

**From:** Klapper Matthew B (OAG)  
**Subject:** RE QFRs incoming please block time on your calendar  
**To:** Matthews Johnson Tamarra D (OAG) Fletcher Brian H (OAG) Goodlander Margaret V (OAG) Visser Tim (OAG) Appleton Rachel E (OLA) Payton Rayshon J (OLA) Prasanna Sandeep A (OLA) Heinzelman Kate (OAG) Loeb Emily M (ODAG) Greenfeld Helaine A (OLA) Robertson Ashley E (ODAG) Grogg Adam (OASG) Walker Burden (OASG)  
**Cc:** Washington Tracy T (OAG)  
**Sent:** February 25 2021 12:16 PM (UTC 05:00)  
**Attached:** Lynch QFR 2 9 15 OCR pdf Holder QFRs OCR pdf Master QA 2 25 2021 docx

Thanks again to everyone for your work on this. A few items that were discussed this morning, but putting them here for your convenience and for those who missed the meeting:

First, please send a status update to me and Hea ne about your progress (# of questions answered, # remaining, needs you have) at 4pm today, 10pm tonight, and 11am tomorrow. This will help us track progress in this tight window and determine how best to allocate resources.

Second, please raise sensitive Q&A or other flags (process, consistency, etc) to me and Hea ne immediately so we can start giving thought to how best to answer and loop in others if needed.

Third, ask for help from and offer it to others.

Fourth, keep an eye on other people's language throughout the document for consistency's sake – let me and Hea ne know if you see any issues, although we'll be scanning throughout the day.

Fifth, attached find Holder and Lynch QFRs in searchable PDFs, and Lisa's prep Q&A document. As far as Lisa's Q&A goes, please be mindful to (b) (5)

Sixth, if you missed this morning's training, note that the team sent around the relevant contact as well as materials. Please reach out to them with any questions regarding OneDrive.

Finally, below find some sample answers written by Rache:

1. Do you support the Unborn Victims of Violence Act of 2004, which provides that a person guilty of killing a child in utero may be punished to the same extent as if they had killed the child's mother, and that a person who intentionally kills a child in utero may be charged as a homicide (i.e., murder or manslaughter)?
  - a. Given that "homicide" requires the killing of an innocent human being, do you agree that in order to punish someone for violating this statute, the child in utero would have to be a human being?
  - b. Are there any circumstances which justify the killing of an innocent human being?

**Sample Answer:** (b) (5)

2. What are your thoughts on what is called "cancellation"? Is "cancellation," as you understand it, consistent with the values of free speech?

**Sample Answer:** (b) (5)

3. Assume for the sake of this question and this question only that after reviewing the facts of the Durham investigation, you were to determine that the Durham investigation was not properly predicted.
  - a. Would that hypothetical lack of proper prediction be sufficient grounds to terminate the investigation? Please explain your answer.
  - b. Would that hypothetical lack of proper prediction be sufficient grounds to terminate John Durham? Please explain your answer.
  - c. Does your answer to subpart (a) change if you assume that reasonable, objective observers could disagree with your assessment that the investigation lacked a proper prediction? Please explain your answer.
  - d. Does your answer to subpart (b) change if you assume that a reasonable, objective observer could disagree with your assessment that the investigation lacked a proper prediction? Please explain your answer.

**Sample Answer:** (b) (5)

- c. In *Priests for Life v. HHS*, you voted in support of an opinion on requiring a religious nonprofit to comply with the Obama Administration's contraceptive mandate. Could you explain why you voted against rehearing that case?

**Sample Answer:** (b) (5)

**From:** Kapper, Matthew B (OAG)  
**Sent:** Thursday, February 25, 2021 12:47 AM  
**To:** Matthews Johnson, Amarra D (OAG) (b) (6); Fletcher, Brian H (OAG) (b) (6); Goodander, Margaret V (OAG) (b) (6); Vsser, m (OAG) (b) (6); Appeton, Rache E (OLA) (b) (6); Payton, Rayshon J (OLA) (b) (6); Prasanna, Sandeep A (OLA) (b) (6); Henze man, Kate (OAG) (b) (6); Loeb, Emily M (ODAG) (b) (6); Greenfeld, Hea ne A (OLA) (b) (6); Robertson, Ash ey E (ODAG) (b) (6); Grogg, Adam (OASG) (b) (6); Wa ker, Burden (OASG) (b) (6)  
**Cc:** Wash ngton, racy (OAG) (b) (6)  
**Subject:** RE: QFRs ncom ng please b ock t me on your caendar

Good news and bad news, fo ks

he good news: m conf dent that th s group of very ta ented, ded cated peop e s capab e of do ng anyth ng

he bad news: the Judge has rece ved over 850 QFRs, cose to f not a record number NASA may have anded on Mars th s past week, but ust wa t unt they hear about what we re go ng to accomp sh

We have added three peop e (Ash ey, Adam and Burden) to our team due to the h gher than ant c pated vo ume

hanks to the hard work of Rache , Rayshon and Sandeep, we have a conso dated document and every quest on s ass gned to a member of th s team, grouped to the extent poss b e by sub ect matter for both cons tency and eff c ency s sake We w ke y need to reass gn quest ons throughout the next two days as ba anc ng work oads s go ng to be a b t of an art here, so please ra se your hand f at any po nt you fee your oad s e ther too ght or too heavy A so note that He a ne has pu ed a few quest ons out of the document that requ re the Judge s persona tten on at the outset He w work on those tems n para e to our efforts

You have a rece ved an nv tat on to co laborate n the QFR document on OneDr ve Fee free to ump n and fam ar ze yourse f w th the quest ons and your ass gnments, and please a so rev ew the attached Barr and Barrett QFRs to get a sense of what answers can ook ke h s s not to say that we re seek ng to m rror the r approach, but the r QFRs shou d ge ve you an dea of what s not requ red: deta ed responses that shou dn t be expected of a nom nee who s not yet n the Department Repet t on s OK So s keep ng answers s mp e and d rect, and acknow edg ng that an answer w have to wa t on more nformat on to come at a ater date You shou d ean heav y on the Judge s words from h s hear ng ve attached the transcr pt aga n for your conven ce

A so for your reference, be ow s a d rectory of ODAG eads by ssue area We don t expect that you need to dr d own for deta n many f any p aces (these quest ons are be ng answered, u t mate y, by someone who s not yet n the Department), but f you do need he p please cons der them a resource

We w d scuss process n greater deta n the morn ng Look ng forward to see ng everyone, and thanks so much for your he p!

**ODAG Primary Points of Contact (as of 2/24/2021)**

Antitrust	Sara Solow
ATF	Adam Braverman
BOP	Eric Nguyen
Civil Division	Karl Thompson
Civil Rights Division	Myesha Braden
COPS	Stacie Harris
CRS	Stacie Harris
Criminal Division	Kevin Chambers
DEA	Robin Thiemann
ENRD	Myesha Braden
EOIR	Margy O'Herron
EOUSA/USAs	Iris Lan
FBI	Iris Lan (Criminal) David Newman (National Security)
Foreign Claims Settlement Commission	Margy O'Herron
INTERPOL	Adam Braverman
Justice Management Division	Anita Singh
National Security Division	David Newman
OCDEF	Adam Braverman
Office of Information Policy	Margy O'Herron (searches)/Emily Loeb (releases)
Office of the Inspector General	Brad Weinsheimer
Office of Justice Programs	Myesha Braden
Office of Legal Counsel	Karl Thompson
Office of Legal Policy	Robyn Thiemann
Office of Legislative Affairs	Emily Loeb
Office of the Pardon Attorney	Brad Weinsheimer
Office of Privacy and Civil Liberties	Sara Solow
Office of Professional Responsibility	Brad Weinsheimer
Office of Public Affairs	Emily Loeb
Office of the Solicitor General	Karl Thompson
Office of Tribal Justice	Myesha Braden
Office on Violence Against Women	Stacie Harris

PRAO	Andrew Goldsmith
Tax	Karl Thompson
USMS	Adam Braverman
U S Parole Commission	David Newman
U S Trustee Program	Adam Braverman

**From:** Kapper, Matthew B (OAG)

**Sent:** Tuesday, February 23, 2021 7:18 PM

**To:** Matthews Johnson, amarra D (OAG) (b) (6); Fletcher, Brian H (OAG) (b) (6); Goodander, Margaret V (OAG) (b) (6); Vasser, m (OAG) (b) (6); Appeton, Rache E (OLA) (b) (6); Payton, Rayshon J (OLA) (b) (6); Prasanna, Sandeep A (OLA) (b) (6); He nze man, Kate (OAG) (b) (6); Loeb, Em y M (ODAG) (b) (6); Greenfe d, He a ne A (OLA) (b) (6)

**Cc:** Wash ngton, racy (OAG) (b) (6)

**Subject:** RE: QFRs ncom ng please b ock t me on your ca endar

Hi

Thanks to everyone for holding conversations on your calendar, consistent with the anticipated work schedule outlined in last night's email. A few updates:

- 1 You have received two calendar checks for Thursday morning the first, at 9:30, is a tutorial on OneDrive, which is similar to Google Drive. Hea ne and w have spent the night prior creating a single word document we can work from concurrently in OneDrive, with designated drafters noted for each question and assigned with an amount of grouping by thematic to the extent possible. We will use that document during the tutorial, so this will be time we spent even if you've used a Word document in OneDrive before. The second meeting follows immediately at 10am and will be where we provide an overview of the work ahead and provide a space for Q&A/sharing of ideas.
- 2 We are working to assemble common language to be used for a few items we expect to repeat often. Some of this will be based on the Judge's testimony, and some on past QFRs submitted by DOJ nominees and officials. We may be in touch with some of you to help with this prior to Thursday.
- 3 Attached is the hearing transcript, courtesy of Maggie. It will certainly be helpful to your drafting efforts and it's worth familiarizing yourself with it prior to commencing your work.
- 4 We will approach answers as the Judge did at the hearing – without incorporating information that would only be in his hands once he is in the Department, or taking positions that require further review and consultation with departmental personnel. That means, that unlike overnight hearings, we expect that there to be no help from the components will be necessary.

If you have questions or suggestions as we prepare for the QFRs, please don't hesitate to reach out.

Matt

**From:** Kapper, Matthew B (OAG)

**Sent:** Monday, February 22, 2021 11:56 PM

**To:** Matthews Johnson, amarra D (OAG) (b) (6); Fletcher, Brian H (OAG) (b) (6); Goodander, Margaret V (OAG) (b) (6); Vasser, m (OAG) (b) (6); Appeton, Rache E (OLA) (b) (6); Payton, Rayshon J (OLA) (b) (6); Prasanna, Sandeep A (OLA) (b) (6); He nze man, Kate (OAG) (b) (6); Loeb, Em y M (ODAG) (b) (6)

**Cc:** Greenfe d, He a ne A (OLA) (b) (6)

**Subject:** QFRs ncom ng please b ock t me on your ca endar

Hi team

Thanks for the work you did to make today's hearing a success. We're now approaching the beginning of an unusually brief QFR turnaround window and are asking for your help tackling a significant amount of time-sensitive work. Given the truncated timeline and the nature of the answers we anticipate providing, Hea ne and w have decided to approach this process a little differently than the way we presumably work for future hearings. More specific instructions will follow, but for now please block as much time as possible on Thursday and Friday of this week to allow for work on this project. We cannot be sure how many QFRs are coming our way, but we do expect that we will take everyone on this email's mandated calendar into account in order to get this done. If you have a conflict, please let me know immediately.

Draft project timeline:

**Wednesday night:** QFRs received from the Committee, Matt and Hea ne sort by topic and assign to drafters

**Thursday am:** Team meets to discuss process, drafters (Rache, Rayshon, Sandeep, amarra, Brian, Maggie, m) begin work

**Friday 2p:** Answers due from drafters to reviewers (Matt, Kate, Em y and Hea ne)

**Friday 2p Saturday am draft completion:** Reviewers edit for substance and consistency, and drafters available for questions/follow-ups

**Saturday am Sunday 4pm:** Judge reviews QFRs and may request follow up from drafters/reviewers

**Sunday 5pm:** QFRs submitted to committee

More to come, but don't hesitate to be in touch with any questions in the meantime

Thanks,  
Matt

**From:** Dykstra, Sam (OIP)  
**Subject:** Heads up on FOIA Litigation Release  
**To:** Heinze man, Kate (OAG); Good ander, Margaret V. (OAG); O'Herron, Margy (ODAG); Loeb, Emi y M. (ODAG); Sooknanan, Spark e (OASG); Ke ner, Kenneth E. (OLA); Creighton, Ke y M (PAO)  
**Cc:** Ta ebian, Bobak (OIP); O'Nei , Sean (OIP); Brinkmann, Vanessa R (OIP); Ziese, Timothy (OIP); Breyan, Jonathan (OIP); Hibbard, Doug as (OIP); Vi anueva, Va erree A (OIP); Day, Laurie (OIP); Smith, James M. (OIP); Ve e a, Brittnie R (OIP); F annigan, Brian (OIP)  
**Sent:** May 5, 2021 10:55 AM (UTC-04:00)  
**Attached:** 01. Complaint 08.26.19.pdf, 01. Initia Request (6.7.19).pdf, 5.5.21 Fina Response\_5155.pdf

All:

For your awareness, today OIP will issue the attached interim release in response to FOIA litigation filed by American Oversight, for records related to U.S. Attorney John Durham. This litigation involves multiple requests that generally seek records reflecting communications between John Durham and the Offices of the Attorney General and Deputy Attorney General.

In today's response, OIP will release in part 7 pages with redactions made pursuant to Exemptions 5, 6, and 7C. Some of the withholdings were made on behalf of ICE. This will be our final response for this FOIA request.

I have attached the response letter, the initial request, and the complaint for your reference. Please reach out to myself or Vanessa Brinkmann (b) (6) if you have any questions.

Regards,  
Samuel J. Dykstra  
Attorney-Advisor  
Office of Information Policy  
U.S. Department of Justice

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

\_\_\_\_\_  
AMERICAN OVERSIGHT,  
1030 15th Street NW, B255  
Washington, DC 20005

*Plaintiff,*

v.

U.S. DEPARTMENT OF JUSTICE,  
950 Pennsylvania Avenue NW  
Washington, DC 20530

*Defendant.*

Case No. 19-cv-2563

**COMPLAINT**

1. Plaintiff American Oversight brings this action against the U.S. Department of Justice under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency from

continuing to withhold agency records and ordering the production of agency records improperly withheld.

### **PARTIES**

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant U.S. Department of Justice (DOJ) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). The Office of Information Policy (OIP) is a component of DOJ and processes FOIA requests on behalf of itself and several other DOJ components including the Office of the Attorney General (OAG), the Office of the Deputy Attorney General (ODAG), the Office of the Associate Attorney General (OASG), the Office of Legislative Affairs (OLA), the Office of Public Affairs (PAO), and the Office of Legal Policy (OLP). The Executive Office for the United States Attorneys (EOUSA) is a component of DOJ. DOJ has possession, custody, and control of the records that American Oversight seeks.

**STATEMENT OF FACTS**

7. In May 2019, it was reported that Attorney General Bill Barr had assigned the U.S. Attorney for the District of Connecticut, John Durham, to examine the origins of investigations of now-President Donald Trump and his campaign.

*Main Justice Communications FOIA*

8. On June 7, 2019, American Oversight submitted a FOIA request to OIP and EOUSA seeking access to the following records:

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) the Office of the Attorney General or the Office of the Deputy Attorney General, and (2) U.S. Attorney for the District of Connecticut John Durham, Mr. Durham's first assistant Leonard C. Boyle, or anyone communicating on their behalf.

9. American Oversight requested all responsive records from February 14, 2019, through the date the search is conducted.

10. OIP assigned the Main Justice FOIA tracking number DOJ-2019-005155.

11. EOUSA assigned the Main Justice FOIA tracking number EOUSA-2019-003243.

*White House and Congressional Communications FOIA*

12. On June 21, 2019, American Oversight submitted a FOIA request to OIP and EOUSA seeking access to the following records:

1. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material,



talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) the Office of the Attorney General, the Office of the Deputy Attorney General, the U.S. Attorney for the District of Connecticut John Durham, or Mr. Durham's first assistant Leonard C. Boyle, or anyone communicating on their behalf, and (2) the White House Office (including, but not limited to, email communications with email addresses ending in @who.eop.gov), regarding the investigation or review Attorney General Barr has directed Mr. Durham to undertake into matters outside his ordinary remit, including matters related to the origins of investigations of the president and his campaign for the presidency.<sup>1</sup>

2. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) the Office of the Attorney General, the Office of the Deputy Attorney General, the U.S. Attorney for the District of Connecticut John Durham, or Mr. Durham's first assistant Leonard C. Boyle, or anyone communicating on their behalf, and (2) any member of Congress or staffer employed by any member of congress (including, but not limited to, communications with email addresses ending in @mail.house.gov or senate.gov), regarding the investigation or review Attorney General Barr has directed Mr. Durham to undertake into matters outside his ordinary remit, including matters related to the origins of investigations of the president and his campaign for the presidency.<sup>2</sup>

13. American Oversight requested all responsive records from February 14, 2019, through the date the search is conducted.

14. OIP assigned the White House and Congressional Communications FOIA tracking number DOJ-2019-005519.

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<sup>1</sup> See Ltr. From Stephen E. Boyd, Assistant Attorney General, Dep't of Justice, Office of Legislative Affairs to Rep. Jerrold Nadler, Chair, U.S. House of Representatives Committee on the Judiciary, June 10, 2019, <http://cdn.cnn.com/cnn/2019/images/06/10/2019-6-10.doj.review.of.intelligence.activities.-.nadler.pdf>.

<sup>2</sup> *Id.*

15. EOUSA assigned the White House and Congressional Communications FOIA tracking number EOUSA-2019-003447.

*Exhaustion of Administrative Remedies*

16. As of the date of this complaint, DOJ has failed to (a) notify American Oversight of any determination regarding its FOIA requests, including the scope of any responsive records DOJ intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

17. Through DOJ's failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

**COUNT I**

**Violation of FOIA, 5 U.S.C. § 552**

**Failure to Conduct Adequate Searches for Responsive Records**

18. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

19. American Oversight properly requested records within the possession, custody, and control of DOJ.

20. DOJ is an agency subject to FOIA, and it must therefore make reasonable efforts to search for requested records.

21. DOJ has failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA requests.

22. DOJ's failure to conduct an adequate search for responsive records violates FOIA and DOJ regulations.

23. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

**COUNT II**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Wrongful Withholding of Non-Exempt Responsive Records**

24. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

25. American Oversight properly requested records within the possession, custody, and control of DOJ.

26. DOJ is an agency subject to FOIA, and it must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

27. DOJ is wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to its FOIA requests.

28. DOJ is wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA requests.

29. DOJ's failure to provide all non-exempt responsive records violates FOIA and DOJ regulations.

30. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

**REQUESTED RELIEF**

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (4) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant American Oversight such other relief as the Court deems just and proper.

Dated: August 26, 2019

Respectfully submitted,

/s/ Daniel A. McGrath  
Daniel A. McGrath  
D.C. Bar No. 1531723

/s/ Cerissa Cafasso  
Cerissa Cafasso  
D.C. Bar No. 1011003

AMERICAN OVERSIGHT  
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Washington, DC 20005  
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*Counsel for Plaintiff*



June 7, 2019

**VIA ONLINE PORTAL**

Douglas Hibbard  
Chief, Initial Request Staff  
Office of Information Policy  
U.S. Department of Justice  
1425 New York Avenue NW  
Suite 11050  
Washington, DC 20530-0001  
Via FOIAOnline

Kevin Krebs  
Assistant Director, FOIA/Privacy Staff  
Executive Office for United States Attorneys  
U.S. Department of Justice  
175 N Street NE  
Suite 5.400  
Washington, DC 20530-0001  
Via FOIAOnline

**Re: Freedom of Information Act Request**

Dear Freedom of Information Act Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Justice (DOJ), 28 C.F.R. Part 16, American Oversight makes the following request for records.

Attorney General William Barr has reportedly directed U.S. Attorney for the District of Connecticut John Durham to examine the origins of investigations of now-President Trump and his campaign.<sup>1</sup> In light of the Attorney General's incredible characterization of aspects of these investigations—referring to them as “spying”<sup>2</sup>—there is substantial public concern about the parameters of this investigation. U.S. Attorney for the District of Utah John Huber was previously directed to review and evaluate related and overlapping matters.<sup>3</sup> American Oversight seeks records with the potential to shed light on this matter.

**Requested Records**

American Oversight requests that DOJ produce the following within twenty business days:

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype,

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<sup>1</sup> Adam Goldman et al., *Barr Assigns U.S. Attorney in Connecticut to Review Origins of Russia Inquiry*, N.Y. TIMES, May 13, 2019, <https://www.nytimes.com/2019/05/13/us/politics/russia-investigation-justice-department-review.html>.

<sup>2</sup> *Id.*

<sup>3</sup> See AMERICAN OVERSIGHT, *DOJ Letter from Jeff Sessions to John Huber Directing Clinton Inquiry*, Mar. 8, 2019, <https://www.americanoversight.org/document/doj-letter-from-jeff-sessions>.



or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) the Office of the Attorney General or the Office of the Deputy Attorney General, and (2) U.S. Attorney for the District of Connecticut John Durham, Mr. Durham's first assistant Leonard C. Boyle, or anyone communicating on their behalf.

Please provide all responsive records from February 14, 2019, through the date the search is conducted.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.<sup>4</sup> **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**<sup>5</sup>

In addition, please note that in conducting a "reasonable search" as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered DOJ's prior FOIA practices unreasonable. **In light of the government-wide requirements to manage**

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<sup>4</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

<sup>5</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) ("The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official's] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official's] work email account." (citations omitted)).

information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.<sup>6</sup> Furthermore, agencies that have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians' files. For example, a custodian may have deleted a responsive email from his or her email program, but DOJ's archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that DOJ use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information "only if . . . disclosure would harm an interest protected by an exemption" or "disclosure is prohibited by law."<sup>7</sup> If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA."<sup>8</sup> Moreover, the *Vaughn* index "must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information."<sup>9</sup> Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'"<sup>10</sup>

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>11</sup> Claims of nonsegregability must be made with the same degree of detail as required

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<sup>6</sup> Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, "Managing Government Records Directive," M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

<sup>7</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

<sup>8</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>9</sup> *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphases in original).

<sup>10</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

<sup>11</sup> *Mead Data Central*, 566 F.2d at 261.

for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

**You should institute a preservation hold on information responsive to this request.** American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, DOJ is on notice that litigation is reasonably foreseeable. To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and DOJ can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k), American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way.<sup>12</sup> Moreover, the request is primarily and fundamentally for non-commercial purposes.<sup>13</sup>

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding” of government operations and activities.<sup>14</sup> The disclosure of the information sought under this request will document and reveal the operations of the federal government, including the scope of a very controversial and sensitive investigation into matters that the Attorney General has characterized as “spying”—seeming to indicate his prejudgment of the results of the investigation.<sup>15</sup> The requested records also have the potential to shed light on whether DOJ appropriately created formal orders defining the scope of the Attorney General’s delegation to a U.S. Attorney, and whether Attorney General Barr has given that U.S. Attorney substantial direction regarding the conduct of the investigation. As discussed below, American Oversight has the capacity and intention to inform a broad audience about government activities that are the subject of these records.

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<sup>12</sup> 28 C.F.R. § 16.10(k)(1).

<sup>13</sup> *Id.*

<sup>14</sup> 28 C.F.R. § 16.10(k)(1), (2)(i)-(ii).

<sup>15</sup> *See* Goldman et al., *supra* note 1.



This request is primarily and fundamentally for non-commercial purposes.<sup>16</sup> As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>17</sup> American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney,<sup>18</sup> American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ's process for ethics waivers.<sup>19</sup> As another example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.<sup>20</sup>

Accordingly, American Oversight qualifies for a fee waiver.

### **Conclusion**

We share a common mission to promote transparency in government. American Oversight looks forward to working with DOJ on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Dan McGrath at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.897.4213. Also, if American Oversight's

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<sup>16</sup> 28 C.F.R. § 16.10(k)(1), (2)(iii).

<sup>17</sup> American Oversight currently has approximately 12,200 page likes on Facebook and 54,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited May 29, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited May 29, 2019).

<sup>18</sup> *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

<sup>19</sup> *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

<sup>20</sup> *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers  
Executive Director  
American Oversight



**U.S. Department of Justice**  
Office of Information Policy  
Sixth Floor  
441 G Street, NW  
Washington, DC 20530-0001

Telephone: (202) 514-3642

May 5, 2021

Austin R. Evers  
1030 15th Street, NW, Suite B255  
Washington, DC 20005  
[foia@americanoversight.org](mailto:foia@americanoversight.org)

Re: DOJ-2019-005155  
19-cv-2563 (D.D.C.)  
VRB:JMB:SJD

Dear Austin R. Evers:

This is our tenth and final response to your Freedom of Information Act (FOIA) request submitted to this Office, dated June 7, 2019, seeking records reflecting communications between the Offices of the Attorney General or the Deputy Attorney General and the U.S. Attorney for the District of Connecticut John Durham.

Previously, we provided you with nine interim responses, most recently on April 2, 2021. I have determined that an additional seven pages containing records responsive to your request are appropriate for release with withholdings made pursuant to Exemptions 5, 6, and/or 7(C) of the FOIA, 5 U.S.C. §§ (b)(5), (b)(6), and (b)(7)(C). Please note some of these withholdings were made on behalf of U.S. Immigration and Customs Enforcement. Exemption 5 pertains to certain inter- and intra-agency communications protected by civil discovery privileges. Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy. Exemption 7(C) pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions regarding this response, please contact Kuntal Cholera of the Department's Civil Division, Federal Programs Branch at (b) (6)

Sincerely,

Vanessa R. Brinkmann  
Senior Counsel

Enclosures

DuCharme, Seth (OAG)

---

**From:** DuCharme, Seth (OAG)  
**Sent:** Tuesday, October 15, 2019 9:14 PM  
**To:** Durham, John (USACT)  
**Subject:** Fwd: UPDATED ALERT NOTIFICATION -- BOS (HAR) -- (b)(6), (b)(7)(C) per ICE  
(b)(6) ) media interest and CT Governor's letter to the Secretary CT Attorney

John you tracking this? Gene Hamilton asked me to reach out to you.

Sent from my iPhone

Begin forwarded message:

**From:** "Hamilton, Gene (OAG)" <ghamilton@jmd.usdoj.gov>  
**Date:** October 15, 2019 at 8:57:18 PM EDT  
**To:** (b)(6) >, (b)(6) >  
(b)(6), "DuCharme, Seth (OAG)" <sducharme@jmd.usdoj.gov>  
**Subject:** Fwd: UPDATED ALERT NOTIFICATION -- BOS (HAR) -- (b)(6), (b)(7)(C) per ICE  
(b)(6) ) media interest and CT Governor's letter to the Secretary CT Attorney

? Hey y'all,

(b)(6) or Seth—would one of you mind reaching out to John Durham or his team and getting the facts of this situation? (b)(5)

Thanks,

Gene P. Hamilton  
Counselor to the Attorney General  
U.S. Department of Justice

Begin forwarded message:

**From:** (b)(6), (b)(7)(C) per ICE >  
**Date:** October 15, 2019 at 8:39:24 PM EDT  
**To:** (b)(6) >, "Hamilton, Gene (OAG)" <ghamilton@jmd.usdoj.gov>  
**Subject:** FW: UPDATED ALERT NOTIFICATION -- BOS (HAR) -- (b)(6), (b)(7)(C), (b)(6) ) media interest and CT Governor's letter to the Secretary CT Attorney

? Presume you all are aware. (b)(5) per ICE

Sent with BlackBerry Work  
(www.blackberry.com)

From: (b)(6), (b)(7)(C) per ICE  
Date: Tuesday, Oct 15, 2019, 7:51 PM  
To: Davis, Mike P (b)(6), (b)(7)(C) per ICE >, Padilla, Kenneth  
(b)(6), (b)(7)(C) per ICE, Loiacono, Adam V  
(b)(6), (b)(7)(C) per ICE >, (b)(6), (b)(7)(C) per ICE  
(b)(6), (b)(7)(C) per ICE >, (b)(6), (b)(7)(C) per ICE  
(b)(6), (b)(7)(C) per ICE >, (b)(6), (b)(7)(C) per ICE  
(b)(6), (b)(7)(C) per ICE >  
Cc: (b)(6), (b)(7)(C) per ICE >, (b)(6), (b)(7)(C) per ICE  
(b)(6), (b)(7)(C) per ICE >  
Subject: RE: UPDATED ALERT NOTIFICATION – BOS (HAR) – (b)(6), (b)(7)(C) per ICE  
(b)(6), (b)(7)(C) per ICE media interest and CT Governor's letter to the  
Secretary CT Attorney

All –

(b)(5) per ICE

ERO has been informed of the stay.

(b)(6), (b)(7)(C) per ICE



Chief Counsel - OPLA Boston

(T) (b)(6), (b)(7)(C) per ICE

(C) (b)(6), (b)(7)(C) per ICE

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\*\*\*

This communication and any attachments may contain confidential and/or sensitive attorney/client privileged information or attorney work product and/or law enforcement sensitive information. It is not for release, review, retransmission, dissemination, or use by anyone other than the intended recipient. Please notify the sender if this email has been misdirected and immediately destroy all originals and copies. Furthermore do not print, copy, re-transmit, disseminate, or otherwise use this information. Any disclosure of this communication or its attachments must be approved by the Office of the Principal Legal Advisor, U.S. Immigration and Customs Enforcement. This document is for INTERNAL GOVERNMENT USE ONLY and may be exempt from disclosure under the Freedom of Information Act, 5 USC §§ 552(b)(5), (b)(7).

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**From:** (b)(6), (b)(7)(C) per ICE  
**Sent:** Thursday, October 10, 2019 7:26 PM  
**To:** (b)(6), (b)(7)(C) per ICE >; Davis, Mike P  
(b)(6), (b)(7)(C) per ICE >; Padilla, Kenneth  
<(b)(6), (b)(7)(C) per ICE >; Loiacono, Adam V  
(b)(6), (b)(7)(C) per ICE > (b)(6), (b)(7)(C) per ICE  
(b)(6), (b)(7)(C) per ICE  
**Cc:** (b)(6), (b)(7)(C) per ICE  
**Subject:** RE: UPDATED ALERT NOTIFICATION -- BOS (HAR) --  
(b)(6), (b)(7)(C) per ICE ) media interest and CT  
Governor's letter to the Secretary CT Attorney

FYSA -

As anticipated, (b)(5) per ICE  
(b)(6), (b)(7)(C) per ICE

OPLA Boston will send a detailed alert tomorrow morning.

(b)(6), (b)(7)(C) per ICE

Chief Counsel  
Office of the Principal Legal Advisor, Boston  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security

(T) (b)(6), (b)(7)(C) per ICE

(C) (b)(6), (b)(7)(C) per ICE

Sent with BlackBerry Work

([www.blackberry.com](http://www.blackberry.com))

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From: (b)(6), (b)(7)(C) per ICE

Date: Wednesday, Oct 09, 2019, 5:43 PM

To: Davis, Mike P (b)(6), (b)(7)(C) per ICE, Padilla, Kenneth

(b)(6), (b)(7)(C) per ICE Loiacono, Adam V

(b)(6), (b)(7)(C) per ICE (b)(6), (b)(7)(C) per ICE

Cc: (b)(6), (b)(7)(C) per ICE

Subject: FW: UPDATED ALERT NOTIFICATION -- BOS (HAR) -- (b)(6), (b)(7)(C) per ICE

(b)(6), (b)(7)(C) per ICE media interest and CT Governor's letter to the  
Secretary CT Attorney

FYSA - latest development on CT pardon issue

(b)(6), (b)(7)(C) per ICE

Chief Counsel  
Office of the Principal Legal Advisor, Boston  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security

(T) (b)(6), (b)(7)(C) per ICE

(C) (b)(6), (b)(7)(C) per ICE

Sent with BlackBerry Work

([www.blackberry.com](http://www.blackberry.com))

---

From: (b)(6), (b)(7)(C) per ICE

..... (b)(6), (b)(7)(C) per ICE

Date: Wednesday, Oct 09, 2019, 5:38 PM

To: (b)(6), (b)(7)(C) per ICE > (b)(6), (b)(7)(C) per ICE

Cc: (b)(6), (b)(7)(C) per ICE > (b)(6), (b)(7)(C) per ICE

Subject: RE: UPDATED ALERT NOTIFICATION -- BOS (HAR) (b)(6), (b)(7)(C) per ICE  
(b)(6), (b)(7)(C) per ICE media interest and CT Governor's letter to the  
Secretary CT Attorney

(b)(5) per ICE

USAO will forward us a copy as soon as they are served.

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(b)(6), (b)(7)(C) per ICE

Assistant Chief Counsel

Office of the Principal Legal Advisor, Boston (Hartford)

U.S. Immigration and Customs Enforcement

U.S. Department of Homeland Security

450 Main Street, Room (b)(6), (b)(7)(C) per ICE

Hartford, CT 06103

Tel: (b)(6), (b)(7)(C) per ICE

iPhone: (b)(6), (b)(7)(C) per ICE

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This communication and any attachments may contain confidential and/or sensitive



attorney/client privileged information or attorney work product and/or law enforcement sensitive information. It is not for release, review, retransmission, dissemination, or use by anyone other than the intended recipient. Please notify the sender if this email has been misdirected and immediately destroy all originals and copies. Furthermore do not print, copy, re-transmit, disseminate, or otherwise use this information. Any disclosure of this communication or its attachments must be approved by the Office of the Principal Legal Advisor, U.S. Immigration and Customs Enforcement. This document is for INTERNAL GOVERNMENT USE ONLY and may be exempt from disclosure under the Freedom of Information Act, 5 USC §§ 552(b)(5), (b)(7).

**From:** (b)(6), (b)(7)(C) per ICE >  
**Sent:** Monday, October 07, 2019 9:17 AM  
**To:** (b)(6), (b)(7)(C) per ICE  
> (b)(6), (b)(7)(C) per ICE  
> (b)(6), (b)(7)(C) per ICE  
(b)(6), (b)(7)(C) per ICE  
**Cc:** (b)(6), (b)(7)(C) per ICE > (b)(6), (b)(7)(C) per ICE  
(b)(6), (b)(7)(C) per ICE  
(b)(6), (b)(7)(C) per ICE  
(b)(6), (b)(7)(C) per ICE  
> (b)(6), (b)(7)(C) per ICE  
(b)(6), (b)(7)(C) per ICE  
(b)(6), (b)(7)(C) per ICE  
(b)(6), (b)(7)(C) per ICE  
(b)(6), (b)(7)(C) per ICE  
**Subject:** RE: UPDATED ALERT NOTIFICATION -- BOS (HAR) --  
(b)(6), (b)(7)(C) per ICE media interest and CT  
Governor's letter to the Secretary CT Attorney

All:

Though many of you have been on the ongoing email traffic on this case, we wanted to provide an updated alert for all POCs.

Procedural Background:

(b)(5) per ICE

**(b)(5) per ICE**

Update on Phone Call with CT Solicitor General:

**(b)(5) per ICE**

Specific Questions from the CT SG through **(b)(6), (b)(7)(C) per ICE** Counsel:

**(b)(5) per ICE**

**From:** Greenfeld, Helaine A. (OLA)  
**Subject:** QFR from Sen. Grassley to me  
**To:** Goodlander, Margaret V. (OAG)  
**Sent:** July 12, 2021 3:24 PM (UTC-04:00)

1. Recently, the Department hired Susan Hennessey, who has made partisan comments about the Justice Department Inspector General's Crossfire Hurricane investigation and Special Counsel Durham's inquiry. Hennessey stated, about the Inspector General's inquiry,

This is extremely irregular. There are growing signs that there are serious problems with the IG report and questions as to whether this is designed to be an honest accounting of the views of the IG or a political document driven by Barr's conspiracy theories. <sup>[1]</sup>

Hennessey stated the following about the Durham inquiry,

Durham has made abundantly clear that in a year and a half, he hasn't come up with anything. I guess this kind of partisan silliness has become characteristic of Barr's legacy, but unclear to me why Durham would want to go along with it. <sup>[2]</sup>

Hennessey's partisan comments show a clear political bias that undercuts her ability to impartially work on some matters within the NSD's purview, including the Durham inquiry.

- a. Does Ms. Hennessey have any role in the Durham inquiry? If so, please describe that role.
  - b. Does Ms. Hennessey have authorization to access any aspect of the Durham inquiry, including records? If so, has she used that authorization? If so, for what?
  - c. Has Ms. Hennessey been recused from all matters relating to the Durham inquiry? If not, why not? If so, please provide all records relating to her recusal obligations, including a recusal memo.
  - d. Please describe the extent to which DOJ officials were aware of Ms. Hennessey's previous partisan statements when considering hiring her to work at DOJ.
2. What is the status of the Durham inquiry? When will it be completed?

**Helaine Greenfeld**

*Deputy Assistant Attorney General  
Office of Legislative Affairs  
U.S. Department of Justice*

(b) (6)

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<sup>[1]</sup> Ashe Schow, *As Expected, Media Move to Discredit IG Report Regarding Origins of the Russian Collusion Narrative*, The Daily Wire (Nov. 16, 2019) <https://www.dailywire.com/news/as-expected-media-move-to-discredit-ig-report-regarding-origins-of-the-russian-collusion-narrative>.

<sup>[2]</sup> Chuck Ross, *DOJ's Top National Security Lawyer Slammed Investigation Into Government Wrongdoing in Surveillance of Trump Aide*, Washington Free Beacon (May 10, 2021), <https://freebeacon.com/biden-administration/dojs-top-national-security-lawyer-slammed-investigation-into-government-wrongdoing-in-surveillance-of-trump-aide/>.

**From:** Greenfeld, Helaine A. (OLA)  
**Subject:** Sorry - use this - Grassley QFR  
**To:** Goodlander, Margaret V. (OAG)  
**Sent:** July 12, 2021 3:25 PM (UTC-04:00)

**RESPONSE:**

1. Recently, the Department hired Susan Hennessey, who has made partisan comments about the Justice Department Inspector General's Crossfire Hurricane investigation and Special Counsel Durham's inquiry. Hennessey stated, about the Inspector General's inquiry,

This is extremely irregular. There are growing signs that there are serious problems with the IG report and questions as to whether this is designed to be an honest accounting of the views of the IG or a political document driven by Barr's conspiracy theories. [\[1\]](#)

Hennessey stated the following about the Durham inquiry,

Durham has made abundantly clear that in a year and a half, he hasn't come up with anything. I guess this kind of partisan silliness has become characteristic of Barr's legacy, but unclear to me why Durham would want to go along with it. [\[2\]](#)

Hennessey's partisan comments show a clear political bias that undercuts her ability to impartially work on some matters within the NSD's purview, including the Durham inquiry.

- a. Does Ms. Hennessey have any role in the Durham inquiry? If so, please describe that role.
  - b. Does Ms. Hennessey have authorization to access any aspect of the Durham inquiry, including records? If so, has she used that authorization? If so, for what?
  - c. Has Ms. Hennessey been recused from all matters relating to the Durham inquiry? If not, why not? If so, please provide all records relating to her recusal obligations, including a recusal memo.
  - d. Please describe the extent to which DOJ officials were aware of Ms. Hennessey's previous partisan statements when considering hiring her to work at DOJ.
2. What is the status of the Durham inquiry? When will it be completed?
3. Former Attorney General Barr's October 19, 2020, memo, cited 28 C.F.R § 600.8, which requires Durham to submit interim reports and a final report to you. Barr's memo also directed Durham to submit the reports "to the maximum extent possible...in a form that will permit public dissemination." [\[3\]](#)
    - i. Do you agree with former Attorney General Barr that interim reports and a final report should be drafted "to the maximum extent possible...in a form that will permit public dissemination"? If not, why not? If so, what steps have you taken to ensure that they will be produced in that manner?
    - ii. Will Ms. Hennessey have access to any of Durham's draft and final reports?
    - iii. Please provide a list of all DOJ employees who will be able to review draft and final versions of the Durham report.

**Helaine Greenfeld**

*Deputy Assistant Attorney General*

*Office of Legislative Affairs*

*U.S. Department of Justice*

(b) (6)

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[1] Ashe Schow, *As Expected, Media Move to Discredit IG Report Regarding Origins of the Russian Collusion Narrative*, The Daily Wire (Nov. 16, 2019) <https://www.dailywire.com/news/as-expected-media-move-to-discredit-ig-report-regarding-origins-of-the-russian-collusion-narrative>.

[2] Chuck Ross, *DOJ's Top National Security Lawyer Slammed Investigation Into Government Wrongdoing in Surveillance of Trump Aide*, Washington Free Beacon (May 10, 2021), <https://freebeacon.com/biden-administration/dojs-top-national-security-lawyer-slammed-investigation-into-government-wrongdoing-in-surveillance-of-trump-aide/>.

[3] Charlie Savage, *Barr Makes Durham a Special Counsel in a Bid to Entrench Scrutiny of the Russia Inquiry*, The New York Times (Dec. 1, 2020), <https://www.nytimes.com/2020/12/01/us/politics/john-durham-special-counsel-russia-investigation.html>. See also, [https://www.politico.com/f/?id=000001762008\\_d692\\_a977\\_3c7afcd50000](https://www.politico.com/f/?id=000001762008_d692_a977_3c7afcd50000) (copy of then Attorney General Barr's order appointing Durham as a special counsel).

**From:** Good ander, Margaret V. (OAG)  
**Subject:** Fo ow up  
**To:** K apper, Matthew B. (OAG); Dena Iverson (PAO) (b) (6); Brad ey Weinsheimer (ODAG) (b) (6)  
**Sent:** August 11, 2021 3:37 PM (UTC-04:00)  
**Attached:** 2021-2-23 Ho ds HIGHLIGHTED - SEE PP. 69, 132 OF Hearing on the Nomination of Merrick Gar and to be Attorney Genera Day One\_WORD.docx, (b) (5), (b) (5)

Hi all To follow up on our conversation three items:

**1. Feb 22 Confirmation Hearing Transcript**

- a. I've attached the transcript from the AG's Feb. 22 confirmation hearing and highlighted on page 69 (and pasted below) an exchange with Senator Cotton in which the AG said "everything I know sitting here suggests that [Durham] should, of course, have [the time, staff, and resources he needs to complete his investigation]."
- b. There is also potentially helpful statement in the attached transcript from Senator Durbin on page 132 of the attached doc: "*Since it has appeared, reappeared, and then appeared again, this question about the Durham Special Counsel. ... The administration is clearly committed publicly to allowing Durham to complete his investigation. I don't know that any additional comments are needed beyond that, though you've been asked many, many times that question.*"

(b) (5)

(b) (5)

Let me know how else I can help?

Best,  
Maggie

# Senate Judiciary Committee Holds Hearing on the Nomination of Merrick Garland to be Attorney General, Day One

## LIST OF PANEL MEMBERS AND WITNESSES

DURBIN:

This hearing will come to order. Today, the Senate Judiciary Committee will hold a hearing on the nomination of Judge Merrick Garland to be the 86th attorney general of the United States. Judge Garland, I want to welcome you and your family. I want to welcome you back to the Senate Judiciary Committee. I know this return trip has been a long time in planning and you're here, finally.

This will be the Judiciary Committee's first hearing of the 117th Congress. Before I turn to my opening remarks, I'd like to just take a few minutes to make some acknowledgements. I want to welcome my friend, Senator Chuck Grassley as the committee's ranking member. When I first came on the Senate Judiciary Committee, 24 years ago, I was the ranking member on a subcommittee with you, and we dealt with the issue of bankruptcy.

Now, Illinois and Iowa sit next to each other, and so did Durbin and Grassley. We have our differences, but Senator Grassley and I've worked together on important legislation over the years, most recently on criminal justice and sentencing reform. I look forward to continuing that work in this Congress.

I want to recognize the outgoing chair and ranking member. Senator Lindsey Graham, who will join us remotely this morning, and Senator Dianne Feinstein. Senator Graham, as is true of Senator Grassley, while we don't always agree has always been a welcome partner on many issues, including one of the most challenging issues, immigration.

Senator Feinstein, I want to commend for leading the committee Democrats with grace and resolve over the past four years. I know she will continue to be an important voice on this committee on a host of issues, including in her new capacity as the chair of the Human Rights and Law Subcommittee, which I was proud to chair in past Congresses.

I also want to welcome our new committee members who either be here in person I see one in person, one probably remote, Senators Padilla and Ossoff on the Democratic side, Senator Cotton on the Republican side. I look forward to working with each of you.

There are some historic firsts in the Judiciary Committee this year. Senator Padilla, our new senator from California will be chairing the Subcommittee on Immigration, Citizenship, Border Safety. I am honored that he's the first Latino senator to chair that subcommittee, and we look forward to his leadership. Senator Cory Booker of New Jersey will chair the Subcommittee on Criminal Justice and Counterterrorism. He's the first black senator to chair a Judiciary Subcommittee. And we could not imagine a better choice at the helm of this particular subcommittee.

To all of our other members who are returning to serve on the committee. Welcome back. I want to thank all the committee members for agreeing to hold this committee hearing and vote on Judge Garland's nomination. It is a great honor to serve on this committee. The Senate established the Judiciary Committee by resolution on December 10, 1816, making it among the very first standing committees of the Senate.

This committee has seen many consequential debates and approved many important nominations and landmark legislation. In the committee's history. There's only been one prior Illinois senator to serve as chair, Judge Garland, Lyman Trumbull, who led the committee from 1861 to 1872. And during his term of service was a Democrat, a Republican, a radical Republican and a Democrat again. He was the most bipartisan senator you can imagine.

His tenure was also distinguished by passage of historic legislation, the 13th, 14th, and 15th Amendments to the Constitution, the Freedmen's Bureau Acts of 1865 and 1866, the Civil Rights Act of 1866.

The last of these was introduced by Trumbull and ultimately became the nation's first civil rights law. As Chair Trumbull saw a nation torn apart by Original Sin, slavery, and widespread violence and injustice that continued even after the 13th Amendment's passage as African Americans throughout the nation face racism. Our nation is still dealing with the consequences of these injustices, people of color face systemic racism, and we are still working to rid this nation of the horrific legacy of slavery and Jim Crow.

This committee can make a difference. We have the jurisdiction and the opportunity to do it through legislation oversight and nominations, including this nomination of Merrick Garland to serve as our nation's next attorney general.

There have been few moments in history where the role of attorney general and the occupant of that post have mattered more. Judge Garland should you be confirmed, and I have every confidence you will be, you'll oversee a Justice Department at an existential moment. After four tumultuous years of intrigue, controversy, and brute political force, the future of the department is clearly in the hands of the next attorney general.

Under Attorney General Sessions and his successor, Bill Barr, the Justice Department literally became an arm of the White House committed to advancing the interests of President Trump, his family, and his political allies. It came as little



surprise then that the U.S. Department of Justice became the Trump Department of Justice. General Barr stated clearly that he believed the Attorney General was the president's lawyer, not the nation's.

And what were the results? Too many in the department senior roles cast aside the rule of law. Trump appointees and the department sideline to career public servants from line attorneys to FBI agents, limited their roles, disregarded their nonpartisan input, override--overriding their professional judgment and falsely accusing them of being members of the deep state.

And the department pursued policies of almost unimaginable proportions from separating thousands, thousands of innocent migrant children from their parents, to banning innocent Muslims from traveling to our shores, from defending and even ordering violent crackdowns on peaceful protesters to parroting baseless lies about voter fraud in the lead up to the 2020 election.

The misdeeds of the Trump Justice Department brought this nation to the brink. In fact, as we learned after President Biden's inauguration, a senior official in the Trump Justice Department, Jeffrey Clark, plotted with President Trump for one final stab at the results of the 2020 election. They were thwarted at the last minute by Justice Department attorneys who threatened to resign en masse rather than joining their effort.

So Judge Garland, it's no overstatement to say that your nomination is one of the most critical in department history. When I reflect on it, I'm reminded of two previous attorneys general one a Democrat, the other Republican. Robert Kennedy, Edward Levi.

Kennedy entered office at a time of political turmoil. Although the nation had started down the path towards civil rights, Attorney General Kennedy recognized that equal rights and equal justice under law, were still an aspiration for too many people of color in the United States.

In June 1963, several years into his tenure as AG, Kennedy testified before the House Judiciary Committee. He said, "The demonstrations of the past few months have only served to point up what thinking Americans have known for years, that this country can no longer abide the moral outrage of racial discrimination." He continued, "If we fail to act promptly and wisely at this crucial point in our history, the ugly forces of disorder and violence will surely rise and multiply throughout the land, and grave doubts will be thrown on the very premise of American democracy."

The moral outrage of racial discrimination remains with us today, as do the forces of disorder and violence. And tragically, the Justice Department in the previous administration fanned the flames of discrimination. But a restored Justice Department, a department under new leadership can and I believe will meet the moment. There are great challenges ahead. The right to vote is under constant assault by those who wish to suppress the voices of communities of color.

We have a criminal justice system still in urgent need of reform. And too many Americans whether because of race, national origin, disability, sexual orientation, or gender identity, face inequality in their daily lives. It is time for the Department of Justice to confront these realities that unfortunately, continue to threaten, as Robert Kennedy said, the very premise of American democracy.

Judge Garland, when I think of what you face and restoring integrity and independence of the Justice Department, I also think another--of another one of your predecessors and fellow Chicagoan, Edward Levi, who likewise assumed time--the office at a time of turmoil. Levi had, of course, been president of the University of Chicago before his nomination to serve as attorney general for President Ford.

DURBIN:

And when he came before this committee for his confirmation in 1975, he was asked about removing the Justice Department from the ambit of part--partisan politics. This is what he said. "I do not believe that the administration of justice should be partisan matter in any sense, but I do not think the cases should be brought to reward people or to punish them for partisan reasons."

He continues, "I think it would be a bad thing for the country to believe that the administration of justice was not even handed because it was in some ways tilted by partisan politics." Why was this question asked? Why was Levi's response so important?

Just two years earlier, President Nixon had attempted to use the Justice Department as his personal law firm, ordering Elliott Richardson to fire Archibald Cox, the special prosecutor overseeing Watergate. Richardson rightly refused to fire Cox, as it is deputy, William Ruckelshaus. And so, each of them were fired in what became known as the Saturday Night Massacre.

Richardson and Ruckelshaus refused to act in a way contrary to the rule of law. They refused to put partisan politics and the personal interests of President Nixon above fidelity to the Constitution and the principle of equal justice for all, even those who occupy the White House. In the wake of Nixon's action, the Justice Department faced a reckoning. With the department's legacy--legacy still tarnished and public confidence shaken, President Gerald Ford turned to Levi to restore honor, integrity, and independence.

Well, Judge Garland, the nation now looks to you to do the same. The public's faith and the Department of Justice has been shaken, the result of department leadership consumed with advancing personal and political interests. In fact, that it not been for several Justice Department attorneys I mentioned earlier threatening to resign this January, President Trump might have gone even further than he did to overturn the election results. And that raises critic--critical questions this committee and you must reckon with.

Judge Garland, we're confident we can rebuild the department's once hallowed halls, that you can restore the faith of the American people and the rule of law and deliver equal justice. I want to close by returning to the attempt to overturn the 2020 presidential election. You probably noticed when you came to Capitol Hill how it's changed. You lived most of your life, and I've lived a large part of mine, coming to this Capitol Hill to visit, to work, really to honor the traditions of these buildings.

We now have established a perimeter around this building. It stretches for blocks in every direction and a 10 foot high fence that walls off this Capitol building from the rest of America. At the top of the fence, barbed wire; inside the fence, we have not only our loyal police force but men and women of the National Guard from all over the United States, thousands of them still standing guard over this building.

What a commentary on the current state of America that we face today, but it's needed. We were here in January 6th. We lived through it. We were lucky. For most of us, we were not in direct contact with the mob. Others were and, sadly, paid a heavy price for it.

For months, President Trump spread falsehoods about the election and fraudulent voting. And before a single vote had been cast, he claimed that he could only lose as the result of fraud.

Far too many Americans gave credence to these unproven, dangerous claims. We know the result. We saw the attempt to subvert democracy culminating in the events of January 6th when this armed mob stormed the Capitol, sought to disrupt the counting of Electoral College votes, violently targeted the Congress, our colleagues in the House, our families, even the vice president, staff ultimately causing the senseless deaths of Capital Police Officer Brian Sicknick and Howard Liebengood in DC Police Officer Jeffrey Smith.

When you're confirmed, Judge Garland, you, along with the rest of the nation, will continue to grapple with the January 6th attacks, but you'll be in a you--unique position with a new unique responsibility. As the nation's chief law enforcement officer, you'll be tasked with the solemn duty to responsibly investigate the events of that day, to prosecute all of the individuals responsible, and to prevent future attacks driven by hate, inflammatory words, and bizarre conspiracy theories.

You know what it's like. You've been there before. You've seen domestic terrorism. You led the investigation and prosecution of the Olympic--of the Oklahoma City bombing and, in doing so, made the nation safer and brought some measure of peace and healing to the victims and their families. I'm confident that, given this prior experience, you're up to the task the department now faces in the wake of January 6th. In fact, I can think of few people better suited to do it.

I look forward to hearing your testimony, but at this point I will turn to my colleague, Senator Grassley.

GRASSLEY:

Thank you, Senator Durbin. Welcome to Judge Garland, glad that you've been honored with this appointment to be attorney general of the United States. Welcome the public at large, most of them very remote, not the large crowds we normally have when we have an attorney general nominee before this committee. I have a longer statement that output in the record, and I've still got plenty to say even this morning.

I, of course, congratulate Senator Durbin on his new role as chairman. He has already referred to he and I getting appointed on the Administrative Oversight Subcommittee and working on what now is a badly needed law when agriculture is in bad shape by passing Chapter 12 agricultural bankruptcy legislation. And I look forward to working with you in the future here.

And I also want to express my admiration for Senator Feinstein, the previous Democrat leader of this committee. She and I have worked closely together during the years that I chaired, and she was ranking member, and I thank you for your leadership.

I'd also like to say a word about Judge Garland. This is, of course, Judge Garland's first time appearing before this committee since sending to the federal bench. I had something to do with that. After the death of Justice Scalia, my Republican colleagues and I decided not to hold a hearing on his nomination, in other words meaning Judge Garland's nomination to the Supreme Court, having been nominated by President Obama.

As you recall, it was an election year with a divided Congress. The position I took was consistent with previously public--publicly expressed positions by other senators and Democratic senators previous to that. So, yes, it's true that I didn't give Judge Garland a hearing. I also didn't mischaracterize his record. I didn't attack his character. I didn't go through his high school yearbook. I didn't make his wife leave the hearing in tears. I took a position on hearings and I stuck to it, and that's it.

I admire Judge Garland's public service. Just because I disagreed with anyone being nominated didn't mean that I had to be disagreeable to that nominee. Unfortunately, that's not always the way it works in this town that has great political division.

Judge Garland is here and we're here to talk about his nomination to be attorney general. And I extend a warm welcome to you, Judge Garland, and your family and friends that are probably very honored because of your nomination. This, of course, is a worthy capstone on a storied career that you have had.

Judge Garland is a good pick to lead the Department of Justice. He has decades of experience as one of the most respected appellate judges in the country and, before that, being a great prosecutor. When the domestic terrorist, Tim McVeigh--McVeigh, was executed for his crimes, we had Merrick Garland to thank for that successful prosecution.

No one doubts that Judge Garland is qualified for his job, but of course attorney general is more than just qualifications. The top law enforcement officer of the United States must be committed to enforcing the rule of law. As our former colleague and a former Attorney General John Ashcroft likes to say, the Department of Justice is the only cabinet agency whose name is an ideal. It's not the department of law enforcement, but the Department of Justice.

Justice is equality under the law. There is one law for all Americans regardless of race, color, creed, or connection. Is Judge Garland up to that task? I think he is, but today our goal is to ask them questions to find out.

GRASSLEY:

The Department of Justice has taken important steps to live up to these ideals expressed by Attorney General Ashcroft. And--and I think they've done well in that direction, particularly over the last four years. The department has undertaken many successful initiatives to reduce violent crime in all communities and has sought to maintain the rule of law by reforming consent decrees, guidance documents, and sue and settle abuse.

It has protested our civil liberties, in particular defending our religious liberties and pursuing elder justice. I hope that the Department of Justice continues these initiatives under you, Judge Garland.

What I don't want is a return to the Obama years. I don't want an attorney general who bragged about being a wingman--and those are his words--to the president. That was Eric Holder, notoriously describing himself.

I don't want a Justice Department that abuses the FISA process to spy on American citizens. I don't want consent decrees that federalize law enforcement and cause murder rates to soar. I don't want a return to catch and release on the border.

I could come up with many other examples. Unfortunately, a lot of what we've seen so far from the Justice Department is discouraging. They have whiplashed inducing changes to litigation positions. They're going through rescinding excellent rule of law memorandums right out of the gate.

President Biden is even reportedly firing nearly every Senate confirmed U.S. attorney regardless of what investigations they're supervising. That is troubling.

That is why I am especially concerned about the Durham investigation. Starting January 2017, I began an investigation on how the Justice Department and the FBI handled Crossfire Hurricane, its investigation into the Trump campaign and administration. Simply said, Crossfire Hurricane is a textbook example of what shouldn't happen during investigations.

What the Obama administration did to the Trump campaign, transition, and administration can't ever happen again. If confirmed, you'll have oversight of Special Counsel Durham's review of Crossfire Hurricane.

When Bill Barr appeared before the committee for his nomination hearing, he said, "It's finally important that the special counsel be allowed to complete his investigation." Of course, he was referring to then Special Counsel Mueller's investigation.

Today, you'll need to be clear about what your position will be with regard to Special Counsel Durham. We should expect the same level of commitment from you to protect Durham as we expected from Barr to protect Mueller.

So, Judge Garland, I just want to say that I like you, I respect you, and I think you're a good pick for this job. But I have a lot of questions about--about how you're going to run the Department of Justice. Thank you, Mr. Chairman.

DURBIN:

Thank you, Senator Grassley. At this time, we'll have formal introduction of Judge Garland. Two of our colleagues will be doing that. Because of your state of residence, Senator Chris Van Hollen of Maryland will be first and because of your roots, Senator Tammy Duckworth, my colleague of Illinois, will be second. Both are joining us by WebEx. There will be a record statement made by Senator Cardin placed in the record.

Senator Van Hollen?

VAN HOLLEN:

Thank you, Mr. Chairman. Let me thank you and Ranking Member Grassley and all of our colleagues on the Senate Judiciary Committee for being here today and I'm really grateful for the opportunity to introduce the president's nominee for attorney general, Judge Merrick Garland, who's not only a fellow Marylander, but somebody who I have known personally for many years. And I know that President Biden has picked a nominee with impeccable credentials and unimpeachable character.

His experience stretches from the halls of the Justice Department to the chambers of the U.S. Court of Appeals for the District of Columbia Circuit. And, he embodies the decency, the impartiality, and the commitment to justice that our nation deserves as the attorney general of the United States.

I'm confident that if confirmed, Judge Garland will serve admirably and faithfully as the next attorney general and I'm proud to present him to you and the committee on behalf of myself, but also Senator Cardin, who as you mentioned, Mr. Chairman, is fully in support of this nomination but could not join us because of a scheduling conflict.

The nation already knows Merrick Garland because of his Supreme Court nomination and as the former judge of the U.S. Court of Appeals for the District of Columbia Circuit, where he earned a reputation as one of our nation's finest and fairest jurists. But his tenure on the D.C. Circuit was just the most recent achievement in a life dedicated to serving the rule of law.

After excelling at law school, Judge Garland clerked for the 2nd Circuit Court of Appeals and then for the Supreme Court. He then rose through the ranks of a prominent law firm before jumping back into public service feet first, as a federal prosecutor in the U.S. Attorney's Office during the administration of President George Herbert Walker Bush and then later served as the principal associate deputy attorney general at the Department of Justice.

As a senior DOJ official, Judge Garland was tasked with overseeing the case of the Oklahoma City bombing, one of the deadliest domestic terrorist attacks in American history. It left 168 Americans dead and hundreds more injured.

Merrick Garland brought a steady hand to an operation that involved massive amounts of evidence, pressure from the public, and a large team with diverse skills and backgrounds. With fidelity to the law and meticulous attention to detail and unrelenting focus, Merrick Garland helped bring the bomber, Timothy McVeigh, to justice. He has called this case the most important thing he has done in his life.

Mr. Chairman, Ranking Members, and committee members, we are going to need his experience as we once again confront the rise of domestic terrorism, particularly in the wake of the horrific events of January 6th. And, the next Attorney General must not only take on the rise of white supremacist and radical militia groups, but also ensure that justice is rendered equally and fairly by promoting and ensuring racial equity, rooting out discrimination in our criminal justice system, addressing police reform, and ensuring that we don't see a concerted effort to limit people's citizen's right to vote in the United States of America.

As Justice Garland has himself stated, ensuring the rule of law and making real a promise of equal justice under the law are "the great principles upon which the Department of Justice was founded and for which it must always stand." Judge Garland has spent his career doing both and I have no doubt he will honor that tradition as attorney general.

While his professional experiences have prepared him for this job, it's his character that makes him right for this moment. Should he be confirmed, Judge Garland will be charged with restoring credibility and independence to the Department of Justice, making it clear that the department is not the political instrument of the White House.

I know Merrick Garland is up to the task. The lengthy list of testimonials speaking to his fairness and sound judgment span the political spectrum. He is respected by lawmakers, scholars, and lawyers of every legal persuasion and political philosophy.

And, on a personal note, I can attest to the fact that his brilliance is matched by his kindness. His many achievements have never gone to his head. He has always stayed humble and treated everyone with respect.

Mr. Chairman, Ranking Member, members of the committee, it's for these reasons and many more that I'm honored to present to you the president's nominee to serve as the next attorney general of the United States, Judge Merrick Garland. Thank you.

DURBIN:

Thank you, Senator Van Hollen. And now I'm calling on my colleague and friend from Illinois, Senator Tammy Duckworth.

DUCKWORTH:

I thank the chairman. Thank you so much for this opportunity to introduce President Biden's nominee to serve as the next attorney general of the United States.

We in Illinois also claim Merrick Garland as a son of our state. He possesses the brilliance and the resilience, the experience, and the intellect, the expertise and integrity necessary to serve effectively as our next attorney general.

I am especially honored to be here today because I have full confidence in his capability to lead the Department of Justice in an independent and impartial manner and he will defend the civil and constitutional rights of all Americans, no matter what they look like, who they love, how they pray, or their disability status.

Judge Garland hails from our home State of Illinois, Mr. Chairman. His father ran a small business out of his home, and his mother directed volunteer services at the Council for Jewish Elderly in Chicago.

After graduating as valedictorian at Niles West High School in Skokie, he won scholarships to both college and law school. He then graduated from Harvard University in 1974 and Harvard Law School in 1977. His breadth of experience stems in part from his time in private practice and judicial clerkships. He clerked for Judge Henry Friendly on the Second Circuit and Justice William Brennan on the United States Supreme Court.

However, his commitment to public service is perhaps even more clearly demonstrated by his successful tenure at the Department of Justice and his current seat on the United States Court of Appeals with the District of Columbia Circuit. In 1979, Judge Garland joined the DOJ as a special assistant and then after a brief stint in private practice left the department as a principal associate deputy attorney general in 1997.

During his tenure, (INAUDIBLE) both Republicans and Democratic administrations, he led multiple high-profile investigations, working on a number of issues, including criminal, civil, antitrust, appellate, espionage and national security measures. He



gained valuable experience as a prosecutor by trying and supervising numerous prosecutions and appeals. Notably, he played a key role in the prosecution of the Oklahoma City bombers, as has been previously noted.

Following his career at the DOJ, the United States Senate confirmed his nomination for a lifetime appointment to serve on the DC circuit. Judge Garland authored hundreds of opinions that address disability rights, criminal justice and voting rights, among other issues, issues that affect Americans at every mile in every corner of this country.

As a judge, he joined a unanimous panel decision that upheld a Department of Labor regulation requiring contractors to comply with the Rehabilitation Act of 1973. This decision upheld regulations that sought to protect employment opportunities for individuals living with a disability, like myself.

It is this legacy of public service that gives me confidence that, if confirmed to be our nation's chief law enforcement officer, Judge Garland will not only modernize and strengthen enforcement of the Americans with Disabilities Act but will restore integrity and lift morale throughout the DOJ.

Judge Garland is ready to defend the constitutional and civil rights that our nation so deeply values, and I know he will make all of us Illinoisans proud as our country's next gen--attorney general. Thank you.

DURBIN:

Thank you, Senator Duckworth. Judge Garland, will you please stand to be sworn? Do you affirm that the testimony you're about to give before the committee will be the truth, the whole truth and nothing but the truth so help you God?

GARLAND:

I do.

DURBIN:

Thank you. Before I turn to my questions--I think there's another element in the program here, your testimony. Let me turn to Judge Garland.

GARLAND:

Thank you, Mr. Chairman, Mr. Ranking Member, members of the Judiciary Committee. I am honored to appear before you today as the president's nominee to be the attorney general. I would like first to take this opportunity to introduce you to my wife, Lynn, my daughters, Jessie and Becky, and my son-in-law, Xan. I am grateful to them and to my entire extended family that is watching today on C-SPAN, every day of my life.

The president nominates the attorney general to be the lawyer, not for any individual, but for the people of the United States. July 2020 marked the 150th anniversary of the founding of the Department of Justice, making this a fitting time to remember the mission of the attorney general and of the department. It is a fitting time to reaffirm that the rule--role of the attorney general is to serve the rule of law and to ensure equal justice under law.

And it is a fitting time to recognize the more than 115,000 career employees at the department and its law enforcement agencies and their commitment to serve the cause of justice and protect the safety of our communities.

If I am confirmed as attorney general, it will be the culmination of a career I have dedicated to ensuring that the laws of our country are fairly and faithfully enforced and the rights of all Americans are protected.

Before I became a judge almost 24 years ago, a significant portion of my professional life was spent at the Justice Department as a special assistant to Ben Civiletti, the last of the trio of post-Watergate attorneys general, as a line assistant U.S. attorney, as a supervisor in the Criminal Division, and finally, as a senior official in the department.

Many of the policies that the Justice Department developed during those years are the foundation for reaffirming the norms that will ensure that the department adheres to the rule of law. These are policies that protect the independence of the department from partisan influence in law enforcement that strictly regulate communications with the White House, that establish guidelines for FBI domestic operations and foreign intelligence collection, that ensure respectful treatment of the press, that read the Freedom of Information Act generously, that respect the professionalism of DOJ employees and that set out the principles of federal prosecution to guide the exercise of prosecutorial discretion.

In conversations that I have had with many of you before this hearing, you have asked why I would agree to leave a lifetime appointment as a judge. I've told you that I love being a judge. But I have also told you that this is an important moment for me to step forward because of my deep respect for the Department of Justice and for its critical role of ensuring the rule of law.

Celebrating DOJ's 150th year reminds us of the origins of the department, which was founded during Reconstruction in the aftermath of the Civil War to secure the civil rights that were promised in the 13th, 14th and 15th Amendments.

The first attorney general appointed by President Grant to head the new department led it in a concerted battle to protect black voting rights from the violence of white extremists, successfully prosecuting hundreds of cases against white supremacist members of the Ku Klux Klan.

Almost a century later, the Civil Rights Act of 1957 created the department's Civil Rights Division with a mission to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society. That mission on the website of the department's Civil Rights Division, remains urgent because we do not yet have equal justice.

Communities of color and other minorities still face discrimination in housing, in education, in employment and in the criminal justice system. And they bear the brunt of the harm caused by a pandemic, pollution and climate change. Hundred and fifty years after the department's founding, battling extremist attacks on our democratic institutions also remains central to the department's mission. From 1995 to 1997, I supervised the prosecution of the perpetrators of the bombing of the Oklahoma City Federal Building who sought to spark a revolution that would topple the federal government.

If confirmed, I will supervise the prosecution of white supremacists and others who stormed the Capitol on January 6th, a heinous attack that sought to disrupt a cornerstone of our democracy, the peaceful transfer of power to a newly elected government. And that critical work is but a part of the broad scope of the department's responsibilities.

Justice Department protects Americans from environmental degradation and the abuse of market power, from fraud and corruption, from violent crime and cybercrime, and from drug trafficking and child exploitation. And it must do all of this without ever taking its eye off of the risk of another devastating attack by foreign terrorists. The attorney general takes an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic.

I am mindful of the tremendous responsibility that comes with this role. As attorney general, later Supreme Court Justice, Robert Jackson, famously said, "The prosecutor has more control over life, liberty, and reputation than any other person in America. While prosecutors at their best are one of the most beneficent forces in our society, when they act for malice or other base mode--motives, they are one of the worst."

Jackson then went on to say, "The citizens' safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches the task with humility." That was the prosecutor I tried to be during my prior service in the Department of Justice. That is the spirit I tried to bring to my tenure as a federal judge. And if confirmed, I promise to do my best to live up to that ideal as attorney general. Thank you.

DURBIN:

Thank you, Judge Garland. Before I turn to my questions, I want to add a few mechanics before the hearing. Senators will have eight minutes in the first round of questions, followed by a five-minute second round. And I asked members to do their best to stay within their allotted time.

We will take a break every once in a while, for 10 minutes. I am hoping the first will be sometime near 11:00. At about 12:15 or 12:30, we will break for lunch for 30 minutes. I beg you to stick with that schedule if you can and be back in time so that we can keep the hearing moving along.

So let me at this point turn to questions. You were sent to Oklahoma City 1995. What happened there was the deadliest act of homegrown domestic terrorism in modern American history. A 168 people had been killed, including 19 children. Hundreds were injured. You are supervising the prosecution of Timothy McVeigh and Terry Nichols, who are accused of being complicit and leading in that destruction.

Now, if you are confirmed as attorney general, which I believe you will be, you will face what is known as the biggest, most complex investigation in Justice Department history, and that is the investigation around the events of January 6th, 230 have been arrested so far. Some 500 are under investigation. We know that the death of at least one police officer is one of the major elements in this investigation.

I'd like to ask you to reflect on two things. What's going on in America? Was Oklahoma City just a one-off unrelated to what happened here? Can you measure, based on what you've learned so far, what kind of forces are at work to divide and destroy the American dream? Secondly, when it comes to this prosecution, are there elements that we should consider in terms of law enforcement to deal with this rising threat to the American democracy?

GARLAND:

Thank you, senator. Thank you very much for the opportunity to address the committee today. I'm grateful for this opportunity.

I don't think that this is necessarily a one-off. FBI Director Wray has indicated that the threat of domestic terrorism, and particularly of white supremacist extremists, is his number one concern in this area. This is coupled with an--an enormous rise in hate crimes over the past few years. There is a line from Oklahoma City and there's another line from Oklahoma City all the way back to the experiences that I mentioned in my opening with respect to the battles of the original Justice Department against the Ku Klux Klan.

We must do everything in the power of the Justice Department to prevent this kind of interference with the policies of American democratic institutions. And I plan, if you confirm me for it attorney general, to do everything in my power to ensure that we are protected.

DURBIN:

Judge Garland, it goes without saying that we ought to make it of record. We abhor violence whether comes from the right or left, whatever its source. It has no place in responsible constitutional dialogue in America.

Currently, though, we are faced with elements that weren't there 25 years ago in Oklahoma City; a proliferation of weapons, secondly social media and the Internet, which serves as a gathering place for many of these domestic terrorists. What are your thoughts about how we should deal with those elements from the law-enforcement viewpoint?

GARLAND:

Well, Mr. Chairman, I certainly agree that we are facing a more dangerous period than we faced in Oklahoma City at the--and at that time. From what I have seen, and I have no inside information about how the department is developing it--its work, it looks like an extremely aggressive and perfectly appropriate beginning to an investigation all across the country in the same way our original Oklahoma City investigation was, but many times more.

I don't yet know what additional resources would be required by the department. I can assure you that this will be my first priority in my first briefing when I return to the department, if I am confirmed.

DURBIN:

Judge Garland, several years ago, I went to an immigration court hearing in downtown Chicago. It was in a high-rise loop (PH) building. I met the immigration court judge. She'd been on the job almost 20 years and seem like a very conscientious and fair person. She asked me to stay for the docket call, particularly for the first clients on the docket. The first clients on the docket were a four-year-old girl named Marta.

When the judge asked that all of the people in the courtroom be seated, she had to be helped into the chair. It was too tall for her to get into. She was handed a stuffed animal to hold during the hearing. At the same table was a young boy with the unlikely name Hamilton, who was given a little Matchbox car, which he played with on the top of the table. He was six years old.

They were the victims of the Zero-Tolerance Policy. We remember it well. Thousands of children were forcibly removed from their parents, separated and many times lost in the bureaucracy. Some have incorrectly stated that that administration policy with the Trump administration was just a continuation of Obama era policy.

That isn't true. The Obama administration did not have policies that resulted in the mass separation of parents and children. And on rare occasion separations occurred, this was due to suspicion of trafficking or fraud, not because of an intentional cruel policy to separate children.

The Justice Department's inspector general conducted an investigation of the Zero-Tolerance Policy and noted that the Justice Department was "the driving force" in the policy. There is still a lot that we do not know about that policy and the

accountability for the officials who were responsible for it, so let me ask you this. This committee is going to hold oversight hearings to get to the bottom of it. Will you commit to cooperate with those investigations?

GARLAND:

Senator, I think the oversight responsibility of this committee is--is one of its very most important things. It's a duty imposed by the Constitution, and I greatly respect it.

I think that the policy was shameful. I can't imagine anything worse than tearing parents from their children. And we will provide all the cooperation that we possibly can.

DURBIN:

I thank you for that. When it comes to congressional oversight, this committee has a role in restoring independence and integrity to the Justice Department through oversight hearings.

It has a long-standing tradition of holding annual Justice Department oversight hearings, but sadly it's been three years since the attorney general has been called before this committee.

I pledge that as chairman I will hold annual DOJ oversight hearings where members from both sides of the aisle can ask important questions of you in that capacity. I don't want to go into detail, but I ask you obviously, would you agree to cooperate in that commitment oversight hearing?

GARLAND:

Of course, if I am confirmed, I will certainly cooperate with--with you.

DURBIN:

And when requests are made for information by members of the committee, I hope that I can also have your commitment to cooperation and providing timely answers?

GARLAND:

Yes, Mr. Chairman. We will be as responsive as we possibly can. As I said, a great respect for and belief in the oversight role of this committee.

DURBIN:

Thank you. Senator Grassley.

GRASSLEY:

Since you're a currently sitting judge, you're bound by the Code of Conduct of U.S. Judges. Nevertheless, I hope that we can get frank answers from you on your views. And, when we talked last on the phone, you told me you would get guidance from the administrative office on what you can or can't say. I assume that you sought that guidance. If so, what did they advise you?

GARLAND:

Yes, Senator Grassley, I did and they advised me, just as you and I thought that they would. Canon 3 bars me commenting on any pending or impending case that is in any court, but I am free to talk about policy with you.

GRASSLEY:

I'm going to go to the Durham investigation. At Barr's hearing, he stated the following regard to Mueller's investigation. "It's virtually important that the Special Counsel be allowed to complete his investigation." Also, at that same hearing, Senator Feinstein asked, "Will you commit to providing Mr. Mueller with the resources, funds, and time needed to complete his investigation?"

Attorney General Barr answered Senator Feinstein with a one word, "Yes." With respect to Special Counsel Durham's investigation, I expect that he will be allowed to complete his investigation. If confirmed, will you commit to providing Special Counsel Durham with the staff, resources, funds, and time needed to thoroughly complete the investigation?

GARLAND:

So, senator, I don't have any information about the investigation as I sit here today and the very--and another one of the very first things I'm going to have to do is speak with Mr. Durham, figure out how his investigation is going. I understand that he has been permitted to remain in his position and sitting here today, I have no reason to think that that was not the correct decision.

GRASSLEY:

Okay. And--and I suppose that would be an answer that he would only be removed for cause then. Would that be your position?

GARLAND:

Well, senator, I--I really do have to have an opportunity to talk with him. I have not had that opportunity. As I said, I don't have any reason, from what I know now, which is really very little, to make any determination on that ground. But I don't have any reason to think that he should not remain in place.

GRASSLEY:

If confirmed, would you commit to publically releasing Special Counsel Durham's report just like Mueller report was made public?

GARLAND:

So, senator, I'm--I am a great believer in transparency. I would, though, have to talk with Mr. Durham and understand the nature of what he's been doing and the nature of the report. But I am a big--very much committed to transparency and to explaining Justice Department decision making.

GRASSLEY:

At this point, I'm not going to take exception to the answers you gave me about Durham because I think you're an honorable person. They're not quite as explicit as I hoped they would be, like we got from Barr for the Mueller investigation. But, I--I think you've come close to satisfying me, but maybe not entirely.

We're in the midst of a poly-drug crisis in addition to opioids, methamphetamine, and cocaine, fentanyl and fentanyl analogs are plaguing our country. Increasingly sophisticated drug trafficking organizations, both domestic and internationally, try to skirt the law by changing their molecular structure.

So, the Center for Disease Control has found that drug overdose deaths rose to their highest level ever made during the pandemic with the overall jump in deaths being driven most substantially by drugs like fentanyl. We must stop this fentanyl substance from entering our neighborhoods and killing thousands of Americans.

So, my question is, as you lead the Justice Department, having oversight over the Drug Enforcement Administration within that department, and they will be addressing the spread of fentanyl analogs and related substances by pushing for continued class wide prohibition of fentanyl. So, I didn't quite make my question clear.

Would you lead the Justice Department in pushing for continued class wide prohibition of fentanyl analogues?

GARLAND:

Senator, I'm--I'm familiar with this problem. One of my roles as the chief judge of the D.C. Circuit was to serve on the Pre-Trial Services Committee for the--a Committee for the Pre-Trial Services Agency for the district and we were constantly advised of the fact that the formula was being slightly changed constantly and this was a problem both for detection, as well as for the problem of enforcement.

To be honest, I'm no chemist. This is one of the reasons I ended up being a lawyer instead of a doctor. But I--I would need to look at what would be proposed. But, I do understand the scope of this problem and I'm in favor of doing something, either by scheduling or legislation if I'm confirmed that would address the problem that you're talking about, which is an enormous problem for enforcement.



GRASSLEY:

I want to go to the death penalty because we have some people already prosecuted where the death penalty has been advocated or sought and one of those is the people that were involved in Boston Marathon. So, the question, the Justice Department, again under the Obama administration, sought and received an appropriate death--sentence of death. That sentence is currently being appealed. Will you commit to defending these sentences on appeal?

GARLAND:

Well senator, this--now--now we're rubbing up against exactly the problem that you asked me about in the beginning. These are pending cases and as a sitting judge, the Cannons bar me from making comment on pending cases.

GRASSLEY:

My last question will have to deal with the investigation that's underway by some of us in Congress about Hunter Biden. Have you discussed the case with the president or anyone else? And I don't expect you to discuss your private conversation with the president, but members of this committee always asked judges or other people what your--did you discuss with the president? For instance, your appoint--your position on abortion.

So, have you discussed this Hunter Biden case with the president or anyone else?

GARLAND:

I have not. The president made abundantly clear, in every public statement before and after my nomination, that decisions about investigations and prosecutions will be left to the Justice Department. That was the reason that I was willing to take on this job. So, the answer to your question is no.

GRASSLEY:

Okay, thank you.

DURBIN:

Thanks, Senator Grassley. Senator Leahy would be next but he is outside of the jurisdiction of Zoom at the moment.

(LAUGHTER)

I--I guess that's appropriate. And so Senator Feinstein will be recognized.

FEINSTEIN:

Thank you very much, Mr. Chairman, and welcome. Throughout your career, you have been praised by people on both sides of the aisle. When you were nominated to the Supreme Court, President Obama said you were "someone who would bring a spirit of decency, modesty, integrity, even handedness, and excellence."

Similarly, Senator Orrin Hatch called you "a fine man" who would be a "moderate choice for the court." Even Carrie Severino of the Conservative Judicial Crisis Network once called you "the best scenario we could hope for to bring the tension and the politics in the city down a notch."

At a time when America feels more polarized than ever before, this sort of bipartisanship is truly rare. So I ask this question. Can all Americans, regardless of their political affiliation, count on you to faithfully and fairly enforce our laws?

GARLAND:

Yes, senator. That is my personality. That is everything I've done in my career. And that is my vision for the Justice Department, to dispense the law fairly and impartially, without respect to persons and without respect to political parties.

FEINSTEIN:

Thank you for that statement. On January 6th, a group of white supremacists launched a terrorist attack on our Capitol in an attempt to overturn the results of a democratic election. Their attempt failed and resulted in at least five fatalities, including a Capitol Police officer. It also led federal prosecutors to file over 180 charges and initiate 25 domestic terrorism cases.

So this is not the first time the Justice Department has been forced to investigate and prosecute white supremacists for an act of terrorism. You received high praise for investigating and supervising the prosecution of the Oklahoma City bombing perpetrators in 1995. So here's the question. What steps will you take to ensure that the perpetrators of the attack on our Capitol are brought to justice?

GARLAND:

Senator, I think this was the most heinous attack on the democratic processes that I've ever seen and one that I never expected to see in my lifetime. One of the very first things I will do is get a briefing on the progress of this investigation.

I intend to give the career prosecutors who are working on this matter 24/7 all of the resources they could possibly require to do this, and at the same time, I intend to make sure that we look more broadly to look at where this is coming from, what other groups there might be that could raise the same problem in the future and that we protect the American people. And I know that FBI director has made the same commitment.

FEINSTEIN:

Thank you for that answer. Over the last four years, the independence of the attorney general has been repeatedly attacked. For example, President Trump once told the New York Times, quote, I have the absolute right to do what I want to do with the Justice Department, end quote. Do you believe that, in fact, the president does have the absolute right to do what he wants with the Justice Department?

GARLAND:

The president is constrained by the Constitution, as are all government officials. The issue here for us are the set of norms and standards to which this president, President Biden, has agreed, that he will not interfere with the Justice Department with respect to its prosecutions and investigations, that those decisions will be made by the department itself and by--led by the attorney general and that they will be without respect to partisanship, without respect to the power of the perpetrator or the lack of power, without respect to the influence of the perpetrator or the lack of influence. In all of those respects, the department will be independent.

The department is a part of the Executive Branch, and for that reason on policy matters we follow the lead of the president of the administration as long as it is consistent with the law, and the role of the department is to advise the president and the administration and the other agencies about what is consistent with the law. That is our obligation, and we will do so objectively based only on our reading of the law.

FEINSTEIN:

Well, thank you for that. I think you've laid it out clearly and directly, and it's very much appreciated. If the president's interest and the public's interest are in conflict, which interest does the attorney general represent?

GARLAND:

The attorney general represents the public interest, particularly and specifically as defined by the Constitution and the statutes of the United States.

FEINSTEIN:

Do you believe that the president has the authority to order the attorney general to open or close an investigation or a prostitute--a prosecution?

GARLAND:

This is a hard question of constitutional law, but I do not expect it to be a question for me. As I said--as I just said to you, the president has promised that those decisions will only be made by the attorney general, and that is what I plan to do. I do not plan to be interfered with by anyone. I expect the Justice Department will make its own decisions in this regard.

FEINSTEIN:

Well thank you. I'm going to cease at this time, but I just want to say that I think you've had a remarkable career. You've done very special things and always in a very reasonable, sober, penetrating way. So I just want to say thank you for that.

GARLAND:

I'm grateful, senator. Thank you for that.

FEINSTEIN:

Thank you, Mr. Chairman.

DURBIN:

Thank you, Senator Feinstein. We hope that-- we hope that Senator Graham, who is next up, is ready. Senator Graham.

GRAHAM:

Can you hear me?

DURBIN:

We can hear you. You have eight minutes.

GRAHAM:

Great. Yes sir. Congratulations to you, and Judge Garland, congratulations on your appointment. I think you're a very good pick for this job, so I'm going to try to go through as much information as I can. Do you promise to defend the Portland Courthouse against anarchists, the federal court building in Portland?

GARLAND:

Any attack on a federal building or damage to a federal building violates the federal statutes, and those who do it will be prosecuted.

GRAHAM:

Okay, when it comes to the people who attacked the Capitol on January 6th, will you let the committee know if you need more resources?

GARLAND:

Yes, absolutely, senator. As I--I really do think one of my first jobs is to consult with the prosecutors and the agents who are investigating that matter and see what resources they need. And I'm eager to have an invitation--

GRAHAM:  
(INAUDIBLE)

GARLAND:  
I'm eager to have an invitation from the Senate to ask for more resources.

GRAHAM:  
Sure thing, thank you. I think all of us want to prosecute every single person that deserves to be prosecuted. So whatever you need, I'm sure you will get from this committee.

GARLAND:  
Thank you, senator.

GRAHAM:  
Have you read the Horowitz report?

GARLAND:  
Senator, in our conversations you asked me to read it. It's some 400 pages long, and I asked you for permission to read only the also very long executive summary.

GRAHAM:  
That's okay. That's good.

GARLAND:  
And I have done that.

GRAHAM:  
So what's your general take?

GARLAND:  
Well, my general take is that there were certainly serious problems with respect to FISA applications, particularly for Mr. Page, and in the subsequent report to the way in which FISA applications are documented.

The inspector general had a substantial number of recommendations for how this could be fixed and how it must be fixed. I understand that he submitted those to the FBI director, and I understand the FBI director agreed in--totally, and either has made those changes or is in the course of making them.

I intend, if I am confirmed, to speak more deeply and directly with Mr. Horowitz, the inspector general, about this and with Director Wray and make sure that these and any other things that are necessary be done. I am always concerned and have always been concerned that we be very careful about FISA. It is a tool that is very useful and important for investigations--

GRAHAM:

That's good to hear. So Clinesmith, are you familiar with the fact that a lawyer for the FBI has been prosecuted, pled guilty to altering information to the FISA court?

GARLAND:

I did read about that, yes, senator.

GRAHAM:

What would happen to somebody under your charge that did that? How would you feel about that behavior?

GARLAND:

Well, somebody who makes a false statement to the FBI or inspector general during an investigation has violated 18 U.S.C. 1001, and I've prosecuted those myself.

GRAHAM:

Do you believe--do you believe the Durham investigation is a legitimate investigation?

GARLAND:

Senator, I don't know anything really about the investigation.

GRAHAM:

You've read the Horowitz report. Do you think somebody should look at what happened?

GARLAND:

Well, I do think somebody should look at what happened with respect to those FISAs, absolutely, and I believe the inspector general has done that.

GRAHAM:

Based on what your review of the Horowitz report, do you think Jim Comey was a good FBI director?

GARLAND:

Senator, I really don't want to get into analyzing any of the previous directors and--

GRAHAM:

Well, you know, you've been very critical, and appropriately so at times. I just find it pretty stunning that you can't say, in my view, that he was a terrible FBI director.

But have you ever been to the border? Have you ever been to the U.S.-Mexican border?

GARLAND:

No, sir, I haven't.

GRAHAM:

So, I'd like you to go because I just got back, because I learned that drug cartels are using our asylum laws against us. They will collect people to sort of rush the border. And once they're apprehended, they will claim asylum.

In most of these claims, 90 percent, are rejected. And that will take resources away from securing the border and detecting drugs and protecting the nation against terrorism. This is a--a behavior by the cartels. Will you look into that practice of using asylum claims by drug cartels to weaken border security?

GARLAND:

I--I had to not know about this, and I will certainly look into this problem. I think the drug cartels are a major menace to our society. The poison that they put into our streets is damaging communities of every kind. If they have--

GRAHAM:

--Well, I would ask--

GARLAND:

--If they have--if they have--

GRAHAM:

--I would ask you to visit the border, and I think you'll find patriots there. And when they make mistakes, they need to be held accountable. But that's one of the toughest jobs in the country. This is--

GARLAND:

--Senator, I apologize for speaking over, but there--over you just now, but there is, like, little bit of a lag.

GRAHAM:

I'm sorry.

GARLAND:

It's not your fault. It's a lag in the technology, I think.

GRAHAM:

Okay. Well, I do take--I have a southern, so I--

GARLAND:

--It's not the accent. I'm familiar with southern accents.

GRAHAM:

I'm going to get high-speed Internet. This is the 20th anniversary of 9/11. Are you concerned that al Qaeda and ISIS types are going to try to hit us again?

GARLAND:

I am very concerned that foreign terrorist organizations will try to hit us again, yes. I--I don't know enough at this point about the capabilities of those two, but it really doesn't matter which foreign terrorist. The--the--the terrible thing is the attack.

And as I said in my opening statement, with all the other things that the Justice Department has to do, it must always keep its eye on the ball with respect to foreign terrorist attack. I--I--I was sitting in--in my office--or arriving at my office as the first planes--first plane hit the Trade Center, and I was sitting in my office and could see smoke rising over the Pentagon. I can assure you that this is top of mind for me.

GRAHAM:

Well, one of the reasons I am very inclined to support you is I believe what you just said is true. I think you have a very deep understanding of the--the threats America faces. And to my colleagues on the committee, al Qaeda has been diminished. ISIS' footprint has been greatly diminished. But they're out there and they're trying to--they will this year sometime, I hope I'm wrong, let us know they're still there. So, it's great to hear the--the potential future attorney general understanding that our nation is very much still under threat.

So, when it comes to interacting with the committee, we're going to be talking about Section 230 reform. What your impression of Section 230 liability protection for big tech and is it time to revisit that topic?



GARLAND:

Senator, I--I have to be the first to confess when I have relatively limited information about a subject. I--I have had one case on Section 230. It was a very straightforward application of the law, so course I know what it is. I also know that many members of this committee have ideas for how it should be amended.

And I--I would have to have an opportunity, if I'm confirmed, to talk with you about that and understand all the conflicting concerns and the--and the complexities of--of how to alter it if it's to be altered. The devil in the sort of things is always in the details. And you--you on the committee know more about this than I do, and I look forward, if I'm confirmed, to having the chance to talk about it with you.

GRAHAM:

Thank you. Congratulations On your nomination. Thank you, Mr. Chairman.

DURBIN:

Thank you--

GARLAND:

--Thank you, senator--

DURBIN:

--Thank you, Senator Graham. Senator Whitehouse?

WHITEHOUSE:

Thank you, Chairman. And welcome, Judge Garland.

GARLAND:

Thank you, senator.

WHITEHOUSE:

People who've been prosecutors understand that it's not the legislature's business to meddle around in a prosecution. At the same time, we have oversight responsibilities. In your view, is it appropriate for Congress ask that DOJ give an honest look at investigative matters?

GARLAND:

Senator, I--I know of your own long experience as a prosecutor, including some of it which overlapped with mine, and I'm deeply respectful of it and appreciative of it. When you ask it that way, it--it's of course all--always possible for any--anyone to ask about matters like this.

The department has to be very careful with respect to the Congress, and in the same way it has to be respectful--careful with respect to the White House that no investigations get started just for partisan--and I'm not in any way suggesting--

WHITEHOUSE:

--Correct--

GARLAND:

--that that's what you were asking.

WHITEHOUSE:

Nope, I agree with you.

GARLAND:

We have to be careful about this.

WHITEHOUSE:

And after the fact, once an investigation is closed or concluded, is it appropriate in the exercise of our oversight to assure that in fact an honest look was taken?

GARLAND:

Yes, of course it is. There are obviously limitations on the department's ability to speak. They include everything from grand jury material--

WHITEHOUSE:

--Rule 6E and so forth--

GARLAND:

--and its forces and methods.

WHITEHOUSE:

Understood. Understood.

With respect to January 6th, I'd like to make sure that you are willing to look upstream from the actual occupants who assaulted the building in the same way that, in a drug case, you would look upstream from the street dealers to try to find the kingpins and that you will not rule out investigation of funders, organizers, ringleaders, or aiders and abettors who were not present in the Capitol on January 6th.

GARLAND:

Senator--

WHITEHOUSE:

Is that a fair question?

GARLAND:

Fair question. And again, your law enforcement experience is the same as mine. Investigations--you know, I began as a line assistant U.S. attorney and was a supervisor. You know, we begin with the people on the ground and we work our way up to those who are were involved in further involved. And we will pursue these leads wherever they take us.

WHITEHOUSE:

Thank you.

GARLAND:

That's the job of a prosecution.

WHITEHOUSE:

As Chairman Durbin mentioned, there have been widely reported problems within the department in the last four years. The--Judge Gleeson's brief for Judge Sullivan is one pretty stunning reproach of the department. Judicial decisions out of the DC District Court and the Southern District--District Court have been pretty damning. And press reports, too many to mention, have raised concerns about problems within the department during that period. How do you plan to assess the damage that the department sustained so that you can go forward with a clear understanding of what needs repair?

GARLAND:

Well, senator, I am a strong believer in following the processes of the department. That--that was my experience and all of my experiences at the department regardless of whatever level I served. The traditional process is for issues to be raised before either the Inspector General or the Office of Professional Responsibility in the areas that you're--that you're talking about, that they conduct investigations.

And they certainly seem to extremely capable of conducting thorough investigations. They then make recommendations. And that would be the normal procedures in the department. And I would expect, if I'm confirmed, that those would be the kind of procedures I would want to follow.

WHITEHOUSE:

Well, I would submit to you that you may want to take it on more systematically than that, but we can leave that for a later day.

On this committee, and particularly on this side of this committee, we have experienced more or less a four-year stonewall of information from the Department of Justice and from the FBI. From 2017 to 2020, we had 25 DOJ and FBI witnesses who failed to answer some or all of the questions for the record that centers asked them. Twenty-one answered none of the questions of the record from either side.

I have sent during the course of those years 28 different letters on various subjects that went completely unanswered. It got so bad that Chairman Graham brought the deputy attorney general up to meet with him and me to go through the list and try to figure out why the hell we weren't getting answers and where the policy came from, the de facto policy, refusing to answer questions of senators.

WHITEHOUSE:

I think we need to understand what happened during that period, why these questions weren't being answered. The base question--the point of entry is where were these questions not being. Upon whose instructions were these questions not being answered? Why? What was behind? What was the motive for refusing to answer these questions? Once we've cleared that up, then I think we've got to go through the backlog of questions that the department refused to answer.

As you know, sometimes Congress asks questions that are touchy for a department. Somebody may have misbehaved. There may be wrongful conduct that has taken place and I hope you will agree that covering up misconduct is never an acceptable reason for refusing to answer questions of Congress.

GARLAND:

Well, I certainly agree that covering up anything is never an appropriate reason for not answering a question of--of Congress. There will be policy, de facto or otherwise, if I am confirmed that would direct the department to not be responsive to this committee and to its members. I want the department I lead to be as responsible--responsive as possible and at the very least, to explain why if it can't answer a question or can't answer a letter, why it can't do so.

WHITEHOUSE:

--Correct--

GARLAND:

That's the minimum you're entitled to.

WHITEHOUSE:

Correct. And I don't want this just going forward. I want to be able to go back and get answers to those backlog questions that were wrongfully refused. Would you help us make sure that that happens?

GARLAND:

Yes, senator. As we talked in our conversation before, I would definitely direct the previous answer--questions be answered. I only ask you and the other members of the committee as a matter of resource and priority allocation, to give us--the department some sense of the priorities of which ones still need to be answered and perhaps--

WHITEHOUSE:

--Correct--

GARLAND:

--even in what order.

WHITEHOUSE:

We will do that. And, last, I have just a few seconds left, so I'll just flag two things. I think that the Office of Legal Counsel has taken a lot of hits from the torture memos to the warrantless wiretap memos to the Southern District decision, to the D.C. Court decision, to extremely self-serving and self-propagating view of presidential investigations. This is a part of the department that I think is in real trouble.

Another role of the department's is the policing and the intermediation of executive privilege for an administration and I think that is an area that has been in complete collapse and I look forward, with my time now expired, to working with you to figure out what to do about it--we'll see--and, what to do about the intermediate role of the Department of Justice when executive privilege is asserted.

GARLAND:

Thank you, senator. I look forward to speaking with you.

DURBIN:

Senator Cornyn.

CORNYN:

Welcome, Judge. I enjoyed our conversation the other day. Thank you--

GARLAND:

--As did I. Thank you--

CORNBYN:

--Thank you for that. As I told you, my sole criterion for voting for your confirmation is your pledge to make sure that politics does not affect your job as attorney general. And, I believe you told me that you could make that commitment. Is that a commitment you can make here publicly today?

GARLAND:

Yes, absolutely. I would not have taken this job if I thought that politics would have any influence over prosecutions and investigations. I do--I do want to just to be clear about--to clarify as to not disappoint you, with respect to policies of the administration, which I assume are driven by politics, although as a judge, I wouldn't know for sure--it is our obligation to advance the policies of the department as long as they are consistent with the law and our evaluation of the law has to be based only on the law and not politics.

CORNBYN:

Thank you for that clarification. I think being attorney general has got to be the toughest job in the United States government because you serve at the pleasure of the President, but you also have, as you appropriately point out, an obligation to equal justice and impartial enforcement of the law.

If you were asked to do something that you considered to be in violation of the law or unethical, would you resign?

GARLAND:

Well, the first thing I would do is to tell the president or whoever else was asking me to do that that it was unlawful. I do not expect this to happen with this president who has made it completely clear publically and in private that he will not do that. But, of course, if I am asked to do something and an alternative is not accepted, I would resign, yes.

CORNBYN:

Judge Garland, I think one of the biggest problems that the Administration of Justice has had here in the United States for the last--particularly the last couple presidencies has been the perception that there is a double standard, one that applies to maybe one political party or people with--or wealth and another one that applies to the opposing political party or people who don't have the resources in order to defend themselves against the awesome investigative and prosecutorial powers of the Department of Justice.

Of course, you're acquainted with the--with the phrase above the Supreme Court equal justice under the law. Do you agree with me that a double standard--a perception of a double standard of justice can be a cancer that will eat away at public confidence in the Administration of Justice and that commitment to equal justice?

GARLAND:

Absolutely, senator. As I have said to many people, I think probably including yourself, Ed Levi is my model for the attorney general. His role was to be sure that justice was meted out fairly and impartially without any special favors for anyone. This is the definition, in my view, of the rule of law that the powerful and the powerless, one party and another party, one community in the United States and another community in the United States all are treated equally in the Administration of Justice.

CORNYN:

The chairman's recitation of things that he perceives as being inappropriate at the Department of Justice ended with the Trump--started and ended with the Trump administration, but let me take you back a little further into the Biden-Obama administration.

You're familiar with the press conference that James Comey, the FBI director, had in July of 2016--

GARLAND:

--I remember--

CORNYN:

--where we discussed the investigation of Hillary Clinton for inappropriate use of her email server?

GARLAND:

I remember it, Senator, yes.

CORNYN:

According to the Justice Department norms and procedures and rules that you're well acquainted with as a result of your experience, is that an appropriate step for an FBI director to take to talk about derogatory information in a case that they say no reasonable prosecutor would pursue?

GARLAND:

Senator, I--I don't think it's useful for me to comment on specific matters involving specific former officials. But I have no problem at all telling you that the Justice Department's policies make clear that derogatory comments about subjects, targets, even people who have been indicted except for what's in the indictment are not appropriate. And, if I am confirmed, I will zealously attempt to incul-- re-inculcate that spirit.

When I was in--when I was speaking to the press after each court hearing in Oklahoma City, I was assiduous in making sure that I did not say anything about the defendants who had just been before the court and who had done, now we know after conviction, horrible things, that I would not say anything other than what the charges had been brought against them and what the judge reported. And, I believe that is an important part of federal prosecution.

CORNYN:

I know you don't want to comment on Mr. Comey's actions, but what you've just described strikes me as--as diametrically opposed to what he actually did.

Senator Graham asked you if you'd read the Horowitz report on the investigation of Crossfire Hurricane and I understand that your time has been limited up to this point, but do you--would you pledge to read all 404 pages of that report if you're confirmed?

GARLAND:

I will, senator. It may take me some time, but I have a head start by reading the executive summary. So, I think I should be able to get through it.

CORNYN:

Well, I think it's really important that you do so--

GARLAND:

--Okay. I--

CORNYN:

--because of the abuse, not only to the FISA process where the FBI lawyer lied to the FISA court in order to get a warrant to spy on an American citizen, but the abuse of counter intelligence investigation--a counter intelligence investigation against a presidential candidate and--in the run up to the election.

Are you familiar with the Steele dossier?

GARLAND:



Only what I've read in the newspapers and I have to admit that I've read only conflicting reports about it in the--in the papers.

CORNYN:

Well, it's been revealed that the sources for the Steele dossier, which was used in part in order to get FISA warrants, that the sub-sources could well be--could well be Russian intelligence officers using that in order to get as part of a Russian active measures campaign. Are you familiar with the practice of the Soviet Union and now the Russian Federation to use active measures as part of their intelligence service attacks against the United States?

GARLAND:

So not from my experience either as a judge or as a prosecutor, but again, from reading media reports I know what words mean, and I have a general idea of what you're speaking about, yes.

CORNYN:

Judge Garland, my time's about up, but I think we talked about the role of the Judiciary Committee and authorizing the tools, like Section 702 of the Foreign Intelligence Surveillance Act and the importance of preserving public confidence that those tools will be appropriately used, and there will be appropriate oversight both at the Department of Justice and the FBI, as well as the Judiciary Committee and the Intelligence Committees.

Do you agree with me that abuse of those authorities jeopardizes the availability of those tools in a way that is detrimental, potentially to the security of the United States?

GARLAND:

Absolutely, senator. My entire career as a Justice Department official was aimed at ensuring that we used FISA only as appropriate under the law as it existed at the time. It's not only that I'm worried about losing a tool that's essential.

It's also that I'm worried about transgressing the constitutional rights of Americans. Both of those are important, and I have to say probably the latter is way more important in my view. We have to be careful about respecting American citizens' constitutional rights.

CORNYN:

Thank you, Judge.

DURBIN:

Thank you, Senator Cornyn. Senator Klobuchar.

KLOBUCHAR:

Thank you very much, Mr. Chairman. Congratulations on your new job, and congratulations to you, Judge Garland, on your nomination.

GARLAND:

Thank you.

KLOBUCHAR:

I was--I listened with much happiness in your opening remarks when you talked about being the lawyer for the people, that you want to serve the law and not factional purposes, and that you used the important adjective, humble. I think we could need a little bit more of that in this town, so I appreciate that.

And I was also glad that you mentioned when President Biden nominated you attorney general Edward Levi, who taught an iconic first-year law class at the University of Chicago that I took, and like Edward Levi, who took office after Watergate, you will take on the Department of Justice at a critical time and will have the great task of restoring its ideals of independence and fidelity to the Constitution and to the law.

What is the number one thing you want to do to boost morale in the Department of Justice on day one?

GARLAND:

Well, on day one, hopefully if I'm confirmed I will take an oath in which I say all the things that you just said. I want to make clear to the career prosecutors, the career lawyers, the career employees, the career agents of the department, that my job is to protect them from partisan or other improper motives.

I then hope to have an opportunity over the next few months to visit with as many members of the Justice Department as possible. In the pandemic, unfortunately this will have to be over a Zoom. I had--I would much prefer to be able to go down to the Great Hall at the cafeteria and mingle with folks and let them hear what's in my heart about this, but I'm afraid that technology is the only way I'm going to be able to do it now.

KLOBUCHAR:

Okay, very good. One of the things that troubled me along these lines was the pardon process that was--that President Trump undertook, and one study found that 88 percent of the pardons that he granted had some sort of personal or political connection to the former president. What do you think we need to do to restore integrity to the pardon process? Obviously, it's an important power of the president. What do you think you can do from the attorney general's position?

GARLAND:

Well senator, you're right. This is a power granted by the Constitution to the president. I think the role of the Justice Department through its pardon attorney is to provide a careful and visualized examination of the people who are asking to be pardoned. The office has a set of very detailed regulations which describe when people are appropriate for pardons and when they are not. It provides an important screen that not only yields who maybe should be pardoned, but also protects the president from improper influence.

KLOBUCHAR:

Okay. Just a few things I want to ask quickly because I want to also get to antitrust. You talked to Senator Graham about resources for domestic terrorism and that you want to take a look. Do you think you will need additional authorities, or you want to look at that when you get in there? I'm going to be chairing a hearing tomorrow with the Rules Committee on what happened at the Capitol and what we need to do to improve security. Obviously part of it is prosecuting the perpetrators.

GARLAND:

Well, I think you for that question. The department is probably always looking for new tools, but first thing we have to do before we look for new tools is figure out what whether the tools we have are sufficient, and that will be part of this briefing that I want to have to determine whether the laws, which are quite capable, in which we're capable of the charges against McVeigh and Nichols and many other terrorists over the years, whether they are sufficient. And then I'd be interested in speaking with you and other members of the committee about what other additions might be made. But I first have to know whether anything more is necessary.

KLOBUCHAR:

Very good. Will you commit to reinstating Attorney General Holder's 2015 guidelines requiring the AG to sign off on subpoenas to journalists, something I care a lot about as a daughter of a journalist?

GARLAND:

Yes, so these guidelines came out originally when I was working for Ben Civiletti, and I had the great pleasure of working on them. These are things--this is something that I am deeply committed to. They've improved, I would say, over the years as more concerns have arisen. But I would expect re-up--to re-up those guidelines. I don't believe that they have been rescinded in any way, though. I believe they are still there.

KLOBUCHAR:

No, but there was--I couldn't really get a straight answer from Attorney General Sessions or Barr. So we can talk about this more.

GARLAND:

Well, I hope this is (INAUDIBLE) answer for you.

KLOBUCHAR:

I know you support reforms to police practices. That's correct?

GARLAND:

Yes.

KLOBUCHAR:

Okay, very good. We have--obviously have a major bill on that. Conviction Integrity Units, something that I think is very important, you support federal grants for that?

GARLAND:

Oh, yes, yes. Look, I think that convicting someone who did not commit the crime is one of the most--it's a risk, of course, of all kinds of law enforcement, but if we can determine that we made a mistake, we need very much to correct it. And I think that grants for the purpose of supporting Conviction Integrity Units in district attorneys, states attorney's offices across the country is a very good idea.

KLOBUCHAR:

We share an interest in antitrust law. I know that you used to teach that to law students, and you've handled some cases as judge, as chair of the Competition, Policy and Antitrust Subcommittee. We're going to be doing a lot in this area along with my colleague, Senator Lee. Two thirds of U.S. industries have become more concentrated between '97 and 2012. The pandemic has actually made things even harder on small businesses.

I think that we need more resources. The FTC and the antitrust division of DOJ are literally shadows of what they were when the breakup of AT&T occurred, and we can't expect the agencies to do what we need to do to take on the biggest companies the world has ever known on the tech side, in addition to other ones, with band-aids and duct tape. Senator Grassley and I have a bill to greatly increase the funding to those divisions and agencies. Would you support that?

GARLAND:

Well, I appreciate your recognizing that my first love in law school turned out was in fact antitrust, and I studied under one of the most famous scholars and was his research assistant, Phil Areeda.

As a practice I worked with Bob Pitofsky, another one of the greatest scholars and the former head of--a chair of the Federal Trade Commission, and I did practice antitrust law, including trying antitrust cases. I always want to be in a position of saying thank you, yes, when you ask whether we want more resources. My expectation is that is what I would say, but until I'm--if and until I'm confirmed, I really can't evaluate what resources we might need. But I am happy to work with you on that.

KLOBUCHAR:

Will you commit to vigorously enforcing the antitrust laws?

GARLAND:

Absolutely.

KLOBUCHAR:

I believe that we need some changes to those laws to aid you in doing that, and I hope you'll be open to those. I have a bill called the Competition Antitrust Law Enforcement Reform Act that I hope you'll look at, changing some of the standards for mergers and for exclusionary conduct.

I also think that if anything has illustrated the need to look back at the consolidation in some of these industries, it would be the lawsuits filed by DOJ and the FTC; example, Facebook's acquisitions of Instagram and WhatsApp. I'd suggest you look at Mark Zuckerberg's email where he talked about purchasing nascent competitors.

And I think the answer to that has got to come from the Justice Department, the answer--the reply to that email that this kind of exclusionary conduct is not the way capitalism works in America.

And we've always had a balance. We've had a balance through Republican presidents and Democratic presidents to say that we believe in the capitalist system and we have to make sure we keep rejuvenating it by allowing smaller competitors to emerge.

That's not happening right now in many areas, and I just need your commitment that you'll take this area of the law very seriously.

GARLAND:

I take it very seriously and have throughout my entire career. The Supreme Court has repeatedly referred to the antitrust law as the charter of American economic liberty, and I deeply believe that.

KLOBUCHAR:

Thank you very much, Judge Garland.

GARLAND:

Thank you.

DURBIN:

Thanks, Senator Klobuchar. This is the first test of the new regime. We are going to take a break now for 10 minutes and resume at 11:20 for the much-anticipated questioning of Senator Leahy.

GARLAND:

Thank you, Mr. Chairman.

(RECESS)

DURBIN:

Senator Lee?

LEE:

Thank you very much, Mr. Chairman. And thank you, Judge Garland, for being here today. I appreciated, also, your kind words about former Attorney General Ed Levi. I've been a life-long admirer of his. He truly is an attorney general in the grand tradition of that office, and he's someone my family has known in one way or another for a long time.

My late father worked for him while he was running the civil division during Ed Levi's time as attorney general. And I've had close personal and professional interactions with both his son, David Levi, former judge and later law school dean, and with Ed Levi's grandson, David's son, Will, who served with me as my chief counsel, worked on this committee for several years, and later served as chief of staff to Attorney General Bar. So a big fan of that family, and I'm glad that he's someone that you look up to.

I want to talk about a few issues today. Let's talk first, for a moment, about the Second Amendment and the right to bear arms. This is going back 15 years or so, but in a case called *Parker v. District of Columbia*, a case that later became known as--as *District of Columbia v. Heller*, as I recall, you voted for rehearing en banc with respect to an opinion, striking down that same ban on handguns within the District of Columbia.

And of course later in the same proceedings of the same case the Supreme Court struck down the ban. Can you tell us why you voted the way that you did and why you voted to give D.C. another chance to defend its ban on handguns in that case?

GARLAND:

Yes, Senator. As I know you know because you were a law clerk yourself, you know that rehearing en banc is a vote to hear a case. It's not a vote on the merits of the case. And in my case, for myself it's never a vote on the merits. It's a vote to rehear the case. The panel decision was the first time I think ever a Court of Appeals had held the individual right to keep and bear arms, which you are exactly right, the Supreme Court did uphold in the end. Every Court of Appeals had decided to the contrary, and the issue was plainly one that would require looking at a deep historical record as to the meaning of the Second Amendment and as to the way that it had been applied.

I thought this was an extremely important issue, important enough since it was the very first time, that we should hear it en banc. I was not the only judge, and other judges including a judge appointed by a president of a different party also voted, and for the same reason, so that we would have an opportunity to hear the case.

LEE:

Thank you. I appreciate that. Let's talk a little bit about the meaning of the Second Amendment. How do you view it, and do you agree with Justice Thomas's analysis in his dissent in the Rogers case that the Second Amendment right to bear arms certainly includes the right to carry operable firearms in public for self-defense?

GARLAND:

So my view is totally controlled by the Heller opinion. And in that case, Justice Scalia held that there was an individual right to keep and bear arms for self-defense. In the subsequent McDonald case the court said that was a fundamental right, which applied to the states, as well. It is a right, as Justice Scalia said in the opinion, like all rights that is subject to some limitations. The court has not given us much more to work with at this point, and I do think, as I said with respect to my vote en banc, this is a matter that requires careful historical examination, which I have never done, and I certainly can't, you know, do sitting here for you. So I don't have an opinion on that question.

LEE:

You've been in a judicial role for the last 20, going on 25 years.

GARLAND:

Yes, sir.

LEE:

You will be in a different role if confirmed to this position, one in which you'll have a significant impact on policy. So let's talk about policy as it relates to the Second Amendment briefly. Do you support universal background checks?

GARLAND:

Well, I do think that it's very important that we be careful that people who are entitled to have guns get the background check that allows them to have them, and that those who are not entitled and who we are concerned about because they are threats, because they are felons or for whatever reason barred by the law, that we have--that there is an opportunity to determine that they not be given a gun.

LEE:

Do you support banning specific types of guns?

GARLAND:

I'm sorry--I'm sorry?

LEE:

Do you support banning--the banning of certain types of firearms?

GARLAND:

Well, as I'm sure you know, the president is a strong supporter of gun control and has been an advocate all of his life, his professional life, on this question. The role of the Justice Department is to advance the policy program of the administration as long as it is consistent with the law. And as I said so far, we have a little indication from the Supreme Court as to what this means, but we don't have a complete indication. And where there is room under the law for the president's policies to be pursued, then I think the president is entitled to pursue them.

LEE:

What about policies that would support holding firearms manufacturers liable for damage caused by people using firearms they produced to commit a crime?

GARLAND:

I don't have a--I believe that the president may have a position on this question. I have not thought myself deeply about this. I don't think it raises a Second Amendment issue itself, the question of the liability protection. But I have not addressed this in any way, and I need to think about this considerably more.

LEE:



The other questions I raised potentially implicate the Second Amendment that raises other policy concerns.

GARLAND:

I understand.

LEE:

I understand that. Let's talk about FISA briefly. Senator Leahy and I have offered an amendment to reform the FISA process by strengthening the amicus curiae provisions. They are already in there in existing law that have been put in there by, among other provisions, the USA Freedom Act, which Senator Leahy and I got passed through Congress and signed into law by President Obama in 2015.

And our amendments would also require the government to disclose relevant exculpatory evidence, both to the FISA court and to the amici. This is an amendment that ended up passing the Senate last year by a bipartisan super majority of 77 to 19. Do you support reforms to FISA like those I just described in the Leahy amendment?

GARLAND:

So I think FISA is an extremely important tool for the Justice Department and intelligence community in general to protect the country from foreign agents and foreign terrorists. On the other hand, it is extremely important that everything we do with respect to FISA--and I have felt this way my entire professional life also--that we do so in accordance with the law and with respect for the constitutional rights of citizens.

I don't know very much specifically about your two proposals. I do know the current rules with respect to Amicus, and I have had the opportunity to discuss those with judges on the foreign intelligence surveillance court, and everyone seems quite happy with the way that process is going. I don't know what more might be needed. I would have to study that.

LEE:

Mr. Chairman, I see my time is expired. I've got one very brief follow-up. Can I just finish that question? Thank you. On this topic of questions related to FISA, I also wanted to ask you, do you think that the federal government ought to be able to collect American citizens' web browsing or internet search history without a search warrant supported by probable cause?

GARLAND:

I know this is a big issue. I don't--you know, my experience with FISA comes from a slightly different era. I have a lot of experience, but it was a very different era, and I follow this a little bit. I obviously haven't had any cases on it myself. I'd have to look

at it. You know, I believe in judicial review, and I am a strong supporter and respectful of judicial review of orders, but I don't know what the practicalities of going for a probable cause warrant in those circumstances would be, if it would be an emergency, etc. And I'm eager to engage with you and other members of the committee who are concerned about this so that I can understand this problem more fully.

LEE:

Thank you very much, Mr. Chairman.

DURBIN:

Senator Coons?

COONS:

Thank you, Chairman Durbin, Ranking Member Grassley. Judge Garland, welcome.

GARLAND:

Thank you.

COONS:

Congratulations on your nomination, and please convey my thanks to Lynn, to Jake, to Becky, to your family for supporting what has been a decades long career at the bench and bar as someone dedicated to public service, to law enforcement, and upholding the balance between justice and liberty.

I cannot think of a more urgent task before us than restoring the people's faith in our institutions and in the rule of law. And your opening statement, which in part was dedicated to clarifying your review that the attorney general represents the public interest and your enthusiasm for ensuring that the 115,000 career employees at the Department of Justice are appropriately sheltered from partisan or political influence, is very encouraging to me after what I think were some herring moments in the last two years.

As I'm sure you know, there are quite a few admirers of yours who work here in this committee, some of former clerks of yours who work closely with me, and many who've reassured me not just of your professional skill and great insights, but also your personal decency, kindness, and thoughtfulness. I was struck in reading through your background that you've spent 20 years quietly as a tutor at an elementary school here in the District of Columbia, something I think not enough elected or appointed officials on either the bench or in Congress do. So, thank you for your willingness to continue your service.

I am from a small town in Delaware which, like many other cities in America, was torn apart by concerns about racial justice and equality, a city that has also struggled with long-standing challenges with gun violence and with insecurity and instability in our community. Our mayor, Mike Purzycki, our governor, John Carney, are doing a great job and working hard to try and address this.

And striking the right balance between protecting our citizens from gun violence but also developing an environment where law enforcement is more transparent and accountable is going to be one of the core challenges which you and the Department of Justice will be involved in, in partnership with state and local law enforcement and with other elected officials.

In Wilmington and Dover, Delaware, we're rolling out body worn cameras for law enforcement officers. Our governor has committed to having that available for all of our law enforcement officers by 2025, but it's very expensive. It's something law enforcement has embraced, something that advocates have embrace.

I am an appropriator for the Department of Justice as well as a member of this committee. Is that something you could agree to, to be an advocate for the funding and deployment of body worn cameras to ensure both accountability and improve trust in between law enforcement and local communities?

GARLAND:

Well, Senator, I am, again, always happy to accept more resources for the Department of Justice. I don't know what that might take away from in other areas for the department, but I--I personally think that body cams are a very important tool to protect--both to protect officers and to protect the citizens.

And, you know, just as everyone of you--well, you were all on the inside. I was on the outside watching what happened on January 6th. And the fact that we were able to see exactly what was happening to the officers and the way in which they were caring about their duties in--in--in the best way they could is only possible to be captured because of the body cameras.

COONS:

Well, I--

GARLAND:

--I think it's an important tool for accountability. Yes, I do.

COONS:

Thank you, Your Honor. If--if you might, I do think it's important that we increase investment in a variety of programs. I've long worked for the Victims of Child Abuse Act. COVID-19 has demonstrated a tragic rise in child abuse, and this is a critical tool that allows state and local law enforcement to effectively address child abuse;

the Bulletproof Vest Partnership Program, which has helped save 3,000 officers' lives. These and other grant programs are things I look forward to working with you on.

There's also much-needed legislation that will move us forward in terms of criminal justice reform and protecting communities from violence. Senator Cornyn and I hope to soon reintroduce the NICS Denial Notification Act, which just ensures that state and local law enforcement gets notified when a person prohibited lies and tries, they attempt to purchase a gun. That's something that's been discussed in previous Congresses on this committee. We haven't made progress on it. I think we should.

Senator Wicker and I are soon going to introduce--reintroduce the bipartisan Driving for Opportunity Act, which incentivizes states to stop suspending drivers licenses simply for unpaid fines and fees. It's a cruel counterproductive way to take away people's ability to get to work and ensures people are trapped in modern day debt prisons. It's something that has strong support from law enforcement and civil rights groups. And I'd just be interested in whether you'll work with us here in Congress to move bipartisan bills like these two.

GARLAND:

I'm extremely interested, if I'm confirmed, and working with members of Congress, and particularly on bipartisan legislation. I don't know specifically about those, but each of them has the ring of something that's very important and--and quite reasonable.

COONS:

Well, enactable, reasonable, moving the ball forward are the sorts of things I hope we get to work on.

I'll be serving as the chair of the Subcommittee on Privacy, Technology, and the Law in this Congress, and look forward to working with Senator Sasse, who will serve as ranking member. One of the core things we'll be looking at is how online misinformation is contributing to domestic terrorism, to division here. You've discussed your own experience with domestic terrorism cases and your plan to prioritize this issue.

It's something the FBI director has said is one of our most pressing threats. Do you think the DOJ has a role to play in examining the role of misinformation and incitement online to contributing to violence, and that--that the DOJ has a role in working to help us develop reasonable solutions to this challenge?

GARLAND:

Well, again, Senator, I think that every opportunity the Justice Department has to work with members of the Senate, think about how to solve problems and how to craft legislation, is one that we should take. I--I don't have in mind particular legislation in this area. I do think that an important part of the investigation of violent extremist groups is following their activities online and getting an idea of what kind of information and misinformation is--is putting--being put out. I look forward to, you know, talking more about this with you.

COONS:

Well, there's increasing regulatory schemes, both in Europe and in California and other states, being considered. And I look forward to working with you on striking that appropriate balance between protecting data privacy, protecting individual liberty, but also protecting the competitiveness of the United States and globally making sure that we're pushing back on digital authoritarianism.

Last, I'm glad to see the department is prosecuting--I think there's 235 charges brought so far--against rioters who invaded the Capitol and attacked our democracy on January 6th. I've supported calls for 9/11 style independent commission to investigate the bigger picture of what caused this and one we might learn from it.

Do you think an independent commission of that style would help complement the department's work and help the American people better understand the root causes of that riot, that incident, and then a better help us both protect the Capitol and those of us who serve her, but more importantly protect the underpinnings of our democracy?

GARLAND:

Well, Senator, I do think the 9/11 Commission was very useful and very helpful in understanding what happened then. And of course, the--the Congress has full authority to conduct this kind of oversight investigation or to set up an independent commission.

The only thing that I would ask, if I were confirmed, is that care be taken that it not--the invest--that commission's investigation not interfere with our ability to prosecute individuals and entities that caused the Capitol--the storming of the Capitol. And--and as you well know, this is a very sensitive issue about, you know, disclosing operations which are still in progress, disclosing our sources and methods and--and allowing people to testify in a way that then it makes it impossible to prosecute them. So, with those caveats, I--I certainly could not object to anything that the--that Congress would want to do in this regard.

COONS:

Understood. Thank you, Judge. I'm encouraged by the broad bipartisan support you've already garnered from this committee and publicly, and look forward to supporting your confirmation. Thank you.

GARLAND:

Thank you very much, Senator. I appreciate it.

DURBIN:

Thank you, Senator Coons. Senator Cruz?

CRUZ:

Thank you, Mr. Chairman. Judge Garland, welcome.

GARLAND:

Thank you, Senator.

CRUZ:

Congratulations on your nomination.

GARLAND:

Thank you.

CRUZ:

In two plus decades on the court, you have built a reputation for integrity and for setting aside partisan in--interests and following the law. The job to which you have been appointed is a very different job.

CRUZ:

And as I look back over the eight years of the Obama/Biden Justice Department in my view the most problematic aspect of that tenure was that the Department of Justice was politicized and weaponized in a way that was directly contrary to over a century of tradition of the Department of Justice of being apolitical and not a partisan tool to target your opponents.

So, it is very much my hope, if you're confirmed as Attorney General, that you will bring that reputation for integrity to the Department of Justice and demonstrate a willingness to stand up for what will be inevitable political pressure to once again politicize the Department of Justice and use it as a tool to attack the political opponents of the current administration.

Eric Holder, before he was nominated as Attorney General, had likewise built a reputation as being relatively nonpartisan and a prosecutor with integrity and unfortunately, his tenure as Attorney General did enormous damage to that reputation. As was previously discussed, Eric Holder described his role as Attorney General as being the wingman for President Obama.

Am I right in--in assuming you do not view your role as Attorney General as being Joe Biden's wingman?

GARLAND:

Yeah, Senator, I--as I said, I don't want to comment on any individuals' conduct of any of my predecessors or FBI Directors' conduct in any way. But, I can assure you I do not regard myself as anything other than the lawyer for the people of the United States and I am not the president's lawyer. I am the United States' lawyer and I will do everything in my power, which I believe is considerable, to fend off any effort by anyone to make prosecutions or investigations partisan or political in any way.

My job is to protect the Department of Justice and its employees in going about their job and doing the right thing according to the facts and the law.

CRUZ:

Under the Obama administration, the IRS targeted the political opponents to the president. It targeted conservatives for their speech, it targeted pro-Israel groups, it targeted tea party groups, it targeted individuals perceived to be on the opposite political side as the administration.

Will you commit as Attorney General that you will not allow the Department of Justice to be used to target those who are perceived as political opponents because they are political opponents?

GARLAND:

Absolutely, I will not.

CRUZ:

Also under the Obama administration, Operation Choke Point was used to pressure lawful organizations, lawful institutions, institutions, for example, that sell firearms, to constrain their lawful activity and to use regulatory authority to abuse and force them to comply with the administration's stated policies.

Do you believe it's appropriate for the administration to use regulatory pressure to force lawful behavior to stop?

GARLAND:

Senator, I'm not aware of the specific that you're giving and I expect you don't expect that I would have been aware of it. But, of course, I do not believe as a general matter that regulations should be used to stop people from doing what they're lawfully entitled to do, unless the regulation is pursuant to a statute obviously, in which Congress is given authority to change the rules.

CRUZ:

As you also know, Attorney General Eric Holder was held in contempt of Congress, criminal contempt of Congress. That was a bipartisan vote. Eighteen Democrats voted to hold Attorney General Holder in contempt. They did so because he refused to produce documents to Congress for Congress's investigation of the Fast and Furious scandal, a major scandal that resulted in the death of two federal law enforcement officers.

You've previously committed to senators on this panel that under your leadership, the Department of Justice will comply to the extent possible with requests from this committee and I want to, in the course of this question, associate myself with Senator Whitehouse's comments and questions.

He and I disagree on a great many issues, but on this particular issue, we are emphatically in agreement that senators from this committee should get answers, should get candid answers, should get substantive answers, should get real answers from the Department of Justice regardless of the party of the senator asking that question, that that's--that is a level of oversight that the American people have a right to expect. Do you agree with that?

GARLAND:

I do think that this is a level of oversight the American people have a right to expect. I want the department, if I'm confirmed, to be responsive to the extent that it's possible with respect to the Justice Department's appropriate equities to be responsive to the requests for information.

CRUZ:

So, you've had--previously, you said you've read the executive summary of the Horowitz report. What--what was your reaction to the Horowitz report?

GARLAND:

Well, I thought, as Mr. Horowitz explained--and I don't--and I believe Director Wray agreed, there were problems with respect to the applications for several FISAs that those were not--they were not consistent with the internal regulations of the department and that that--those problems had to be corrected.

And, I think deeply, that we have to be careful about how we use FISA and that's a reason we have pretty strict regulations internally in policies. We need to find out why they aren't followed and to be sure that they are followed. I understand that was the purpose of his report and his recommendations to Director Wray.

CRUZ:



So, you describe the report as saying there were problems. That's a fairly (INAUDIBLE) way of characterizing it given the multiple material misstatements the Horowitz report details, including Mr. Kline Smith's fabrication of evidence and lying to a court, which he's now pleaded guilty to.

I think that was yet another example of the deep politicization of the Department of Justice culminating in a meeting with the Acting Attorney General, President Obama, Vice President Biden in the Oval Office concerning the targeting of their political opponent.

Will you commit to this committee that under your leadership, the Department of Justice will not target the political opponents of this administration, that there will be real scrutiny? What that report outlines, among other things, is weaponizing oppo research from the Hillary Clinton campaign and launching a criminal investigation based on that. Will you commit that that conduct will not be acceptable under any Department of Justice you're leading?

GARLAND:

So, absolutely, Senator. But, without trying to comment specifically on that matter, it's totally inappropriate for the department to target any individual because of their politics or their position in a campaign. The only basis for targeting has to be evidence of--of the risk for an intelligence problem or of a criminal problem and that is a nonpartisan issue. That is a question of objective facts and law and it can never be an effort to help one party or another party.

In--in politics--in investigations and prosecutions, there is no party. The department is an independent nonpartisan actor and that's my job to ensure that that's the case.

CRUZ:

Thank you.

DURBIN:

Thanks, Senator Cruz. We now understand that Senator Leahy is in Zoom range. Senator Leahy, do you read me?

LEAHY:

Hey (OFF-MIC), can you hear me?

DURBIN:

I hear the voice.

LEAHY:

I assume there's a picture coming in here somewhere.

DURBIN:

Is there a way to turn up the volume so we can hear Senator Leahy? There he is.

LEAHY:

I'll move this camera around just a little bit.

DURBIN:

All right, if you'll--

LEAHY:

--Okay.

DURBIN:

Take it away, Senator.

LEAHY:

Thank you very much. First off, Mr. Chairman, I'm glad that you're having these hearings and Judge, it's great to see you seated there. I wish five years ago, we would have seen you seated there for your Supreme Court nomination, but I'm glad you're here today.

GARLAND:

Thank you, Senator.

LEAHY:

(INAUDIBLE) The nomination comes at probably the most vulnerable moment in the 51--or 151 year history of the department and you've got to restore the integrity and the respect of the department. No small job, but I can't think of anybody more qualified to do that.

I know that a number of people stated their support of you. One person I know and respect greatly, former FBI Director, Judge Freeh, and I know he sent a letter--Mr. Chairman, if you don't mind, could we have that letter go in the record if you haven't already put it there?

DURBIN:

Without objection.

LEAHY:

Thank you. We're going--a lot of the things have already been covered, and of course you and I have talked before. Your experience in the Oklahoma City bombings, anybody who has been a prosecutor knows what a job you did there, and I do appreciate that. We have other things that we have to deal with, the Voting Rights Act, the John Lewis Voting Rights Act enforcement.

We've seen that there's been a scourge of voter suppression, which would be wrong; I don't care who is being suppressed. Unless the Justice Department gets its tools back under the Voting Rights Act, I'm afraid the right to vote is always going to be at risk, especially for minorities and under-served communities. Do you agree that legislation like the John Lewis Voting Rights Advancement Act is urgently needed?

GARLAND:

So Senator, I don't know the specifics of the act, although I certainly knew John Lewis well, and I was a great admirer. I think that respect to voting, even in this last election where a larger percentage of Americans voted than ever before, there was still a huge percentage that did not, at least a third did not vote. I think it's important that every American have the opportunity to vote. Voting is a central facet, the fulcrum of our democracy. So anything that can--any legislation that will encourage more voting, I strongly support.

Specifically, you were referring to the Supreme Court's decision in the Shelby County case, which said that the coverage formula for preclearance couldn't be used as unconstitutional because of the then state of the Congressional record, but the court indicated that a different and stronger record might support preclearance, and I would be in favor of, if I'm confirmed, of working with the committee, and the Senate and the House, to try and develop that record that would allow that important tool to be used.

The department still does have other tools. It has a Section 2, which remains in force, as the Supreme Court clearly said, in Shelby County, and it prevents interference with voting practices and procedures, you know, that interfere with minorities' ability to vote, and it is something that the department has always looked to as an important tool. There are plenty of other tools to increase the ability of Americans to vote, which I would support.

LEAHY:

Thank you. Thank you, and I know Senator Lee has already raised this, but please know that Senator Lee and I will both be talking to you about privacy matters. This is not a partisan issue. It's an issue of concern, and we'll do that. Let me ask you another area that was an issue of concern to me. In the Bush administration, the last Bush administration, they put a moratorium on death penalty in federal cases.

They gave solid reasons for that, and that moratorium has lasted--or did last from 2003 during the Bush administration, and then suddenly in the last six months the Justice Department, under the last president, rushed to execute more people--this is what is stunning--in six months than had been executed in the past 60 years. That's a matter--many of us feel that was nothing short of being a killing spree.

And what worries me, we all know the death penalty is used disproportionately against minorities and the poor. I was a prosecutor. I prosecuted many murder cases. I always opposed the death penalty. And Vermont has gotten rid of theirs. I'd much rather have somebody serve their time for years in a prison cell thinking of what they did wrong. Now, I'm joining Senator Durbin and Senator Booker in reintroducing the Federal Death Penalty Act, which would end the federal death penalty.

So I would ask you this. Would you go back to what President Bush did and reinstate the federal moratorium, which was lifted just in the last few months by the last administration, have reinstate it while Senator Durbin, Senator Booker and myself and others work on the legislation eliminating the death penalty?

GARLAND:

Well, as you know, Senator, President Biden is an opponent to the death penalty. I have to say that over those almost 20 years in which the federal death penalty had been paused, I have had great pause about the death penalty. I am very concerned about the large number of exonerations that have occurred through DNA evidence and otherwise, not only in death penalty convictions, but also in other convictions. I think a terrible thing occurs when somebody is convicted of a crime that they did not commit, and the most terrible thing happens if someone is executed for a crime they did not commit.

It's also the case that during this pause we've seen fewer and fewer death penalty applications anywhere in the country, not only in the federal government, but among the states. And as a consequence, I'm concerned about the increasing almost randomness or arbitrariness of its application when you have so few number of cases.

And finally, and very importantly as the other matter that you raise, which is its disparate impact. The data is clear that it has an enormously disparate impact on black Americans and members of communities of color, and exonerations also that something like half of the exonerations had to do with black men. So all of this has given me pause, and I expect that the president will be given direction in this area. And if so, I expect it not at all unlikely that we will return to the previous policy.

LEAHY:

Thank you. I know my time is just about up, but I'd also add as chairman of the Appropriations Committee I'm going to be talking to you about the Department of Justice and the grants they had on Violence Against Women Act, VOCA grants,

other such things. Those have--(INAUDIBLE) has had bipartisan support. Again, we've got to make sure they are done. Frankly, Judge, I am very happy you are here. I think--I have a feeling we're going to have a lot of conversations in the next few years.

GARLAND:

Well, I hope that's the case, Senator. I'd be happy to have conversations even if I'm not confirmed, but I certainly prefer them if I am confirmed.

LEAHY:

You're going to be confirmed. I'll bet my farm in Vermont on that.

GARLAND:

Never ask anybody to bet that, Senator.

DURBIN:

Thank you, Senator Leahy. Senator Sasse.

SASSE:

Thank you, Chairman. Congratulations, Judge, on your nomination, and thank you for the time you've spent in this process with those of us who were wanting to grill you in private before you were here today in public. You're in the process of moving from Article III to Article II. Were you confirmed to the bench in '96, '97?

GARLAND:

'97.

SASSE:

Okay. In the 23 years, 24 years since you left an executive role, obviously the Article II branch has grown in power, and Article I seems to be shriveling in lots of ways. Do you have a theory of why Articles II and III are gaining more power in American life, and Article I seemingly is weaker?

GARLAND:

That is, I would say, a cosmic question of our civic life. I don't really have an answer to that.

GARLAND:

Obviously, each branch has enormous powers authorized by the Constitution. And it may be, if this is the case, that the Congress has just not asserted it--itself as it should with respect to protecting its authorities. I don't have--to be honest, as--not enough of a political scientist to know exactly how this balance has changed. I--I'm sure from the point of view of the Congress, it--its--its role has diminished. But, you know, sometimes I'm sure the other branches feel the same way.

SASSE:

Right. Well, I--I think it's a--a mix of overreach by Article II and under reach by Article I. So, I'm not asking the question in a way to put you on the defensive as if everything that's wrong is chiefly outside the Congress, because I think we're probably chiefly to blame.

But you are going to become the most powerful law enforcement officer in the nation, and obviously you'll have lots of prosecutorial discretion. But could you help us understand what the line is between prosecutorial discretion, which is understandable in any complex organization, and executive unilateralism, which I hope we can agree, at least of the definitional level, is a massive constitutional problem. What's the line?

GARLAND:

Yeah. So, it's not the most easy line to--to outline. The Supreme Court's Chaney case is the best overall description. This--for the entire history of the country, prosecutors have--and government agencies have--have had discretion to make decisions about how they allocate their resources in terms of enforcement priorities, both criminal and civil. And these--this has either generally been a non-reviewable or deferentially reviewable in the courts.

The--the opposite side of the line is that the executive branch can't simply decide we're not going to enforce this lot all. Now, where a particular piece of conduct falls between those two is--is--is a difficult thing to--to say, except in an individual case.

SASSE:

Well, I mean, obviously in our tribal politics, it's easy for each party, when they're out of power, to say that the Article II branch is overreaching. But when you're in power, it turns out that those mostly look like discretion. How--how do you think not just the Supreme Court line of cases but at the level of--of you being the boss of the AAG for OLC, for instance--

GARLAND:

--Yeah--

SASSE:

--How will you dis--determine what actions are beyond the pale?

GARLAND:

Yeah. Well, I do think that when the department makes determinations based on resources, on its views about which are the most important matters that it should--should go forward with, when it thinks that state and local governments are in a better position to handle those matters, any of those kind of factors are all perfectly appropriate for deciding to--to exercise prosecutorial discretion. But mere disagreement with a law passed by Congress or a--a decision that the department will simply not enforce regardless of resources or other things would be impermissible.

But again, I think it--no matter how hard I try, I can't put this into perfect words, and I'm sure maybe will disagree in the future if I--if I do get this position. But it will be out of a good faith effort on my part to be sure that the executive is only doing what it's supposed to do.

SASSE:

I want to move on to another topic, but one--one more finer point on it. Is Congressional inaction a legitimate basis for Article II to decide it just must act because it wishes policy were different and legislation doesn't move? Therefore you have a pen and a phone, can you just act because Congress didn't?

GARLAND:

Also, you're asking really tough questions of our basic constitutional structure. Doing so simply out of upset that Congress hasn't done what you want, obviously not okay. But in the formulation that Justice Jackson, who I quoted in my opening famously gave in a Youngstown Steel case, the president does have authorities. When he acts consonant with Congress, he is at his highest power.

When Congress has not acted at all, he is left with only his own power, which is clearly available under the Constitution depending on the circumstance that we're talking about. And when he acts in contravention of Congress, he has only the authorities the Constitution gives him minus the authorities that the Congress has. And this is what Jackson famously referred to as the lowest ebb of the executive's authority. So, inaction is in the middle. You can do this just because Congress didn't act, but you can--the president can act if it's within his authority and he believes that something in the public interest.

SASSE:

Thanks. I want to switch gears a little bit. I was encouraged earlier when you said that the department's purposes are to make sure--include among them to include--to ensure that both the powerful and the powerless are treated--treated equally. I want to talk about one case where that obviously hasn't happened, and that's the case of Jeffrey Epstein and his many, many victims of domestic and international sex trafficking.

Obviously, he evaded justice for years. And when the department did ultimately partner with local authorities, it allowed charges to be brought that didn't befit the seriousness of his crimes. Infuriatingly, he was allowed to die by apparent suicide in federal custody despite the fact that everybody knew he was a suicide risk, and many people would benefit from that outcome. And then most recently, his estate has failed it to pony up to make right on all of their obligations to compensate his victims. What do you think went wrong with the department's handling of the Epstein case?

GARLAND:

Center, so my position as a judge, I'm--and also my previous position as a prosecutor, I'm always been extremely careful not to comment about something without knowing the facts. The facts I know about the Epstein matter are the ones I've read in the--in the media and that I've seen on television, so I don't think--I'm just not in a position--

SASSE:

--We--we can agree that those are disgustingly embarrassing--

GARLAND:

--Absolute--

SASSE:

--About how weak the department's pursuit of this evil man was.

GARLAND:

Absolutely. But you asked me the why question, and I--I can't answer the--the why question. But on the values question, I can answer. This is just horrendous, and he obviously should have been vigorously prosecuted substantially earlier. But I--I don't know the why.

SASSE:

And--and he has co-conspirators who are still being held and pursued. And as you and I discussed in private, I hope that we will make sure that the department prioritizes resources for this. Scores and scores of the women he victimized are in their 30s now, but they've had so much of their lives stolen from them. Obviously, sex trafficking is a scourge of our time, and I--I really would hope that the department continues to do an after action review on why we've under invested there.

I have a couple more questions on the department's China initiative, but my time is expired, so I'll follow up with that separately. Thank you, sir.



GARLAND:

I look forward to it. Thank you.

DURBIN:

Senator Blumenthal?

BLUMENTHAL:

Thanks, Mr. Chairman. I want to welcome you to the committee, Your Honor and welcome your family as well, a very supportive and accomplished family, and say that among the qualities that you bring to this job, obviously your brilliance, your service as a judge are tremendously important, but I think the lesson today is that character counts in restoring the integrity and credibility in the leadership of the Department of Justice.

I think that the character that you've demonstrated throughout your career are going to be most important, your resilience as well as your brilliance, you've been tested by adversity, and the kind of values that you exemplified beginning when I think both of us served as prosecutors in the Department of Justice and first met. So, I look forward your inspiring more young attorneys to join the ranks of law enforcement and celebrate the accomplishments of those 115,000 professionals who every day help keep us safe.

I welcome your commitment to combating violent extremism. I've supported and I'm introducing a 9/11 Commission bill. But I want to turn to an area of violence that you raised, which is hate crimes. The growing incidence of hate crimes, especially against now certain groups, Asian Americans, I think is extraordinarily alarming. I've introduced a measure called the No HATE Act. The Jabara-Heyer NO HATE Act would perform the penalties, but also increase reporting. As you know, any of these crimes are underreported. I like your commitment that you will support such a measure and enforcement of the existing penalties against hate crimes.

GARLAND:

Well, you couldn't have any opposition from me on--in that matter, Senator. I hate crimes. They tear at the fabric of our society, make our citizens worried about walking on the street and exercising even their most normal rights. And--and the role of the civil rights division is to prosecute those cases vigorously and I can assure you that it will if I'm confirmed.

BLUMENTHAL:

Thank you. On gun violence, you've been asked a few questions by Senator Lee. Three years ago this month, Parkland occurred. Parkland, Sandy Hook, other places like Las Vegas have become shorthand for massacres that are true

tragedies and also preventable by common sense steps, such as President Biden has supported and I have helped to lead in the Congress universal background checks, safe storage measures, Ethan's Law, closing the Charleston loophole, and of course, emergency risk protection orders.

Senator Graham and I have worked together on a measure that I'm hoping we will re-introduce. One of your predecessors, William Barr, said about emergency risk protection orders, "This is the single most important thing I think we can do in gun control area to stop these massacres from happening in the first place."

William Barr and I didn't agree on a lot, but I think I'm of the opinion that it is an important step to take. Would you support these kinds of common sense steps?

GARLAND:

Yeah, I don't know the specifics of all of them, certainly with respect to emergency risk orders. When somebody is acting out in a way that suggests that they are going to use violence against another human being, we have to be very careful that they don't get a weapon in their hands.

I don't know the specifics of how the legislation would do that. But, I--I do think that, yes.

BLUMENTHAL:

Well, I welcome your support to that extent--

GARLAND:

--I don't mean to be non-supportive, but unless I know the specifics, it's very hard for me to make a calculation.

BLUMENTHAL:

I understand and you're doing an excellent job of navigating your way through the requests for specific commitments. And, by the way, I understand sometimes a non-answer is the right way for you to go in this position.

GARLAND:

Thank you, Senator.

BLUMENTHAL:

Let me say also I hope you'll consider executive orders. I understand that President Biden may have some under consideration. For example, closing the Charleston loophole, redefining the nature of a firearm to prevent ghost guns from populating the world, and other steps. And, I hope you will consider using the existing authority through ATF and other agencies to take such action.

I want to ask you about two areas that are of importance I think, although they may not have reached a lot of public visibility. As you may be aware, the survivors of the 9/11 tragedy have filed a lawsuit pursuant to the Justice Against Sponsors of Terror Act, JASTA. Senator Cornyn and I were strong advocates of JASTA.

They have asked for information from the FBI in connection with that lawsuit.

They've been denied that information under the state's secret privilege. In my view, there is no justification for failing to provide that information. I hope that you will consider taking prompt action to release it.

I know that you can't necessarily address it now, but I wrote to the Department of Justice last week, not to yourself but to your predecessor, and I hope that you will take that letter as a matter of priority.

GARLAND:

If I'm lucky enough to be confirmed, I will certainly get the letter and I will give it my attention. Yes, I will.

BLUMENTHAL:

And, similarly, the Department of Justice Inspector General reportedly opened an investigation in September 2018 of the FBI's potential mishandling of the investigation in to Larry Nassar's sexual abuse. I'm sure you recall his prosecution. There was an Inspector General report that goes into the FBI's possible delay and malfeasance. That report is finished, we're told. I hope that it will be published promptly in the interest of the transparency value that you outline so well.

GARLAND:

Well, I will definitely consult with the Inspector General and I do believe in making those reports public to the extent, you know, permissible within the law, yeah.

BLUMENTHAL:

Thank you. And, finally, you may be aware that a number of my former colleagues, attorneys general, have taken action against Exxon and other oil companies to hold them accountable for misleading and defrauding the public about climate change for decades.

Nothing could be so important as the United States Department of Justice similarly taking action against gas and oil companies for lying to the American public about the devastating effects of these products on climate change. I hope you'll consider taking action in that regard.

GARLAND:

Well, I guess from the way you began, it feels like there's probably pending litigation on this matter already. So, it's something I really should not be commenting on.

BLUMENTHAL:

Thank you very much, Judge.

GARLAND:

Thank you, Senator.

DURBIN:

Thank you, Senator Blumenthal. Senator Hawley.

HAWLEY:

Thank you, Mr. Chairman. Judge Garland, thank you for being here.

Congratulations on your nomination.

GARLAND:

Thank you, Senator.

HAWLEY:

Since June of last year, the City of St. Louis in my home state of Missouri, the homicide rate is at its highest level since 1970. Eleven police officers have been shot, including former police officer David Dorn, who was murdered in cold blood during rioting of the city this past summer.

In Chicago, homicides are up 50 percent, in New York, 40 percent, in LA, 30 percent. Clearly, our criminal justice system is under renewed and fairly extreme strain. Can you tell me if you are confirmed as Attorney General, what's the first thing you'll do to confront this growing crisis?

GARLAND:

I'm sorry, at the end, did you ask me what I would do or will I?

HAWLEY:

What will you do? I assume you'll do something. What will you do?

GARLAND:

Yeah. So, look, I am obviously--I've read the statistics myself and I know that there's an upswing in violent crime. I'm very concerned about it. When I--when I was an assistant U.S. attorney, the number of murders in the--I joined at a time when the number of murders in the District of Columbia were more than twice the number of murders that they are now.

I spent much of my early--early career on this problem of violent crime, searching for the best possible ways to suppress it, going after violent repeaters being one of the best ways, going after violent gangs that supported violent action being another important way, and putting resources in the places where they're necessary.

Again, sitting here and therefore only having been an observer of--of this from the outside, I don't know what information the department has now. But, I was a strong supporter and one of the developers of the Violent Crime Initiative during the time when I was in the Justice Department and it may well be time for another one.

I know that the administration of Attorney General Barr looked at this very closely as well. So, I'd have to look at, you know, what--what's going on in the department right now and what more needs to be done. But, I share your concern.

HAWLEY:

Very good. Thank you for that. In the midst of this--of this mounting crime wave, there has been increasing calls by some activists, including members of the United States Congress, to defund the police.

I have to tell you, I think this sends exactly the wrong message to law enforcement who feel very much overburdened, underpaid, under siege, and also sends the wrong message to folks who are suffering from this violent crime wave, especially working class communities.

Tell me what your position is on defunding the police. Do you support this movement? Will you support it as Attorney General?

GARLAND:

Well, as you know, President Biden has said he does not support defunding the police and neither do I. You know, we saw how difficult the lives of police officers were in the body cam videos we saw when they were defending the Capitol.

I do believe--and--President Biden believes in giving resources to police departments to help them reform and gain the trust of their communities. I do believe--and I believe he does as well--that we do need to put resources into alternative ways of confronting some actors, particularly those who are mentally ill and those who are suicidal, so that police officers don't have to do a job that they're not trained for and that, from what I understand, they do not want to do.

And so those resources need to go to mental health professionals and other health profess--and other professionals in the community so that the police can do the job that they've trained for and so that confrontations, if possible, do not lead to deaths and violence.

HAWLEY:

Let me ask you about assaults on federal property in places other than Washington, D.C., Portland, for instance, Seattle. Do you regard assaults on federal courthouses or other federal properties acts of domestic extremism, domestic terrorism?

GARLAND:

Well, Senator, my own definition, just about the same as the statutory definition, is the use of violence or threats of violence in attempt to disrupt democratic processes. So an attack on a courthouse, while in operation, trying to prevent judges from actually deciding cases, that plainly is domestic extremism, domestic terrorism. An attack simply on a government property at night or any other kind of circumstances is a clear crime and a serious one and should be punished. I don't mean--I don't know enough about the facts of the example you're talking about, but that's where I draw the line. One is--both are criminal, but one is a core attack on our democratic institutions.

HAWLEY:

Let me ask you about something that some progressive groups have recently been saying with regard to you. The Progressive Change Campaign Committee, which is a left-wing activist group that does fundraising for Democrat Party causes, is circulating a petition addressed to you that states, and I quote now, "Trump and his criminal network of associates must be investigated and prosecuted for lawbreaking," end quote.

This, of course, against the backdrop, Judge, of groups who are keeping lists of people who worked at the White House, including lists of interns who worked at the White House, trying to prevent them from getting jobs, trying to prevent them from working, whether it's in politics or government or anywhere else again.

We have seen--Senator Cruz, I know, asked you about political targeting. I have to say I'm very concerned about the specter of political targeting because it's happened before. It happened in the Obama/Biden administration. It happened--it culminated in the lies told to the FISA court during the last administration with the FBI, and sadly the Department of Justice signed off on submissions to the FISA court, which, as you know, were falsified, actively falsified, leading to an unprecedented and historic rebuke from that court.

My question is, given this pressure campaign already being mounted toward you--this petition I just quoted is addressed to you personally--if you are confirmed, will you resist the calls and efforts by political groups to politicize the Department of Justice, to use political targeting? Will you adhere to the statute right down the middle and enforce the law fairly and equally?

GARLAND:

Senator, I've been a judge now for almost 24 years. People on one side or the other of every single case think I've done the wrong thing in that case because both sides can't win. I have grown pretty immune to any kind of pressure other than the pressure to do what I think is the right thing given the facts and the law. That is what I intend to do as the attorney general. I don't care who pressures me in whatever direction.

The department under--if I am confirmed--will be under my protection for the purpose of preventing any kind of partisan or other improper motive in making any kind of investigation or prosecution. That's my vow. That's the only reason I'm willing to do this job.

HAWLEY:

Do you agree that what the Department of Justice and the FBI did in misleading--deliberately misleading a FISA court, submitting false information to a FISA court, submitting falsified information and evidence to a FISA court, drawing the rebuke of that court, do you agree that that was an egregious violation of public trust?

GARLAND:

I think a false statement to a court is a terrible thing. It is, you know many--I was going to say obstruction of justice, and it may well be, but that's a very specific concern--I can tell you how angry judges get when they learn that somebody who has made an application to them has not told them the complete truth or has spun the truth in any way. You'll hear those statements by judges all the time, and appropriately so.

HAWLEY:

Very good. Well, thank you, Judge. And I hope if you are confirmed that you will, indeed, be that guardian to make sure that the rule of law is fairly enforced equally and that it is not used for political purposes. Mr. Chairman, my time counter doesn't work. Am I--is my time expired?

DURBIN:

Yes.

HAWLEY:

It is? All right. Thank you very much, Judge. Thank you, Mr. Chairman.

DURBIN:

Senator Hirono, are you within Zoom range?

HIRONO:

Yes. Thank you. Thank you, Mr. Chairman. Welcome, Judge Garland. It's nice to see you again.

GARLAND:

Thank you.

HIRONO:

I will start with two preliminary questions that I ask--I ask every nominee that comes before any of the committees on which I sit, and these questions--two questions are, since you became a legal adult, have you ever made unwanted requests for sexual favors or committed any verbal or physical harassment or assault of a sexual nature?

GARLAND:

No.

HIRONO:

Have you ever faced discipline or entered into a settlement related to this kind of conduct?

GARLAND:

No.

HIRONO:

Judge Garland, considering that we just had a president who did not think the rule of law applied to him, I'm gratified to hear that so many of my Republican colleagues are asking you whether you as attorney general will follow the rule of law, and of course you will. I want to get to consent decrees because I don't think that you've been asked about consent decrees yet. And the Justice Department's civil rights division has described consent decrees as, I quote, most effective in ensuring accountability, transparency and flexibility for accomplishing complex institutional reforms, end quote.

So despite their effectiveness, however, the Trump administration was openly hostile to consent decrees. In November 2018, Attorney General Jeff Sessions issued a memo that drastically curtailed their use in bringing police departments into compliance with the Constitution.

The result was that the Trump administration did not enter into a single new consent decree with any law enforcement agency suspected of systemic abuse of constitutional rights, and they also actively undermined existing consent decrees. All this while excessive force by police in Minneapolis, Louisville, Kenosha and other



cities led to one of the biggest social justice movements this country has ever seen. What is your view, Judge Garland, of the role of pattern and practice investigations and consent decrees in (INAUDIBLE) civil rights abuses by police?

GARLAND:

Thank you for this question, Senator. I think police accountability is an essential element of the ability of a police department to have credibility with the community, and without credibility and trust the police department cannot do its job of ensuring the safety of the community. Police officers who violate the Constitution must be held accountable, and police officers who follow the Constitution want police officers who do not to be held accountable for just that reason, because it leads to a taint on all police officers, which would be unfair.

Congress has given the Justice Department the authority and the responsibility to investigate patterns or practices of law enforcement entities' conduct that violate the Constitution and laws of the United States. That's the statutory responsibility of the Justice Department. And so, it is an important tool the department has for ensuring accountability.

The statute further provides that if the department finds this pattern or practice of unconstitutional conduct, that it can seek equitable remedies from the court. And one of the kinds of equitable remedies which has proven effective in the past, are consent decrees.

GARLAND:

So where they are necessary to assure accountability, it's very important that we use that tool. That is not the only tool available to the Justice Department. We can use grantmaking to provide funds for police departments to reform themselves, to make themselves more accountable. We can provide technical assistance. We can provide incentives. All of these are a set of tools, and the Justice Department has been given these tools by the Congress and issued use all of them.

HIRONO:

So, you emphasize of the police departments. In the Justice Department said that consent decrees--which, by the way, are not just one-sided. They are entered into, as I understand it, after much dialogue and discussion with the affected police departments. So, they are definitely a tool.

By your answer, I--I hope that you plan to reengage the Justice Department in enforcing and abiding by the existing consent decrees, because I noted that the previous administration had undermined the existing consent decrees.

GARLAND:

Well, I think if there is an existing consent decree, then we are certainly going to require adherence to it, yes.

HIRONO:

You've been asked a number of questions about the--in my view, the active voter suppression laws that are being--being enacted, particularly, of course, after the Shelby County decision that gutted one of the major provisions of the Voting Rights Act, leaving Section II that still gives the attorney general's office some tools to go after those states that are contemplating legislation that, in effect, will result in voter suppression. Are you aware of any evidence of widespread voter fraud in the 2020 presidential election or, for that matter, any other election?

GARLAND:

No, Senator. All I know, of course, is what--what I've been able to glean from the public reports of government agencies. The Department of Homeland Security in the previous administration publicly described the last election as the most secure in American history.

Some 60 or more courts rejected claims of fraud in the election, some on legal grounds but many after providing an opportunity for the submission of evidence, and rejected the evidence that was submitted as insufficient. And Attorney General Barr authorized the U.S. attorneys to investigate voter fraud after the election before certification. At the conclusion, he announced that the department had not found evidence of--sufficiently material of widespread voter fraud to have had an effect on the election.

HIRONO:

Thank you, Judge Garland. I am running out of time. I just wanted to reiterate that I heard you--your earlier response that you would work with Congress to determine whether preclearance provision should be reenacted. There's just one more thing that I wanted to note, that is your acknowledgment that hate crimes against the AAPI community is definitely rising, and that you will do everything you can to make sure that--that there is enforcement of--of the laws against these kinds of crimes.

And I just noted that just a few weeks ago an 85-year-old man died after he was abruptly attacked while out on a morning walk in San Francisco. And in Oakland, a Chinatown--in--in Oakland's Chinatown neighborhood, a man violently shoved and injured a 91-year-old man, a 60-year-old man, and a 55-year-old woman. In each of these cases the victims were AAPI community members. Thank you.

I do have additional questions, because I'm--I'll wait for a round two. Thank you.

GARLAND:

Thank you, Senator.

DURBIN:

Thanks, Senator Hirono. Senator Cotton?

COTTON:

Judge, welcome.

GARLAND:

Thank you, sir.

COTTON:

I want to return to Senator Grassley's questions about the Durham investigation. Senator Grassley asked you if you would commit specifically to ensure that John Durham had the staff, the resources, and the time that he needed to complete an investigation. You said you didn't have the info yet that you needed to speak to him, but you had no reason to think that him staying on was not the correct decision.

GARLAND:

That's right, yes.

COTTON:

Why can't you commit specifically to saying that he will have the time, staff, and resources he needs to complete his investigation?

GARLAND:

Well, I--again, it's because I'm sitting here and I don't have any information about what he needs in his resources and how--and--and an allocation of resources. About my--everything I know sitting here suggests that he should, of course, have those resources.

COTTON:

Judge, two years ago Bill Barr made that exact commitment about the Mueller special counsel. He did not have that information. He had not consulted with the department. He was in the same posture you are. He simply said yes. Why can't you say yes today the way Bill Barr did two years ago?

GARLAND:

Again, I'm--my view about every investigation and every decision I make is I have to know the facts before I can make those kind of decisions. I don't know what in-- what went into his consideration. But for myself, I have to be there and learn what's

going on before I can make a decision. But as I said, I have no reason to doubt that the decision to keep him in place and continuing his investigation was in any way wrong.

COTTON:

Was it wrong for Bill Barr to make that commitment two years ago?

GARLAND:

As I said, Senator, I'm--I'm not going to be making judgments about my predecessors. I don't think there's any purpose and that for myself. I want you to judge me on my own record and what I do going forward.

COTTON:

Was it wrong for Democratic Senators on this committee to repeatedly demand that Bill Barr make that commitment two years ago?

GARLAND:

I think my answer would be the same.

COTTON:

Okay. Let's turn to the death penalty. You said that you developed a great pause over it, and you said that Joe Biden expressed his opposition to the death penalty. Did Joe Biden or anyone from his administration, transition, or campaign ask you not to pursue capital punishment in cases against murderers or terrorists?

GARLAND:

No. No.

COTTON:

Thank you. Judge, you spoke at the outset, as did--have several other senators, but your outstanding work in the 1995 Oklahoma City bombing case, in which you were part of a team that helped to bring to justice of white supremacist mass murderer Timothy McVeigh. He was sentenced to death. That death penalty has been carried out. Do you regret the fact that Timothy McVeigh receive the death penalty and has been executed?

GARLAND:

Look, I supported the--as I said in my original setting hearing when I became a judge originally, I supported the death penalty at that time for Mr. McVeigh in that individual case. I don't have any regret.

But I have developed concerns about the death penalty in the 20 some years since then, and I--and I--and the sources of my concern are issues of exonerations, people who have been convicted, of sort of arbitrariness and randomness of its application because of how seldom it's applied and because of its disparate impact on black Americans and members of other communities of color. Those are the things that give me pause, and those are things that have given me pause over the last--you know, as I've thought about it over the last 20 years.

COTTON:

Judge, if you are confirmed as attorney general and there was another case like Timothy McVeigh's, where a white supremacist bombed a federal courthouse, killing 168 Americans including 19 children and your U.S. attorney sought your approval for the death penalty, would you give him that approval?

GARLAND:

So, I--I think it depends on what the development of the policy is. If the president asks or if we develop a policy about moratorium, then it would apply across the board. There's no point in having a policy if you make individual discretionary decisions. So, if that--if that's the policy, then that would be the policy.

COTTON:

So, Judge, you said in your opening statement and in addition to several questions from senators that you would strictly regulate communication between the White House, that there'd be no partisan influence. So, is this a case in which there would be influence from the White House, in individual cases if the U.S. attorney was seeking the death penalty against a white supremacist domestic terrorist?

GARLAND:

Oh, I understand the question. I'm sorry. Maybe I didn't understand before. What--what I'm trying to say here is, if there was a policy decision made by the president and announced by the president, he certainly has the authority to direct--and--and nothing inappropriate about it, it's within his authority to require an across-the-board moratorium.

This is not--what I was talking about was not a decision by the president in any particular case or the direction of how any particular case should go forward, but of a moratorium which would apply as a policy across the board. The Supreme Court has held that the death penalty is constitutional, but it is not required. And that's within the discretion of--of the president.

COTTON:

Before I move on from the Oklahoma City case, let me just commend you again for your work on it and say that I believe Timothy McVeigh deserved the death penalty.

GARLAND:

Thank you, Senator.

COTTON:

Another case involves Dylan Roof, a white supremacist from South Carolina who went into an African-American church and killed nine African-Americans in a racially motivated terrorist attack. The Obama Department of Justice sought the death penalty against him and received it.

COTTON:

Do you believe that was a mistake?

GARLAND:

I'm sorry--

COTTON:

--Do you believe it was a mistake to seek the death penalty against Dylan Roof for murdering--

GARLAND:

--No.--

COTTON:

--nine African Americans as they worshipped in church?

GARLAND:

I know I'm not supposed to be asking you the questions, but I have a feeling that this is still a pending matter and if it is, I can't talk about a particular--a particular case.

COTTON:

In that--in that case, let me ask you a hypothetical idea about--

GARLAND:

--I apologize for asking you because I know that's not my role.

COTTON:

Let's--let's suppose that another white supremacist walks into--

GARLAND:

--Yeah.--

COTTON:

--another African American church and murders African Americans worshipping Christ in cold blood. The U.S. attorney seeks the death penalty against that white supremacist. Would you approve it?

GARLAND:

Again, Senator, I think it does depend on what policy is adopted going forward. I would not oppose a policy of the president because it is within his authority to put a moratorium of the death penalty in all cases and instead, to seek mandatory life without possibility of--of parole, without any consideration of the facts of any particular case.

COTTON:

Some on the left are calling for President Biden to grant an across the board commutation to all federal death row inmates to reduce their sentence to life in prison. Would you recommend to President Biden that he makes a decision across the board commutation?

GARLAND:

So, this is one of the ones that I would have to think about, and which I have not thought about. I'd have to, you know, consult with the administration on such an across the board policy. I--I haven't thought about that.

COTTON:

Thank you. I want to turn to racial equity. Do you agree that a court concept judge of American law is that the government can't discriminate against a citizen on the basis of their race?

GARLAND:

Absolutely, equal justice under the law, written right there on the steps of the--the pediment above the Supreme Court.

COTTON:

And, not only is it unlawful, it's morally wrong as well?

GARLAND:

Yes, I think discrimination is morally wrong, absolutely.

COTTON:

You're aware that President Biden has signed an executive order stating that his administration will affirmatively advance racial equity, not racial equality but racial equity?

GARLAND:

Yes and I--I read--read the opening of that executive order, which defines equity as the fair and impartial treatment of every person without regard to their status and including individuals who are--who have been in underserved communities where they were not accorded that before. But, I don't see any--any distinction between--in that regard. That's the definition that was included in that executive order that you're talking about.

COTTON:

So, to you, racial equity and racial equality are the same thing?

GARLAND:

You know, this is a word that is defined in the executive order as I--as I just said it. So, I don't know what else--I can't give you any more than the way in which the executive order defined the term it was using.

COTTON:

Thanks, Judge.

DURBIN:

Senator Booker.

BOOKER:

Thank you, Mr. Chairman. Judge Garland, it's really good to see you sitting before the Judiciary Committee of the United States Senate.

GARLAND:

Thank you, Senator.

BOOKER:

I'm really grateful. If you don't mind me starting a little bit with philosophy, there's the Micah Mandate, which I'm not sure by your expression you know, but you've heard it before. It's do justice, love mercy.

GARLAND:



That mandate I do know, yes.

BOOKER:

And, walk humbly. It seems like a pretty good mandate for life.

GARLAND:

Yes.

BOOKER:

And, this idea of justice to me is fundamental to the ideals of a nation, founded with a lot of injustice at the time. But, the brilliance of the imperfect geniuses of our founders who aspired to create a society that, you know, John Lewis and others would have called a more beloved community.

And, one of my--an activist--I've read a lot of theologian--said, "What does love--what does love look like in public? It looks like justice."

And, you have, to me, perhaps one of the more important positions on the planet Earth for trying to create a more just society. And, the issues of race--and I was really grateful that you--in your opening remarks talked about your agency actually coming about to deal with issues of justice in our nation.

I want to talk to you about white supremacist violence, which has been mentioned a lot. But, before I get there, I'm actually concerned with something that I consider pernicious and very difficult to root out, which is the realities of implicit racial bias that lead to larger systemic racism.

Now, I've been kind of stunned that the issue of systemic racism has become something argued over. But, if I can just walk you through for a second, does our justice system treat people equally in this country at this point?

GARLAND:

Sadly and it's plain to me that--that it's not--that it does not.

BOOKER:

And, I'm going to stop you there. I mean, Brian (INAUDIBLE) says we have a criminal justice system that treats you better if you're rich and guilty than if you're poor and innocent because one's finances make a difference off with what kind of justice one gets. Is that correct?

GARLAND:

Senator, it's no question that there's disparate treatment in our justice system. Mass incarceration is a very good example of this problem. You know, we're incarcerating 25 percent--almost 25 percent of the world's population and we have, you know,

something like 5 percent of the world's population.

I don't think that that is because Americans are worse. But, what--

BOOKER:

--Well then--

GARLAND:

--underlies that is the disparate treatment of Blacks and communities of color.

BOOKER:

Well, let's drill down on that for a second.

GARLAND:

--Yeah--

BOOKER:

So, one of the big things driving arrests in our country, stunningly to me even that it's still the case, is marijuana arrests. We had in 2019 more marijuana arrests for possession than all violent crime arrests combined.

Now, when you break out that data and disaggregate along racial lines, it is shocking that an African American has no difference in usage or selling than someone who's white in America but their likelihood of being arrested for doing things that two of the last four presidents admit to doing, is three to four times higher than somebody white. Is that evidence that within the system, there is implicit racial bias, yes or no, sir?

GARLAND:

Well, it's definitely evidence of disparate treatment in the system, which I think does arise out of implicit bias, unconscious bias maybe, sometimes conscious bias.

BOOKER:

And, I think that's the fair point, the unconscious or conscious. Nonetheless it results in the system. And, I've had great conversations with people on both sides of the aisle, heads of think tanks that all speak to this as abhorrent to American ideals that we still have a system that so disparately treats people every point, the station house adjustment, which I know you know what that is, which I've seen happen as a mayor that people get called in for arrested for possession of marijuana and the police make a decision like, just, you know, leave and your parents come or whatever and it's dismissed with.

We see from station house adjustments to charging to--to bail to sentencing. Every objective analysis has shown that race right now in our country is still playing a specific influence in the justice that someone gets. You're aware of all of this, yes?

GARLAND:

I am and this is a particular part of the reason at this moment, I think I wanted to be the Attorney General. I want to do the best--

BOOKER:

--Right and to the point--

GARLAND:

--I can to stop this.

BOOKER:

Well, I want to get to that. To the point that a lot of my folks are making, you just made, it does not mean that the people who are engaged in this are racist overtly. It means that they have an implicit racial bias that often leads them to make different decisions about different people. That's correct.

GARLAND:

Yes and also, you know, the marijuana example is a perfect example that you've given here. Here's a non-violent crime that--with respect to usage that does not require us to incarcerate people and then we're incarcerating at different rates--at significantly different rates of the different communities.

And, that is wrong and it's the kind of problem that will then follow a person for the rest of their lives. It will make it impossible to get a job. It will--it will lead to a downward economic spiral for their family.

BOOKER:

--Right, and so--and so to that point--and now to your point that I cut you off on before, now I would like to give you the chance to answer that. Here you're in an agency that was formed to deal with the kind of systemic racism that was going on at that time.

When--when you have disparate use of the law, where you see African Americans being churned into the criminal justice system, where it is concentrated in certain communities and not in others, where it has, as the American Bar Association says, 40,000 collateral consequences on the lives of those African Americans where they can't get loans from banks, they can't get jobs, they can't get certain business

licenses, where it is so dramatic that there are estimates that it costs literally to African Americans in the persistence of a wealth gap in our country, where black families have one-tenth the wealth of white families.

If you just look at the impact of the law and the--and the disparate impact on just marijuana, it is estimated to cost African American communities in this country billions of dollars more.

My question to you now is assuming this position where you are called upon for that Micah Mandate, what are you going to do about this outrageous injustice that persists and infects our society with such a toll on Black and brown communities?

GARLAND:

There are many things that the Justice Department has to do in this regard, and I completely agree that disparate results with respect to wealth accumulation, discrimination in employment, discrimination in housing, discrimination in healthcare availability, all of which we all see now in the consequences of a pandemic, which affects communities of color enormously more with respect to infection rates, with respect to hospitalization and ultimately to death.

So one set of things we can do is the mass incarceration example that I began with. We can focus our attention on violent crimes and other crimes that put great danger in our society and not allocate our resources to something like marijuana possession. We can look at our charging policies and go--and stop charging the highest possible offense with the highest possible sentence.

BOOKER:

I was taught in law school never to interrupt a judge of your--

GARLAND:

I don't think that applies here.

BOOKER:

Forgive me. I would like to end with this question, and then my time is up.

GARLAND:

Yeah.

BOOKER:

You've talked to me a lot about your thoughts about this, and I've been really inspired, but it gets back to me to your conviction in this issue and your determination to go down at a time when our nation needs this, to go down as one

of the great leaders when it comes to dealing with the daily, unconscionable injustices faced by some Americans and not others at the hands of law enforcement.

And I think that one thing you said to me privately, particularly motivated me to believe you when you talk about your aspirations. I'm wondering if you could just conclude by talking--telling--answering the question about your motivation and maybe some of your own family history in confronting hate and discrimination in American history.

GARLAND:

Yes, Senator. So I come from a family where my grandparents fled anti-Semitism and persecution. The country took us in and protected us. And I feel an obligation to the country to pay back, and this is the highest, best use of my own set of skills to pay back. And so I want very much to be the kind of attorney general that you're saying I could become. I'll do my best to try and be that kind of attorney general.

BOOKER:

I believe your heart, and I'm grateful that you are living that Micah Mandate.

DURBIN:

Thank you, Senator Booker. I'm going to make a motion to introduce record--into the record letters of support for Judge Garland's nomination. There are 25 different categories of letters of support. I'm struck immediately by the diversity of support that you have.

150 former attorneys general and top Department of Justice officials, Alberto Gonzales, Michael Mukasey, Eric Holder, Loretta Lynch, the list goes on and on. Dozens of former federal judges, former state attorneys general. For you to have both the National Sheriffs Association, the Fraternal Order of Police and the Leadership Conference on Civil and Human Rights is an amazing political achievement, and the list goes on.

Advocates for Crime Victims and Survivors, former FBI director Louis Freeh. Senator Lee mentioned the Levi children and Green children. They both have written letters of support for you.

I want to take a moment in light of your closing statement from this round to tell you that your work and your life has been recognized across the board. This array of letters of support speaks to fairness and honesty in the way that you've dealt with your legal profession and your public service.

So without objection, I'll introduce these letters of support for your nomination into the record. And now we're going to take a lunch break, and I'm going to declare--I guess I have the power to do that now--that we will return at 1:40, and the first

person up will be from the sovereign state of Louisiana, John Kennedy. And we'll all anxiously await his contribution.

DURBIN:

So let's stand in recess.

(RECESS)

DURBIN:

The hearing will resume. Senator Kennedy of Louisiana.

KENNEDY:

Thank you, Mr. Chairman. Good afternoon, Judge.

GARLAND:

Nice to see you, Senator.

KENNEDY:

Good to see you, sir. I want to follow up a little bit on something that Senator Booker talked about. What, to you, is justice?

GARLAND:

Everybody treated equally, regardless of their position in society, powerful, powerless, rich, poor, Republican, Democrat, Black, white, equal treatment, equal justice under the law.

KENNEDY:

I want to go a little further, press you a little bit on that. Is it justice if you have an unjust law that's applied equally?

GARLAND:

Well, no, the unjust law is itself the lack of justice.

KENNEDY:

Let's narrow it down to punishment in justice. If I suggested to you that justice in the concept of punishment is when someone gets what he deserves, would you agree or disagree with that?

GARLAND:

I suppose it depends on what gets what he deserves mean, but yes, I think justice requires individualized determination of the kind of crime you did, you know, and the mitigating circumstances, yes.

KENNEDY:

Well, let me put it another way. If--is a person who commits a crime a sinner in the moral sense or a sick person?

GARLAND:

This is, again, probably beyond my competence. I think with justice comes mercy, and so I think we have to take into consideration all different kinds of things. I also think that the kind of crime that we're talking about is relevant to the question of what kind of person it is. So I'm not sure exactly what you're asking me. I'm not trying to be evasive. I just don't know exactly what you're asking me.

KENNEDY:

Okay. Let me shift gears here. Were you chief judge when the coronavirus hit us?

GARLAND:

Unfortunately for my successor, my term ran out just before coronavirus hit us.

KENNEDY:

Well, if you had been chief judge--

GARLAND:

Yes.

KENNEDY:

Would you have adopted a rule that said if one of our employees in the court gets coronavirus and goes to the hospital and is treated, and is released, and wants to come back to work at the court, it would be discriminatory to ask them to take a coronavirus test?

GARLAND:

No.

KENNEDY:

Okay. Isn't that what happened with a lot of our nursing homes throughout the country?

GARLAND:

You know, I honestly don't know what happened with the nursing homes. I don't know what they were doing with respect to--to--I'm sorry, again, I'm not trying to be evasive.

KENNEDY:

Sure.

GARLAND:

I really don't know the facts here. I mean, I think an example you gave me there's nothing discriminatory about asking people who might be infected from a public health point of view to be sure they don't infect other people, and if a determination is made they are not infected, then of course that's the end of it.

Equal treatment doesn't mean we don't take into consideration the possibilities of different degrees of health in a particular circumstance, and I don't--I honestly don't know what happened with the nursing--I know it was terrible that many people got COVID in the nursing homes, and it was a major vector of the spread of the infection, but I don't know why that was except that there are people cooped up in one place, and it's easy to spread that way.

KENNEDY:

All right. I think science tells us that keeping our schools closed has a disproportionate impact on poor people and children from poor families and on families including, but not limited to, children of color. At what point do you think our--our refusal of some of our leadership and our schools to reopen becomes a civil rights violation?

GARLAND:

Senator, I completely agree with your description of the consequences of the school closing. I tutor two children in a neighborhood of Washington, D.C., where most of the people, students in the school are people of color, and I've been able to tutor them by Zoom every week. But you know, and they are taking classes by Zoom, and it's much more difficult, obviously, for them, although they've done terrifically, not because of me, but they have--then it would be with people with other resources.

I don't--you know, I think that public officials have to weigh very serious competing concerns with respect to how to deal with COVID. There's just no doubt about it. On the one hand, we have to be very worried about setting kids back in their schooling, and on the other hand we have to be very worried about not spreading the disease in a way that kills them or, more importantly, more likely their parents or their grandparents. And I don't want to be the person who makes that judgment.



KENNEDY:

I understand. I get it. I'm sorry to interrupt. I hate to have to do that.

GARLAND:

No, no, I'm sorry I interrupted you.

KENNEDY:

I just have limited time. You have written in one of your opinions I'm going to read. I know you haven't memorized all of your opinions. You said the Constitution, quote, "does not contemplate that the district, District of Columbia, may serve as a state for purposes of the apportionment of congressional representatives. That textual evidence is supported by historical evidence concerning the general understanding at the time of the district's creation." Is that still your considered opinion?

GARLAND:

Yes, and I would say that that is a case--one of my earliest cases which taught me what it means to be a judge, which is to do something to the opposite of what you would do if you had public policy concern. I think that citizens of the District of Columbia should be able to vote, but I didn't think that the Constitution gave me authority on my own to give it to them, and it made me sad, but it reaffirmed my role as a judge.

KENNEDY:

Okay. In my last 20 seconds I'm going to ask you if you agree with this statement. Allowing--and I'm not suggesting the answer one way or other. I just want to know what you believe. Allowing biological males to compete in an all-female sport deprives women of the opportunity to participate fully and fairly in sports and is fundamentally unfair to female athletes.

GARLAND:

This is a very difficult societal question that you're asking me. I know what underlies it.

KENNEDY:

I know, but you're going to be attorney general.

GARLAND:

Well, but I may not be the one who has to make policy decisions like that, but not that I'm averse to it. Look, I think every human being should be treated with dignity and respect, and that's an overriding sense of my own character but an overriding sense of what the law requires. This particular question of how Title IX applies in

schools is one, in light of the Bostock case, which I know you're very familiar with, is something that I would have to look at when I have a chance to do that. I've not had a chance to consider these kinds of issues in my career so far. But I agree that this is a difficult question.

KENNEDY:

Thank you, Judge.

DURBIN:

For his first question as a member of the Senate Judiciary Committee, Senator Alex Padilla.

PADILLA:

Thank you, Mr. Chairman. Thank you, Mr. Chairman. Judge Garland, and to your family, thank you for your many, many years of public service and should you be fortunate enough to be confirmed in this next chapter. I've spent a little bit more than 20 years in public service myself in different capacities, including the prior six years, prior to my appointment to the Senate, as California's secretary of state and chief elections officer. My mission in that role was to increase voter participation and ensure free and fair elections.

As the country has become more diverse, not just states like California and New York, but throughout the nation, it's no coincidence that we have seen a resurgence of white supremacy and violent extremism. And history is clear. Voter suppression is rooted in white supremacy. This issue now and has been true ever since Reconstruction and the establishment of the Department of Justice, just as this committee has acknowledged at its outset.

It should not be lost on any of us that, after the 2013 Shelby v. Holder decision by the Supreme Court, we've seen a wave of legislation in states across the nation which have the effect of making it harder for eligible citizens to register to vote, to stay registered to vote, or to simply cast their ballot. I know Senator Leahy touched on the subject of voting rights in his questioning earlier today, but I want to acknowledge that this--that despite the success of the 2020 election, which has been deemed to secure, new voter suppression laws are being introduced right now across the country under the false pretext of preventing voter fraud.

Now, we all saw how former President Trump's years of lies about voter fraud, the big lie, radicalized many of his supporters and led not just to physical threats against elections officials, elections offices, polling places, and even voters, but they ultimately led to the violent insurrection here in the nation's Capitol. I know you touched on this in your opening remarks, but can you expand on how you will combat the white supremacy that threatens the safety and fairness of our elections specifically?

GARLAND:

Well, you asked a lot of questions all in one, which is--

PADILLA:

--It's complicated.

GARLAND:

It's a complicated problem, right. So, I strongly believe in voting and in increasing every possible opportunity for voting, which of course Congress can do even on its own. The elections clause of the Constitution permits the Congress to set time, place, and manner and to alter state regulations in that respect. In default, the state decides, but Congress can act that way. So, that is one thing that Congress could do as a matter of legislation.

As I said, I think I'd like to work with the Congress on improving the record with respect to Section 4 so that we can use the tool of Section 5. We do have the authority of Section 2. It does require--it changes the burden of proof and it requires to attack one by one changes in election laws, but it does give us the opportunity to bring cases both where there was intention to discriminate but also where there is a overall disparate impact with respect to discrimination.

So, we have a number of tools available to us. And the Voting Rights section of the Civil Rights Division was established for the purpose of pursuing those cases, and we would do so.

PADILLA:

Thank you. That's--I want to dig a little bit deeper on this, because you're absolutely right. We need, in my opinion, to restore the full strength of the federal Voting Rights Act. There is a lot that can and should be done not just in terms of elections administration with respect to--to voting rights, but the protection of voters themselves. You know, people should be able to vote free of any on--harassment, intimidation, obstacles, etc. And part of what works against that is, again, rooted white supremacy, this big lie.

We all sat through the impeachment trial. And the results notwithstanding, I can't help but be moved by the evidence presented by the House managers, again how President Trump's big lie about voter fraud radicalized so many of his supporters. And I was struck by a February 19th opinion piece in the Washington Post by Jim Sciutto about the parallels between the Capitol insurrectionists and foreign terrorist organization that I respectfully ask would be inserted into the record, Mr. Chairman.

PADILLA:

In it, Jim Sciutto writes, and I'll quote, "Domestic radicalism has deep parallels to jihadist terrorism. Both movements are driven by alienation from the political system and a resulting breakdown in social norms. For some groups and individuals, this breakdown leads to violence they see as justified to achieve political ends."

Now, as we all know, the definition of terrorism is the unlawful use of violence and intimidation in pursuit of political ends. President Trump's political end was clear, stopping the certification of the 2020 election at the Capitol on January 6th. One could argue that right-wing groups like the Proud Boys and the Oath Keepers have acted like terrorist cells, communicating with one another, training together, and preparing for the moment they are activated for their mission.

Indeed, President Trump instructed the Proud Boys on national television to stand back and stand by, and then he summoned them to the Capitol on January 6th as Congress was meeting to certify the election. What happened on January 6th was not a property crime. It was not a vandalism--it was not vandalism, in reference to a question you were asked earlier.

Judge Garland, as we sit here in the United States Capitol surrounded by National Guard troops and barbed wire, how you bring the full resources of the Justice Department to bear on white supremacist organizations that pose an ongoing threat to not just our safety and not just the safety of this Capitol building, but to our fundamental democracy for which it stands?

GARLAND:

I--I couldn't agree more that extremist groups and a particularly white supremacist groups do pose a fundamental threat to our democracy. And they have posed a threat throughout our history. And as I recounted, that was the reason the Justice Department was originally established, to fight the first incarnation of the Ku Klux Klan.

The best that I can do is--as I said, my first priority will be to have a briefing on where we are, if I'm confirmed, with the investigations which, from the outside, appear quite vigorous and nationwide, and to find out what additional resources we need. But that is just the focus on--on what happened in--in the Capitol. We also have to have a focus on what is happening all over the country and on where this could spread and where this came from.

And that requires--it does require a lot of resources. I--I--I am very pleased to have read that the director of the FBI believes that this kind of extremism is the most dangerous threat to the country, and that that's where he's putting FBI resources. And that is where I would put Justice Department resources. And I--I--we need very much to make it--make sure that that's the case.

I do want to be careful that we also always worry about the foreign threat because it is always with us. And the fact that nothing has happened recently doesn't mean it could not happen tomorrow. So, from whichever direction, inside, outside, right, left,

doesn't matter. An attack on our--our institutions of democracy and of our ability to go forward with our daily lives and safety has to be stopped. And that--we need it all. It's a governmentwide, but also a Justice Department wide obligation.

PADILLA:

Thank you, Judge. Thank you, Mr. Chair.

DURBIN:

Thank you, Senator. Senator Tillis would be next, but he is not in Zoom range for that possibility. And so, Senator Blackburn, if she can connect with us, is next up.

BLACKBURN:

Yes, sir. I am connected, Mr. Chairman. Thank you so much. And Judge Garland, I want to say thank you to you for your willingness to--to serve and for your career in public service.

I will tell you, as I've talked to Tennesseans about this, they care a lot about law, order, timeliness at the Justice Department. And after the Christmas Day bombing, you and I discussed this, and the bombing that took place in Nashville. They really are interested in the principles and the convictions of our nation's top law enforcement official. And my hope is and I think the expectation is that you will assure the American people that you are going to apply the law fairly and equitably because, in this country, as we know, no one is above the law.

Now, I know you've been asked about the Durham investigation. And I will tell you that this is important to Tennesseans, and making certain that that investigation is going to be completed and that you are going to work to be certain that it is not impeded and is completed, and that you are committed to seeing this through to completion.

GARLAND:

Well, thank you, Senator. I appreciate it. And I appreciate the opportunity we had to discuss these matters earlier as well.

As I said, with respect to the Durham investigation I don't know anything about it other than what has appeared in the media. The investigation has been discrete with--as appropriate with respect to expressions of the--of its status. I understand that Mr. Durham has been permitted to remain in his position, and I know of nothing that would give me any doubt that that was the correct decision.

BLACKBURN:

And I appreciate that. And likewise, we had discussed the investigation into Hunter Biden's business dealings. And we want to make certain that you commit to allowing Delaware U.S. Attorney David Weiss to complete that investigation and

bring that evidence forward.

GARLAND:

And similarly with Mr. Durham, I don't know anything about that investigation other than what I've read in the media. And again, that--that investigation has been proceeding discreetly, not publicly, as all investigations should. I understand that the Delaware U.S. attorney was permitted to say on as U.S. attorney, and I, again, have absolutely no reason to doubt that that was the correct decision.

BLACKBURN:

And let's talk a little bit about China, because we discussed some of that, for the record. And our last DNI had stated that China is our greatest threat. So, I would like to hear from you. Do you agree that the Chinese Communist Party is an enemy of the American people?

GARLAND:

Well, I--I don't have the same familiarity with the intelligence information that the director of the--of National Intelligence has. So, in terms of comparing, say, a threat from China and a threat from Russia, I'm just not competent to make that and I--that comparison. And I have learned in my professional career not to make judgments on which I am not competent.

But I--certainly from what the director said, there's no doubt that--that China is a--a threat with respect to hacking of our computers, hacking of our infrastructure, theft of our intellectual property. All of these are very difficult problems and we have to defend against.

BLACKBURN:

Well, we do. And I know that Lindsey Graham asked you about Section 230 and some of the issues that are there. We all are very concerned about the issues that surround China, whether it is the Chinese Communist Party and their--the way they threaten our democracy and our economic leadership around the globe. And we're also concerned about the Chinese military links into our American universities through things like the Confucius Institutes.

And for instance, recently there was a situation at Harvard with a cancer researcher, and he was caught trying to smuggle 21 vials of biological material out of the U.S. and get it to China. And I would hope that you agree that this threat puts American intellectual property and technology at risk. And I would hope that you would assure the American people that you're going to put to the full force of the Department of Justice to--forward to investigate and prosecute every one of these spies that are working on U.S. soil.

GARLAND:

Well--well, Senator, I'm--I'm not familiar with that circumstance, so I can't comment on it specifically. But, I can assure you that the Justice Department's National Security division was created in part for the purpose of ferreting out espionage by foreign agents and that is also the role of the FBI and the two working together. And, if--if foreign agents are caught stealing American intellectual property, American trade secrets, American materials, that they will be prosecuted, yes of course.

BLACKBURN:

Thank you. We're about a year into this pandemic and technology has allowed for us to do work like we in the Senate are doing with WebEx. I think we've all found that it gives a lot of flexibility, but as we are spending more time online, we hear from people about holding Big Tech accountable.

As I've said, you've discussed Section 230 earlier. And, we are hearing more about anti-trust lawsuits. Of course, you all have the current suit against Google and I will hope that you are going to allow that lawsuit to continue.

GARLAND:

Yeah, I don't--again, I don't want to talk about a particular lawsuit, but I--I don't see, you know, every matter. I'd have to ask for a briefing on. But, much of that lawsuit is public and again, given what I've read, I don't see any reason why that investigation--the decision to institute that investigation would be changed. But, I--I only know what I've read with respect to the descriptions of the public filings.

BLACKBURN:

Let me ask you one more question and then I'm going to have a series of questions come to you as QFRs. The--President Biden has talked about reinstating the Obama administration practice of paying settlement money from winning lawsuits to third party interest groups like La Raza, the National Community Reinvestment Coalition, and the Urban League.

And, it's just, you know, I find it really interesting that they would choose to have that money go to these outside groups instead of to victims or to the U.S. Treasury. So, do you plan on reinstating that policy and how would you justify reinstating that policy?

GARLAND:

I--I don't have any plan one way or the other. I know you raised that policy when we were talking before and I understand your concern about it. Obviously, damages recoveries should first go to help victims. I don't know very much at all about the policy and it would be something I would have to consider if I'm confirmed. I'd have to hear the arguments on both sides of why the policy obviously started and also why it was rescinded.

BLACKBURN:

Thank you so much. I appreciate your time. Mr. Chairman, thank you.

DURBIN:

Thanks, Senator Blackburn. Senator Ossoff, welcome to the committee. Your turn to question.

OSSOFF:

Thank you, Mr. Chairman, and Judge Garland, congratulations on your nomination.

Thanks for the time that we spent by video conference discussing some of these issues. Thank you also for sharing your family's immigrant story with the committee.

It mirrors my own. My great grandparents came here fleeing anti-Semitism in 1911 and 1913 from Eastern Europe and I'm sure that your ancestors hardly have imagined--

GARLAND:

--They probably (INAUDIBLE)--



OSSOFF:

I'm sure that your ancestors could hardly have imagined that you'd now be sitting before this committee pending confirmation for this position. Judge, I want to ask you about equal justice. Black Americans continue to endure profiling, harassment, brutality, discrimination in policing, in prosecution, in sentencing, and in incarceration. How can you use the immense power of the Office of the Attorney General to make real America's promise of equal justice for all? And, can you please be specific about the tools that you'll have at your disposal?

GARLAND:

So, this is a substantial part of why I wanted to be the Attorney General. I'm deeply aware of the moment that the country is in. When Senator Durbin was reading the statement of Robert Kennedy, it just--it hit me that we are in a similar moment to the moment he was in.

So, there are a lot of things that the department can do. One of--one of those things has to do with the problem of mass incarceration, the over incarceration of American citizens and of its disproportionate effect on black Americans and communities of color and other minorities.

There are different ways in which we can try--that is disproportioned in the sense of both population, but also given the data we have, on the fact that crimes are not committed by these--these crimes are not committed in any greater number than-- than in others and that similar crimes are not charged in the same way. So, we have to figure out ways to deal with this.

So, one important way I think is to focus on the crimes that really matter that attract our--to bring our charging and our resting on violent crime and others that deeply affect our society and not have such an over emphasis on marijuana possession, for example, which has disproportionately affected communities of color and then damaged them for--after the original arrest because of inability to get jobs.

We have to look at our charging policies again and the--go back to the policy that I helped Janet Reno draft during her period and then Eric Holder drafted while he was the Attorney General of--of not feeling that

we must charge every offense to the maximum, that we don't have to seek the highest possible offense with the highest possible sentence, that we should give discretion to our prosecutors to make the offense and the charge fit the crime and be proportional to the damage that it does to our society.

We should look at our--our--se should also look closely and be more sympathetic towards retrospective of reductions in sentences, which the First Step Act is giving a sum opportunity, although not enough to reduce sentences to a fair amount. And, legislatively, we should look at equalizing, for example, the--what's known as the crack powder ratio, which has had an enormously disproportionate impact on communities of color, but which evidence shows is not related to the dangerousness of the--of the two drugs.

And, we should do as--as President Biden has suggested, seek the elimination of mandatory minimum so that we, once again, give authority to district judges, trial judges to make determinations based on all of the sentencing factors that judges normally apply and--and that don't take away from them the ability to do justice in individual cases. All that will make a big difference in the things that you're talking about.

OSSOFF:

Thank you, Judge Garland. Let's discuss accountability for local agencies. The Civil Rights division has the authority to launch pattern or practice investigations targeting systemic violations of constitutional rights or violations of federal statutes governing law enforcement.

Tomorrow will be the first anniversary of the murder of Ahmaud Arbery in Glynn County, Georgia, who was shot to death in broad daylight in the street on camera. But, local authorities chose to look the other way and were it not for the activism of Georgia's NAACP, there likely would not have been any prosecution in that case.

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How can Congress equip DOJ's Civil Rights division to launch more and more effective pattern or practice investigations without asking you to comment on the details of the Arbery case? And, how else can the Department of Justice use its authority to ensure that where local agencies violate constitutional rights or fail to uphold the guarantee of equal protection, there's accountability?

GARLAND:

Well, I--I appreciate that you're not asking me to talk about a pending case.

GARLAND:

What I will say is that like many, many Americans, I was shocked by what I saw on videos of Black Americans being killed over this last summer. That's--I do think created a moment in the national life that brought attention from people who had not seen what black Americans and other members of communities of color had known for decades. But it did bring everything to the fore and created a moment in which we have an opportunity to make dramatic changes and--and really bring forth people justice under the law, which is our commitment of the justice department.

So the Civil Rights Division is the place where we focus these--these operations. You're exactly right that pattern and practice invest--pattern or practice investigations are--are the core of our ability to bring actions here, that these lead to all different kinds of remedies, sometimes consent decrees, as--as a potential remedy. We also can--can criminally prosecute violations of constitutional rights.

And we can also provide funding for police departments to reform themselves. I do believe that officers who follow the law and the constitution want that accountability. They want officers who do not to become accountable, because if--if that doesn't happen, their--their--their law enforcement agency is tainted, they lose the credibility in the community. And without the community's trust, they can't bring safety.

So we have this--this--this number of tools, whether we need additional tools in this particular area, I don't know. Obviously, the resources are necessary. Probably going to be like a broken record, in every one of these areas for us to do our job--

OSSOFF:

--And Judge Garland with--with my time, sir--

GARLAND:

--I'm sorry--

OSSOFF:

--Will you commit to working with my office and with this committee to determine what additional authorities the department may need and what resources you may require in order to be able to bring more and more effective pattern or practice investigations where appropriate?

GARLAND:

Absolutely, Senator, I'm sorry to have gone on.

OSSOFF:

No problem. Thank you, Judge Garland. Mr. Chairman, I yield back.

DURBIN:

Thank you, Judge. And thank you, Senator Ossoff. And so only in the Senate, would we characterize a five minute round of questioning as a lightning round. That's what we're going to shift to at this moment. And those senators who wish to ask a second question will have five minutes to do so, and I'm going to kick it off, if I can.

I want to address an issue which doesn't come up very often in this type of hearing, but should. And that is the state of America's federal prisons. We talk a lot about justice under the law, sentencing, enforcement. We know the outcome in many, many cases is that a person is incarcerated for sometimes a very lengthy period of time.

How long that period of time is and how that person is treated in prison should be our concern as well. It's a reflection on our values as a nation, just as many other things are. So the first thing I would say is that I made a serious mistake, along with many others, including the current president in supporting a bill more than 25 years ago, which established the standard for sentencing crack cocaine 100 to 1 compared to powder cocaine.

The net result of it was a failure of policy. It did not reduce addiction. It did not raise the price of crack cocaine, just the opposite occurred. We ended up arresting thousands of Americans and sentencing and lengthy sentences, primarily African Americans. And so I introduced a bill several years ago, the Fair Sentencing Act, which was signed into law by President Obama. And then I worked with Senator Grassley, Senator Lee, who's here today, as well as Senator Booker and others to pass the First Step Act.

The idea was to reconcile some of the injustice in our sentencing under that earlier law. Senator--President Trump, much to our surprise, signed it into law, and even spoke positively about it at the State of the Union. Unfortunately, it has not been implemented, and the provisions in there to prepare people for release from prison as well as to reduce sentences have not been effectively enforced. So point number one, I hope you will put that on your agenda because I'll be back in touch with you to ask.

Second point. The United States has 5 percent of the population in the world, and 20 percent of the COVID infections and deaths. It's a terrible commentary on our failure to deal with this public health crisis. But to make matters even worse, infection rate in federal prison populations is four times what it is in the surrounding community, and more than 230 federal prisoners have died.

We need to have a sensible and humane response to compassionate release in this time of pandemic. Senator Grassley and I have introduced legislation along those lines. And I'm going to ask you to look at that carefully as well.

And the third is, the last item that I'll bring up for your response, was an article written several years ago in the New Yorker Magazine, and I think I may have mentioned this to you, by Dr. Atul Gawande, who is a surgeon in the Boston metropolitan area, a prolific writer and a very insightful man. And he wrote an article about the impact of solitary confinement on the human mind and went further to talk about how people in a perilous situation can be reduced to an inhuman level just by isolation 23 hours a day sitting in the cell by yourself. It--it just has that impact.

And I looked into it to see what was happening at the federal level, I'm happy to report to you that things are marginally better, but only marginally. I think that isolation is cruel and unusual. And has to be used in some circumstances, for an extremely dangerous inmate, but unfortunately, is used in too many circumstances. Now, many states are way ahead of the federal prison system in looking at this issue. I only have a minute left, and it's all yours to react.

GARLAND:

These are all easy, because I had already thought about all of them. And in each case, I think I will be looking at each one of these problems, the First Step Act, both with respect to our--the--if I'm--obviously, if I'm confirmed, the--the First Step Act with respect to the re-entry education that's required so that people don't--are--don't become recidivist, they're able to go into societies. The First Step Act with respect to the coverage of the act as--for retroactive reduction in sentences.

I also, over the years, maybe like you, I've learned more and more about the crack-powder distinction and how, by reading the Sentencing Commission reports about how there seems to be little, if any, support for making that. So I now have the view that there was no reason so I'm very interested in reforming that area.

I--I--I have read but don't know a lot about the solitary confinement issue. But I can't imagine that I--obviously it's required in some circumstances to protect people from other people, but it's not any kind of regular measure for incarceration. So all three of these areas are ones that I was already planning to look at. And I can assure you that I will.

DURBIN:

Thanks, Judge. I see senator Lee is here. And I'm going to recognize him next in the lightning round.

LEE:

Thank you, Mr. Chairman. Judge Garland, consistent with the idea of this being our lightning round, I'm going to start with some questions that can be yes or no. If they require more than that, you can say yes, with this or that minor caveat, but I'd prefer a yes or no, if you can provide one of these. Do you believe that individuals who advocate for the rights of unborn human beings are--are rendered unfit for public office by virtue of having engaged in such advocacy?

GARLAND:

No.

LEE:

Do you believe that efforts to purge voter rolls of individuals who have either died or have left the state in question or require voter identification or are racially discriminatory and an assault on voting rights?

GARLAND:

This one is when I can't answer yes or no, because you're asking about motivations of individuals, some of whom may have discriminatory purpose and some of whom have no discriminatory purpose.

LEE:

Okay. Okay. I think that answers my question there. Because I guess what I'm asking is does an individual, without knowing more than that, is there anything about those comments are sworn support for those positions that in and of themselves would make that person a racist or an assault un voting rights?

GARLAND:

Again, it--there's nothing about the comment itself, but when, you know, there's such a thing as circumstantial evidence, obviously. And if there's enormously disparate impact of--of things that somebody continues to propose, you know, it's not unreasonable to draw conclusions from that. But the mere fact of the statement, no.

LEE:

Do you believe that Republicans in the United States, and by Republicans I mean, as--as a whole, are determined to, "Leave our communities to the mercy of people and institutions driven by hate, bigotry, and fear of any threat to the status quo?"

GARLAND:

I don't make generalizations about members of political parties. I would never do that.

LEE:

I--I appreciate that and wouldn't expect otherwise. The reason I raised these ones is that these are questions that have been drawn from comments made by Vanita Gupta, who has been nominated to be the associate attorney general has advocated for each of these positions.

GARLAND:

Well, Senator I know of Vanita Gupta now quite well, I didn't know her before, but since the nomination, I've gotten a chance to talk with her and speak with her. I have to tell you I regard her as a person of great integrity and a person who is dedicated to the mission of the department, and particularly equal justice under law.

LEE:

Understandable.

GARLAND:

So, I don't know the--

LEE:

--I'm not asking you to weigh in on her, on--on--on her as a person. I'm just talking about the comments.

Let's move on. Would--would an individual's past statements, statements in the past as an adult, declaring that one racial group is superior to another, would statements like that be relevant to an evaluation of whether such a person should be put in charge of running the Department of Justice's Civil Rights Division?

GARLAND:

So, Senator, I've read in the last few days these allegations about Kristen Clarke, who I also have gotten to know, who I also trust, who I believe is a person of integrity whose views about the Civil Rights Division I have discussed with her, and they are in line with my own. I have every reason to want her. She is an experienced former line prosecutor of hate crimes, and we need somebody like that to be running the--

LEE:

--I'm asking about the statement. I'm not asking about her as a person. I'm asking about the statement. Would it--in the abstract, would someone who has made that comment, with that comment itself be relevant to the question of whether that person, having made that statement, should be put in charge of running the Civil Rights Division?

GARLAND:

All I can tell you is I've had many conversations with her about her views about that--about the Civil Rights Division, about what kind of matters she would investigate. They are all--

LEE:

--What--what about anti-Semitic comments? Would those be relevant to someone wanting to run--

GARLAND:

--You know my views--

LEE:

--The Civil Rights Division--

GARLAND:

--About anti-Semitism. I--

LEE:

--Right--

GARLAND:

--No one needs to question those, obviously.

LEE:

I'm not questioning your view.

GARLAND:

I know--I know you're not, but I also want you to know I'm a pretty good judge of what an anti-Semite is. And I have--and I do not believe that she is an anti-Semite, and I do not believe she is discriminatory in any sense.

LEE:



Okay. Tell me this. Judge, you--you are a man of--of integrity and--and one who honors and respects the laws. What assurances can you give us as--as one who has been nominated to serve as the attorney general of the United States, that you, if confirmed as attorney general of the United States, what assurances can you give Americans who are Republican, who are pro-life, who are religious people who are members of certain minority groups, you know, in short, half or more than half of the country, telling them that the U.S. Department of Justice, if you're confirmed, will protect them if--if Department of Justice leaders have condoned radical positions like those ones--those that I've described?

GARLAND:

Look, I'll say again I don't believe that either Vanita or Kristen condone those positions. But--and I--I have complete faith in them. About I--we are a leadership team, along with Lisa Monaco, that will run the department. In the end, every--the final decision is mine. The buck stops with me, as Harry Truman said. And I will assure the people that you're talking about I have--I am a strong believer in religious liberty and there will not be a--any discrimination under my watch.

LEE:

Thank you.

DURBIN:

I might remind the committee that the statements--I might remind the committee that the statements that are being alleged can all be asked of the actual witness. The committee is going to have a hearing on these individuals, and it would only be fair to take the question to them as opposed to asking for a reaction from someone who did not make that statement. Senator Klobuchar?

KLOBUCHAR:

Thank you very much, Mr. Chairman. And I appreciated, Judge, your full throated defense not only religious liberty, which I know is important to Senator Lee, but also of your team and the people that you want to work with going forward. And while the chairman is correct, we can ask questions of those nominees, I think it's important to hear from you with their hearings coming up of your beliefs about how they can do the job. So, I appreciate that. I know both of them and have a lot of respect for them.

GARLAND:

Thank--thank you, Senator. They have skills that I do not have. They have experiences that I do not have. Likewise, Lisa Monaco has experiences in the intelligence world that I do not have. No human being can have all of the skills necessary to run the Justice Department, and I need this leadership team if I'm going to be successful, if you confirm me.

KLOBUCHAR:

Very good. Well, thank you very much. And one thing that we didn't touch on when I asked my first round of questions was the Violence Against Women Act. And I'm going to be working with Senator Feinstein and others on that--this committee to finally get that done.

I don't know if you've followed this, but we've had a--a delay in getting that reauthorized. It's tended to be a bipartisan bill in the past. And I have several provisions in the bill, including one on--to fix a loophole that exists involving--it's called the boyfriend loophole, but it's not as positive as that sounds, about owning--getting guns after people have committed serious crimes.

But the second piece is a bill called the Abby Honold Act, which is a rape victim in Minnesota who worked with us, and Senator Cornyn is my cosponsor of the bill, to be able to do a better job of law enforcement to investigate sexual assault crimes. But just in general, do you want to talk about your views on the Violence Against Women Act and the Justice Department role in training and the like across the country?

GARLAND:

Yes. So, as I know you know, the Violence Against Women Act was pressed by Senator Joe Biden many years ago, and he has a deep commitment to its continued reauthorization, as do I. I was in the Justice Department when we set up the first office for violence against women for the purpose of coordinating departmental programs in this area. I know this requires resources. Both of the examples that you give seem--again, I don't know the specifics, but from the description I can hardly imagine a--a serious disagreement.

We have to do--provide the resources necessary to help rape victims, obviously. And I don't see any reason why you know, somebody who commits a violent crime against a--a--a person but isn't married or have an intimate relationship should be treated any differently than one who does. So, I think I'm all in on the violence against women--re-upping the statute--

KLOBUCHAR:

--Very good--

GARLAND:

--Authorization, I guess.

KLOBUCHAR:

Thank you. Another thing that I've been very focused on, in part because my dad struggled with alcoholism most of his life and has got through that thanks to treatment and recovery, is to give the same kind of opportunity to people in the

criminal justice system. And drug courts are a big presence in Minnesota, as is treatment. We're home of Hazelton Betty Ford, as well as many other fine treatment centers.

And we've worked really hard here. I've led to some of the efforts on diversion with federal courts with drug court. Of course, there's much use of them on state courts. Could you talk about your views on that?

GARLAND:

Yeah. No, I think courts and diversion are an excellent idea for people who have addiction and need to be treated. I think now that the opioid crisis has struck large parts of America, many Americans now understand that sometimes it's just not a question of willpower to turn this stuff down, that this is--these kind of drugs take control of your lives and you just can't do anything about it.

And treating--treating people in those circumstances in the criminal justice system is a--a abuse of them, but also it's a terrible misallocation of resources. So, the drug courts that are able to get people into addiction programs are a godsend, and I--I'm in favor of them.

KLOBUCHAR:

And thank you for also mentioning opioids, which has been such a scourge. We lost Prints in Minnesota because of opioids, but we lost a lot of other people that people may not know their names and a lot of kids to opioids.

Actually, Senator Whitehouse and I, along with Senator Portman, Senator Graham has been involved in this, and many others, Grassley, have been leading the way for a while before people were even identifying this as an issue, and commitment to the treatment side of it, which you've already made just now, but also to the prosecution of synthetic production and distribution, synthetic opioids continues to this day. Could you comment briefly? I think maybe Senator Graham asked about this, but if you could comment.

GARLAND:

Yeah. Yeah, he did. And of course, I think that--that's right.

GARLAND:

The people who are putting the poison into the communities are the ones we should be focusing on and, you know, I think that's what the DEA is well known for doing and I'd like to put as much effort into this as we possibly can.

KLOBUCHAR:

Okay, I see the Chairman is looking at me in a very polite Midwestern way to tell me that my time has expired. So, thank you.

GARLAND:

I'm familiar with the polite Midwestern way.

DURBIN:

Senator Kennedy, your diligence has been rewarded. You have five minutes.

KENNEDY:

Thank you, Mr. Chairman. Judge, I'm really curious about your thinking on this and I don't want my questions to be interpreted as suggestive or inconsistent with your thinking. But, you and I are about the same age, I think.

GARLAND:

I think so. That's right, Senator.

KENNEDY:

What is--when you refer to systemic racism, what is that?

GARLAND:

I think--I think it is plain to me that there is discrimination and widespread disparate treatment of communities of color and other ethnic minorities in this country. They have a disproportionately lower employment, disproportionately lower home ownership rates, disproportionately lower ability to accumulate wealth--

KENNEDY:

--Can I stop you because this five minutes goes so fast?

GARLAND:

I'm sorry.

KENNEDY:

So, you're basically saying there's--there's a disparate impact.

GARLAND:

A disparate impact, which in some cases is the consequence of historical patterns. Sometimes it's the consequence--

KENNEDY:

--Okay, let me--let me ask you this.

GARLAND:

--of unconscious bias and sometimes conscious.

KENNEDY:

When you were at the Department of Justice--

GARLAND:

--yes.--

KENNEDY:

--was the Department of Justice then systemically racist?

GARLAND:

I think each--we look for a pattern or practice in each institution. When you talk about a specific institution, you look for its pattern and practices.

KENNEDY:

But, how do you know what you know? In other words, you say an institution is systemically racist.

GARLAND:

I didn't say any particular institution--

KENNEDY:

--I know. I'm not saying you did. I'm saying if you say an institution is systemically racist, how do you know what you know? Do you measure it by disparate impact, controlling you for other factors?

GARLAND:

Well, the very--

KENNEDY:

--Or do you look at the numbers and say the system must be racist?

GARLAND:

Well, now you've asked me a slightly different question, which I think I have a slightly different answer for.

KENNEDY:

Okay.

GARLAND:

So, the authority of the Justice Department has to investigate institutions, is to look for patterns or practices of unconstitutional conduct and if we find a pattern or a practice of unconstitutional conduct, I would describe that as institutional racism within that institution. That may not be the perfect definition, but that's what I would think.

KENNEDY:

So, it's just a product of the numbers?

GARLAND:

Well, if there is a pattern and a practice. This is not just a question of individual numbers. What we're looking for here under those investigations are patterns. Why is it that, you know, a series of similar events are occurring like that?

Looking into any individual's heart is not something we can do.

KENNEDY:

Who bears the burden of proving that, the institution--

GARLAND:

No. No, no. Like in all matters of law, the burden is on the govern--the investigator to prove, first by investigation, then before a court.

KENNEDY:

Is there any other way to measure institutional racism other than--than the numbers, the disparate impact?

GARLAND:

Well yes, I mean, you could look at large numbers of individual cases in which discriminatory conduct is actually found, intentional discriminatory conduct. Then it's not just a question of numbers.

But, you know, if--if an institution has a very large number of incidents of unconstitutional conduct, the entity is responsible in the same way a corporation is responsible for the behavior of its individuals. It's the same way--same way--

KENNEDY:

--What's the difference, though, between people who are racist and an institution that's racist?

GARLAND:

Now, we do have a cosmic question. But, I think institutions are made up of--

KENNEDY:

--Yeah, but this is important.

GARLAND:

I know. I'm totally with you. I totally agree with that. Corporations are nothing other than the collection of their individuals and the same is true for a public entity, which is in a certain way a corporation.

KENNEDY:

I've got to get one more in. I'm sorry, I've got 24 seconds.

GARLAND:

I'm sorry, you asked a very hard question.

KENNEDY:

--We can talk about this later. But, I want to ask you about this concept of implicit bias.

GARLAND:

--Yeah.--

KENNEDY:

Does that mean I'm a racist no matter what I do or what I think? I'm a racist but I don't know I'm a racist?

GARLAND:

Okay, that--the label racist is not one that I would apply like that. Implicit bias just means that every human being has biases. That's part of what it means to be a human being. And, the point of examining our implicit biases is to bring our conscious mind up to our unconscious mind and to--to know when we're behaving in a stereotyped way.

Everybody has stereotypes. It's not possible to go through life without working through stereotypes. And, implicit biases are the ones that we don't recognize in our behavior. That doesn't make you racist, no.

KENNEDY:

Who judges that? Doesn't the person judging me have his own implicit bias? How do I know his implicit bias isn't worse than my implicit bias?

GARLAND:

I agree, but I'm not judging you, Senator, and I don't know--

KENNEDY:

--I'm not asking you--

GARLAND:

--Who would be judging--

KENNEDY:

But, somebody, if you say, "You have implicit bias," that's a pejorative statement. I'm not saying you're being mean. You're not a mean guy. That's obvious. You're a nice guy.

If you say somebody has implicit bias, somebody's got to make that subjective judgment and the person making that subjective judgment has implicit bias if it's part of being a human. Then how do you know who wins?

GARLAND:

Fair enough. But, if we say that all people have implicit bias, it's not--you shouldn't take it as pejorative. This is just an element of the human condition. So, you shouldn't take that as pejorative. Implicit bias is just a descriptor of--of the way people's minds--everyone's mind works.

KENNEDY:

How about if you say that America has racist in it, just like everybody else? Does that--just like everywhere else. Does that make America systemically racist?

GARLAND:

I think--I don't want to waste your time because I think this is what I said before. What I mean by systemic racism is the patterns of discrimination and disparate treatment across the country. It doesn't mean that any particular individual is a racist.



KENNEDY:

Judge, I'm in big trouble. I've gone way over.

DURBIN:

I'm developing a bias. Thank you for the exchange.

GARLAND:

It's a pleasure--a pleasure talking with you, Senator.

KENNEDY:

Same here, Judge.

GARLAND:

Appreciate it.

KENNEDY:

You'll be a good Attorney General.

DURBIN:

All right, so I'd like to let the committee know that Senator Hirono will be the next up and then we're going to take a break and return to five-minute rounds. Senator Hirono, are you tuned in?

HIRONO:

Yes, I am. Thank you, Mr. Chairman. I would like to ask, well what I think is a very straightforward question. Over the past couple of years, the Justice Department has initiated a number of efforts related to missing and murdered indigenous people and women, including U.S. (INAUDIBLE) pilot projects in Alaska and Oklahoma to implement tailored tribal community response plans.

To what extent do you plan to continue to focus on these and other regional engagement efforts that could help address the missing and murdered indigenous people crisis?

GARLAND:

Well, I--I certainly do intend to continue those. Again, when--last time I was in the Justice Department at the Office of Tribal Justice was established and I believe from looking at the organization chart that it is still there. This is an important aspect. We have a responsibility to indigenous peoples, both statutory and otherwise, to protect.

And, you know, many of our problems in this country are regional and we must focus our resources on problems that are regional. Not every problem is a national one and our regional problems have to be addressed directly with respect to the problems caused in those regions (OFF-MIC).

HIRONO:

Thank you, (INAUDIBLE) this is--I think this is an under--possibly underreported and definitely we don't get enough attention to what is happening to murdered and missing indigenous women and people. I think we need to put a lot more emphasis on what's going on there.

Now, the past four years have seen a reawakening of right-wing extremism. Last year, FBI Director Wray testified that the greatest domestic threat--terrorist threat facing the United States is white extremist groups. And of course, last month, we had the insurrection at the U.S. Capitol led by white supremacists and right-wing extremists. Late last month, the New York Times reported that President Trump, with the help of his Attorney General, Barr, diverted law enforcement resources from combating the serious threat posed by right-wing extremist groups. Will you reprioritize Justice Department resources to address white supremacists and other right-wing extremists?

GARLAND:

Yes, Senator. If anything was necessary to refocus our attention on white supremacists, that--that was the attack on the Capitol. And I expect to put all departmental resources necessary to combat this problem into this area, to make sure both our agents and our prosecutors have the numbers and the resources to accomplish that mission.

HIRONO:

Thank you. My next question has to do with immigration courts. And we discuss immigration and the courts when we were able to meet a few weeks ago. And it's worth highlighting that under the Trump administration the backlog of cases pending in the immigration court has exploded to almost 1.3 million cases.

That is an amazing number. In some jurisdictions, the wait to hear case for years and there are cases that have been pending for more than five years. And this not only affects families trying to reunite, but students trying to study or train in the U.S., victims of crime, are working with law enforcement, and members of our military trying to adjust status. 1.3 million backlog. How will you address this backlog and increase the efficiency of the immigration courts?

GARLAND:

This is an extraordinarily serious problem, looking from my pampered perch as an appellate judge who has a limited number of cases and weeks and weeks to study those and then weeks and weeks to write those, I can't imagine how judges can operate under the conditions that you described and that I have heard, even from other judges exist. When I get into the Department, if I'm confirmed, I will certainly look into what can be done about this.

I suppose this must mean an increase in a number of resources and judges. It must mean some ability to--to give to the judges to prioritize their cases. Even in our own appellate courts, we have developed ways in which we handle some cases more swiftly and some cases take longer. Some cases are some barely resolved. Some require full opinions.

Some way of evaluating this is required. But I can't give you any specific examine--idea with respect to court administration, which I know something about but not enormous about, until I have a chance to get into the Department, if confirmed, and to understand what the cause of this huge backlog and number of cases is.

HIRONO:

There is an executive office or immigration review that oversees these, but I think the really important thing is an acknowledgement that this kind of serious backlog has got to be addressed. And we--because lives are at stake here. Thank you, Mr. Chairman.

DURBIN:

Thank you, Senator Hirono. We're going to break now and come back at five minutes after 3:00.

(RECESS)

DURBIN:

The committee resumes, and I'm going to turn to the ranking member, Senator Grassley, five minutes. Go ahead.

GRASSLEY:

Thank you. Judge Garland, when I talked to on the phone, I said I was going to give you a binder--I'm not going to ask you to come up and give it and I'm not going to take it down to you, but I'll have my staff give it to you--of letters going back to the last two years of the Trump administration that haven't been answered the Department, and also maybe just a very few letters of the recent administration. So, I hope that you will do what you can to get those answered so six months from now I don't blame you. It's the fact that the Trump people didn't answer it.

GARLAND:

I--I would like to keep the blame on the--my predecessor, yes, Senator.

GRASSLEY:

Okay. Thank you. And then I'm going to say something about your answering questions for us, and this goes back--now that I'm ranking member, I want to give you a quote that I said to Senator Sessions when he was sitting where you are. And if Senator Feinstein contacts you, do not use this excuse as so many people use, that if you are not a chairman of a committee, you do not have to answer the questions. I want her questions answered just like you would answer mine. So, I hope that, whether I'm ranking member or chairman of the committee, you will help me get answers to the questions. And I hope Senator Durbin will do the same thing.

GARLAND:

I will not use any excuse to not answer your questions, Senator.

GRASSLEY:

Thank you. And then, the other thing is just--I don't want to dwell on Durham, but several people have asked you and you've given the same answer. And I understand why you give that answer, but would it be impossible for you to have some sort of a briefing on Durham between now and the time you get written answers back so you could give us a more definitive answer?

GARLAND:

So, I--I don't think it's appropriate. I mean, I assume, among other things, that the Durham investigation--

GRASSLEY:

--I'll--I'll accept your answer.

GARLAND:

Okay.

GRASSLEY:

You don't need to go any further.

GARLAND:

Yeah.

GRASSLEY:

Okay. Then let's go to a subject of domestic terrorism. And that--and obviously, in a democracy, we need to be able to disagree with each other without violence. Political extremism, the willingness to use violence advocate one's political views on either side, is a threat to our democracy. The Capitol attack shows us that very directly.

I think you've answered this question and--and so, just a very short answer. I think you've assured all of us that the Justice Department has all the necessary resources to investigate and prosecute all cases connected to the attack on the United States Capitol.

GARLAND:

I can't yet say we have all the resources. What I said was I would--I would look into the question of whether we--I just don't know.

GRASSLEY:

Okay.

GARLAND:

But we certainly have--we certainly have authorities to look into it. Whether we have the money and the--and the--and the person power, I just don't know yet.

GRASSLEY:

Okay. Then likewise, in the previous year there have been numerous attacks not only on other institutions of the government, like the White House and the federal courthouse in Portland, but on hundreds if not thousands of police officers who were injured, as well as on fellow citizens and their businesses, particularly small businesses.

The Justice Department over--opened over 300 domestic terrorism cases due to that violence and started an antigovernment extremism task force. So, I hope you could commit absolutely, as you did for the Capitol rioters, that you will see those investigations of the 2020 riots and continuing Antifa riots in the Pacific Northwest through to the very end.

GARLAND:

Look, the--the--the Justice Department--I think Director Wray said it exactly right, which is we investigate violence. We don't care about ideology.

GRASSLEY:

Okay.

GARLAND:

If there are investigations going on like those, then of course they're going to continue.

GRASSLEY:

Okay. And then taking off a little bit what you referred to what the FBI said, former Attorney General Barr noted that the FBI, while it had robust programs for white supremacy--supremacy [sic] and militia extremism, lacked a similar infrastructure for anarchist extremism cases. Former acting Department of Homeland Security Secretary Wolf stated that this may have contributed to law enforcement being blindsided by the civil unrest that became--that began in 2020.

So, I hope that I can get you to say that you would be willing to review your anarchist extremism program for weaknesses and fixing those weaknesses based upon what Barr said, that the FBI said, that they had better programs to con--to go after white supremacy than they did other anarchist extremism.

GARLAND:

You know, I think we need to go after violence from whatever direction, left, right, up, down. It doesn't make any difference. We need to go after--to go after that. I think what Director Wray had said was the--what he was most concerned about was the--a rise of white supremacist extremism as an element of domestic terrorism. But it doesn't matter what direction it comes from. It doesn't matter what the ideology is. We have to investigate it.

GRASSLEY:

I guess my time's up. I'm going to have a lot of questions for him. I'm going to have a lot of questions for answer in writing.

GARLAND:

Fair enough.

DURBIN:

So, I'm--I want to try to give an indication of the sequence. Dick Blumenthal is going to be next, and then on the Republican side I think it's going to be John Cornyn. Then it'll--it'll either be Senator Ossoff or Senator Booker. They can arm wrestle until I have to make that decision. And then Senator Cotton, I believe, you were the next arrival. This has become kind of a--a little difficult to predict, the sequence. I want to make sure you see it coming.

BOOKER:

I--I would never want a rookie senator go between Cotton and Cornyn, so I'll--I'll go there.

(LAUGHTER)

DURBIN:

Senator Blumenthal?

BLUMENTHAL:

Thanks, Mr. Chairman. I want to pursue a couple of the questions that I was asking when we ran out of time, just to say that on the issue of climate change, President Biden as a candidate committed to hold accountable the oil and gas industry for any lies or fraud they had committed in denying the effects of climate change. And I hope you'll take that into consideration in determining what the Department of Justice will do in those kinds of cases, pursuing any kind of pollution or climate change or lies in connection with the oil and gas industry.

And just to kind of ask a threshold question, do you have any doubt that human beings are a cause of climate change?

GARLAND:

No, no doubt at all.

BLUMENTHAL:

Thank you. You--you may--

GARLAND:

--That wasn't a trick question, I guess.

BLUMENTHAL:

It wasn't a trick question.

GARLAND:

Okay.

BLUMENTHAL:

I ask it because the last major nominee before this committee back in September, it was a Supreme Court nomination, seemed to have some trouble with the question, but I'm glad you don't.

Let me move to this--the issue of racial discrimination, which has been pursued. And I really welcome your very sincere and passionate commitment to ending racism and racial injustice. We're in the midst of a racial justice movement right now. One of the areas that most concerns me is holding accountable public officials when they violate individual rights and liberties.

As you know, Section 242 makes it a federal crime to willfully deprive a person of their constitutional rights while acting under color of law, but prosecutors have to show that that public official had specific intent to deprive constitutional rights which, as you also know, is a pretty high bar. I believe, and I have advocated we, in effect, lower the state of mind requirement in Section 242 from willfully to knowingly or with reckless disregard, because this stringent mens rea requirement makes Section 242 prosecutions rare or impossible.

And so, I hope you agree that we need to adopt measures that will enable criminal accountability where all of the elements of the crime are committed and the mens rea intent requirement can it, in effect, fit the crime.

GARLAND:

Well, what I can agree is that I--I'll consult with the career lawyers in the Civil Rights Division, who are the ones who are--would be bringing these cases and who have brought them in the--in the past.

GARLAND:

I actually just don't know. I know everyone says that they're very difficult to make. On the other hand, in the Clinton administration, we did successfully make quite a number of those cases. So, I'd like to know from talking to them what kinds of changes might be necessary in the statute and what the consequences of changing the mens rea requirement would be.

BLUMENTHAL:

Thank you. I'd also like to ask you about Section 230. I've proposed various measures, one of them actually adopted into law and signed by the president. It imposes accountability on the Big Tech platforms for certain kinds of really horrific material, human trafficking under SESTA and Senator Graham and I have led an effort. It's called the Earn It Act to hold accountable the tech companies for spreading child sexual abuse material.

I think reform of Section 230 is long overdue. I led these kinds of targeted and indeed bipartisan efforts to revise Section 230 to hold Big Tech accountable and I hope that you will consider joining with the Congress in those kinds of targeted deliberate efforts to reform Section 230, which no longer fits the world that currently it applies to.



GARLAND:

So, I don't know that much about 230 except for the case I mentioned that I'd worked on myself, which was a pretty direct application of the provision. I know that a number of members, including you spoke to me about this in our meetings and I know people have different views about how it should be altered. I really would have to study that, but I'm very eager to study that. There's no doubt the Internet has changed from when 230 was originally adopted. So, I would be eager and interested in studying it and speaking with the members about it.

BLUMENTHAL:

Great. Thank you very much.

DURBIN:

Thank you, Senator Blumenthal. Senator Cornyn.

CORNYN:

Judge, are you familiar with Title 42, which is a public-health measure which restricts traffic across the international border as a public-health measure to mitigate the spread of COVID-19? Are you familiar with that?

GARLAND:

I--I don't know the statute specifically. You know, I know that there must be provisions that do that, but I don't know the statute, no.

CORNYN:

Well, one of the things I hear from the Border Patrol and Customs and Border Protection is they're fearful that when the current Title 42 restrictions on cross-border traffic are lifted, there will be no plan in its place and certainly no transition back to normal cross-border trade traffic and visit.

And, this is a huge issue that I've raised with the--with Director Mayorkas and others as well and I just wanted to make sure that's on your radar screen. But, I also want to take up what Senator Hirono was talking about, the 1.2/1.3 asylum cases that are backlogged. There's no way that the United States government is ever going to clear that backlog, but I want to suggest to you that that is part of a conscious strategy by the cartels, who--who make a lot of money moving people across the border into the United States, along with drugs, whether it's human trafficking, whether it's, as I said, drugs, whether it's just migrants who are trying to flee poor economic circumstances and dangerous conditions in their home country.

But, if the Biden administration is not going to enforce current laws with regard to immigration and many people are suggesting, including the nominee for Health and Human Services, that we ought to give free healthcare to people who are not legally

in the country. All of this is going to be a huge incentive for more and more people to immigrate illegally into the United States and obviously the Department of Justice has a very important role to play there.

But, I want to suggest this is not an accident. This is not a coincidence. This is part of a conscious strategy by the cartels to who are enriched by each and every person, each and every load of drugs that comes across the border.

And, I hope that you will commit to working with me and all the other members of Congress to try to address this humanitarian and public-health crisis in addition to the other aspects of immigration. Will you agree to do that?

GARLAND:

Certainly, I will commit to working with members of Congress to address the public-health crisis. To say--I wasn't aware that the cartels were doing this, but this seems like something that the Justice Department needs to focus on.

CORNBYN:

Well, different times it's referred to as transnational criminal organizations, cartels. Basically it's people who are engaged in criminal enterprises for money. That's-- that's why they do it. They care nothing about the people that they leave some to die in route to the United States. All they care about is money. So, I appreciate your willingness to work with me and others about that.

China and Russia, to a lesser extent, have perfected cyber espionage on the United States for many reasons but in part to steal our intellectual property. The billions of dollars that Congress appropriates for development of the next generation of stealth fighter to nuclear modernization, you name it, if the Russians and the Chinese can get it without making those investments and the years long delay necessary to--to roll them out, they have a tremendous advantage in terms of competing with us economically and also militarily.

Eighty percent of all economic espionage cases brought by the Department of Justice involve the Communist--Communist China and there are at least some nexus to China in about 60 percent of all trade theft cases.

I've told people that Director Wray, who's a pretty stoic individual, gets positively animated when he begins to talk about the role that China is playing and its rivalry with United States, both from an economic standpoint. And, if you look at the South China Sea and some of its aggressive and boisterous actions there, with the potential for military conflict in some future, this is our number one--number one challenge I believe today as we speak here.

Do you--do you share my concerns about China's role as a rival in the world, what they're doing in terms of stealing intellectual property and what that means to us economically and from a national security perspective?

GARLAND:

Well Senator, I don't have any inside information with respect to what the intelligence agencies know. But, I've read quite a lot about this and it seems quite clear to me that the Chinese are involved in hacking, of stealing our intellectual property.

We're in an age where individual espionage prosecutions don't--don't quite cut it, given the Internet and how so much can be stolen in just a single hack. So, this has to be an all of government response to this problem. There has to be a forward look as to what's happening to us.

There has to be a defensive look. I know that that's the purpose of Cyber Command. That's certainly something that the DNI is very concerned about and then of course the FBI with respect to enforcement. But, this is a dangerous problem for all the reasons you said and it requires a whole-of-government response.

CORNYN:

Thank you.

DURBIN:

Thanks, Senator Cornyn. Based on who is present and apparently interested, Senator Booker, Senator Cotton, Senator Ossoff, Senator Hawley. Those are the ones I see. So, Senator Booker.

BOOKER:

Thank you very much, Mr. Chairman, and thanks for the grace of Senator Ossoff for allowing me to go before him.

I'd love to just jump in real quick if I may and a lot has been talked about your incredible walk with the Oklahoma City bombing, but I'm also aware that you have a long record of working on domestic terrorism in pretty significant ways in the mid-1990s in response to a wave of bombings and arson attacks against black churches in the South and other houses of worship.

The Clinton administration formed a national task force where you in your leadership, along with others, helped to make this Justice Department a priority, resulting in several hundred investigations and arrests. And, I--I just really appreciate the totality of your record on fighting domestic terrorism.

I do just really quickly just wonder, just in terms of proportionality, since that time until now, we've seen just this rise of right-wing terrorist attacks in our country. In fact, since 9/11, the majority of domestic terrorist attacks have been right-wing extremist groups. The majority of those have been white supremacist groups.

And, I'm just hoping--and again you're not in the position. God willing you will be, but just the proportionality of the resources we are directing towards trying to stop the scourge of domestic terrorism. Is this something that you will look at in terms of the degree of the resources of the agency?

GARLAND:

Yeah. As I said, I think the first thing I should do as part of the--my briefings on the Capitol bombing are briefings with Director Wray as to where he sees biggest threat and whether their resources of the Bureau and of the Department are allocated towards the biggest threat and the most dangerous and direct threat. We do have to be careful across the board. We can never, you know, let--let somebody sneak around the end because we're not focusing but we also have to allocate our resources towards the biggest threat.

BOOKER:

Great. And I'd like to shift back to marijuana. Our earlier conversation, we were talking about the systemic racism there that has--I've watched tons of friends in elite colleges not worrying at all about being arrested for marijuana, while the inner-city black and brown community live into--it's a much different reality, much different set of laws applying to them.

But I actually want to get to the good news, I think in the United States of America is that red states, blue states, America, general, if you want to call those states that way, American states are moving towards more and more legalization, medical marijuana, loosening up of laws, decriminalization. It's an amazing thing. But the federal government is out of step with that, right, as of now. And I hope to work in a bipartisan way to see if we can advance the federal government maybe to delist the legislation. Think of some restorative justice elements.

Just today New Jersey signed its first major effort, legalization and restorative justice. But one thing I--that was done by the Obama administration was putting forward a--the Cole Memorandum, as I'm sure you're aware. But Attorney General Jeff Sessions rescinded the Cole Memorandum, which gave guidance to us attorneys that the Federal marijuana prohibition should not be enforced in states that have legalized marijuana in some form.

And so do you think that the guidance in the Cole Memorandum to deprioritize marijuana enforcement should be reinstated? That is, should the Justice Department respect state's decisions on marijuana policy?

GARLAND:

So I don't have every element of the Cole Memorandum in mind, but I do--do remember it and I have read it. This is a question of the prioritization of our--our resources and prosecutorial discretion. It does not seem to me a useful use of

limited resources that we have to be pursuing prosecutions in states that have legalized and reg--and that are regulating the use of marijuana either medically or otherwise. I don't think that's a useful use.

I do think we need to be sure that there are no end runs around the state laws that criminal enterprises are doing. So that kind of enforcement should be continued.

But I don't think it's--it's a good use of our resources where states have already authorized. And it only confuses people, obviously, within the state.

BOOKER:

So real quickly, the violence against black trans Americans is unconscionable, with many murders every single year. The bullying and violence against a lot of trans children. About a third of LGBTQ American children report missing school because of fear, fear of violence and intimidation. Is this something that you will make a priority to protect all children from violence and discrimination, as particularly in this case, transgender children--and transgender children? And would you also commit to taking seriously the targeting of transgender adults, specifically with the trend we're seeing with the alarming number of murders of black trans--black transgender (INAUDIBLE)--

GARLAND:

--These are hate crimes, and it's the job of the Justice Department to stop this, to find them, to enforce, and to penalize. And that's what the section of the special litigation unit in the Civil Rights Division is intended to do. There is the Shepard Byrd Act, which was particularly aimed at this and I think it's--I'm not sure whether it needs broadening. But it's clear to me that this kind of hate--hateful activity has to stop. And yes, we need to put resources into it.

BOOKER:

Thank you for your time. I look forward to voting for your confirmation. And I'm going to stop here because I do not want to make Tom Cotton mad at me.

DURBIN:

So the remaining senators for five minutes each, Senators Cotton, Ossoff, Hawley, and now Senator Whitehouse is going to make a return. Senator Cotton.

COTTON:

Judge, I want to return to where we stopped this morning. The question of racial equality, specifically, race discrimination, higher education. Last year, the Department of Justice sued Yale University, for discriminating against students on the basis of race. Based on Yale's own data, if you look at one of its top academic categories--when you control for academic achievement--the admission rates by

racial categories were as follows: Asian Americans, 6 percent. White applicants, 8 percent. Hispanics, 21 percent. African Americans, 49 percent. Do you think that evidence suggests discrimination based on race in Yale's admissions process?

GARLAND:

So again, I'm--I--my best recollection is that between my nomination and now the Department has made a decision about that.

COTTON:

The case was voluntarily dismissed on February 3rd. It's no longer a pending case.

GARLAND:

So my recollection is correct. So these kinds of cases, obviously depend on application of the Supreme Court's opinion in the Grutter case and the Fisher case. And they require a lot of factual development and examination of the facts. These cases do not only depend on--on--disparate statistic--disparate statistics, but on all the factors. The Supreme Court instructed the lower courts and the government as to what kinds of affirmative action in higher education are permissible and which ones aren't. So I can't--I honestly can't draw any conclusions without knowing the facts of the case.

COTTON:

So some of that Supreme Court case law about racial discrimination, higher education says that race can only be used as a plus factor. It can't be decisive in practice, it can't be a defining feature can't be the predominant factor. When Asian American kids are eight times less likely to be admitted in the same band of academic achievement, you don't think that at least suggests a facial case of racial discrimination of Asian Americans?

GARLAND:

Well, I think that's--that's the question that you look at for the underlying facts to know. Your--I think--I don't remember exactly the words of the Supreme Court opinions, but they seem pretty much exactly, you know, what--what you just said. You can't have a rigid quota, you can't have a fixed--this was the consequence of the Gratz case, which was the companion case to Grutter. Grutter was the University of Michigan law school. Gratz was University of Michigan as a university.

With respect to Grutter, the Court said it was a holistic approach and was permissible. With respect to Gratz, it said it was a fixed ratio or a fixed number and not permissible. But those are things you find out by discovery in the case and you--examination of what the actual practices of--of the university were. And I have no idea what they were.

COTTON:

Judge, did anyone in the Biden administration consult with you about the decision to drop the lawsuit?

GARLAND:

--No--

COTTON:

--Against Yale University?

GARLAND:

No, no, I've--I have assiduously kept out of those. It's not my--it's not appropriate for me to be examining anything like that, unless you confirm me.

COTTON:

Will the Department of Justice, under your leadership, pursue cases of obvious racial discrimination and higher education?

GARLAND:

Well, if you put it that way, the answer is, of course, yes. Obvious cases--

COTTON:

--Well, I think this presents an obvious case of discrimination against Asian Americans. I suspect some Asian American parents and their kids are a little disappointed in those answers, Judge. I want to turn to the--

GARLAND:

--I just want to say, I'm only giving the answer to what the Supreme Court said the law was. I can't do any better than that.

COTTON:

Eight times less likely to be admitted.

GARLAND:

All I--my answer was you have to look at the facts inside--

COTTON:

--Okay, I want to turn to another very important topic, which is the rising rates of violent crime in the country. According to FBI's crime statistic--statistics, only 45 percent of violent crimes in this country result in an arrest. Would it be better or worse if 100 percent of violent crimes in this country resulted in arrest and prosecution instead of just 45 percent?

GARLAND:

Would be better if--if you gave--if Congress gave the Department enough money to arrest every single person? I--I assume you're talking about state crimes and--and federal crimes.

COTTON:

That's according--yes. Department of Justice, FBI crime statistics. 45 percent.

GARLAND:

So those--almost all are a large percentage, you're talking about local crime. So, yes. Better to--

COTTON:

--Do you think the Department--do you think that Department today solves too many crimes or prosecutes too many criminals?

GARLAND:

The Justice Department?

COTTON:

Yes.

GARLAND:

I think it may bring charges in areas which are not a good allocation of its resources, but I don't think it has sufficient resources to, and probably never will, to pursue every crime. That seems impossible.

COTTON:

One final point, Judge, I just want to get on the record. We spoke about this last week in our telephone call about the importance of state and local law enforcement to work together in a collaborative and cooperative fashion--profession--or fashion or fashion with the Department of Justice, both its local U.S. Attorneys and the law enforcement over--agencies that you ever see.



I was glad to know that you agree with me those partnerships are vital to reduce crime and keep our community safe. I just wanted to have--give you the chance to put that on the record today.

GARLAND:

Yes, absolutely. You know, my experience in Oklahoma City was close cooperation with the DA's office, the local police there and with the governor and with the state police. I think these joint task forces are an exceedingly good idea. They're a force multiplier, so I--I'm completely on board with this, yes, sir.

COTTON:

Thank you, Judge.

DURBIN:

Senator Ossoff?

OSSOFF:

Thank you, Mr. Chairman. Hi again, Judge Garland. I want to return to the question of the Department's authorities and mission to defend voting rights, and note that Sunday would have been Congressman John Lewis's 81st birthday. And as you know, he committed his life and indeed nearly lost his life in the struggle for voting rights.

But as we speak, Georgia's state legislature is considering legislation that would make it harder for Georgians to vote; for example, to end Sunday early-voting, which is used heavily by black and working-class voters, to cut the window during which voters can participate via absentee ballot, which would make it harder for seniors to vote. And I'm not asking you to comment on these specific bills, but what I'm hoping you can provide is an assurance that the Department of Justice will diligently and fully enforce constitutional and statutory guarantees of the rights to vote.

GARLAND:

I give you my complete assurance, yes, Senator.

OSSOFF:

Thank you so much. I'd also like to discuss with you resources available for public defender's offices around the country. And a visit to a municipal court in any major American city will reveal that a steady stream of low-income defendants, lacking the resources to hire their own attorneys, are often represented by overworked and under resourced public defenders, which contributes to class and race bias in the justice system and, in my view, is an affront to the constitutional guarantee of due process as well as of equal protection.

So, will you work with my office and this committee to determine whether grant programs, which may already exist at the Department to support local public defender's offices, or way--which may need to be created, can be considered in legislation that this committee and the Senate may consider?

GARLAND:

Yeah, I--I will, Senator. There is no equal justice in the United States unless everybody has equal access to justice. My own experience, our federal public defender's office is terrific. It needs resources, the federal public defenders across the country. I've tried my best, when I was in an administrative position, to provide as many resources as possible, the same for our lawyers who volunteer under the Criminal Justice Act.

The difference between having an excellent lawyer and not can make all the difference in the world. And I--I think we should give all the resources that we can. And with respect to the local courts and local public defenders, it would have to be through grant programs. But of course to--to the extent Congress is willing, I--I'm strongly in favor.

OSSOFF:

Well, I appreciate that answer, and I--I look forward to working with you, I hope, and the chairman and ranking member on those grant programs.

And--and finally, I want to return to the discussion that we had earlier about pattern or practice investigations. And I just want to urge you that, if you are confirmed and as you take this office, and there will be so many demands on your time and your attention and important missions for the Department to fight violent crime and to defend our national security, that you personally exercise leadership within the Department to ensure that the Civil Rights Division's mission is elevated and emphasized, and that you come to this committee to seek and to secure any resources that you need to make that real.

And just illustrate why I believe that so important, the South Fulton Jail in my home state of Georgia has been known to the public for years to have appalling conditions for incarcerated people. And actually, in the last month, a federal court ordered changes to practices within the jail, but it was after years of litigation. The U.S. Attorney's office did file a brief in the case, but the litigation was brought by independent, nonprofit plaintiffs, years it took for changes to be ordered by a federal court.

I'm going to read you a quote from the plaintiff's brief to illustrate the conditions in this jail, and I want to warn the public viewing this on television that the material is graphic. "The cells were covered in bodily fluids, rust, and mold. In these conditions, the inmates deteriorated, leaving them incoherent, screaming unintelligibly, laying

catatonic, banging their heads against walls, and repeatedly attempting suicide." This refers to the solitary confinement of women with severe psychiatric disorders in the South Fulton Jail in Georgia, and these conditions are not unique to this facility.

So, I want to urge you and ask you one more time, please, respectfully, Judge Garland, your commitment to elevate this mission within the Department and to work to secure the human rights of incarcerated people and the American public with all the power you'll have in this position.

GARLAND:

Well, you have my commitment that--that the civil rights division has responsibility and some authorities in those areas and--and so, is quite capable of pursuing these kinds of cases. I took to heart what Chairman--the Chairman said with respect to the role that Robert Kennedy played when he was the Attorney General, and I regard my responsibilities with respect to the civil rights division as--at the top of my major priorities list. So, you have my commitment to do everything I can in this area.

OSSOFF:

Thank you. And just with the chairman's indulgence, Judge, will you commit to reviewing any materials that are sent to you by Congress or by entities such as the NAACP or the Southern Center for Human Rights where it pertains to conditions of incarceration?

GARLAND:

So, I--so that I have some time to be able to read everything that I--I need to read, if it's all right with you I'll commit to being sure that the head of the Civil Rights Division and the associate attorney general, Ms. Clark and Ms. Gupta, who are directly responsible, do that and then brief me about it. I--I will, to the extent possible, read them myself, but I've already committed to--to reading a 400-page document and there are only so many hours in my day.

OSSOFF:

Understand. The Department's condition is what I'm looking for, so thank you so much. Thank you, Mr. Chairman.

DURBIN:

Senator Hawley?

HAWLEY:

Thank you, Mr. Durbin. Judge Garland, I like to talk a little bit more about the law enforcement challenges at the border, which I know a number of other members have run up with you. Just a--a fundamental question; do you believe that illegal entry at America's borders should remain a crime?

GARLAND:

I haven't thought about that question. I just haven't thought about that question. I--I think, you know, the president has made clear that we are a country of--with the borders and with a concern about national security. I don't know of a proposal to decriminalize but still make it unlawful to enter. I just don't know the answer to that question. I haven't thought about it.

HAWLEY:

Will you continue to prosecute unlawful border crossings?

GARLAND:

Well, this is, again, an--a question of allocation of resources. We will--the Department will prevent unlawful crossing. I don't know--you know, I--I have to admit I just don't under--know exactly what the conditions are and how this is done. I think if--I don't know what the current program even is with respect to this, if there--so, I--I--I assume that the answer would be yes, but I don't--I don't know what the issues around--surrounding it are.

HAWLEY:

Let me ask you about the guidelines on asylum eligibility that issued as part of the Executive Office of Immigration review. The--your--your predecessors have--have issued quite a number of guidelines about asylum eligibility. Several senators, Senator Hirono, I think Senator Cornyn, talked about the very significant backlog that we have currently in asylum cases. Will you continue to use--keep enforce the current guidelines on asylum eligibility, or do you anticipate changing them?

GARLAND:

Again, given my current professional occupation, I--I have had no experience whatsoever with the guidelines, so I can give you direct answer to that question. Asylum is part of American law and the Justice Department and the State Department have an obligation to--to apply the law. I don't know what the guidelines are that you're talking about, and I don't know even about the rescissions of the guidelines that you're talking about.

HAWLEY:

Will you--if confirmed, I'm sure that you'll be reviewing this and considering these questions. Will you pledge to keep us fully posted as you do so?

GARLAND:

Yeah, if there's a change in the government policy, if I'm confirmed, of--of course that will be a public change because you can't apply those kind of guidelines without making them public.

HAWLEY:

Let me turn to the subject of antitrust.

GARLAND:

Um-hmm.

HAWLEY:

I heard your answer to Senator Blackburn about the ongoing Google antitrust prosecution. I believe your answer was you did not anticipate any changes in that ongoing prosecution, that it--the case would go forward. Did I hear you correctly? Is that right?

GARLAND:

I don't want to talk about a pending case

GARLAND:

because it is, after all, a pending case and just what a judge can't talk about. But, as true with most of our investigations, I--you know, when I get in, if I'm confirmed, I will examine them. But, I don't have any reason to think that I would stop that kind of investigation.

HAWLEY:

Recent news--recently news outlets, various news outlets, have reported that Susan Davies being considered to lead the DOJ Antitrust Division. Susan Davies, of course, has defended Facebook from federal antitrust laws. Facebook has been another target of antitrust scrutiny.

Do you think it's appropriate to have someone who is a defender of these massive corporations leading the Antitrust Division?

GARLAND:

Well, let me say a number of things in response to this. First of all, the Department has recusal rules, which prevents somebody who had a role from taking a role in a case like that. Susan Davies is a fantastic lawyer, a woman of enormous integrity, and I have every confidence that were she in that division, she would proceed as completely appropriate.

But, it turns out that the press reports are completely incorrect. So--

HAWLEY:

--She's not under consideration?

GARLAND:

No, not that I know of, no.

HAWLEY:

And is--and is not going to be, to the best of your knowledge? (INAUDIBLE).

GARLAND:

--I don't--look, I don't think either she or I have aspirations for her to be in the Antitrust Division. So, I'm not exactly sure where this came from, but she is a woman of remarkable ability who has helped me in my previous role and I would be very eager to rely on her good judgment and her--and a woman of strong ethical judgment.

So, if she were in a position, any position anywhere in the Department, she would know when to recuse or not. But, this particular issue, she's not--as far as I know, she's not going to be in the Antitrust Division, not because she wanted to be or I wanted her to be in there and because somebody says she couldn't.

HAWLEY:

Good. Well, I think that's news I think and welcomed news and I just want to register my own point of view here, which is I think that the recusal or not, the message it would send--the Google case is perhaps the most significant antitrust case the Department has undertaken since Microsoft, easily, maybe more significant than that because Google, frankly, is significantly more powerful than Microsoft was.

The message it would send to have a lawyer defending these massive companies (INAUDIBLE)--

GARLAND:

--Well, I don't--I don't know who is sending this message or why this message was being sent. But, there is no--I don't have any intention of this, but I am confident that had this been the case, this would not be a problem.

You know, unfortunately or fortunately, a lot of the best antitrust lawyers in the country have some involvement one way or another in some part of--of Big Tech and we can't exclude every single good lawyer from being able to be in the division. But, that's not an issue, nothing you need to be concerned about.

HAWLEY:

Thank you, Judge. Thank you, Mr. Chairman.

DURBIN:

Senator Cruz.

CRUZ:

Thank you, Mr. Chairman. Judge Garland, I want to go back to the topic of protecting the Department of Justice from political influence and being weaponized politically.

A number of Senate Democrats at this hearing have used the opportunity to cast dispersions to the job Bill Barr did as Attorney General. I think those dispersions are false. I think he showed enormous courage and fighting to defend the rule of law.

But, Bill Barr, when explicitly asked about whether he would terminate Robert Mueller, at his confirmation hearing, the same situation you find yourself, he said he would not terminate him absent "good cause." Are you willing to meet the same standard of integrity that Bill Barr demonstrated and will you make that same commitment to this committee that you will not terminate Mr. Durham absent good cause?

GARLAND:

What I've said to the committee and what is, is that I need to get information about this investigation, which I do not have here. I understand the decision has been made to keep him in place and I have absolutely no reason to doubt that that was the right decision and that he should be kept in place. But, I can't go any further without learning the facts of the investigation and what the status is.

CRUZ:

So, Judge--Judge Garland, with all due respect--and I recognize you've been a judge for 23, 24 years. Judicial nominees sit in that chair and decline to answer just about every question senators pose them as saying, "Well, as a judge, I can't commit how I would rule on any given case," and that's appropriate.

You're not nominated to be a judge in this position. You were nominated to an executive position and you're a constitutional scholar. You understand fully well the difference between attorney general versus an Article 3 judge. Bill Barr didn't know the details of the Mueller investigation at the time, but he knew that Bob Mueller was investigating President Trump, that it was highly politically sensitive.

And, so to show his integrity and commitment to being nonpartisan, he said he wouldn't terminate Mueller absent good cause. You have the opportunity to do the same thing. The investigation into Durham is highly political. It potentially implicates

Joe Biden and Barack Obama.

And, I--I just want to be clear. You're refusing to give that same commitment. You want to keep the options open to terminate the investigation.

GARLAND:

Look, I'm not refusing to give that commitment because I am a judge. I'm telling you what I think an attorney general ought to do, which is to look at the facts before making a decision. I'm also telling you that I will never make a decision in the Department based on politics or on partisanship. So, whatever decision I were to make, it would not be based on that.

And, all I can ask you to do is trust me based on a record of my 24 years as a judge, my entire career before that as a prosecutor, and my life before that. That's my record of integrity and that's what you have before you.

CRUZ:

So, a similar line of questions that you were asked concern the Google antitrust investigation and--and Google--Big Tech as a whole contributed over \$15 million to the Joe Biden campaign. They're enormously important Democratic donors.

There will be enormous political pressure to abandon that case against Google. Can you give this committee assurances that you can stand up to that political pressure, just because Democratic fundraisers want to--want to be lenient on Google, that the Department of Justice will not give into that pressure?

GARLAND:

So, Senator Cruz, I'm old enough to remember when there was a political effort to end the case in--antitrust case in the Justice Department against I.T.T., which gives you an idea of how old this is that there is no I.T.T. anymore, the International Telephone and Telegraph Company.

This--if I'm not wrong, this was one of the paragraphs in the indictment, the proposed indictment impeachment of President Nixon, I think, but it was around the same time. And, it had to do with the partisan effort to influence the Justice Department and the Antitrust Division.

I grew up knowing that this is not something that is permissible for the Justice Department to do. And, my whole life has been looking at Ed Levi and Watergate--post-Watergate Attorneys General who stood up to that kind of stuff. And, I can assure you that there will--I don't care what kind of donor talks to me about what of anything. I don't expect to talk to any donors.

I have no conflicts. I don't own any Google stock and I will do whatever is the right thing and I don't own any stock or I won't if I'm--



CRUZ:

--Let me ask two very quick questions because my time is expiring.

GARLAND:

--Yeah.--

CRUZ:

Number one, you voted to rehear the Heller case or actually the Parker case en banc.

GARLAND:

I did.

CRUZ:

I argued the Parker case on the D.C. Circuit. As Attorney General, will the Department of Justice argue for the Supreme Court to overturn Heller versus District of Columbia?

GARLAND:

Look, the Department, you know, makes all kinds of judgments like that. I--I can't promise, but I find it hard to believe that the Department could think that there was any possibility of overturning the Heller case.

CRUZ:

Okay. And, then the final one, with the Chairman's indulgence because I'm at the end of my time. Nine senators wrote a letter to Chairman Durbin asking this committee to investigate Governor Andrew Cuomo's policies concerning COVID and sending COVID positive individuals into nursing homes. A senior aid of his admitted to a cover up to hide information from the Department of Justice. You've committed to a number of investigations here at this hearing today.

Will you commit to investigating the extent to which the government of New York broke laws or covered up their policies concerning COVID positive patients in nursing homes?

GARLAND:

With all--all of these investigations, the Justice Department is open to evidence of fraud, false statements, violations of the law. They normally begin in the appropriate way in the U.S.--Relevant U.S. Attorney's Office and that is the way that something like this--without commenting on this in particular because I don't know the facts--

CRUZ:

--But, in this instance, the acting U.S. attorney is the mother in law of the senior official in the Cuomo administration that admitted to the cover up. Will you at least commit to not having the investigation done by a person with a conflict of interest?

GARLAND:

Of course. I don't know any of the facts, but I can guarantee you that somebody with a conflict of interest will not be the person running an investigation of any kind.

CRUZ:

Thank you.

**DURBIN:**

Since it has appeared, reappeared, and then appeared again, this question about the Durham Special Counsel. For the record, the president of the United States and the White House, when they reported their policy on the future of U.S. Attorneys, made two exceptions, if I remember correctly. One was for the Delaware U.S. Attorney, and the second one was in this situation with Durham. The administration is clearly committed publicly to allowing Durham to complete his investigation. I don't know that any additional comments are needed beyond that, though you've been asked many, many times that question.

In terms of secretary--or Attorney General Barr, we do remember that he wrote an unsolicited memo questioning the legitimacy of the Mueller--Mueller investigation, before he was under active consideration for the Office of the Attorney General. I don't know why the other side keeps returning to this, but I think your position is consistent with the White House position and is what we would expect of any Attorney General when it comes to making the assessment after they learn the facts. Senator Whitehouse.

WHITEHOUSE:

Thank you, Chairman. And I may be the--am I the final questioner? Could be. So I may be all that stands between you and relief from these proceedings, Your Honor.

I would summarize our earlier conversation, as you telling us that when we ask you questions, or the Department or the FBI questions, we're entitled to an answer. And if the answer is no, we can't tell you that, we're entitled to an explanation as to why you think that is that correct?

GARLAND:

Yes, that's right, Senator.

WHITEHOUSE:

Good. I touched on the problem of executive privilege, because the Department of Justice has a role as kind of an arbiter for the whole administration of executive privilege determinations. We had--we had documents sent in here blank that had the phrase constitutional privilege stamped on them. No articulation of what constitutional privilege it was. We have had witnesses claim to assert executive privilege, but the administration never backed them up by actually asserting the privilege. So there was never actually a test of the proposition.

But our chairman wouldn't force an answer, so we were stuck. And I urge you to, maybe we should even have a hearing on it, think through what executive privilege ought to look like, what the process for declaring ought to look like, and try to get that cleared up so that in this committee, we're no longer being treated the way we were in the last administration.

You answer--you mentioned that false statements were a way that cases kind of traditionally came in, went to the U.S. Attorney first, worked their way up. There's one sort of strange anomaly which is false statements to the IRS. The administration before this one took the view that a false statement to the IRS was something that they wouldn't look at, unless it had been referred by the IRS.

So I get the policy of not getting into criminal investigations of tax law without the IRS saying, hey, we'd like you to prosecute this. We are the tax law experts and we really--we have some equities here and we either want you or don't want you to proceed criminally in this matter. I get that. When it's a plain vanilla false statement, I did that as U.S. Attorney, you did those cases, anybody who served in--as a U.S. Attorney has done those cases. I'd urge you to reconsider a policy of deferring to the IRS before proceeding on a simple false statement case. Obviously, it'll be facts specific, but I--I flag that for you.

And the last point I'd like to make is--is that it seems to me, and I'll ask you to agree or disagree with the statement, it seems to me that failing to proceed, failing to proceed where an investigation or prosecution is warranted and doing so on political grounds is just as bad as proceeding with an investigation or prosecution on political grounds. Would you agree that that's a correct proposition?

GARLAND:

Yes. Of course, absolutely.

WHITEHOUSE:

Last of all, we all need something to believe in, I think. People who worked in the Department very much believe in the Department of Justice. They believe in the merits and the norms and the values in the traditions of their service and of the Department.

People across this country need to believe and there was a lot that happened in the last administration to cause doubt about whether the Department of Justice met that standard, that they were worthy of the public's trust and belief. Let me ask you as your closing comments to respond to how you view the importance of the public's trust and belief in the Department of Justice and your commitment to salvaging, if necessary, restoring as needed, and upholding those ideals.

GARLAND:

Yeah, look, I--I couldn't agree with you more. It's not just that the Department has to do justice, it's that it has to appear to do justice and that the people of the United States has to believe that it does justice. Otherwise, people lose their faith in the rule of law. They take the law into their own hands. They've become cynical about law enforcement, about public servants.

I would like, for the time that I'm in the Justice Department, to turn down the volume on--on the way in which people view the Department that the Justice Department not be the center of partisan disagreement. That, you know, we return to the days when the department does its law enforcement and--and criminal justice policy and that this is viewed in a bipartisan way, which, for a long time in the history of the Department, that's the way it was.

I know that these are divisive times. I'm--I'm not naive. But I would like to do everything I can to have people believe that that's what we're doing. People will disagree. People on the left side, the right side, the Democratic side, the Republican side, will disagree with things that I do. And that has happened as a judge. The only thing I can hope is that people will understand that I am doing--I'm doing what I do because I believe it's the right thing, and not out of some improper motive. That's the best I can ask. And if you confirm me and if at the end of my time people still believe that, I will consider that a singular accomplishment.

WHITEHOUSE:

Godspeed to you, sir.

DURBIN:

Judge Garland, I'm going to say a few words about what he's going to do tomorrow in pursuit of your nomination and then a few closing comments. Tomorrow. The second day of the hearing begins at 10:00 am. We'll hear from a panel of outside witnesses. Reminder that questions for record from the senators on the committee must be submitted by 5:00 pm on Wednesday, February 24. I hope people will show good faith and common sense in the number of questions that they submit because you have been open now for two full rounds to ask whatever people have had on their minds.

Let me say a few words in closing. My appreciation of your background is a little different than some. I know one of your earliest inspirations was a man named Abner Mikva, who proceeded to serve with distinction all three levels of government in the federal branch, as well as his initial service in the Illinois House of Representatives. One of his closest friends and allies and colleagues over the years was a man named Paul Simon, who picked me up and dusted me off a few times when I lost elections and said you'll get them next time. He was right. I eventually did but took a while.

I knew Abner Mikva personally and through his relationship with my mentor, Paul Simon. They represented the very best in public service, integrity, honesty, hard work, all of the above time and again. We're lucky to be heirs of that legacy. And I think that this inspired both of us in our different pursuits of public service.

When President-elect Biden told me that you were under consideration for this job, I thought instantly this is the right person. At this moment in history, this is the right person to put in as Attorney General. The Department of Justice needs to have its morale restored. It needs to have its reputation restored. It needs a leadership that is honest and we can respect from every corner of this country.

You are that person. Your testimony today is evidence of that. I want to thank your family in particular. I don't know that they have--you mentioned it, but it's well worth repeating. Lynn, thank you for being here. Rebecca and her husband, Alexander. That would be Becky and Xan. And Jessica, Jessie, thank you for being here today in support of an extraordinary person who is ready to serve again and has office called by the president to be there at a moment in history when he's needed the most.

This president has put faith in you, Judge Garland. We will do the same. Thank you again. I look forward to your swift confirmation. And with that the hearing stands adjourned until 10:00 tomorrow.

## **List of Panel Members and Witnesses**

### **PANEL MEMBERS:**

SEN. RICHARD J. DURBIN (D-ILL.), CHAIRMAN

SEN. PATRICK J. LEAHY (D-VT.)

SEN. DIANNE FEINSTEIN (D-CALIF.)

SEN. SHELDON WHITEHOUSE (D-R.I.)

SEN. AMY KLOBUCHAR (D-MINN.)

SEN. CHRIS COONS (D-DEL.)

SEN. RICHARD BLUMENTHAL (D-CONN.)

SEN. MAZIE K. HIRONO (D-HAWAII)

SEN. CORY BOOKER (D-N.J.)

SEN. ALEX PADILLA (D-CALIF.)

SEN. JON OSSOFF (D-GA.)

SEN. CHRIS VAN HOLLEN (D-MD.)

SEN. TAMMY DUCKWORTH (D-ILL.)

SEN. CHARLES E. GRASSLEY (R-IOWA), RANKING MEMBER

SEN. LINDSEY GRAHAM (R-S.C.)

SEN. JOHN CORNYN (R-TEXAS)

SEN. MIKE LEE (R-UTAH)

SEN. TED CRUZ (R-TEXAS)

SEN. BEN SASSE (R-NEB.)

SEN. JOSH HAWLEY (R-MO.)

SEN. TOM COTTON (R-ARK.)

SEN. JOHN KENNEDY (R-LA.)

SEN. THOM TILLIS (R-N.C.)

SEN. MARSHA BLACKBURN (R-TENN.)

WITNESSES:

ATTORNEY GENERAL NOMINEE JUDGE MERRICK GARLAND

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Source: **CQ Transcripts**

**From:** Schwartz, Leah F. (OLA)  
**Subject:** OLA incoming congressional correspondence 8/19/21  
**To:** Kapper, Matthew B. (OAG); Lewis, Megan (ODAG); Goodander, Margaret V. (OAG); Heinzelman, Kate (OAG); Conango, Matthew (OASG); Hyun, Peter (OASG)  
**Cc:** Greenfield, Elaine A. (OLA); Gaeta, Joseph (OLA); Casce, Christina M. (OLA); Antea, Kira M. (OLA); Wodemariam, Wintta (OLA)  
**Sent:** August 19, 2021 8:27 PM (UTC-04:00)  
**Attached:** Blackburn.incoming.8.19.2021.pdf

Please find below and attached.

1. Letter from Sen. Blackburn and 43 other senators to AG requesting update on the status of Special Counsel John Durham's inquiry into the Crossfire Hurricane Investigation.

# United States Senate

WASHINGTON, DC 20510

August 19, 2021

The Honorable Merrick Garland  
Attorney General  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Garland:

We write to request an update on the status of Special Counsel John Durham's inquiry into the Crossfire Hurricane Investigation.

Two years ago, your predecessor appointed United States Attorney John Durham to conduct a review of the origins of the FBI's investigation into Russian collusion in the 2016 United States presidential election. Mr. Durham was later elevated to special counsel in October 2020 so he could continue his work with greater investigatory authority and independence.

The Special Counsel's ongoing work is important to many Americans who were disturbed that government agents subverted lawful process to conduct inappropriate surveillance for political purposes. The truth pursued by this investigation is necessary to ensure transparency in our intelligence agencies and restore faith in our civil liberties. Thus, it is essential that the Special Counsel's ongoing review should be allowed to continue unimpeded and without undue limitations.

To that end, we ask that you provide an update on the status of Special Counsel Durham's inquiry and that the investigation's report be made available to the public upon completion. Thank you for your attention to this matter.

Sincerely,



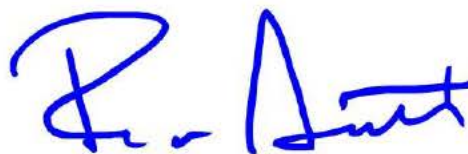
Marsha Blackburn  
United States Senator



Mitch McConnell  
United States Senator



Pat Toomey  
United States Senator



Rick Scott  
United States Senator



United States Senate  
WASHINGTON, DC 20510



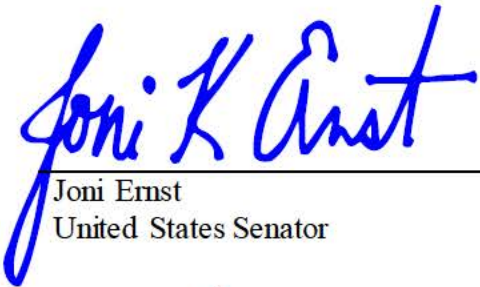
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Bill Hagerty  
United States Senator



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Rand Paul  
United States Senator



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Joni Ernst  
United States Senator



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Mike Crapo  
United States Senator



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Thom Tillis  
United States Senator



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Deb Fischer  
United States Senator



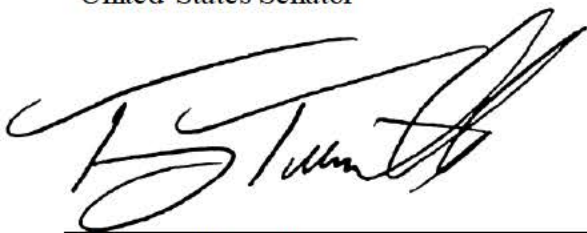
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Jerry Moran  
United States Senator



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Dan Sullivan  
United States Senator



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Tommy Tuberville  
United States Senator



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Cynthia Lummis  
United States Senator



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Cindy Hyde-Smith  
United States Senator



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James Risch  
United States Senator

United States Senate  
WASHINGTON, DC 20510

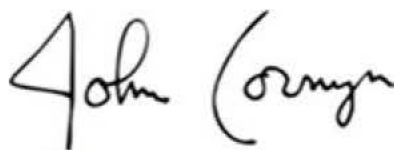
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Roy Blunt  
United States Senator



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Ted Cruz  
United States Senator



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John Cornyn  
United States Senator



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John Hoeven  
United States Senator



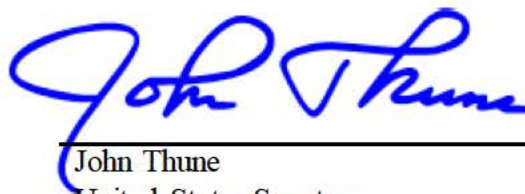
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John Kennedy  
United States Senator



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Richard Shelby  
United States Senator



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John Thune  
United States Senator



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Tim Scott  
United States Senator



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Lindsey Graham  
United States Senator



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Mike Lee  
United States Senator



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Shelley Moore Capito  
United States Senator

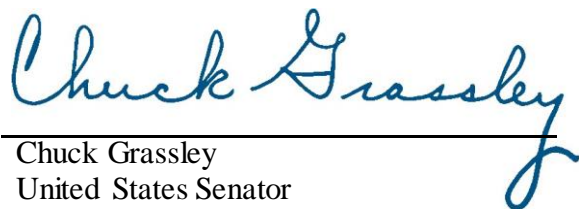


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Richard Burr  
United States Senator

# United States Senate

WASHINGTON, DC 20510



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Chuck Grassley  
United States Senator



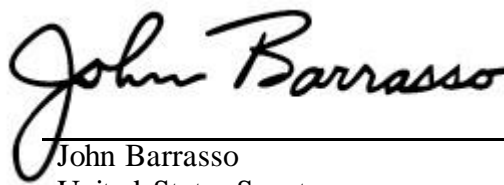
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James Lankford  
United States Senator



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James Inhofe  
United States Senator



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John Barrasso  
United States Senator



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John Boozman  
United States Senator



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Steve Daines  
United States Senator



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Roger F. Wicker  
United States Senator



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Marco Rubio  
United States Senator



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Tom Cotton  
United States Senator



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Kevin Cramer  
United States Senator



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Mike Braun  
United States Senator



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Roger Marshall  
United States Senator

United States Senate  
WASHINGTON, DC 20510



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Mike Rounds  
United States Senator



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Todd Young  
United States Senator



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Josh Hawley  
United States Senator



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Ron Johnson  
United States Senator