

Re: Merrick B. Garland

Dear Senator Hatch:

I write this letter in support of Merrick B. Garland whose name has been submitted to the Senate Judiciary Committee to fill a vacancy on the United States Court of Appeals for the District of Columbia Circuit.

This incredibly busy and important Court needs judges of the highest integrity, intellect, experience and judicial demeanor. Mr. Garland is an outstanding lawyer and citizen who possesses all of these necessary qualifications. He is a lawyers' lawyer who enjoys a magnificent reputation for fairness, keen intellect and good judgment.

I urge the Committee to look favorable upon his nomination.

Very truly yours,



Robert S. Bennett

**McGUIRE WOODS
BATTLE & BOOTH, LLP**

The Army and Navy Club Building
1627 Eye Street, N.W.
Washington, DC 20006-4007
Telephone/TDD (202) 857-1700 • Fax (202) 857-1737

George J. Terwilliger
Direct Dial: (202) 857-1704

October 16, 1995

HAND DELIVERED

The Honorable Orrin G. Hatch
Chairman
United States Senate Committee
on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6275

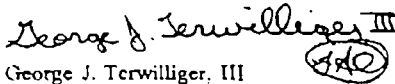
Re: Nomination of Merrick B. Garland to the U.S. Court
of Appeals for the District of Columbia Circuit

Dear Senator Hatch:

I have been asked to express my views to you on Merrick Garland's nomination to sit on the Federal Court of Appeals in the District of Columbia. First, I believe Mr. Garland is an accomplished and learned lawyer and is most certainly qualified for a seat on this important bench. Second, my experience with Mr. Garland leads me to the conclusion that he would decide cases on the law based on an objective and fair analysis of the positions of the parties in any dispute. Third, I perceive Mr. Garland as a man who believes and follows certain principles, but not one whose philosophical beliefs would overpower his objective analysis of legal issues.

I know of no reason to suggest that the President's choice for this vacancy on the Court of Appeals should not be confirmed. As you, of course, have demonstrated during your tenure as Chairman, the President's nominees are his choices and are entitled to be confirmed where it is clear that the nominee would be a capable and fair jurist. I believe Mr. Garland meets that criteria and support favorable consideration of his nomination.

Sincerely yours,


George J. Terwilliger, III



NATIONAL DISTRICT ATTORNEYS ASSOCIATION

99 Canal Center Plaza • Suite 510 • Alexandria, Virginia 22314

Telephone: (703) 549-9222

Fax: (703) 836-3195

Office of the President

October 16, 1995

The Honorable Orrin Hatch
 Chairman, United States Senate Judiciary Committee
 135 Russell Senate Office Building
 Washington, D. C. 20510

Dear Senator Hatch:

I write to you as the Prosecuting Attorney for St. Joseph County, Indiana, and as President of the 7,000 member National District Attorneys Association to recommend Principal Associate Attorney General Merrick Garland for appointment as a judge to the Washington, D. C. Court of Appeals.

Mr. Garland has been extremely helpful and cooperative in all matters that we have discussed with him, and has exhibited the legal knowledge, temperament, and character which would make him an excellent Federal Judge.

On a personal level, I have become acquainted with Mr. Garland, spent time with him, and had the opportunity to discuss many matters with him which have lead me to the conclusion that he is an excellent lawyer, brilliant scholar, and a man of high integrity.

Please favorably consider him for the D. C. Circuit position.

Respectfully,

MICHAEL P. BARNES
 PROSECUTING ATTORNEY
 ST. JOSEPH COUNTY

MPB/kjg

To be the voice of America's prosecutors and to support their efforts to protect the rights and safety of the people.

KILPATRICK & CODY

Suite 2800
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Atlanta, Georgia 30309-4530

November 2, 1995

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1050 Brussels

Honorable Orrin Hatch
Chairman, Judiciary Committee
U.S. Senate
Washington, DC 20510

Dear Mr. Chairman:

As a former Department of Justice official in the Reagan/Bush Administration, having served as Acting Associate Attorney General and United States Attorney in two Georgia districts, it is my distinct pleasure and privilege to write you a letter regarding the nomination of Merrick Garland to be a member of the United States Court of Appeals for the D.C. Circuit.

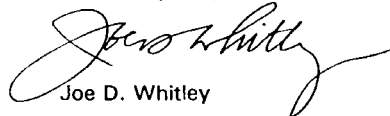
Over the past two years, I have had the pleasure of working with Merrick as a fellow member of the Criminal Justice Section of the American Bar Association. From that experience, I have learned that he is universally respected and well-regarded by people from both political parties. Additionally, in his role as a high-ranking Department of Justice official, I have found him to be fair-minded and considerate of the competing views expressed in criminal justice matters, both from the prosecution and defense perspectives.

Also, he has distinguished himself in his handling of the Oklahoma City bombing case and other high profile matters for Deputy Attorney General Jamie Gorelick.

He is a well thought out person who is a natural for the Federal Circuit Bench. I strongly urge the Senate Judiciary Committee to accelerate his confirmation before the close of this legislative year.

Thanking you for your consideration in this regard.

Yours very truly,



Joe D. Whitley

JDW/dlg

CC: Honorable Paul D. Coverdell

SHAW, PITTMAN, POTTS & TROWBRIDGE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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CHARLES J. COOPER
(202) 663-8267

November 9, 1995

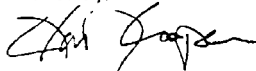
The Honorable Orrin Hatch
Chairman, Senate Judiciary Committee
United States Senate
Washington, D.C.

Dear Senator Hatch:

I write to express my support for President Clinton's nomination of Merrick Garland to the position of Circuit Judge of the United States Court of Appeals for the District of Columbia. I've known Merrick since 1978, when we served as law clerks to Supreme Court Justices — he for Justice Brennan and I for Justice (now Chief Justice) Rehnquist. Like our respective bosses, Merrick and I disagreed on many legal issues. Still, I believe that Merrick possesses the qualities of a fine judge.

You are no doubt well aware of the details of Merrick's background as a practicing lawyer, a federal prosecutor, a law teacher, and now a high-ranking official of the Department of Justice. This varied background has given Merrick a breadth and depth of legal experience that few lawyers his age can rival, and he has distinguished himself in all of his professional pursuits. He is a man of great learning, not just in the law, but also in other disciplines. Not only is Merrick enormously gifted intellectually, but he is thoughtful as well, for he respects other points of view and fairly and honestly assesses the merits of all sides of an issue. And he has a stable, even-tempered, and courteous manner. He would comport himself on the bench with dignity and fairness. In short, I believe that Merrick Garland will be among President Clinton's very best judicial appointments.

Sincerely,



Charles J. Cooper

CJC/eth

4624 VERPLANCK PL., N.W.
WASHINGTON, DC 20016
202-537-6015

November 25, 1995

The Honorable Senator Orrin G. Hatch
Chairman, Senate Judiciary Committee
Senate Dirksen Building, Room 224
Washington, DC 20510

Dear Mr. Chairman:

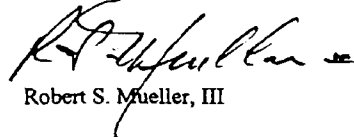
I write with regard to the nomination of Merrick Garland to the Court of Appeals for the District of Columbia.

I have known Mr. Garland since 1990 when he was an Assistant United States Attorney and I was the Assistant Attorney General for the Criminal Division in the Department of Justice. Over the years I have had occasion to see his work in several cases.

Based both on my own observations and on his reputation in the legal community, I believe him to be exceptionally qualified for a Circuit Court appointment. Throughout my association with him I have always been impressed by his judgment. Most importantly, Mr. Garland exemplifies the qualities of fairness, integrity and scholarship which are so important for those who sit on the bench.

If I can be of any further assistance, please do not hesitate to call me. My number in the United States Attorney's Office is 202-307-6675.

Sincerely,



Robert S. Mueller, III

RSM

LAW OFFICES OF
PILLSBURY MADISON & SUTRO

SAN FRANCISCO
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SAN JOSE
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NEW YORK

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November 28, 1995

VIA FACSIMILE

Honorable Orrin G. Hatch
Chairman
Senate Judiciary Committee
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Charles E. Grassley
Chairman
Senate Judiciary Subcommittee on
Administrative Oversight and the Courts
SH-325 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators Hatch and Grassley:

I am writing with respect to the nomination of Merrick Garland to serve as a judge on the United States Court of Appeals for the District of Columbia Circuit. I understand you have significant reservations about filling the existing vacancy on the District of Columbia Circuit at this time. In the event you consider filling the vacancy at this time, I commend Merrick Garland for your consideration.

I have known Mr. Garland for nearly ten years. We met initially during my service as Deputy Counsel to the President while Mr. Garland was assisting in an Independent Counsel investigation. During the course of that contact, I was impressed with Mr. Garland's professionalism and judgment. After I was appointed United State Attorney for the District of Columbia, Mr. Garland expressed to me an interest in gaining additional prosecutorial experience, and applied for a position as an Assistant United States Attorney. I hired Mr. Garland for my staff, and initially assigned him to a narcotics unit where he had an opportunity to assist in investigating a number of significant cases and to gain valuable trial experience. Mr. Garland quickly established himself as a dedicated prosecutor who was willing to handle the tough cases. He conducted thorough investigations, and became a skilled trial attorney.

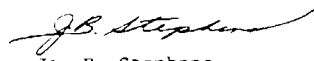
Honorable Orrin G. Hatch
Honorable Charles E. Grassley
November 28, 1995
Page 2

Subsequently, after gaining significant trial experience, Mr. Garland was assigned to the Public Corruption section of the U.S. Attorney's Office. There he had an opportunity to investigate and try a number of complex, sensitive cases. In the Public Corruption section, Mr. Garland demonstrated an excellent capacity to investigate complex transactions, and approached these important cases with maturity and balanced judgment. He was thorough and thoughtful in exercising his responsibility, and he always acted in accord with the highest ethical and professional standards.

During his service as an Assistant United States Attorney, Mr. Garland distinguished himself as one of the most capable prosecutors in the Office. He brought to bear a number of outstanding talents. He was bright. He had the intellectual capacity to parse complex transactions. He built sound working relationships with agents and staff based on mutual respect. He was willing to work hard to get the job done. He was dedicated to his job. He exercised sound judgment, and approached his work with professionalism and thoughtfulness. He exhibited excellent interpersonal skills, and was delightful to work with. In sum, his service as an Assistant United States Attorney was marked by dedication, sound judgment, excellent legal ability, a balanced temperament, and the highest ethical and professional standards. These are qualities which I believe he would bring to the bench as well.

I appreciate the opportunity to provide these comments for your consideration.

Sincerely,



Jay B. Stephens

Senator SPECTER. We have the distinguished Congresswoman from Maryland, Connie Morella. Connie, you are welcome. We understood you were engaged on the floor earlier and we welcome you here for your comments.

STATEMENT OF HON. CONSTANCE MORELLA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mrs. MORELLA. Thank you very much, Senator Specter, Senator Kohl. It was really nice to be able to hear the line of questioning and the responses. Do forgive me for not being here promptly at the beginning, but we were working on the Amtrak bill which is now completed.

It is always an honor to be able to come over here to the body on which we in the House rely more and more, it seems, for reasonable and thoughtful responses to the challenges that we face. But it is also wonderful to be able to be here to say something good about a constituent of mine, and the nominee that you have been questioning and listening to. Merrick Garland is my constituent and I am very proud of his record. I think that the President has chosen, from what I have seen, very wisely and well—and his daughter agrees—for the U.S. Court of Appeals for the District of Columbia Circuit.

As you have already mentioned, his academic credentials are not only distinguished, but extraordinary. He graduated No. 1 in his class at Harvard College, and then at the law school was summa cum laude. He did extensive writing on the law journals and in undergraduate work, too. He also has been involved academically in teaching, so he has that experience as part of his multifaceted career.

In private practice, it was mentioned that he was with a prestigious law firm. He has been involved in Government service. Certainly, he will be missed at Justice, but I think that the work he has done will be carried on in terms of the prosecution in the terrible tragedy of Oklahoma City. He has also been involved professionally in organizations that pertain to the law, and, indeed mention has been made of the fact that he was a law clerk to Justice Brennan.

Mr. Garland mentioned *Marbury v. Madison*. I might add that I am not a lawyer, but my husband is, as Senator Specter knows, and he represented Judge Sirica when the tapes case went to the court of appeals in the *Watergate* case where *Marbury v. Madison* was kind of at the heart of the matter.

So I must say that the nominee that you are considering today, Mr. Garland, is highly qualified. He is also a good community person; he is dedicated not only to his profession but to his community and to his family, and I believe that he would bring to the administration of justice a really stellar dedication, experience, and professional response to all our needs.

As Shakespeare wrote in one of his plays describing the renaissance character of Mr. Garland, "a man of sovereign parts, he is esteemed, well fitted in arts, glorious in arms. Nothing becomes him ill that he would well." I think he would serve us well and I thank you for the opportunity to speak favorably about a constituent who deserves them.

SUBMISSIONS FOR THE RECORD

SENATE JUDICIARY COMMITTEE
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)
Merrick Brian Garland
2. Address: List current place of residence and office address(es).
Residence: 5418 Grove Street
Chevy Chase, MD 20815
Office: U.S. Department of Justice
Room 4206
10th and Constitution Avenue, N.W.
Washington, D.C. 20530
3. Date and place of birth:
November 13, 1952 - Chicago, IL
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).
Married to Lynn Rosenman Garland. Staff Assistant, E-Systems, 7700 Arlington Blvd., Falls Church, VA 22046.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.
Harvard Law School, Cambridge, MA; 1974-77; J.D., June 1977.
Harvard College, Cambridge, MA; 1970-74; A.B., June 1974.
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.
1994-present: Principal Associate Deputy Attorney General,
U.S. Department of Justice

1993-94: Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice

1992-93: Partner, Arnold & Porter

1989-92: Assistant U.S. Attorney, District of Columbia

1981-89: Partner and Associate, Arnold & Porter

1987-88: Associate Independent Counsel (Wedtech / Nofziger) (part-time)

1986: Lecturer, Harvard Law School (advanced antitrust) (part-time)

1979-81: Special Assistant to the Attorney General, U.S. Department of Justice

1978-79: Law Clerk, Justice William J. Brennan, Jr., U.S. Supreme Court

1978: Summer Associate, Arnold & Porter

1977-78: Law Clerk, Judge Henry J. Friendly, U.S. Court of Appeals, 2d Circuit

1977: Summer Associate, Arnold & Porter

1976: Summer Associate, Pillsbury, Madison & Sutro

1975-77: Research Assistant, Harvard Law School (Professors Philip Areeda and Charles Nesson)

1974-77: Proctor and Assistant Senior Tutor, Harvard University

1974: Summer worker, Congressman Abner Mikva

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Director's Award, Executive Office for U.S. Attorneys,
 Department of Justice, 1992, for superior performance in
 financial investigations involving government fraud, bribery
 and money laundering
 J.D., magna cum laude, Harvard Law School, 1977
Harvard Law Review, 1975-77
 Articles Editor, 1976-77
 Harvard Graduate National Scholar
 A.B., summa cum laude, Harvard College, 1974
Phi Beta Kappa
 Harvard National Scholar
 Paul Revere Frothingham Award, Harvard College
 Richard Perkins Parker Award, Harvard College
 Detur Prize, Harvard College
 Edwards Whitaker Award, Harvard College
 U.S. Presidential Scholar, 1970

9. Bar Associations: List all bar associations, legal or
 judicial-related committees or conferences of which you are
 or have been a member and give the titles and dates of any
 offices which you have held in such groups.

American Bar Association, 1981-95
 Justice Department Representative to Criminal Justice Section
 Council, 1994-95
 District of Columbia Bar, 1979-95
 Co-chair, Administrative Law Section, 1991-94
 Nominating Committee for Officers and Board of Governors, 1994
 Assistant U.S. Attorneys Association, Washington, D.C., 1989-95
 Judge William Bryant American Inn of Court, Wash., D.C., 1988-92
 Council for Court Excellence, Washington, D.C., 1987-89

10. Other Memberships: List all organizations to which you
 belong that are active in lobbying before public bodies.
 Please list all other organizations to which you belong.

Other than the American Bar Association, I do not believe any of
 the organizations are active in lobbying.

Council for Excellence in Government, Washington, D.C.
 Chevy Chase Recreation Association, Chevy Chase, MD
 Harvard Law School Alumni Association, Washington, D.C.
 Harvard University Alumni Association, Washington, D.C.
Phi Beta Kappa

11. Court Admission: List all courts in which you have been
 admitted to practice, with dates of admission and lapses if
 any such memberships lapsed. Please explain the reason for
 any lapse of membership. Give the same information for

administrative bodies which require special admission to practice.

District of Columbia Court of Appeals, Dec. 17, 1979
 U.S. District Court, District of Columbia, Jan. 7, 1980
 U.S. Court of Appeals for the District of Columbia Circuit,
 Feb. 19, 1980
 U.S. Court of Appeals for the 9th Circuit, March 19, 1980
 U.S. Supreme Court, Jan. 17, 1983
 U.S. Court of Appeals for the 4th Circuit, March 28, 1983

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Garland, Antitrust and State Action, 96 Yale L.J. 486 (1987)
 Garland, Antitrust and Federalism, 96 Yale L.J. 1291 (1987)
 Garland, Deregulation and Judicial Review, 98 Harv. L. Rev. 505 (1985)
 Garland, Courts and Deregulation, Legal Times (4/22/85)
 Garland & Pitofsky, FTC Investigations, in 2 Antitrust Litigation Techniques (J.O. von Kalinowski ed. 1984)
 Garland & Fitzpatrick, Court, Veto & Airbags, N.Y. Times (8/20/83)
 Commercial Speech, in The Supreme Court, 1975 Term, 90 Harv. L. Rev. 56, 142 (1976) (collaborative student note)
 The State Action Exemption and Antitrust Enforcement Under the Federal Trade Commission Act, 89 Harv. L. Rev. 715 (1976) (collaborative student note)
 Speech on Department of Justice Professional Responsibility Initiatives, George Washington University Annual Institute on Program Fraud, Sept. 1, 1994
 Speech on Department of Justice Professional Responsibility Initiatives, American Bar Association, Criminal Justice Section, White Collar Crime Committee, Oct. 15, 1994
 Outline of Remarks for Panel Discussion, Will There be a New Antitrust Agenda?, American Corporate Counsel Association, June 24, 1993, and St. Mary's University School of Law Symposium, May 21, 1993.

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Excellent. Last exam, March 1995.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

I have not been a judge.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None, other than the Justice Department positions listed in Question 17 below.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Law Clerk to Judge Henry J. Friendly, U.S. Court of Appeals for the Second Circuit, 1977-78.

Law Clerk to Justice William J. Brennan, Jr., U.S. Supreme Court, 1978-79.

2. whether you practiced alone, and if so,

the addresses and dates;

I did not practice alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

4/94 - Present: Principal Associate Deputy Attorney General,
U.S. Department of Justice, 10th &
Constitution Ave., N.W., Washington, D.C.

9/93 - 4/94: Deputy Assistant Attorney General, Criminal
Division, U.S. Department of Justice, 10th
& Constitution Ave., N.W., Washington, D.C.

10/92 - 9/93: Partner, Arnold & Porter, 555 12th St., N.W.,
Washington, D.C.

2/89 - 9/92: Assistant U.S. Attorney, District of Columbia
555 4th Street, N.W., Washington, D.C.

2/81 - 2/89: Partner and Associate, Arnold & Porter
555 12th St., N.W., Washington, D.C.

3/87 - 3/88: Associate Independent Counsel (Wedtech /
Nofziger) (part-time), 1111 18th Street,
N.W., Washington, D.C. (office now closed)

1986: Lecturer on Law, Harvard Law School,
Cambridge, MA 02138 (advanced antitrust)
(part-time)

9/79 - 1/81: Special Assistant to the Attorney General,
U.S. Department of Justice

7/78 - 7/79: Law Clerk, Justice William J. Brennan, Jr.,
U.S. Supreme Court, Washington, D.C.

7/78: Summer Associate, Arnold & Porter
555 12th St., N.W., Washington, D.C.

8/77 - 6/78: Law Clerk, Judge Henry J. Friendly,
U.S. Court of Appeals for the Second
Circuit, New York, NY

6/77: Summer Associate, Arnold & Porter
555 12th St., N.W., Washington, D.C.

6/76 - 7/76: Summer Associate, Pillsbury, Madison & Sutro
225 Bush Street, San Francisco, CA

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1993 - present,
& 1979 - 1981 Service in the Department of Justice, in the Office of the Deputy Attorney General, the Criminal Division, and the Office of the Attorney General

1992 - 1993,
& 1981 - 1989 Private practice, concentrating in criminal, civil and appellate litigation

1989 - 1992,
& 1987 - 1988 Federal prosecutor, prosecuting narcotics, public corruption and government fraud cases

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

As an attorney for the Department of Justice, my client has been the United States. As Principal Associate Deputy Attorney General, I serve as chief of staff and senior advisor to Deputy Attorney General Jamie S. Gorelick. My areas of responsibility cut across the Department's work, including criminal, civil and appellate matters. The majority of my work is focused on criminal and law enforcement matters. As Deputy Assistant Attorney General in the Criminal Division, my responsibilities included supervision of the Division's Appellate and Fraud Sections. As an Assistant United States Attorney, I prosecuted narcotics, public corruption and government fraud cases.

As an attorney in private practice, my typical clients were corporations, government entities and individuals. My areas of specialization included criminal, civil and appellate litigation, and administrative and antitrust law.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

As an Assistant U.S. Attorney from 1989-92, I appeared in court very frequently, at times almost daily. During that

period, I participated in the full range of judicial proceedings, including preliminary examinations and detention hearings, arraignments, motions hearings, pleas, trials and sentencings. From the fall of 1992 through 1994, I appeared in court twice (once in the U.S. Court of Appeals for the District of Columbia Circuit and once in federal district court). In April and May of this year, 1995, I appeared in court regularly in proceedings relating to the Oklahoma City bombing case described below.

As an associate and then partner at Arnold & Porter during 1981-89, the frequency of my court appearances varied. I appeared frequently in 1988 and 1983-84, and occasionally during other years. I participated in every phase of complex civil and criminal litigation, from initial complaints, to discovery, to depositions and motions practice, to trial and appeal. In my final full year at Arnold & Porter, 1988, I tried two jury cases to verdict, one lasting three weeks and the other 4 1/2 months.

2. What percentage of these appearances was in:

- (a) federal court;
- (b) state courts of record;
- (c) other courts.

Overall, approximately 90% of my appearances were in federal court, except during 1989-92 when the appearances were 100% in federal court, and during 1988 when the appearances were approximately 80% in state court and 20% in federal court.

3. What percentage of your litigation was:

- (a) civil;
- (b) criminal.

As a prosecutor from 1989-92, 100% was criminal. During the balance of my career, approximately 20-30% was criminal and 70-80% civil.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried 15 cases. I was sole counsel in 10 and associate counsel in 5.

5. What percentage of these trials was:

- (a) jury;
- (b) non-jury.

100% jury.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) United States v. McVeigh, No. M-95-98 (W.D. Okla. 1995), and United States v. Nichols, No. M-95-105 (W.D. Okla. 1995). Investigation and prosecution of the perpetrators of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City. Starting two days after the bombing in April 1995, through the end of May, I was the lead Department of Justice prosecutor on-site in Oklahoma City, responsible for emergency coordination of nationwide prosecution efforts and for handling court proceedings, including the preliminary hearings of Timothy McVeigh and Terry Nichols. The magistrate judge found probable cause with respect to both defendants and held each without bond. Thereafter, I helped put in place a long-term prosecution team for the indictment and trial of the case, and returned to Washington where I continued to have responsibility for nationwide coordination.

- (a) The bombing occurred on April 19, 1995; the preliminary hearings were held in April and May; the grand jury returned indictments on August 10, 1995.
- (b) The preliminary hearings were conducted before U.S. Magistrate Judge Ronald Howland (W.D. Okla.).
- (c) Co-counsel included Donna Bucella, Rm. 1619, U.S. Department of Justice, 10th & Constitution Ave., N.W.,

Washington, DC 20530 (202-514-2123); and Joseph Hartzler, Suite 400, U.S. Attorney's Office, 210 W. Park Ave., Oklahoma City, Oklahoma 73102 (405-553-7262). The defendants' counsel are Stephen Jones, Esq., Suite 1100 Broadway Tower, 114 East Broadway, P.O. Box 472, Enid, Oklahoma 73702 (405-242-5500), and Michael Tigar, P.O. Box 160037, Austin, TX (512-416-4620).

(2) United States v. Kelley, 36 F.2d 1118 (1994), affirming Crim. No. 92-152 (D.D.C. 1992). Investigation and prosecution of a senior official of the Agency for International Development (AID) for a transnational conspiracy to bribe, to defraud the United States and to obstruct justice in connection with two large-scale AID computer contracts in Guatemala and Washington. The bribes were laundered from Guatemalan subcontractors to black-market currency traders to Panamanian shell corporations and, through further financial transactions in the United States, to the AID official. I was the sole prosecutor at trial and argued the appeal in the D.C. Circuit. The official was convicted after trial and the conviction was affirmed on appeal. Three other participants pled guilty.

- (a) The case was investigated during 1990-92 and tried during July and August of 1992; the appeal was argued in 1993 and decided in 1994.
- (b) The case was tried before U.S. District Judge Stanley Harris (D.D.C.). The appeal was argued before Circuit Judges Douglas H. Ginsburg and A. Raymond Randolph (D.C. Cir.) and District Judge Hubert Will (N.D. Ill.).
- (c) The defendant's counsel were Charles F.C. Ruff and Carol Bruce, 1201 Pennsylvania Ave., N.W., Washington, D.C. 20040 (202-966-3521).

(3) United States v. Richardson, et al., Crim. Nos. 92-117 through 92-126 (D.D.C. 1992). Undercover investigation (FBI Operation Inside Track) and prosecution of 10 District of Columbia corrections officers and 1 civilian for smuggling narcotics to inmates in the District of Columbia Jail. The case involved the long-term use of undercover agents and inmate informants, as well as audio-taped and photographed stings. I was the lead prosecutor. Ten of the 11 defendants pled guilty. One went to trial and was convicted after I left the U.S. Attorney's Office.

- (a) The case was investigated during 1991-92; the defendants were indicted, pled guilty and were sentenced in 1992.

- (b) The case was litigated before U.S. District Judge Royce Lamberth (D.D.C.).
- (c) My co-counsel was AUSA Wendy Wysong, U.S. Attorney's Office, 555 4th Street, N.W., Washington, D.C. 20001 (202-514-9832). Counsel for the defendants included: Nathan Silver, P.O. Box 5757, Bethesda MD 20814 (301-229-0189); (now Judge) Russell Canan, Superior Court of the District of Columbia, 500 Indiana Avenue, N.W., Rm. JM-420, Washington, D.C. 20001 (202-879-1952); Michael Olshonsky, 1625 K Street, N.W., Suite 905, Washington, DC 20006 (202-785-0112); Patrick Donahue, 1120 G Street, N.W., Suite 950, Washington, D.C. 20005 (202-371-1080); Robert Morin, 419 7th Street, N.W., Suite 201, Washington, D.C. 20004 (202-638-6700); Fred Sullivan, 12427 Sadler Lane, Bowie, Maryland 20715 (301-464-0500); and James Lyons, 1275 K Street, N.W., Suite 825, Washington, D.C. 20005 (202-898-0722).

(4) United States v. Palmer, Harris, et al., Crim. No. 89-036 (D.D.C. 1989), affirmed in substantial part, 959 F.2d 246 (1992). Prosecution and trial of a large-scale, violent narcotics organization that imported crack cocaine from New York City and distributed it in District of Columbia housing projects. This was the first mandatory life Continuing Criminal Enterprise case tried in the District. I represented the United States at trial with lead counsel Judith Retchin. The kingpin (Michael Palmer) and four lieutenants were all convicted at trial. The kingpin and three lieutenants received mandatory life sentences without parole; the fourth was sentenced to 37 years without parole. Four other members of the organization pled guilty, three to sentences of 10 years without parole. The case was affirmed in substantial part on appeal.

- (a) The case was tried during June and July of 1989.
- (b) The case was tried before U.S. District Judge Harold Greene.
- (c) Lead counsel was AUSA (now Judge) Judith Retchin, Superior Court of the District of Columbia, 500 Indiana Avenue, N.W., Washington, DC 20001 (202-879-1866). Defendants' counsel included Kenneth Mundy (deceased); Robert E. Sanders, 601 Indiana Avenue, N.W., Suite 500, Washington, DC 20004 (202-639-9450); Michael McCarthy, 12427 Sadler Lane, Bowie MD 20715 (301-464-0500); and Christopher Davis, 3548 Quebec Street, N.W., Washington, DC 20016 (202-234-7300).

(5) United States v. Whitehead, et al., Crim. No. 89-231 (D.D.C. 1991), aff'd, No. 91-3176 (D.C. Cir. 1992). Investigation and trial of New York gang trafficking in cocaine and heroin in the District of Columbia. I was sole counsel for the United States at trial. The gang's enforcer went to trial and was convicted of conspiracy to distribute cocaine; the conviction was upheld on appeal. Seven other gang members, including the leader and his principal lieutenant, pled guilty or were convicted in related cases.

- (a) The case was investigated during 1989-91 and tried during April 1991.
- (b) The case was tried before U.S. District Judge John Pratt.
- (c) Co-counsel at various stages of the investigation and related cases were AUSAs Eileen Mayer (514-7063) and Daniel Bernstein (514-7059), U.S. Attorney's Office, 555 4th Street, N.W., Washington, D.C. 20001. Defendants' counsel included Samuel Edgar Wilhite, 325 Pennsylvania Ave., SE, Washington, DC 20003 (202-675-6301); and Michael Olshonsky, 1625 K Street, N.W., Suite 905, Washington, DC 20006 (202-785-0112).

(6) United States v. Yansane, Crim. No. 89-240 (1990), aff'd in substantial part, No. 90-3235 (D.C. Cir. 1991). Investigation and trial of bank fraud by Nigerian national; victims included Riggs Bank and the Embassy of Nigeria. I was sole counsel for the United States at trial. The defendant was tried and convicted; the conviction was affirmed in substantial part on appeal.

- (a) The case was tried in July 1990.
- (b) The case was tried before U.S. District Judge June Green.
- (c) Defendant's counsel was Patrick Donahue, 1120 G Street, N.W., Suite 950, Washington, D.C. 20005 (202-628-7420).

(7) State of Maryland Deposit Insurance Fund (MDIF) v. Billman, et al., No. 11073 (Circuit Court, Montgomery County MD) (1988), affirmed in substantial part, 593 A.2d 684 (Md. Ct. Spec. App. 1991). Investigation and trial of 6 former officers and directors of Community Savings and Loan for breach of fiduciary duty in connection with the operation of a complex tax shelter syndication scheme known as EPIC. Funds were siphoned from the bank to the two principal defendants through a series of payments

to parent companies and loans to subsidiaries and limited partnerships. I represented the plaintiff State of Maryland Deposit Insurance Fund during the investigation and at trial; lead counsel was Neil Dilloff of Piper & Marbury. After over a four-month jury trial, the six defendants were held liable for \$112 million in damages to the savings and loan. The jury verdict was affirmed in substantial part on appeal. [The U.S. Attorney's Office for the District of Maryland later convicted the principal defendant of fraud; he received a 40-year prison sentence.]

- (a) The case was investigated during 1986-88, and was tried from May until September of 1988.
- (b) The case was tried before Montgomery County (MD) Circuit Judge James McKenna (301-217-7550).
- (c) Lead counsel for MDIF were Neil Dilloff, Piper & Marbury, 1100 Charles Central South, Baltimore MD 21201 (410-576-1644) and Alexander Bennett, Arnold & Porter, 555 12th Street, N.W., Washington, D.C. (202-942-5192). Defendants' counsel included: Mark Tuohey III, 1200 - 18th Street, N.W., Washington, DC (202-457-8668); Eugene Propper, 1250 Connecticut Ave., N.W., Washington, DC 20036 (202-637-9000); Richard Gordin, 1776 K Street, N.W., Washington, D.C. 20006 (202-429-7000); John Fornaciari, 888 16th Street, N.W., Washington, D.C. 20006 (202 296-8600); and Robert Trout, 2100 Pennsylvania Avenue, N.W., Washington, D.C. 20037 (202-955-3000).

(8) Motor Vehicle Manufacturer's Ass'n v. State Farm Mutual Insurance Co., 463 U.S. 29 (1983), vacating and remanding 680 F.2d 206 (D.C. Cir. 1982). Challenge by automobile insurers to Department of Transportation's decision to rescind rule requiring airbags in automobiles. I represented State Farm Mutual Insurance Company and was on the brief; lead counsel was James Fitzpatrick, who argued the case in the D.C. Circuit and Supreme Court. The Supreme Court upheld State Farm's challenge to the rescission, holding that it was arbitrary and capricious, and remanding the case to the agency for further consideration. A modified airbag rule ultimately was issued.

- (a) The case was litigated during 1981-83, and was decided by the Supreme Court in 1983.
- (b) The case was litigated before the U.S. Supreme Court, the U.S. Court of Appeals for the D.C. Circuit, and the Department of Transportation.
- (c) Lead counsel for State Farm was James Fitzpatrick of

Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004 (202-942-5878). Lead opposing counsel were then-Solicitor General Rex Lee, 1722 I Street, N.W., Washington, D.C. 20006 (202-736-8000) and Lloyd Cutler, 2445 M Street, N.W., Washington, DC (202-663-6000).

(9) United States v. Fischbach and Moore, Inc., et al, No. CR 83-169C (W.D. Wash.). Prosecution of the country's five largest electrical contracting companies and their chief executives for alleged conspiracy to fix prices on nuclear power plants. As an attorney at Arnold & Porter, I represented defendant Commonwealth Electric Company, arguing the legal motions; lead counsel was Richard Wertheimer. All defendants were acquitted on all counts.

- (a) The case was tried from November 1983 until January 1984.
- (b) The case was tried before U.S. District Judge John C. Coughenour, Western District of Washington.
- (c) Lead Counsel for Commonwealth was Richard Wertheimer of Arnold & Porter, 555 12th Street, N.W., Washington, D.C. 20004 (202-942-5842). Co-counsel for other defendants included Allen Overcash, 206 S. 13th St., Suite 1500, Lincoln, NB 68508 (402-474-0231); Lawrence Bader, 565 5th Ave., NY, NY 10036 (212-856-9600); Ronald Meister, 600 Third Ave., NY, NY (212-867-0606); Gordon B. Spivack, 1114 Avenue of the Americas, NY, NY (212-626-4400); and Jeffrey Slade, 777 Third Ave., NY, NY 10007 (212-935-0800). Counsel for the United States included Anthony Nanni (202-307-6694) and David Jordan (202-307-6693), Antitrust Division, U.S. Department of Justice, 555-4th Street, N.W., Washington, D.C. 20001.

(10) United States v. Mahidoubi, 618 F.2d 1356 (1980). Litigation regarding implementation of the President's response to the Iranian hostage crisis. The appellee challenged a directive of the Immigration and Naturalization Service, revoking deferred departure dates for Iranian nationals. The challenge raised questions under the due process clause, the Administrative Procedure Act and the Freedom of Information Act. As Special Assistant to the Attorney General, I represented the United States in the U.S. Court of Appeals for the Ninth Circuit and argued the appeal. The Court upheld the directive of the Immigration and Naturalization Service.

- (a) The appeal was briefed in 1979-80 and argued in 1980.
- (b) The appeal was heard by Circuit Judges Tuttle, Hug and

Tang (9th Cir).

(c) Defendant's counsel was Bill Ong Hing, 558 Capp Street, San Francisco, CA 94110 (415-285-5066).

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

My appellate experience began with clerkships for Judge Henry J. Friendly (1977-78), and Justice William J. Brennan, Jr. (1978-79), during which I read hundreds of appellate briefs and worked on numerous appellate opinions. In my first position after the clerkships, as Special Assistant to the Attorney General (1979-81), I worked on a number of appellate matters, including litigation regarding implementation of the President's response to the Iranian hostage crisis. In that connection, I represented the United States in a Ninth Circuit argument in support of Immigration and Naturalization Service directives issued as part of that response. The Court of Appeals upheld the directives, United States v. Mahidoubi, 618 F.2d 1356 (1980).

In private practice from 1981-89, as an associate and partner at Arnold & Porter, I drafted and edited appellate briefs and petitions for certiorari in civil and administrative law cases, the most significant of which were the Court of Appeals and Supreme Court briefs in Motor Vehicle Manufacturers Ass'n v. State Farm, discussed in Question 18(8) above. Returning to the government as an Assistant United States Attorney from 1989-92, I reviewed and edited D.C. Circuit briefs prepared by the Appellate Division of the U.S. Attorney's Office in cases I had handled at trial.

As Deputy Assistant Attorney General in the Criminal Division from 1993-94, one of my significant responsibilities was supervision of the Division's Appellate Section. I also argued a case on behalf of the United States in the U.S. Court of Appeals for the District of Columbia Circuit, United States v. Kelley, 36 F.2d 1118 (1994). As Principal Associate Deputy Attorney General from 1994 to the present, my responsibilities have expanded to include the civil divisions of the Department.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have left my retirement funds from my time at Arnold & Porter in the firm's retirement plans. The plans have independent custodians (Fidelity and North American Trust Co.), investments are self-directed, and there are no firm contributions. The investments are listed on my financial disclosure report. I also have retirement benefits as a Justice Department employee from FERS and the Thrift Savings Plan (TSP). The current calculation of my FERS monthly annuity, upon retirement at age 60, is \$1886. My account balance in the TSP is \$20,795.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

In the event of a potential conflict of interest regarding any matter that may effect the financial interests of any member of my family, I will consult the appropriate judicial ethics officials and follow their advice and the Code of Judicial Conduct.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached financial disclosure report on Form AO-10.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I provided volunteer assistance on a Presidential Debate for President Clinton in October 1992 and for Michael Dukakis in October 1988. I did some volunteer work for Walter Mondale's presidential campaign in 1983-84. As a college student, I worked two summers for the campaign of my then-congressman, Abner Mikva, in 1972 and 1974.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	515	030	Notes payable to banks—secured	0	
U.S. Government securities—add schedule	161	340	Notes payable to banks—unsecured	0	
Listed securities—add schedule	465	460	Notes payable to relatives	0	
Unlisted securities—add schedule	67	580	Notes payable to others	0	
Accounts and notes receivable:	0		Accounts and bills due	0	
Due from relatives and friends	0		Unpaid income tax	0	
Due from others	0		Other unpaid tax and interest	0	
Doubtful	0		Real estate mortgages payable—add schedule	0	
Real estate owned—add schedule	490	000	Chattel mortgages and other liens payable	0	
Real estate mortgages receivable	0		Other debts—itemize:	0	
Autos and other personal property	125	000			
Cash value—life insurance	0				
Other assets—itemize: see schedules					
Money Market & Mutual Funds	387	450			
Retirement Accounts	330	040			
Trusts	914	440	Total liabilities	0	
			Net Worth	3,456	340
Total Assets	3,456	340	Total liabilities and net worth	3,456	340
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor	0		Are any assets pledged? (Add schedule.)	No	
On leases or contracts	0		Are you defendant in any suits or legal actions?	Yes *	
Legal Claims	0		Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax	0				
Other special debt	0				

*See Part IV below.

NET WORTH STATEMENT
ADDITIONAL SCHEDULES
August 1995

Cash on Hand and in Banks

Crestar Bank
Dept of Justice, Federal Credit Union

U.S. Government Securities

U.S. Treasury Notes
U.S. Savings Bonds

Listed Securities

Northeast Utilities
General Mills
American Home Products Corp.
Ameritech Corp.
Amoco Corp.
Bristol-Myers Squibb Co.
Citicorp
Exxon Corp.
General Electric Co.
Georgia Pacific Corp.
Gillette Co.
Heinz, H.J. Co.
Proctor & Gamble Co.
Royal Dutch Petroleum Co.
Telephone & Data Systems Inc.
Union Pacific Corp.

Unlisted Securities

The Retail Property Trust
RCL Company

Real Estate Owned

Residence at 5418 Grove Street, Chevy Chase MD

Money Market and Mutual Funds

Fidelity Tax-Exempt Money Mkt Trust
Dreyfus Municipal Money Mkt Fund
The Reserve Fund/Gov't Securities Portfolio
Fidelity Equity Income Fund II
Fidelity Value Fund
Fidelity Contrafund

Retirement Account Assets

U.S. Gov't Thrift Savings Plan (G Fund)
Crestar Bank (IRA)
Fidelity Magellan Fund
Fidelity Money Mkt Fund
Vanguard Index 500 Fund
Vanguard Prime Portfolio Money Mkt Fund
Vanguard Investment Contract Trust
KMart (IRA)
U.S. Treasury Certificates of Accrual (IRA)
Bear Stearns/Shallowbrook Securities
(cash balance in broker accounts)

Trusts

Trust established 12/20/89 by Robert and
Elizabeth Rosenman (wife's parents)
for grandchildren
Trust established 7/9/90 by Elizabeth Rosenman
for daughters (non-vested, contingent
interest)
Trust established 10/25/94 by Elizabeth Rosenman
for self and descendants (apartment at
47 East 88th Street, New York, NY 10128)
(non-vested, contingent interest)

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While I was in private practice, I was involved in pro bono matters providing professional assistance to disadvantaged individuals. These included representation of an African-American stenographer in a claim of racial discrimination against her former employer, representation of a mother in a custody dispute, and court-requested representation of a prisoner. As part of Arnold & Porter's pro bono program, I also supervised junior lawyers in their representations on such matters.

In addition, both in private practice and while in the government, I tutored a disadvantaged young man in developing his writing skills. I worked with him over many years, from the time he began work as a photocopier operator through his graduation from law school.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies.

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection commission. I was recommended to the White House by the Attorney General and Deputy Attorney General. I was interviewed on August 10, 1995 by staff of the White House Counsel's Office and of the Department of Justice. I also underwent an FBI background investigation and submitted answers

to an American Bar Association questionnaire.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Under Article III of the Constitution, the federal courts are courts of limited, defined jurisdiction, whose power extends only to certain "cases" and "controversies." These constitutional commands, combined with the derivative doctrine of

justiciability (including standing, ripeness and political question) and the overall framework of the separation of powers, make clear that federal judges do not have roving commissions to solve societal problems. The role of the court is to apply the law to the facts of the case before it -- not to legislate, not to arrogate to itself the executive power, not to hand down advisory opinions on the issues of the day. Indeed, it is only by hewing to these restrictions that the courts can maintain the legitimacy and credibility required to perform their great tasks of ensuring the constitutional rights of the people and defining the boundaries of the power of the other branches.

AO-10
Rev. 1/94**FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1994**Report Required by the Ethics
Reform Act of 1995, Pub. L. No.
104-194, November 30, 1995
(5 U.S.C.A. App. 4, 101-112)

1. Person Reporting (Last name, first, middle initial) GARLAND, MERRICK B.	2. Court or Organization U.S. Court of Appeals - D.C. Circuit Washington, D.C.	3. Date of Report 8 / 26 / 95
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time) Nominee - U.S. Circuit Judge, D.C. Circuit	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date <u>1 / 1</u> <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6. Reporting Period 1 / 1 / 94 - 8 / 26 / 95
7. Chambers or Office Address Room 4206 U.S. Department of Justice Washington, D.C. 20530	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts,
checking the NONE box for each section where you have no reportable information. Sign on last page.

I. POSITIONS. (Reporting individual only, see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions)	

Partner (until 9/93)	Arnold & Porter, Washington, D.C.
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Admin. Law Section Co-Chair (1991-94)	District of Columbia Bar
Department of Justice Representative to Criminal Justice Section (1994-95)	American Bar Association

II. AGREEMENTS. (Reporting individual only, see pp. 14-17 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements)	

1993	Retirement funds left in retirement plan of former law firm, Arnold & Porter (independent custodians, self-directed, no firm contributions); partnership provisions providing for indemnification of former partners in matters relating to representations while at firm continue.
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III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 18-25 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (years, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income)		
1993-95	E-Systems, Inc. (merged with Raytheon, 5/95) (S)	\$
1993	Arnold & Porter	\$ 199,692
		\$
		\$
		\$

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

GARLAND, MERRICK B.

Date of Report

8 / 26 / 95

IV. REIMBURSEMENTS and GIFTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp. 26-29 of Instructions.)

SOURCE

DESCRIPTION

☐

NONE (No such reportable reimbursements or gifts)

1

Exempt

2

3

4

5

6

7

V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp. 30-33 of Instructions.)

SOURCE

DESCRIPTION

VALUE

☐

NONE (No such reportable gifts)

1

Exempt

\$

2

\$

3

\$

4

\$

VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of Instructions.)

CREDITOR

DESCRIPTION

VALUE CODE*

☒

NONE (No reportable liabilities)

1

2

3

4

5

6

7

* VALUE CODES: J = \$10,000 or less S = \$10,001 - \$50,000 L = \$50,001 - \$100,000 H = \$100,001 to \$250,000
 M = \$250,001 - \$500,000 O = \$500,001 - \$1,000,000 F = More than \$1,000,000

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Date of Report

GARLAND, MERRICK B.

8 / 26 / 95

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A. Description of Assets (including trust assets) Indicate where applicable, owner of the asset, by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. Code (A-H)	(2) Type (S, Div., Int., etc.)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (S, Div., Int., etc.)	IF not exempt from disclosure			
						(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain/Loss Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)					E X E M P T				
¹ Crestar Bank (Money Mkt & Checking Accounts)	E	INT	N	T					
² Crestar Bank (IRA Money Mkt Account)	A	INT	K	T					
³ Dean Witter Liquid Assets Fund	A	DIV			sold				
⁴ Dean Witter Liquid Assets Fund (Retirement Accounts)	A	DIV			sold				
⁵ Dreyfus Municipal Money Market Fund	B	DIV	K	T					
⁶ The Short Term Income Fund (Money Market)	C	DIV			sold				
⁷ Dept. of Justice Federal Credit Union (Money Market and CDs)	E	DIV	M	T					
⁸ U.S. Savings Bonds	A	NONE	J	T					
⁹ Dean Witter Dividend Growth Fund (Retirement Account)	A	DIV			sold				
¹¹ Dean Witter U.S. Gov't Securities Trust (Retirement Account)	B	DIV			sold				
¹³ Fidelity Magellan Fund (Retirement Accounts)	A	DIV	L	T					
¹⁴ Fidelity Money Market Fund (Retirement Account)	C	DIV	K	T					
¹⁵ Vanguard Investment Contract Trust (Retirement Account)	A	DIV	J	T					
¹⁶ Vanguard Prime Portfolio	D	DIV	K	T					
¹⁷ Money Market Fund (Retirement Accounts)									
¹⁸									
1. Income/Gain Codes: (See Col. B1 & B4)	A-\$1,000 or less	B-\$1,001 to \$2,500	C-\$2,501 to \$5,000	D-\$5,001 to \$10,000	E-\$10,001 to \$25,000	F-\$25,001 to \$50,000	G-\$50,001 to \$100,000	H-\$100,001 to \$250,000	I-More than \$250,000
2. Value Codes: (See Col. C1 & C3)	J-\$15,000 or less	K-\$15,001 to \$50,000	L-\$50,001 to \$100,000	M-\$100,001 to \$250,000	N-\$250,001 to \$500,000	O-\$500,001 to \$1,000,000	P-More than \$1,000,000		
3. Value Method Codes: (See Col. C2)	Q-Appraisal	R-Book Value	S-Cost (real estate only)	T-Cash/Market	U-Other	V-Other	W-Estimated		

8 / 26 / 95

A	B.	C.	D.
Description of Assets (including trust assets)	Income during reporting period	Gross value at end of reporting period	Transactions during reporting period
(1)	(2)	(3)	(4)
Type of asset (e.g., dividend, capital gain, etc.)	Value (dollar) (4-a)	Value (dollar) (4-b)	If not exempt from disclosure: (5) Date, Month, Day (5-a)
Place "X" after each asset except from prior disclosures:	Amount Code (A-F)	Method Code (G-H)	Gain/Loss Code (I-J)
NONE (No reportable income, assets, or transactions)			EXEMPT
The Short Term Income Fund (IRA)	A DIV	sold	
U.S. Treasury Certificates of Accrual (IRA)	A NONE K T		
KMart Corporation Common (IRA)	A DIV J T		
Northeast Utilities Common	C DIV K T		
General Mills Common	B DIV K T		
Darden Restaurants, Inc. Common (5/15/95 Stock Distribution from General Mills)	A NONE sold		
American Home Products Common	A DIV K T		
Ameritech Corp. Common	A DIV J T		
Amoco Corp. Common	B DIV K T		
Bristol-Meyers Squibb Company	A DIV J T		
Contel Cellular Inc. Common	A NONE sold		
Exxon Corp. Common	C DIV K T		
General Electric Company Common	B DIV K T		
Georgia Pacific Company Common	B DIV K T		
Gillette Company Common	A DIV K T		
Heinz, H.J. Co. Common	C DIV K T		
Kaufman & Broad Home Corp. Common	A DIV sold		
Value Codes (See Col. B & C)	\$0-\$1,000 to \$10,000	\$10,001 to \$25,000	\$25,001 to \$50,000
Value Codes (See Col. B & C)	\$10,001 to \$25,000	\$25,001 to \$50,000	\$50,001 to \$100,000
Value Codes (See Col. B & C)	\$100,001 to \$250,000	\$250,001 to \$500,000	\$500,001 to \$1,000,000
Value Codes (See Col. B & C)	\$1,000,001 to \$2,500,000	\$2,500,001 to \$5,000,000	\$5,000,001 to \$10,000,000
Value Codes (See Col. B & C)	\$10,000,001 to \$25,000,000	\$25,000,001 to \$50,000,000	\$50,000,001 to \$100,000,000
Value Codes (See Col. B & C)	\$100,000,001 to \$250,000,000	\$250,000,001 to \$500,000,000	\$500,000,001 to \$1,000,000,000
Value Codes (See Col. B & C)	\$1,000,000,001 to \$2,500,000,000	\$2,500,000,001 to \$5,000,000,000	\$5,000,000,001 to \$10,000,000,000
Value Codes (See Col. B & C)	\$10,000,000,001 to \$25,000,000,000	\$25,000,000,001 to \$50,000,000,000	\$50,000,000,001 to \$100,000,000,000
Value Codes (See Col. B & C)	\$100,000,000,001 to \$250,000,000,000	\$250,000,000,001 to \$500,000,000,000	\$500,000,000,001 to \$1,000,000,000,000
Value Codes (See Col. B & C)	\$1,000,000,000,001 to \$2,500,000,000,000	\$2,500,000,000,001 to \$5,000,000,000,000	\$5,000,000,000,001 to \$10,000,000,000,000
Value Codes (See Col. B & C)	\$10,000,000,000,001 to \$25,000,000,000,000	\$25,000,000,000,001 to \$50,000,000,000,000	\$50,000,000,000,001 to \$100,000,000,000,000
Value Codes (See Col. B & C)	\$100,000,000,000,001 to \$250,000,000,000,000	\$250,000,000,000,001 to \$500,000,000,000,000	\$500,000,000,000,001 to \$1,000,000,000,000,000
Value Codes (See Col. B & C)	\$1,000,000,000,000,001 to \$2,500,000,000,000,000	\$2,500,000,000,000,001 to \$5,000,000,000,000,000	\$5,000,000,000,000,001 to \$10,000,000,000,000,000
Value Codes (See Col. B & C)	\$10,000,000,000,000,001 to \$25,000,000,000,000,000	\$25,000,000,000,000,001 to \$50,000,000,000,000,000	\$50,000,000,000,000,001 to \$100,000,000,000,000,000
Value Codes (See Col. B & C)	\$100,000,000,000,000,001 to \$250,000,000,000,000,000	\$250,000,000,000,000,001 to \$500,000,000,000,000,000	\$500,000,000,000,000,001 to \$1,000,000,000,000,000,000
Value Codes (See Col. B & C)	\$1,000,000,000,000,000,001 to \$2,500,000,000,000,000,000	\$2,500,000,000,000,000,001 to \$5,000,000,000,000,000,000	\$5,000,000,000,000,000,001 to \$10,000,000,000,000,000,000
Value Codes (See Col. B & C)	\$10,000,000,000,000,000,001 to \$25,000,000,000,000,000,000	\$25,000,000,000,000,000,001 to \$50,000,000,000,000,000,000	\$50,000,000,000,000,000,001 to \$100,000,000,000,000,000,000
Value Codes (See Col. B & C)	\$100,000,000,000,000,000,001 to \$250,000,000,000,000,000,000	\$250,000,000,000,000,000,001 to \$500,000,000,000,000,000,000	\$500,000,000,000,000,000,001 to \$1,000,000,000,000,000,000,000
Value Codes (See Col. B & C)	\$1,000,000,000,000,000,000,001 to \$2,500,000,000,000,000,000,000	\$2,500,000,000,000,000,000,001 to \$5,000,000,000,000,000,000,000	\$5,000,000,000,000,000,000,001 to \$10,000,000,000,000,000,000,000
Value Codes (See Col. B & C)	\$10,000,000,000,000,000,000,001 to \$25,000,000,000,000,000,000,000	\$25,000,000,000,000,000,000,001 to \$50,000,000,000,000,000,000,000	\$50,000,000,000,000,000,000,001 to \$100,000,000,000,000,000,000,000
Value Codes (See Col. B & C)	\$100,000,000,000,000,000,000,001 to \$250,000,000,000,000,000,000,000	\$250,000,000,000,000,000,000,001 to \$500,000,000,000,000,000,000,000	\$500,000,000,000,000,000,000,001 to \$1,000,000,000,000,000

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

GARLAND, MARRICK B.

Date of Report

8 / 26 / 95

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A. Description of Assets (including trust assets). Indicate where applicable, owner of the asset by using the parenthetical "(P)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "X" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Anc. 1 Code (A-N)	(2) Type (T, D, INT, DIV, RENT, or L)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(3) Type (T, D, INT, DIV, RENT, or L)	If not exempt from disclosure			
						(2) Date: Month/Day	(3) Value Code (J-P)	(4) Gain Code (A-N)	(5) Identity of Buyer/Seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)					EXEMPT				
1 Proctor & Gamble Co. Common	B	DIV	L	T					
2 Royal Dutch Petroleum Common	A	DIV	J	T					
3 Telephone and Data Systems, Inc. Common	A	DIV	K	T					
4 Union Pacific Corp. Common	A	DIV	J	T					
5 Citicorp Preferred & Common	B	DIV	K	T					
6 The Retail Property Trust (Mgr: The O'Connor Group) (owns shopping malls)	B	DIV	K	U					
7 Auburn Investment Pship I	D	DIV			sold				
8 RCL Co. - Investment Pship (administered by Cravath, Swaine & Moore) (owns/leases railroad equipment)	E	RENT	L	V					
9 (no market price - present lease value shown)									
10									
11 E-Systems Inc. ESOP (shares converted to cash by 5/95 merger with Raytheon)	A	DIV			sold				
12									
13 Trust established 7/9/90 by Elizabeth Rosenman for daughters (non-vested, contingent interest)									
14									
15									
16									
17									
18									

1. Income/Gain Codes (See Col. B1 & D4)	A-\$1,000 or less E-\$15,001 to \$50,000	B-\$1,001 to \$2,500 F-\$50,001 to \$100,000	C-\$2,501 to \$5,000 G-\$100,001 to \$1,000,000	D-\$5,001 to \$15,000 H-\$1,000,001 to \$15,000,000
2. Value Codes (See Col. C1 & D3)	J-\$15,000 or less M-\$250,001 to \$500,000	K-\$15,001 to \$50,000 O-\$500,001 to \$1,000,000	L-\$50,001 to \$100,000 P-more than \$1,000,000	N-\$100,001 to \$250,000
3. Value Method Codes (See Col. C2)	Q-Appraisal U-Book Value	R-Cost (real estate only) V-Other	S-Assessment W-Estimated	T-Cash/Market

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
GARLAND, MERRICK B.Date of Report
8/26/95

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 37-54 of Instructions.)

A. Description of Assets (Including Trust Assets) Indicate where applicable, owner of the asset by using the parenthetical "(S)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Asset Code (A-K)	(2) Type (I-D, Div, Int, etc.)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(3) Type (I-D, Div, Int, etc.)	If not exempt from disclosure			
						(2) Date, Month, Day	(3) Value Code (J-P)	(4) Gain/Loss Code (A-U)	(5) Identity of Buyer/Seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)					E X E M P T				
1 Trust established 12/20/89 by Elizabeth and Robert Rosenman for grandchildren	D	INT DIV	M	T					
2									
3 Trust established 10/25/94 by Elizabeth Rosenman for self and descendants (apartment at 47 East 88th Street, New York, NY) (non-vested, contingent interest)									
4									
5									
6									
7 Liquid Assets Treasury Fund (Money Market)	A	INT			sold				
8 The Reserve Fund (Money Market)	A	DIV	L	T					
9 Bear Stearns/Shallowbrook Securities (Cash Balance in Broker Accounts)	A	INT	J	T					
10									
11 Fidelity Tax-Exempt Money Market Trust	B	DIV	L	T					
12 Fidelity Equity Income II	A	DIV	K	T					
13 Fidelity Value Fund	A	DIV	K	T					
14 U.S. Treasury Notes	D	INT	M	T					
15 Fidelity Contrafund	A	DIV	M	T					
16 Vanguard Index 500 Fund (Retirement Accounts)	A	DIV	M	T					
17									
18									

1. Income/Gain Codes: (See Col. B1 & D4)	A-\$1,000 or less E-\$15,001 to \$50,000	B-\$1,001 to \$2,500 F-\$50,001 to \$100,000	C-\$2,501 to \$5,000 G-\$100,001 to \$1,000,000	D-\$5,001 to \$15,000 H-more than \$1,000,000
2. Value Codes: (See Col. C1 & D3)	J-\$15,000 or less K-\$150,001 to \$500,000	L-\$15,001 to \$50,000 M-\$500,001 to \$1,000,000	N-\$50,001 to \$100,000 O-more than \$1,000,000	P-\$100,001 to \$250,000 Q-more than \$250,000
3. Value Method Codes: (See Col. C3)	Q-Appraisal R-Book Value	S-Constructive estate only V-Other	T-Assessment W-Estimated	X-Cash/Market

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
GARLAND, MERRICK B.	8/26/95

VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

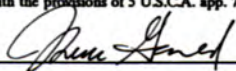
IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date

8/30/95

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure
Administrative Office of the
United States Courts
One Columbus Circle, N.E., Suite 2-301
Washington, DC 20544