



STATEMENT
OF
KAROL CORBIN WALKER
on behalf of the
STANDING COMMITTEE ON THE FEDERAL JUDICIARY
AMERICAN BAR ASSOCIATION
concerning the
NOMINATION
of
THE HONORABLE MERRICK B. GARLAND
to be an
ASSOCIATE JUSTICE OF THE SUPREME COURT
OF THE UNITED STATES
to the
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
JUNE 21, 2016

1050 Connecticut Ave. NW, Suite 400 • Washington, DC 20036
www.americanbar.org

Governmental Affairs
Office

Chairman Grassley, Ranking Member Leahy and Members of the Committee:

My name is Karol Corbin Walker of Newark, New Jersey. It is my privilege to chair the American Bar Association's Standing Committee on the Federal Judiciary, which recently completed its evaluation of the professional qualifications of the Honorable Merrick Garland to be an Associate Justice of the Supreme Court of the United States. Our Federal Circuit representative Pauline A. Schneider was the lead evaluator on the Standing Committee's investigation of the Chief Judge Garland.¹ In accordance with our established procedures for a Supreme Court nominee,² I present this statement to you,³ which explains the Standing Committee's reasoning for its rating and evaluation of the professional qualifications of Judge Garland. The Standing Committee unanimously concluded that Judge Garland merits our highest rating and is "Well Qualified" for appointment to the Supreme Court of the United States.

THE STANDING COMMITTEE'S EVALUATION PROCESS

The Standing Committee has conducted its independent and comprehensive evaluations of the professional qualifications of nominees to the federal bench since 1953.⁴ The Committee consists of 15 distinguished lawyers who come from every federal circuit in the United States. Depending on the workload, these lawyers can each spend as much as 750 to 1,500 hours per year without compensation to conduct the nonpartisan peer reviews of the professional qualifications of all Article III nominees to the Supreme Court of the United States, United States circuit courts of appeals, United States district courts, as well as the Court of International Trade and the Article IV territorial district courts.

¹ Robert Weiner, the District of Columbia representative who would normally have been the lead investigator, recused himself from conducting the evaluation of this nominee pursuant to established Standing Committee practice, because he and the nominee were co-clerks for the same Court of Appeals Judge, were associates and later partners at the same Washington, D.C. law firm, and are close family friends.

² American Bar Association, *Standing Committee on the Federal Judiciary: What it is and How it Works* ("Backgrounder") at p.12.

³ This statement also is available to the public. It has been posted on our website:

http://www.americanbar.org/groups/committees/federal_judiciary/resources/written_statements.html

⁴ *Backgrounder* at p.1

The Standing Committee's investigation of a nominee to the Supreme Court of the United States is based upon the premise that the nominee must possess exceptional professional qualifications. The significance, range and complexity of the matters considered by the Supreme Court, as well as the finality and nationwide impact of the Supreme Court's decisions, are among the factors that require exceptional ability.

The Standing Committee's sole function is to evaluate a nominee's integrity, professional competence, and judicial temperament, and then to rate the nominee either "Well Qualified," "Qualified," or "Not Qualified." In so doing, the Committee relies heavily on the confidential, candid, and considered assessments of federal and state judges, lawyers in private practice and government service, law school professors and deans, legal services and public interest lawyers, community leaders, and others who share relevant information about the nominee's professional qualifications.

As set forth in the ABA's *Backgrounder*:

To merit the Committee's rating of "Well Qualified," a Supreme Court nominee must be a preeminent member of the legal profession, have outstanding legal ability and exceptional breadth of experience, and meet the very highest standards of integrity, professional competence and judicial temperament. The rating of "Well Qualified" is reserved for those found to merit the Committee's strongest affirmative endorsement.⁵

Therefore, our investigation of a Supreme Court nominee is more extensive than for a nominee to a lower federal court. The process also is procedurally different in two principal ways.

First, the Standing Committee members conducted investigations into the nominee's professional qualifications in every federal circuit in the United States, not only in the resident circuit of the nominee. In accord with our procedures, each Standing Committee member prepared a confidential circuit report which is included in the comprehensive confidential final

⁵ *Backgrounder* at p. 11.

report of the lead investigator. The comprehensive report was sent to each member on the Standing Committee for review and recommendation of a rating.

Second, the Standing Committee commissioned three Reading Groups of scholars and practitioners to review the nominee's legal writings to supplement the Standing Committee's own review of the nominee's writings. Seton Hall University School of Law, chaired by Professor Edward Hartnett, and Stanford Law School, chaired by Professor Bernadette Meyler, formed two separate and independent Academic Reading Groups. A total of 30 professors who are recognized experts in their field of law participated in these reading groups. Collectively, these professors have decades of experience not only in teaching and scholarship, but also in law firms, appellate litigation, public interest, nonprofit organizations, and state and federal government including prosecutors' offices, United States Attorney's Offices and other federal agencies.

Former United States Solicitor General and Harvard Law School Professor Charles Fried, along with Wayne L. Lee and Sheryl J. Willert, both former Standing Committee members, co-chaired the Practitioners' Reading Group, which was composed of 15 nationally recognized lawyers with substantial trial and appellate practices. All of the readers were knowledgeable about Supreme Court practice. Most had briefed and argued cases in the Supreme Court or in the highest state appellate courts or are former law clerks to Justices on the Supreme Court. The members of the Reading Groups and the substantive areas of their review are listed in Exhibits A, B, and C appended to this statement.

A team of librarians from Stanford Law School, led by Beth Williams, Director of the Stanford Law Library, and aided by librarians from Seton Hall Law School, created a Dropbox site for the collection of Judge Garland's law review articles, all of the opinions he authored as a judge on the United States Court of Appeals for the D.C. Circuit, the decisions in which he participated that were reversed, and all "newsworthy" cases involving Judge Garland. The opinions were indexed by more than 25 subject matter areas. The Standing Committee and the Reading Groups had full access to the Dropbox site. The Reading Groups separately reviewed over 350 opinions as well as numerous law review articles.

All three Reading Groups adhered to the same standards that govern the work of the Standing Committee and independently evaluated the nominee's analytical ability, clarity, knowledge of the law, application of the facts to the law, and ability to communicate effectively. Each member of each group reduced his or her evaluation to writing, with cited examples, which were incorporated into their respective group reports provided to each member of the Standing Committee.

In undertaking its extensive nationwide investigation of the professional qualifications of Judge Garland, the Standing Committee wrote to and invited input relevant to our investigation from 3,085 persons, including all federal appellate and district judges, and magistrate judges, as well as many state judges, lawyers, and community and bar representatives who were likely to have personal knowledge of his professional qualifications. These included lawyers with whom Judge Garland worked in private practice and the government who opposed him and lawyers who appeared before him during his judicial career. The Standing Committee solicited input from the lawyers, judges, and additional individuals Judge Garland identified in his material submitted to this Committee. The Standing Committee identified other persons with knowledge of Judge Garland's professional qualifications through interviews with lawyers and judges and a review of Judge Garland's opinions and other writings. The Committee also interviewed law school deans, faculty and legal scholars, throughout the country including at his alma mater Harvard Law School, many with personal knowledge of the nominee's professional qualifications and others who regularly studied his opinions in various substantive areas of the law. The current members of the Standing Committee and a former committee member who assisted in this investigation are listed in Exhibits D and E appended to this statement.

The Standing Committee based its evaluation on its interviews with judges, lawyers, law professors and community representatives from across the United States; its own reading of a sampling of the nominee's opinions and other writings; the three Reading Groups' reports, and the in-depth personal interview of the nominee that lead investigator, Pauline Schneider and I conducted on May 5, 2016. Each member of the Standing Committee reviewed the confidential final report and individually evaluated the nominee's professional qualifications by assessing his integrity, professional competence, and judicial

temperament. The Standing Committee unanimously concluded that Judge Garland is “Well Qualified” to be an Associate Justice of the Supreme Court of the United States.

OUR EVALUATION OF JUDGE GARLAND’S PROFESSIONAL QUALIFICATIONS

The Standing Committee did not base its rating on, or seek to express any view regarding, Judge Garland’s philosophy, political affiliation or ideology.⁶ It also did not solicit information as to how Judge Garland might vote on specific issues or cases that might come before the Supreme Court of the United States. Rather, the Standing Committee’s evaluation of Judge Garland is based solely on its comprehensive, nonpartisan, non-ideological peer review of the nominee’s integrity, professional competence, and judicial temperament.⁷

1. Integrity

In evaluating integrity, the Standing Committee considers the nominee’s character and general reputation in the legal community, as well as the nominee’s industry and diligence.⁸ The Committee also considers the extent to which there have been any findings of ethical violations or the like by a nominee. There are no records of any such violations relating to Judge Garland. He has earned and enjoys an excellent reputation for integrity and outstanding character.

Lawyers and judges uniformly praised the nominee’s integrity. Most remarkably, in interviews with hundreds of individuals in the legal profession and community who knew Judge Garland, whether for a few years or decades, not one person uttered a negative word about him. Accordingly, the Standing Committee was not required to consider any negative criticisms of Judge Garland. We recount a few representative comments:

- “Garland’s integrity is off the scales.”
- “Garland is the best that there is. He is the finest judge I have ever met. There is no one who is his peer.”
- “He is superbly well qualified, has great integrity and an ideal temperament.”

⁶ *Backgrounder* at p. 10

⁷ *Id.*

⁸ *Backgrounder* at p. 3

- “Judge Garland has no weaknesses.”
- “He meets and exceeds each of the criteria in terms of his legal analytical ability, his judgment, and, his integrity and temperament.”
- “Judge Garland is a person of highest integrity, as reflected by his record of some 30 years of public service, including 19 years as Circuit Judge.”
- “I do not know a finer person than Judge Garland. He is very solid, has the utmost integrity, and is a totally scrupulous, kind and generous person. It is hard to find a nicer person.”
- “You cannot find anyone with greater personal integrity or anyone more dedicated to public service.”
- “He exudes integrity and has an ideal judicial temperament, both on the bench and in his written work.”
- “Judge Garland has deep integrity and cares about our court system.”
- “He may be the perfect human being.”

On the basis of these and many other similar comments solicited during our extensive review, the Standing Committee concluded that Judge Garland possesses the integrity required to receive a “Well Qualified” rating.

2. Professional Competence

“Professional competence” encompasses such qualities as intellectual capacity, judgment, writing and analytical abilities, knowledge of the law, and breadth of professional experience.⁹ A Supreme Court nominee should possess “exceptional professional qualifications,” including an especially high degree of legal scholarship, academic talent, analytical and writing abilities, and overall excellence. The nominee must be able to write clearly and persuasively, harmonize a body of law, apply the law to the facts, and provide meaningful guidance to the trial and circuit courts and the bar.¹⁰ Judge Garland’s professional competence is exceptional.

Judge Garland has a strong educational background and a broad spectrum of professional experience. He graduated from Harvard College, *summa cum laude*, in 1974. He was a member of *Phi Beta Kappa*. He obtained his law degree from Harvard Law School, *magna cum laude*, in 1977. He

⁹ *Backgrounder* at p. 3.

¹⁰ *Backgrounder* at p. 10.

served as Articles Editor of the *Harvard Law Review*. Upon graduation Judge Garland clerked for Judge Henry Friendly of the United States Court of Appeals for the Second Circuit. He then clerked for Justice William J. Brennan, Jr., on the United States Supreme Court.

Following his clerkships, in 1979 Judge Garland became a Special Assistant to the Attorney General in the United States Department of Justice (“DOJ” or “Department”). While there he was the point of contact for the Civil and Antitrust Divisions, and had various responsibilities in other areas, including some criminal matters.

In 1981 he joined the Washington, D.C. law firm Arnold & Porter as an associate. He later became a partner in 1985. While there he had a general litigation practice that included administrative, antitrust, civil, criminal, and appellate matters. He also participated in several trials. In the Winter Term of 1985 Judge Garland taught an Advanced Antitrust course at Harvard Law School. During private practice Judge Garland participated in every phase of complex civil and criminal litigation, including initial complaints, discovery, depositions, motions, trial, and appeal.

In 1989 he left Arnold & Porter to become an Assistant United States Attorney with the United States Attorney’s Office for the District of Columbia. As an AUSA, Judge Garland investigated and prosecuted narcotics trafficking, public corruption, and government fraud cases. During that period, he tried a number of jury cases. He also participated in the full range of other judicial proceedings, including preliminary examinations, detention hearings, arraignments, motions hearings, pleas, and sentencing. Judge Garland also planned and approved investigations, search warrants, and undercover operations.

He briefly returned to Arnold & Porter as a partner in 1992, and remained until 1993. His practice involved general litigation and counseling in the civil, criminal, and antitrust fields.

In 1993 Judge Garland became a Deputy Assistant Attorney General in the Criminal Division of the DOJ. His responsibilities included supervision of the Division’s Appellate and Fraud Sections. He shared responsibility for the approval of Title III (wiretap) applications nationwide. In addition, he helped develop a structure for coordinating the work of the DOJ’s investigative agencies.

In 1994 he served as Principal Associate Deputy Attorney General. In that position, his

responsibilities spanned the work of the DOJ, including criminal, civil, antitrust, appellate, espionage, and national security matters. The majority of his work focused on criminal and law enforcement issues. This included supervision of some of the Department's most significant criminal investigations and prosecutions, including the Oklahoma City bombing and "UNABOM" cases.

In the spring of 1995 Judge Garland was the lead DOJ prosecutor on site in Oklahoma City, responsible for nationwide prosecution efforts and the initial proceedings against Timothy McVeigh and Terry Nichols. Upon his return to Washington, he drafted the Department's critical incident response plan, worked on intra- and inter-agency plans for responding to terrorist attacks, and oversaw the United States Marshals Service's vulnerability assessment of federal facilities. He remained at the DOJ until 1997.

In 1997, he was appointed a Judge on the United States Court of Appeals for the District of Columbia Circuit. In 2013 Judge Garland was elevated to Chief Judge.

Throughout his career, Judge Garland has participated in a number of civic and public activities. For example, he was a member of the Harvard College Visiting Committee and the Harvard University Board of Overseers from 2003 through 2010. He served as President of the Board of Overseers from 2009 to 2010.

Judge Garland gives back to the community he serves. For the past 18 years he has tutored second through fifth grade students at J.O. Wilson Elementary School, 660 K Street, NE, Washington, D.C. He goes to the school approximately twice each month to tutor students in reading and math.

Lawyers and judges identified Judge Garland's broad-based experience as a litigator, prosecutor, government lawyer and appellate court judge as significant strengths he would bring to the Supreme Court. In summarizing these observations concerning professional competence, we emphasize that the Standing Committee does not simply express its own view. Rather, it serves as a conduit to collect, summarize and express the views of the nominee's peers in our profession. The unanimous consensus of everyone we interviewed was that Judge Garland is superbly competent to serve on the United States Supreme Court. This significant point warrants repeating: all of the experienced, dedicated, and

knowledgeable sitting judges, several former solicitor generals from both political parties, legal scholars from top law schools across the country, and lawyers who have worked with or against the nominee in private practice, government or within the judiciary describe the nominee as outstanding in all respects and cite specific evidence in support of that view.

Many describe Judge Garland's professional competence as "brilliant," "exceptional," and "phenomenal." Some of the specific comments include:

- "His analysis is always very thorough and he is known as someone who puts in long hours, typically about 10 hours a day. He is a perfectionist in his written work."
- "Judge Garland is obviously brilliant but lacks arrogance and that is refreshing. He deserves a well-qualified rating. What makes him 'uniquely well qualified' is that he has tried cases as both a prosecutor and as a defense attorney. It is an important qualification for service on the Supreme Court for an individual to have tried cases on both sides and to be comfortable dealing with the facts and the law from both perspectives. The fact that Judge Garland has tried real cases makes him unique. He writes thoroughly reasoned opinions whether you agree with them or not."
- "Judge Garland is extremely well qualified. He will be a terrific justice, absolutely phenomenal."
- "He is intelligent, thoughtful, open minded and cares passionately about the law."
- "He always is the best prepared because he wants to get it right."
- "He is unnaturally blessed with brilliance, things come to him quickly."
- "He is an incredibly competent lawyer and is very professional and principled."
- "He was trusted by everyone with whom he worked at Justice, for the quality of his intellect, for his ability to listen, for his collegial approach to decision-making, ultimately, for his superb judgment."
- "He is always extremely well prepared. When he hears cases, he carefully goes through the briefs and the record and prints out portions of the law on which he must focus. You can tell he has gone through materials very carefully. He is very sharp and works hard to find consensus among the panel. He decides the case but does not decide more than is necessary to resolve the case. He is a very smart, talented and careful writer."
- "He is an exceptional lawyer, outstanding jurist, and person whom I recommend highly that the ABA rank him as well qualified for a position on the US Supreme Court."
- "I consider him to be an outstanding candidate for the U.S. Supreme Court."
- "He also is a scholar who managed to have published in the Harvard Law Journal two articles in two years while he was working full-time. He is a good listener and is very measured in how he processes and reacts to information. I would rate him 5 Stars in each of the categories the ABA takes into account."

- “He has superb judgment and great leadership skills. He is thorough and meticulous but also aware of the impact of his decisions on real people.”
- “In my opinion there is no better federal judge than Chief Judge Garland. His professional competence is extremely high, even when judged against Supreme Court Justices and D.C. Circuit Judges.”
- “In my judgment, Judge Garland is an outstanding candidate. He is exceptionally bright, very hard working, and very fair-minded. He has very strong writing, oral, and analytical skills.”
- “Judge Garland has the attributes that would make him a superb Justice. He is remarkably intelligent, fair-minded and dedicated to the public good. He has a background that superbly equips him for the Court - a distinguished academic record, significant experience in private practice and exemplary service in the Department of Justice. His decisions as a Judge on the DC Circuit call to mind the record of the legendary Judge Friendly on the Second Circuit, and that is remarkably high praise, indeed.”
- “He is a true jurist and I wish there were more judges like him.”
- “Judge Garland is one of the most gracious and intelligent judges I have appeared before and he wrote a brilliant dissenting opinion.”
- “I have litigated cases throughout the United States and I consider Judge Garland at the very top among the judges whom I have appeared before.”

Throughout his career, Judge Garland has shown an exceptional intellect, industry, and a superior work ethic. He has a reputation for being one of the hardest working and best prepared judges on the D.C. Circuit. He is known among the bar and his colleagues for his preparedness at oral argument and the incisiveness of his questioning. Judge Garland is considered a model lawyer, judge and person, who should be emulated.

Given the breadth and strength of these and a multitude of similar comments from judges and lawyers of all political persuasions and from many parts of the profession, the Committee was compelled to come to only one conclusion, that Judge Garland’s outstanding professional competence is exceptional and merits a rating of “Well Qualified.”

A. Review of the Nominee’s Opinions and Other Writings

The three Reading Groups submitted comprehensive reports to the Standing Committee that further support the conclusion that Judge Garland’s legal scholarship, analytical skills, and writing ability are extraordinary. Even though each reading group worked independently of the other two groups, several

strikingly consistent themes emerged from their assessments. The following excerpts from the extensive reports illustrate the consistency of the views within, and across all three groups.

SETON HALL UNIVERSITY SCHOOL OF LAW

First, Judge Garland is highly knowledgeable across an enormous range of law. A civil procedure professor described him as a “master of procedure.” A health law professor noted his “sophisticated understanding of the landscape of Medicare payment reform.” A property professor pointed to his review of state property law, observing that “he adeptly moves through a thorough, yet concise discussion of the critical concepts.” A securities professor praised him for “his command of the quagmire of overlapping regulators in securities markets.” A criminal law professor noted that he “navigates the interactions of various sentencing rules and the procedural maze of collateral challenges to criminal convictions,” and that his “opinions demonstrate considerable knowledge of Fourth, Fifth, and Sixth Amendment doctrine.” An employment law professor stated that he “showed a remarkable command of even the more arcane areas of the law.” A tax professor concluded that “many tax specialists would find it difficult to explain” a “number of extremely abstract and dauntingly complex code provisions” as well as he did. And an FDA professor finds that he “conveys an impressive grasp of the scientific and technological aspects at issue in cases involving the Food and Drug Administration and is precise on these aspects in his opinions.”

Second, Judge Garland’s opinions are well written and clear. His “prose is elegant, clear, and engaging,” and left a reader “admiring Judge Garland’s ability to set out clear statements of law” that are “accurate, appropriate, and sufficiently detailed to provide a primer for other courts, lawyers, and law students struggling to master a sometimes-obscure set of principles.” Judge Garland’s writings “without exception, are a joy to read. Throughout he is concise, clear and to the point. Yet his arguments are always thoughtful and considerate of opposing viewpoints.” His “opinions are incredibly lucid, analytically rigorous, thorough without being verbose, and both well-written and well-organized.”

Third, Judge Garland shows deference to other decision makers. “If there is a judicial philosophy manifest in these opinions—other than careful judge craft—it is deference to the roles of other institutions in the legal process, whether those institutions be administrative agencies, lower court judges, or juries. Judge Garland not only faithfully recites the familiar standards of deference but seems firmly committed to them.” “One striking feature of the sum of these cases is the respect Judge Garland gives to the decisions of administrative agencies.” “Judge Garland frequently defers to the judgments of the other branches of government,” a “sign of judicial restraint.” Judge Garland’s opinions also reflect “a deference to police decisions that is characteristic of federal courts at all levels.” His “review of the record below is meticulous, and he is deeply committed to allowing a fact-finder [to] do its job if indeed there are material facts in dispute.”

Fourth, Judge Garland is balanced. One reader observed:

One might wonder whether the extent of Judge Garland’s deference depends on the underlying substantive question involved. In other words, does Judge Garland defer only when doing so aligns with some preordained ideological position? Based on my reading of his opinions, that did not seem to be the case. To the contrary, I could find no clear ideological pattern in his opinions.

A different reader described Judge Garland as “a thorough, insightful, detail-oriented judge with no noticeable bent toward or against any set of litigants or issues.” Another reader put it this way, “Across the range of his opinions, I observed a fair-minded jurist at work, one who seemed open to reasonable

arguments by all parties.” Still another noted that “in cases where Judge Garland was called upon to interpret a statute directly, he typically employed well established tools of construction without any evident presuppositions beyond a commitment to reaching a correct result.”

Fifth, Judge Garland is not aloof from the pragmatic realities of litigation and beyond. In one case, he “showed both a nice turn of phrase and a firm grounding in the realities of litigation.” In another, he demonstrated “sensitivity to the practicalities of administrative law.” He “shows awareness of practical concerns and offers practical solutions.” “In addition to paying close attention to the record, Judge Garland also shows an awareness of how legal rules operate in the real world.”

Finally, Judge Garland avoids deciding things that do not need to be decided. His “opinions are narrowly crafted in almost every instance; they identify dispositive issues quickly, and leave other issues undecided.” They “reflect a minimalist approach that seeks the narrowest grounds for a decision; Judge Garland does not opine on issues not squarely before the court.” His “judicial style” is that “he is focused on resolving issues on the narrowest grounds and avoids reaching out.” Judge Garland shows “remarkable care in noting what was necessary to the resolution of the dispute and what was not.”

STANFORD LAW SCHOOL

a. Evaluation

- All of the “reports are strikingly consistent in deeming Judge Garland eminently qualified for this honor.”
- “A picture emerges of Judge Garland as a meticulously careful, scrupulously evenhanded, and analytically insightful judge who eschews any appearance of ideological bias and is aware of the limitations of the role of the appellate judge.”
- “Regardless of the political orientation of the writers of the reports, each concludes that Judge Garland’s work cannot be faulted.”

b. Analytical Approach

- “He tends to begin with textual analysis but also looks to legislative history or Framers’ intent if it is helpful in light of the inquiry at hand. He also weighs existing precedents—whether of the D.C. Circuit itself or the Supreme Court—heavily.”
- “The picture that emerges is of an open-minded, but critical consumer of legislative history. I thought he struck just the right balance on the use of legislative history.”
- “Judge Garland’s other opinions involving constitutional issues confirm that he weighs text and Supreme Court precedent first, although he does not dispense with the original understanding of the Constitution.”

c. Thoroughness/Conciseness

- “In general, Judge Garland’s opinions are not unduly long, but they tend to be exceedingly thorough and to address the concerns of all parties fully.”
- “Judge Garland’s opinions are concise and decisive. They do not belabor points that do not require belaboring, or complicate relatively straightforward issues.”

- “Judge Garland’s opinions are notable for the way they are at once thoroughly argued, yet clear and concise. His writing style is simple, direct, and avoids unnecessary prolixity, but he engages fully with all necessary nuances and complexities.”
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d. Evenhandedness

- “In criminal cases, he treats the government and defendants with equal respect, and when faced with *pro se* litigants, Judge Garland is careful to ensure that their case is heard in the best light.”
- Within the employment discrimination context, “Substantively, Garland does not push any boundaries or consistently favor either plaintiffs or defendants.”
- “Judge Garland’s FOIA opinions demonstrate exceptional even-handedness.”
- Regarding international law opinions, “[L]itigants appearing before [Judge Garland] receive a fair and respectful airing of their positions, even when their arguments are ultimately rejected.”
- I found that “Judge Garland accords the same respect to the arguments of the *pro se* prisoner as he does to the government. . . .”
- “His attitude in this context displays his great integrity as a judge; his care in dealing with the claims of a *pro se* litigant is equal to his care in addressing the arguments in other cases.”

e. Facts and the Record

- “Judge Garland’s approach to judging is very sensitive to the facts of a case and to the development of the record below.”
- “If [Judge Garland] has any obvious predisposition, it is toward ensuring that viable claims receive a fair hearing on the merits rather than being dismissed on pre-trial motions. . . .”
- “Judge Garland is clearly well equipped to handle the complex technical and scientific issues that often arise in the administrative docket of the D.C. Circuit—as well as in many cases before the Supreme Court.”
- “The most distinctive quality in Judge Garland’s analyses is his mastery of complex administrative records. Whether the record involves scientific principles, economics, or the practical elements of developing an effective regulatory system in the environmental field, Judge Garland displays a comfortable ability to parse and evaluate it. . . . He also shows a strong understanding of the scientific principles and challenges underlying the statutory provisions that he is addressing and how they might inform statutory meaning.”

- “[T]elecommunications cases often involve technically complex issues and thorny procedural histories. Without fail, all of the Judge’s opinions provided an accessible discussion of the technology involved, as well as a crisp, clear overview of the procedural background. These facets of his opinions are essential as they form the basis for his merits discussion.”

f. Respect for Precedent and Deference to Lower Courts and Agencies

- “Judge Garland is clearly keenly aware of the position he occupies as a judge on an intermediate federal court of appeals. He is consistently solicitous about applying Supreme Court precedent—even when he indicates in an opinion that it might be ripe for reconsideration—and he also defers as appropriate to federal district court or administrative agency fact finding.”
- “Judge Garland possesses deep knowledge of the law and great respect for precedent. His opinions scrupulously follow controlling Supreme Court precedent” and “cite extensively from relevant precedent within the D.C. Circuit.”
- “Judge Garland is appropriately deferential to the views of administrative agencies.”
- “Judge Garland displayed an appropriate level of deference. In most cases he upheld agency action, as required by deference doctrine, but in several cases, he overturned agency actions because they failed to survive deference tests. Following the lead of the Supreme Court, Judge Garland exercised hard look review of a deregulatory regulation.”
- “Judge Garland has great respect and appreciation for the important role of district courts as courts of first instance, responsible for developing both the facts and the law as fully as possible.”

g. Judicial Restraint and Federalism

- “A strand of commentary in the reports emphasizes Judge Garland’s awareness that a federal judge cannot cure every ill facing litigants and that judges should avoid reaching to decide questions unnecessary to the disposition of a particular case.”
- “In keeping with his judicial restraint, Judge Garland is also very respectful of federalism considerations. This is particularly evident in his opinions applying the common law of various jurisdictions.”

h. Conclusion

- “Across the wide range of decisions Judge Garland has authored, our review discerned a number of characteristics, all of which support a determination that he is unimpeachably competent. Judge Garland’s careful analysis of the law and meticulous review of the facts of a case, as well as his respect for the limitations of the judicial role and evenhandedness in treating all parties before him further indicate his great integrity and his excellent judicial temperament.”

PRACTITIONERS READING GROUP

- “. . . In our investigation the fifteen learned readers have converged on a remarkably similar set of conclusions, in some instances—though we labored independently—even expressed in identical words or phrases. There emerges an exceptionally clear and coherent account of Judge Garland's judicial oeuvre, and of the intellectual, professional and moral characteristics it displays.
- “Judge Garland's opinions first of all set out a very full account of the factual basis of the matter before the court, the contentions of the parties, the proceedings below, the jurisdiction of the court and the standards by which the court will judge those contentions and review the conclusions below. This is followed by a comprehensive and meticulous account of the governing law and legal principles. Statutory authorities are laid out in their full legislative context. If the matter is one of general state or District law—as in contracts or tort cases—not only are local precedents examined, but precedents from other jurisdictions and often provisions of the latest Restatements of the applicable law. Constitutional cases elicit an extensive account of relevant Supreme Court decisions, and where relevant Circuit precedent.”
- “[Judge Garland’s] opinions never mock or scold in setting out an argument which is ultimately rejected. In the many instances in which the opinion is required to parse and follow Supreme Court precedents, Judge Garland rarely remarks that the undoubtedly controlling precedent was indeed a highly controversial one, perhaps decided by a closely divided Court and sometimes with fervently presented dissenting opinions. Dissenting opinions are rarely referred to—they are, after all, for a lower court not authoritative. Nor does Judge Garland permit himself too long an extrapolation from existing authorities or a prediction of where the Supreme Court is heading in a particular area.”
- “The pleasure that comes from reading Judge Garland's opinions comes from the crisp and unremitting solution of difficult legal puzzles and the unraveling of tangled intricacies. In line with this there is in no discernible bias towards plaintiffs or defendants, in favor or against regulation, and in general towards the government or those who challenge it.”
- Many readers noted that Judge Garland displays the same level of care and evenhandedness in cases that might be characterized as big or little, with the result that those same readers, who are all experienced practitioners, have concluded that litigants before Judge Garland—or at least their advocates—must come away with the sense that win or lose their arguments have been heard, understood and fully and fairly weighed.”
- The Practitioners Reading Group has “collectively concluded that Judge Garland satisfies the criteria of professional competence in an exemplary fashion. His opinions are analytical, meticulous and precise. He thoroughly addresses the relevant facts, the arguments of the parties, the applicable statutes, regulations and case law and provides a rigorous analysis that leaves the parties confident that their arguments have been duly considered.”

The observations and laudatory comments of many within the Harvard Law School community echo the nationwide views that others have espoused. Some of those admirable comments follow:

HARVARD LAW SCHOOL

- “Judge Garland’s ability to chair the Board of Overseers meetings was ‘tremendous.’ He was ‘judicious,’ ‘a great listener’ and ‘fair.’ He asked ‘perceptive questions’ and was a particularly ‘constructive presence.’ The nominee played ‘a leadership role’ on the Board and his performance was outstanding.”
- “Garland was absolutely masterful, a great listener. . . [and] completely opposite of dogmatic. He looked to develop consensus and was open to other’s ideas.”
- ‘Garland was ‘deeply and sincerely involved.’ He was also ‘evenhanded.’ He had ‘unquestionable integrity.’ He was “engaged but never intemperate.”
- “Garland’s ‘quiet and effective performance’ is ‘what led to his elevation as President [of the Board of Overseers.]”
- “Garland’s integrity [is] ‘flawless,’ and his competence ‘terrific.’

B. Judge Garland’s Nationwide Reputation

The information the Standing Committee members garnered from their nationwide inquiry in every federal circuit in the United States concerning the nominee’s professional qualifications coincides with Judge Garland’s “unimpeachable” and “stellar” credentials. The following is a synopsis of some of the comments from each circuit confirming the fact that the nominee is universally highly regarded.

FIRST CIRCUIT

“He is a model of judicial thinking.”

“Chief Judge Garland in my view is brilliant, learned, mature, decent, and completely trustworthy. Obviously he is well-qualified to serve on the United States Supreme Court.”

SECOND CIRCUIT

“He is easy to work with, smart, organized and wise.”

“He is a judge’s judge, with a very high standard and legal craftsmanship, a fine sense of fairness to all parties, a measured and dignified judicial temperament, and the highest respect for law and reasoned argument.”

“When he spoke everyone listened. Beyond that, it is worth noting that for someone as exceptionally smart, he was truly a modest person and totally nice, down to earth person.”

“He understands how to share ideas in a thoughtful and collaborative way. He has a good strong set of values: family, country, work and law.”

“Judge Garland’s reputation is outstanding.”

THIRD CIRCUIT

“Judge Garland is a ‘stunning intellect’ ‘brilliant’, talented and very gracious lawyer. Judge Garland was just an outstanding lawyer and a terrific person.”

“He is one of the very top federal judges in legal knowledge, temperament, and administrative ability. He is powerfully intellectual and a consensus builder on the Court of Appeals. I know him as an amiable and hard-working Chief Judge, who is free of partisanship.”

“I had the pleasure of serving with Judge Garland on the . . . Committee. . . . Judge Garland is brilliant, was always prepared and was instrumental in forging consensus. His calm demeanor and pragmatic approach was an asset to the committee.”

FOURTH CIRCUIT

“Judge Garland is a man of the highest competence and the highest integrity, and his temperament is an admirable one for any judge.”

“Throughout his career he has been an admirable reflection of the judiciary and the judicial process.”

“There can be no issue about his integrity. His temperament is excellent.”

Judge . . . has “great respect for Garland’s judgment, his analytical ability, and his capacity to articulate reasons for his conclusions.”

Judge Garland is “off the charts” in all the categories.

“He is very competent, has great analytical ability, fine writing skills, and strong administrative ability. His integrity is unquestioned. As to temperament, he is exceedingly level headed and calm.”

Judge Garland is “very, very smart.”

Judge Garland “had a terrific work ethic, was exceedingly diligent and always well prepared.”

“He has exceptional brain power; a very analytical mind combined with a lot of common sense. He is the full package.”

“On integrity, he is wonderful, above reproach.”

“His temperament is ideal to be a judge.”

FIFTH CIRCUIT

“He is superbly qualified. He starts by being a lawyer. . . .”

“I know no one – bar none – with more integrity and more commitment to truthfulness and accuracy than Judge Garland. He will look to the law and to precedent before anything else.”

“He showed no trace of arrogance and offered enormously intelligent and constructive suggestions in dealing with pressing issues like sequestration, public defender funding and judicial security.”

SIXTH CIRCUIT

“The nominee possesses a brilliant analytical and legal mind and writes beautifully.”

“His work ethic is exceptional.”

“His character is of the highest degree, and his reputation in the legal community is excellent.”

Judge Garland is “very balanced and thoughtful.” “He exudes courtesy and fairness.”

SEVENTH CIRCUIT

“Judge Garland (whom I have known for many years) is highly qualified by intellect, knowledge, and hard work. He would serve with distinction. I agree . . . that Judge Garland is supremely qualified.”

“He has a very long record as a judge in the D.C. Circuit. He is respected enough by his colleagues to be a member of the Executive Committee [of the Judicial Conference of the United States]. I have the highest regard for him.”

“I worked with [Judge Garland] on several issues . . . and found him to be smart, approachable, and one who was not dogmatic nor dictatorial in his approach.”

“His reputation is excellent as to professionalism, competence, integrity and judicial temperament.”

EIGHTH CIRCUIT

Judge Garland is “smart and competent, thoughtful and solid. He has unquestioned integrity and gets along with everyone. His temperament is well suited for being a judge.”

“Judge Merrick Garland is not arrogant, and is very down-to-earth.”

“He is unquestionably competent and has an outstanding judicial temperament.”

NINTH CIRCUIT

Chief Judge Garland “satisfies the highest imaginable standard for professional competence with integrity for service as a justice on the Supreme Court.”

Judge . . . has “the utmost respect for his intellectual capacity, fairness, integrity and temperament.”

“I think that he would be an outstanding Justice.”

“There has never been a better candidate than Chief Judge Garland. He is an exceptional person and jurist. I give him the highest rating in every category. He will make an excellent addition to the Supreme Court.”

“I would say that he is absolutely exceptionally well qualified to sit on the Supreme Court. His professional competence, integrity and judicial temperament are all outstanding.”

“I cannot imagine that anyone would have anything bad to say about this candidate.”

“His integrity is beyond any reproach or question.”

“It is really rare that we get a nominee with this level of experience.”

TENTH CIRCUIT

“I found him to be very thoughtful and [a] careful decision maker.”

He “is a thoughtful and careful jurist who cares deeply about not only his casework, but also about the general well-being of the Judiciary.”

ELEVENTH CIRCUIT

“Judge Merrick [sic], consistent with his reputation, showed keen intellect and got to the point immediately but would present all of the competing views in a succinct and fair manner. He was persuasive but in a collegial way, always reaching for unanimity. He is smart without showing off his brilliance.”

“Merrick is a great guy – and a super intellect.”

“I can say without reservation that he is an exceptionally well qualified nominee. People's fundamental characters do not change in my experience, and Judge Garland has always been a person of the highest integrity, with absolutely superb legal skills and measured judgment. He was destined to be, and obviously became, a dedicated public servant. He was and is a gem, and regardless of one's political views, we all would be fortunate to have him on the Supreme Court.”

“Suffice it to say that when I learned that President Obama had nominated Judge Garland, I immediately e-mailed friends and colleagues that it was a brilliant nomination and that I would be hard-pressed to think of anyone whose qualifications even begin to rival the nominee's.

“From everything that I know about Chief Judge Garland, he is nothing less than stellar in terms of each of these factors. He promises to make an extraordinarily positive contribution both to public confidence in the Court and to the Court's decision making process. Those are contributions that Senators should prize regardless of where they stand on the political spectrum. I very much hope that this nomination comes before the Senate in the near future and that Chief Judge Garland receives the confirmation that he richly deserves.”

In his 19 years on the federal bench Judge Garland has distinguished himself as a jurist whose opinions are well-reasoned, well-organized, fastidiously researched, easily understandable, and reveal a profound command of the law, even when sophisticated and complicated factual and legal issues are presented. His writing style is direct. He has written on a range of issues and has demonstrated an intellectual mastery of the varied subjects on which he has written. His opinions are respectful and professional in tone and approach even when he writes in dissent or disagrees with the position of another judge or party.

On the basis of the foregoing comments and analysis, and our extensive review, the Standing Committee concluded that Judge Garland has extraordinary professional competence, which warrants a rating of “Well Qualified.”

3. Judicial Temperament

In evaluating “judicial temperament,” the Standing Committee considers the nominee’s compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice under the law.¹¹ Lawyers and judges consistently give Judge Garland high praises for his impeccable judicial temperament.

A number of representative comments are as follows:

- “I have never heard anyone say anything bad about Judge Garland. He is a straight shooter who treats people with respect.”
- “His demeanor is excellent, he is tough but appropriate in questioning litigants, he has great temperament and is very smart. Judge Garland is a very balanced, middle of the road candidate who is excellent and is what is needed at this time.”
- “Judge Garland is very patient and always respectful to those who appear before him.”
- “He listens carefully to others. Although Judge Garland has been a judge for 19 years, there are no signs of burn out. He is a great colleague and a wonderful human being. We do not share the same philosophy or background, but we work well together because Judge Garland is so respectful of everyone.”
- “He will fit in so perfectly on the Supreme Court.”
- “He works well with everyone even when they disagree.”
- “He gets along with others and is a terrific chief.”
- “Judge Garland’s temperament is outstanding, he is the model of integrity in the way he approaches cases and he has a judicially appropriate demeanor at all times.”
- “It would be hard to imagine anyone who is better qualified on any metric. He has the perfect temperament for a judge; in fact, I do not believe you can find a person with a better temperament. He is extremely careful in analyzing issues and writing opinions, always producing carefully written, thoughtful and insightful opinions. I am proud of the President for naming someone who was not giving him any political points. He simply picked the best possible candidate.”

¹¹ *Backgrounder* at p. 3

- “He has in every respect the judicial temperament required of a judge, and his record in college, law school, judicial clerkships, private practice and public service confirms that he possess the highest professional acumen.”
- “He is unfailingly courteous and respectful toward everyone. He has an excellent personal and professional demeanor. He is an efficient administrator and he is of the highest moral and ethical character.”
- “He has excellent temperament – he always is courteous on the bench.”
- “He is grounded in fairness.”
- “He’s very serious but not ill tempered. Having appeared before Judge Garland many times before (typically 3 - 4 times each year), I cannot imagine any other person who might be more qualified for the Supreme Court.”
- “He does not have an agenda. He follows the law. He applies the law to the facts.”
- “I have been especially impressed by his graciousness and how he counsels other judges.”
- “What makes Judge Garland different is that he has a pleasant demeanor even if he disagrees.”

Judge Garland’s judicial temperament is unassailable. Based on these and other similar comments received during our extensive investigation, the Standing Committee concluded that the nominee’s judicial temperament is deserving of a “Well Qualified” rating.

CONCLUSION

Judge Garland is a preeminent member of the legal profession with outstanding legal ability and exceptional breadth of experience. He meets the highest standards of integrity, professional competence and judicial temperament. It is the unanimous opinion of the Standing Committee that Judge Garland is “Well Qualified” to serve as an Associate Justice of the Supreme Court of the United States.

Respectfully,



Karol Corbin Walker
Chair

Cc Paulette Brown, President, American Bar Association
ABA Standing Committee on the Federal Judiciary
Honorable W. Neil Eggleston, Counsel to the President

EXHIBIT A

ACADEMIC READING GROUP

SETON HALL UNIVERSITY SCHOOL OF LAW

Chair

Edward Harnett, Professor of Law
(Civil Procedure)

Members

Angela Carmella, Professor of Law
(Property and Civil Rights)

John Coverdale, Professor of Law
(Administrative Law, Ethics, Professional Responsibility, and Taxation)

Rachel Godsil, Professor of Law
(Environmental and Administrative Law)

Thomas Healy, Professor of Law
(Constitutional Law)

John Jacobi, Professor of Law
(Tort Law and Health Law)

Kristin Johnson, Professor of Law
(Securities)

Stephen Lubben, Professor of Law
(Law Review Articles, FTC, and Armed Services)

Solangel Maldonado, Professor of Law
(Civil Rights and Constitutional Claims)

David Opderbeck, Professor of Law
(Statutory Interpretation and Intellectual Property)

Jordan Paradise, Professor of Law
(FDA, Mine Safety, and OSHA)

Alice Ristroph, Professor of Law
(Criminal Law and Criminal Procedure)

Charles Sullivan, Professor
(Contracts and Labor & Employment)

EXHIBIT B

ACADEMIC READING GROUP

STANFORD LAW SCHOOL

Chair

Bernadette Meyler, Professor of Law
(Detainees in the War on Terror, Constitutional Law (misc.), and Federalism)

Members

Marcus Cole, Professor of Law
(Antitrust and Contracts)

Richard Ford, Professor of Law
(Employment Discrimination)

Joe Grundfest, Professor of Law
(Securities Law)

Amalia Kessler, Professor of Law
(Civil Procedure)

M. Elizabeth Magill, Professor of Law and Dean (with Morgan Weiland)
(Telecommunications Law)

Michelle Mello, Professor of Law
(Health Law)

Jane Schacter, Professor of Law
(Election and Campaign Law, First Amendment, and Statutory Interpretation)

Deborah Sivas, Professor of Law
(Energy Law)

Norm Spaulding, Professor of Law
(Civil Procedure, Federal Courts, and Ethics)

Jayashri Srikantiah, Professor of Law
(Freedom of Information Act)

David Sklansky, Professor of Law
(Criminal Law)

Barton “Buzz” Thompson, Jr., Professor of Law
(Environmental Law)

Beth Van Schaack, Visiting Professor
(International Law)

Robert Weisberg, Professor of Law
(Criminal Law)

EXHIBIT C

PRACTITIONERS' READING GROUP

Co-Chairs

Charles Fried, Former United States Solicitor General
and Harvard Law School Professor, Cambridge, MA
(Constitutional Law, Contracts, First Amendment, and Torts)

Wayne J. Lee, Stone Pigman Walther Wittman, LLC, New Orleans, LA
(Armed Services, Ethics, and Statutory Interpretation)

Sheryl J. Willert, Williams Kastner, Seattle, WA
(Employment Discrimination & Title VII and Labor & Employment Law)

Members

Donald B. Ayer, Jones Day Washington, D.C.
(Environmental Law)

Jonathan I. Blackman, Cleary Gottlieb, New York, New York
(Detainees and Constitutional Claims and International Law)

Meir Feder, Jones Day, New York, NY
(Employment Discrimination & Title VII and Labor & Employment Law)

Allyson N. Ho, Morgan Lewis, Houston & Dallas, TX
(Antitrust and Securities Law)

Michael K. Kellogg, Kellogg Huber Hansen Todd Evans & Figel, P.L.L.C., Washington, D.C.
(Former Assistant to the Solicitor General of the United States)
(Elections Law)

Robert Klonoff, Professor, Lewis & Clark Law School, Portland, OR
(Administration, Due Process & Equal Protection, and Tax Law)

Richard J. Lazarus, Professor, Harvard Law School, Cambridge, MA
(Environmental Law)

Jonathan Mitchell, Visiting Fellow, Hoover Institution, Stanford, CA
(Criminal Law and Federalism)

Joseph R. Palmore, Morrison Foerster, Washington, D.C.
(Administrative Law, Health Law, and Federal Courts)

Aaron Panner, Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., Washington, D.C.
(Freedom of Information Act and Telecommunications Law)

Lawrence S. Robbins, Robbins Russell Englert Orseck Untereiner & Sauber LLP, Washington, D.C.
(Criminal Law)

Pratik A. Shah, Akin Gump, Washington, D.C.
(Criminal Law and Energy/Public Utility Law)

EXHIBIT D

2015 -2016 STANDING COMMITTEE ON THE FEDERAL JUDICIARY

Karol Corbin Walker, Chair, LeClairRyan, Newark, NJ

Paul E. Summit, First Circuit, Sullivan & Worcester LLP, Boston, MA

Joseph M. Drayton, Second Circuit, Cooley LLP, New York, NY

Stephen M. Orlofsky, Third Circuit, Blank Rome LLP, Princeton, NJ

Willis P. Whichard, Fourth Circuit, Tillman, Hinkle & Whichard, Chapel Hill, NC

John J. “Mike” McKetta III, Fifth Circuit, Graves Dougherty, Austin, TX

John R. Tarpley, Sixth Circuit, Lewis Thomason, Nashville, TN

Tiffany M. Ferguson, Seventh Circuit, T.M. Ferguson & Co., Chicago, IL

Charles A. Weiss, Eighth Circuit, Bryan Cave LLP, Saint Louis, MO

Barbara J. Dawson, Ninth Circuit, Snell & Wilmer, L.L.P., Phoenix, Arizona

Debra E. Pole, Ninth Circuit, Sidley Austin LLP, Los Angeles, CA

Shannon L. Edwards, Tenth Circuit, Edwards Law Firm, Edmond, OK

Peter Prieto, Eleventh Circuit, Podhurst Orseck, PA, Miami, FL

Robert N. Weiner, D.C. Circuit, Arnold & Porter LLP, Washington, D.C.*

Pauline A. Schneider, Federal Circuit, Washington, D.C.

* * * * *

Denise A. Cardman, Staff Counsel, Washington, D.C.

*Recused

EXHIBIT E

**FORMER ABA STANDING COMMITTEE ON THE FEDERAL JUDICIARY MEMBER WHO ASSISTED
WITH THE EVALUATION**

Stephan Landsman, Emeritus Professor of Law
DePaul University College of Law, Chicago, IL
(Harvard Law School Community)