

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).**

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).**

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 collage.**
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. Yansang, 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 Tuohy 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. Mahjoubi, 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.

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.