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EXCLUSIVE

Merrick Garland, Three Special Counsels and a Justice Department Under Fire

The attorney general has tried to stay above the political fray while overseeing investigations into Trump, Biden and his son

By *Sadie Gurman* [Follow](#) and *Aruna Viswanatha* [Follow](#)

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WASHINGTON—Last summer, a small group gathered around the mahogany table in Attorney General Merrick Garland’s conference room. The table can seat 20, but only a few were there that day, given the sensitivity of the meeting.

Special counsel Robert Hur, sitting across from Garland, pulled papers out of a folder and read aloud. They were excerpts of a transcript of a recording his team had found, of President Biden speaking to his ghostwriter in 2017, shortly after he was no longer vice president.

“I just found all the classified stuff downstairs,” Hur said without inflection, repeating Biden’s words, according to people briefed on the meeting.

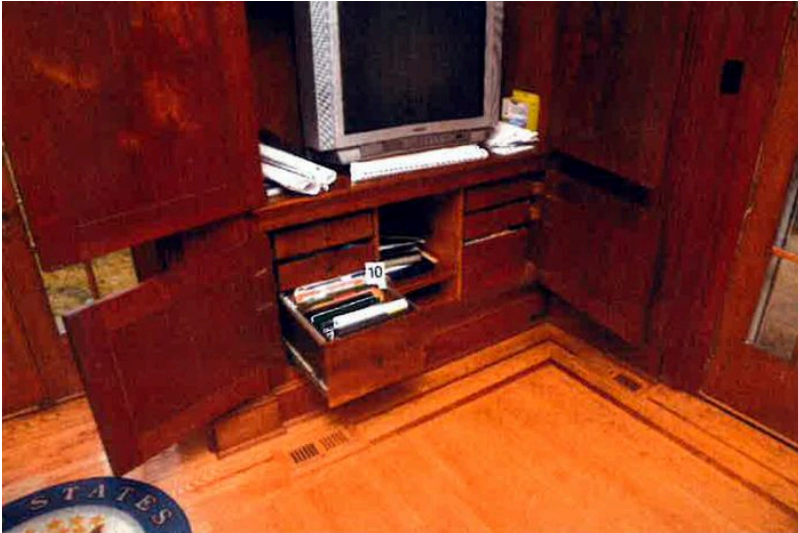
As the group sat stunned at the prospect that the president knew he had classified information and was on tape discussing it with someone not authorized to receive it, Garland asked more questions. Did the ghostwriter have a lawyer? Is he being cooperative? What comes next?

Let us know what else you need, Garland said, repeating words he used in nearly every meeting about complicated investigations.

That briefing in the fifth-floor room at the Justice Department came at a perilous moment for the 71-year-old attorney general, who has somewhat reluctantly presided over three special counsel investigations—of Biden, his son Hunter and former President Donald Trump. In each instance, Garland’s by-the-book, play-no-favorites approach has pleased almost no one.

That has left him with few allies in either political party and working for a White House that distrusts him so much that some aides have tried to dodge him in the West Wing, though officials say the relationship has rebounded from its low point.

Garland's decisions have also raised doubts about whether his earnest approach to law is any match for the bare-knuckle state of U.S. politics.



An image in Robert Hur's report shows files in the home of President Biden. PHOTO: U.S. DEPARTMENT OF JUSTICE/ASSOCIATED PRESS

The stakes couldn't be higher, as Garland risks putting his fingerprints on an election that many in both parties have cast as a test of American democracy. Local prosecutors in Manhattan last week won an unprecedented conviction of Trump in a separate case, a verdict that has hardened political positions and fueled more Republican distrust in the U.S. justice system.

Hur closed the probe into Biden in February, saying a case related to classified documents wasn't warranted, but not without igniting major controversy over Biden's mental fitness, and prompting House Republicans to consider holding Garland in contempt as soon as this week for refusing to turn over audio of the president's interview with Hur.

The issue is expected to produce fireworks at the House Judiciary Committee on Tuesday when Garland is scheduled to appear. The panel's chairman, Rep. Jim Jordan (R., Ohio), who subpoenaed the audio, has promised to investigate what he calls Garland's politicization of the department.

The special counsel investigating Trump, meanwhile, has seen his two cases bogged down in court. And even though he has charged Trump with 44 counts related to efforts to overturn

the 2020 election and hanging on to his own classified documents, the former president might not face trial before the election in these cases because of lengthy delays driven by Trump's defense strategy.

Hunter Biden's legal travails, revolving around gun and tax charges, are playing out in slow motion in two courtrooms on opposite sides of the country after his initial plea deal blew up. A jury was selected in one on Monday.

The targets of the probes have given blistering critiques. Trump has assailed Jack Smith, the special counsel prosecuting him, as "deranged" and "mad dog psycho." Biden's lawyers slammed Hur for making what they described as denigrating and out of bounds statements about his memory. And Hunter Biden's attorney has accused that special counsel, David Weiss, of caving to pressure from fellow Republicans to prosecute the president's son.



Republican Rep. Jim Jordan has subpoenaed the audio of Biden's interview with Hur. PHOTO: TOM WILLIAMS/CQ ROLL CALL/ZUMA PRESS

Garland has also become the subject of ridicule on late-night talk shows, including by comedian Bill Maher, who in May echoed the grievances of many on the left when he referred to Garland as "a purse dog" rather than a pit bull. He criticized Garland for moving too slowly to prosecute Trump while undermining Biden by naming an outside prosecutor who depicted him as a dithering old man.

Garland's critics on the right have accused him of a "two-tiered system of justice" that has targeted Trump while protecting Biden, with some Republicans hoping, improbably, to strip Smith's investigations of funding.

But as investigators unearthed facts about Biden and Trump that only a few knew, it reinforced for Garland that he had made the right calls, people close to him said.

For months, only a handful of senior U.S. officials knew the parallels between investigations into both Biden and Trump—the former president, for example, was also on tape appearing to share classified documents with a writer. Prosecutors ultimately decided to charge only Trump, after amassing evidence that he allegedly held on to hundreds of documents and obstructed their probe.

Garland, who made clear he believed the Justice Department could handle all investigations with integrity, still felt like the extraordinary circumstances warranted special counsels for Trump, Biden and Biden's son. The outside prosecutors would be free of day-to-day oversight from Garland, which he hoped would shield the department from allegations that he interfered in the sensitive probes.

“Being attorney general is an extremely difficult job even in a nonpolitical climate. There are going to be winners and losers in every decision you make,” said Alberto Gonzales, who served as White House counsel and later attorney general under President George W. Bush, before resigning amid his own political scandal. “When you combine it with someone who is involved in a campaign and in the middle of a campaign season, it becomes even more difficult. You're in the middle of a storm,” he said.

The Justice Department declined to make Garland and other senior officials available for interviews.

This account of the day-to-day decisions made by the attorney general in the early days of the special counsels' investigations is based on interviews with more than a dozen current and former U.S. officials and others familiar with the investigations, court records and other documents. Many details haven't previously been reported. They reveal an official carefully progressing through uncharted territory, making calls both small and large that have played out inexorably toward historic outcomes.



Garland has taken a by-the-book, play-no-favorites approach with the three special counsels. PHOTO: ANDREW HARNIK/GETTY IMAGES

Upheaval on day one

Garland accepted the job of attorney general under President-elect Biden in the first week of January 2021, planning to draw on his nearly five decades of experience in Washington to lead the department.

Then, on Jan. 6, as Garland sat in the attic office of his Bethesda, Md., home writing a speech he planned to give when Biden announced his nomination, a mob of Trump supporters stormed the Capitol in an attempt to stop lawmakers from certifying Biden's win.

Garland revised his speech, finishing edits the following day as his wife drove him to Biden's announcement in Wilmington.

In the late 1970s, as a young Justice Department lawyer, Garland had helped codify rules that established the department's independence from the White House on criminal investigations after the Watergate scandal roiled the agency.

Since then, Garland has been driven by one mantra: Follow the facts and the law.

Biden has supported the approach. The day after the Capitol attack, he said the attorney general's job was to stay loyal to the law, not to the president. "As we stand here today, we do so in the wake of yesterday's events," he said, with Garland by his side. "More than anything, we need to restore the honor, the integrity, the independence of the Department of Justice in this nation that has been so badly damaged."



Garland at his attorney general nomination ceremony on Jan. 7, 2021. PHOTO: JIM WATSON/AFP/GETTY IMAGES

Garland had spent more than 20 years as a federal judge. Blocked by Republicans for a seat on the Supreme Court in 2016, he remained on the bench, where he watched with alarm as Trump tried to marshal the Justice Department to his personal and political agenda. A low point, Garland told confidantes at the time, came in March 2019, when then-Attorney General William Barr depicted the results of a special counsel probe into Trump campaign ties to Russia in a way that many saw as misleading and overly favorable to the president. This action, Garland worried, seemed overtly political and contrary to the type of independence he worked to fortify after Watergate.

A few weeks after Biden beat Trump in the 2020 election, Biden's then 50-year old son, Hunter, announced that federal prosecutors were investigating his tax affairs. Meanwhile, Trump was disputing the election results, and state and federal courts were swept up in his claims.

The U.S. legal system was suddenly under enormous pressure. Biden's allies recommended the president-elect prioritize an attorney general pick who would be viewed as independent from partisan pressure.

Garland was confirmed in March 2021. He hung in his office a portrait of Edward Levi, the first post-Watergate attorney general who is credited with restoring public trust in the department.

The former president

One of the first goals Garland believed to be vital in the Jan. 6 investigation: Avoid major process mistakes. If prosecutors forgot to hand over certain files to defendants, it could lead

to dozens of retrials. Use a weak legal theory, and the Supreme Court could throw the cases out. His team spent hours gaming out how a law designed to tackle white-collar fraud could apply to the attack. Prosecutors charged more than 1,400 rioters and have lost only a couple of those cases in court to date.

But many on the left wanted more. Some wanted prosecutors to also pursue an aggressive case against Trump himself, specifically for inciting the mob. Garland and his senior aides had agreed to follow the facts—criminal investigations started from the ground level and worked their way up. For investigators, those facts were also starting to point in Trump’s direction.

Once prosecutors started interviewing seemingly disparate local Republican officials, they recognized a pattern. A group of Trump’s outside advisers who stayed at the Willard Hotel in Washington on Jan. 5 had worked with Trump to systematically squeeze state officials to generate baseless fraud claims and organize fake slates of electors that would wrongly certify that Trump had won.



President Donald Trump spoke to supporters at the Ellipse on Jan. 6, 2021. PHOTO: BRENDAN SMIALOWSKI/AFP/GETTY IMAGES

In June 2022, the House committee investigating the Capitol attack produced what seemed to be blockbuster evidence against Trump: Former White House aide Cassidy Hutchinson said Trump had been told that some of his supporters were heavily armed when he urged them to march to the Capitol and sought to join them. That suggested to the public that Trump might have committed a crime while still president, inciting a riot that he knew would turn violent. Prosecutors didn’t believe they would be able to corroborate Hutchinson’s testimony, but they continued their work in secret.

A month after the House committee's testimony, Garland separately raised an uncomfortable question during a routine meeting with aides. Is there a conflict of interest for the Justice Department to continue investigating someone—Trump—who declares himself a candidate for the presidency? It would still be another four months before Trump officially said he was running, but he had hinted at it plenty during the summer. Once Trump said he was a candidate for the 2024 presidential election, it would trigger regulations designed to avoid conflicts of interest. Trump would be running against Biden, Garland's boss.

The only option, Garland believed, was to appoint a special counsel.

Garland had plenty of experience with them and knew these arrangements could be fraught and messy. He had been an assistant independent counsel decades earlier, overseeing the prosecution of a Reagan White House aide on charges of illegal lobbying. (The conviction was overturned on appeal.) Garland's boss in the Clinton administration, Attorney General Janet Reno, held the job while more than a half-dozen independent prosecutors were at work, including investigating the president.

An aide drafted a secret contingency plan, to assign the Jan. 6 investigation related to Trump to a special counsel. At the top of the list of candidates was Smith, a former U.S. prosecutor who was then the chief prosecutor at The Hague investigating war crimes in Kosovo. The deputy attorney general's office also considered Hur, who at the time was a defense lawyer in private practice, for the post.

While the Jan. 6 investigation proceeded, prosecutors had separately been talking to Trump's lawyers about classified documents he was supposed to have returned to the National Archives.



Special Counsel Jack Smith in August. PHOTO: JONATHAN ERNST/REUTERS

It didn't immediately seem like a big deal. Garland had seen it before, when senior government officials in past decades had called the FBI to collect classified documents from their homes.

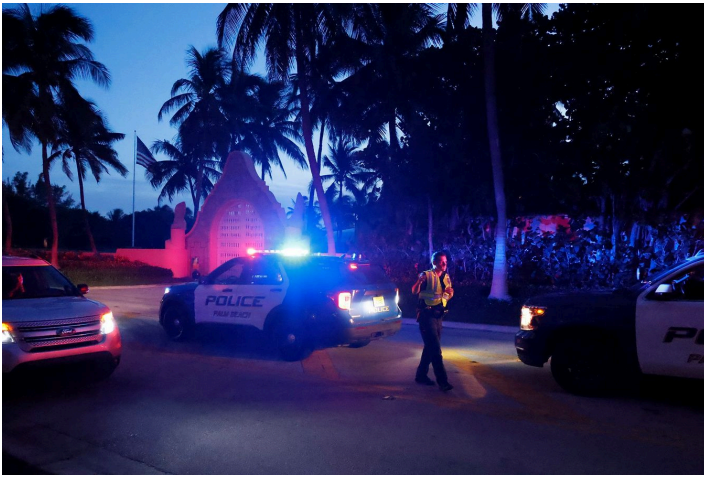
But months of negotiations and a subpoena yielded little progress, and enough evidence mounted to convince a court a warrant-backed search was necessary. In August, a month after Garland began exploring the idea of appointing a special counsel into the Jan. 6 case, he authorized a team of 30 FBI personnel to enter Trump's Mar-a-Lago resort. They took photographs and removed more than two dozen boxes from a storage closet. They broke open a safe in Trump's office. By the next morning, 45 boxes were on their way to Washington.

In November 2022, a senior Justice Department official brought Smith into the agency's headquarters in his car for a secret interview with Garland. He got the job, but just before his post was announced, back in The Hague, Smith fractured his leg in a bike accident.

One official called a surgeon, to determine what drugs Smith might be on when in the hospital and whether it would interfere with his ability to take his official oath. Instead, Smith—whom friends describe as having two main hobbies, putting bad guys in jail and competing in triathlons—forsook any drugs. Fresh from being discharged from the hospital in The Hague, Smith held up his right hand and committed to a job that had marred the reputations of most others who had taken it before him.

Within a few months, Smith sat in Garland's wood-paneled conference room, according to people briefed on the meeting, and brought his own piece of evidence that seemed to crystallize just how bad things could get. Smith presented Garland with excerpts of Trump talking to a writer. In the transcript, Trump described a potential attack against Iran. "I just found—isn't that amazing?" Trump said, showing off what appeared to be a document that outlined the plan. "It is, like, highly confidential," he had said.

Garland pressed Smith. How does this affect the defenses Trump's lawyers would likely use? What's next?



Police direct traffic outside Mar-a-Lago in August 2022. Stacks of file boxes in a bathroom at the resort.

TERRY RENNA/ASSOCIATED PRESS; U.S. DEPARTMENT OF JUSTICE/GETTY IMAGES

Keep going, Garland said.

Then in January 2023, reports of classified documents found in Biden's office began to emerge. About a week later, Garland appointed Hur as a special counsel.

The sitting president, and family

Meanwhile another sensitive inquiry was moving so slowly that agents working on it were suspicious that someone was interfering.

David Weiss, the top federal prosecutor in Delaware, who had been named to the post by Trump, had been investigating the finances of the president's son, Hunter Biden, since at least 2018. The Biden White House said before Garland took office that it would keep Weiss in the post to finish his probe.

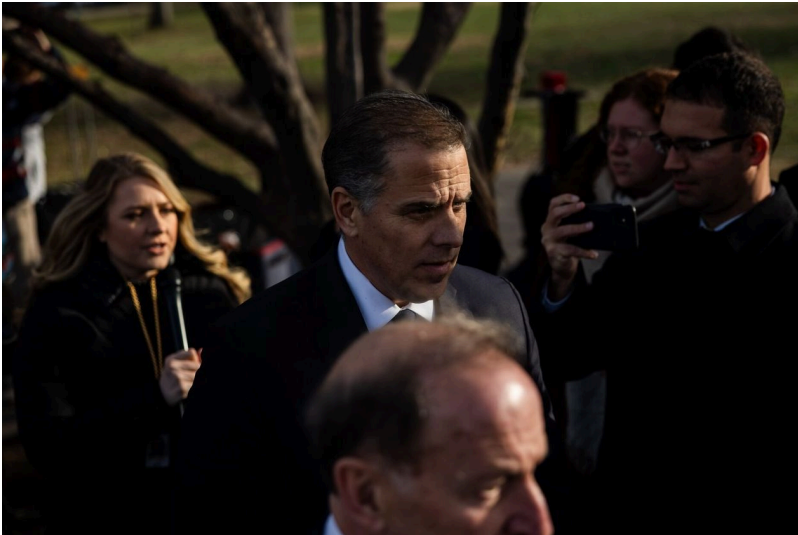
By 2022, prosecutors and agents had already believed that Hunter Biden committed tax crimes, but Weiss still seemed no closer to charging him or resolving the case. FBI officials asked Garland's office if he could help move Weiss along.

Garland refused to prod Weiss, saying he had promised him broad independence to pursue the inquiry as he saw fit.

FBI agents drafted a list of final steps to push the probe forward—including to follow up on allegations from an FBI source that tied Hunter Biden's financial misdeeds directly to his father.

Weiss's office reached a tentative plea deal with Hunter Biden in June 2023, in an agreement that would likely include no jail time. Republicans in Congress alleged that Hunter Biden was getting a sweetheart deal, which fell apart a month later. In August, Weiss asked Garland to make him a special counsel, pointing to the FBI's list and asking for independence. Garland agreed, recognizing that he had earlier promised Weiss autonomy and any resources he sought.

Weiss charged Hunter Biden with firearm offenses in September 2023 and added tax-related charges in December. He also indicted the FBI informant.



Hunter Biden spoke outside the Capitol in December. PHOTO: TIERNEY L. CROSS/BLOOMBERG NEWS

Meanwhile, President Biden's lawyers were in the middle of tense negotiations with another of Garland's special counsels. Hur had been named in January 2023 to examine why classified documents were found at Biden's home and office.

About 12:15 p.m. on Oct. 8, Hur, his deputy, and a pair of FBI agents filed into the White House, where they met with three White House lawyers, two of Biden's personal lawyers and the president.

Biden cracked jokes, reminisced and told meandering personal stories, with Hur prompting him at times to his initial question.

Hur drafted a report, saying he didn't think prosecutors would win a case against Biden given that jurors would likely view him as a "sympathetic, well-meaning, elderly man with a poor memory."

Biden's lawyers read it and were aghast, objecting to "certain aspects of his draft report that violate Department of Justice policy and practice by pejoratively characterizing uncharged

conduct,” they wrote to Garland. They wanted him to take a firmer hand with the special counsel he appointed and whose report they and some former Justice Department officials saw as gratuitous.

Garland didn’t respond, taking the same approach he had with other special counsels. He wasn’t going to step in to protect his boss. Instead, adhering to the Watergate-era policy he helped enshrine, he left it to the agency’s senior career official, Bradley Weinsheimer, who said the language in the report “fell well within the Department’s standards for public release.” Garland, as promised, released it the following day, Feb. 8.



Special counsel Hur testified in the House in March. PHOTO: CHIP SOMODEVILLA/GETTY IMAGES

‘Shake it off’

In April, Garland came to Biden’s defense when pressed about it by Democrats on Capitol Hill. “The president has no impairment,” Garland said during an appropriations hearing.

The attorney general has defended his approach with all three special counsels, but he has found himself personally and politically isolated, a bookish referee in a city where everyone is expected to pick sides and fight like hell.

But fighting like hell doesn’t come naturally to Garland, a Taylor Swift fan who says her anthem about letting things go, “Shake It Off,” has become his calling card.

On the morning of May 16, as House Republicans moved to hold Garland in contempt over his refusal to relinquish the audio of the Biden interview, he took one step outside his office to a bank of waiting camera crews and reporters and lamented the effort as the latest in “a series of unprecedented and frankly unfounded attacks on the Justice Department.” The matter

needs approval from the full House, where Republicans have a narrow majority. Garland said the threat alone puts prosecutors at risk.

A reporter asked what he was doing in response.

“Look, the only thing I can do is continue to do the right thing,” he said, adding: “We follow the facts and the law.”

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