

# Hearing - Hearing Transcripts

## Title Info

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## Body

Senate Judiciary: Oversight of the Department of Justice

MARCH 01, 2023 10:00 A.M.

SPEAKERS:

SEN. DICK DURBIN (D-ILL.), CHAIRMAN

SEN. DIANNE FEINSTEIN (D-CALIF.)

SEN. SHELDON WHITEHOUSE (D-R.I.)

SEN. AMY KLOBUCHAR (D-MINN.)

SEN. CHRISTOPHER 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. PETER WELCH (D-VT.)

SEN. LINDSEY GRAHAM (R-S.C.), RANKING MEMBER

SEN. CHUCK GRASSLEY (R-IOWA)

SEN. JOHN CORNYN (R-TEXAS)

SEN. MIKE LEE (R-UTAH)

SEN. TED CRUZ (R-TEXAS)

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.)

[\*]DICK DURBIN: This meeting of the Senate Judiciary Committee will come to order. Today marks the Senate Judiciary Committee's first oversight hearing of the 118th Congress. Last Congress, we held more than a dozen oversight hearings and honored the committee's historic constitutional responsibility to provide oversight to the agencies of our government.

It is this responsibility, under Article 1 of the Constitution, that serves as a check and balance on the executive branch, whether the president happens to be a Republican or Democrat. Attorney General Garland, welcome. This is the third time you've appeared before this committee. You have many pressing responsibilities, I should say, as attorney general.

You have many pressing responsibilities, and I appreciate your taking the time to be here today. There are so many subjects under your jurisdiction worthy of close examination, which I'll turn to a few in a moment. But we shouldn't take for granted that we now have a Department of Justice with a renewed dedication.

When you were sworn into office two years ago, the department was embroiled in scandal. You committed to restoring its independence, and I believe you've kept your word. I expect that we'll hear accusations today from some of my Republican colleagues to the contrary, such as weaponization of the Justice Department.

The reality is you have recommitted the department to serving the American people and not the personal interests of any one political figure. You've taken the appropriate steps to ensure that investigations are not overshadowed by politics. You have not interfered with the investigation of the president's son by the US attorney for the District of Delaware, a holdover who was appointed by President Trump.

You have not interfered with the special counsel investigation initiated by Attorney General Barr into the origin of the FBI investigation of the Trump campaign ties to Russia. And most recently, you've appointed two special counsels to investigate any potential mishandling of classified documents in the possession of former President Trump or President Biden.

Unfortunately, too many of my colleagues have turned a blind eye to the actual weaponization of the Justice Department during previous administrations. Take one example. President Trump and his allies attempted to co-opt the department into overturning the results of the 2020 election, a relentless campaign that this committee exhaustively documented in *Subverting Justice*, a 394 page report.

But your actions in the last two years should reassure the American people that the Justice Department should not and does not operate as the servant of any president. The Justice Department has important constitutional responsibilities. It must protect the civil rights of the vulnerable. It must respond to threats to our nation, both domestic and international.

It must hold accountable those who violate the laws passed by Congress. We have discussed before, and I will certainly hear again today, some issues of critical importance to the American people. More than 6,800, 6,800 Americans have died from gunfire in the first two months of this year. There have been at least 94 mass shootings, more than one every single day this year in America.

I look forward to hearing how the department is using new tools that Congress approved in the bipartisan Safer Communities Act to -- to quell this violence. In March 2021, FBI Director Wray testified under oath before this committee that the threat of domestic terrorism is metastasizing throughout this country.

I look forward to hearing your response to that extremist threat. We'll discuss the importance of full implementation of the bipartisan First Step Act, which is showing meaningful progress in responsibly reducing recidivism and making our criminal justice fairer -- system fairer. And we'll discuss the importance of preserving America's civil rights and protecting them from attacks on their bodily autonomy, especially after the Supreme Court Dobbs Decision.

The sunset of Section 702 of the Foreign Intelligence Surveillance Act this year provides an opportunity to implement much needed reforms to keep America both safe and free. And the department must continue to hold steadfast to the principles of equity and access, despite resistance from those who are threatened by an even playing field.

As more citizens face greater impediments to exercising their constitutional right to vote and there's an increase in incidents of hate violence, the department must defend America's bedrock values. At this point, I turn to my colleague and the ranking member on the Senate Judiciary Committee, Senator Graham.

LINDSEY GRAHAM: Thank you, Mr. Chairman. Welcome, Mr. Attorney General, appreciate you coming to the committee. And thank you, Mr. Chairman, for having the hearing. So, here's sort of the other side of the story. When you ask Americans are we on the right track as a nation, about 70 percent of them say no. Now, why? I think there's a feeling in this country that we're losing control of our streets, that crime is increasing and the world is a very dangerous people, and people don't feel safe anymore.

You talk about the number of deaths from gun violence, certainly something we should be concerned about, but let me tell you something we also should be concerned about. Rebecca Kiessling, a mother testified yesterday, who lost two sons to fentanyl overdose. They -- they were buying, I think, a Percocet pill, and it -- it was laced with fentanyl, and they died from taking one pill -- pill, both of them.

She said, as I quote, "This is a war. Act like it. Do something." So, 106,000 people died from drug overdoses, 70,000 from fentanyl last year, and it's getting worse. The leading cause of death for Americans aged 18 to 45 is death by fentanyl poisoning. What are we doing? What is that something? So, I hope we'll recommit ourselves, Mr. Chairman of this hearing, to do something, to act like we're at war because we are.

Foreign terrorist organization designation for the Taliban, that's a good thing. Other groups; how about making drug cartels in Mexico and other places foreign terrorist organizations under US law so we can go deeper and prosecute those who help these people poison America? So, the bottom line, we're adrift as a nation.

We're not taking the crime problem as seriously as we should. The world is on fire. We say that Putin's engaged in crimes against humanity. I agree with that statement, but we're not giving jets to the Ukrainians to defend themselves against the crime. So, we've gotta up our game. And I hope out of this hearing we will have a recommitment to convince the American people that we're going to keep you safe, that we're going to have policies to deal with the poisoning of America from fentanyl, that we're going to hold Mexico and other countries accountable, that most of this stuff comes from China, and enough is enough.

We're going after those who are killing our kids from fentanyl. Gitmo; this administration let two detainees out of Gitmo. There's 30-something left. The recidivism rate is about 25, 34 percent depend -- depending on who you ask. Now is not the time, after Afghanistan, to be letting people, who've been in jail for 20 years because they're so dangerous, out of jail.

And I hope this administration will not empty Gitmo, because the worst thing we could do right now is let people go who have been involved in terrorist activities, who are still a danger or enemy combatants under international law because of the passage of time. So, Mr. Chairman, we all want to work with you on this side, but there is no strategy that I can discern about how to deal with the poisoning of American through fentanyl.

Most Americans are worried about the rise in crime, and we need to reassure them we get it, that we're going to do better. That Schedule I designation for fentanyl expires at the end of the year. Mr. Chairman, I know you don't want to -- that to happen. Senator Cotton's been ahead of this before any of us. So, if you put arsenic in a pill knowing somebody is going to take it, why aren't you charged with -- you would be charged with murder.

If you lace a pill with fentanyl, which is probably more lethal than arsenic, why aren't you charged with murder? We're going to have to deter those who are killing young people in America. We're going have to put countries on notice that you're with us or you're against us when it comes to this scourge of fentanyl.

We're going to have to control our border. We're going to have to come up with a rational immigration policy. We're gonna have to change our asylum laws because everybody in the world believes if they get one foot in America, they never leave. On many fronts, law and order has broken down here at home and the world is in chaos.

China is watching what we do in Ukraine. And the question for all of us, are we doing enough to combat the threats that we're all living with? And I would say we're woefully inadequate in dealing with the threats that exist against America at home and abroad. And maybe this committee, in a bipartisan fashion, can do something about it. Thank you.

DICK DURBIN: Thank you, Senator Graham. Let me lay out the mechanics of today's hearing. After I swear in the attorney general, he'll have five minutes to provide an opening statement. We have his written statement for the record. There will be a first round of questions, and each senator will have seven minutes. Please try to remain within your allotted time.

Following the first round of questions, if there's an interest in the second round, senators will have an additional three minutes each. I would now ask the attorney general to please stand and raise his right hand. Do you affirm that the testimony you're about to get before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

MERRICK GARLAND: [Off-mic]

DICK DURBIN: The record reflects that the attorney general answered in the affirmative. And now you're invited to proceed with your opening statement.

MERRICK GARLAND: [Off-mic] Got it. Thank you. Appreciate it. Good morning, Chair Durbin, Ranking Member Graham, and distinguished members of this committee. Every day the 115,000 employees of the Justice Department work tirelessly to fulfill our mission to uphold the rule of law, to keep our country safe, and to protect civil rights.

Every day our FBI, ATF, and DEA agents, and our deputy US Marshals put their lives on the line to disrupt threats and respond to crises. Every day department employees counter complex threats to our national security. They fiercely protect the civil rights of our citizens. They pursue accountability for environmental harms.

They prosecute crimes that victimize workers, consumers, and taxpayers. And they defend our country's democratic institutions. And every day in everything they do, the employees of the Justice Department adhere to and uphold the rule of law that is the foundation of our system of government. Thank you for an opportunity to discuss our work.

First, upholding the rule of law. When I began my tenure as attorney general, I said it would be my mission to reaffirm the norms that have guided the Justice Department for nearly 50 years. I do -- did so because those norms matter now more than ever to our democracy. The health of our democracy requires that the Justice Department treat like cases alike, and that we apply the law in a way that respects the Constitution.

It requires that, as much as possible, we speak through our work and our filings in court so that we do not jeopardize the viability of our investigations and the civil liberties of our citizens. And the survival of our democracy requires that we stand firmly against attempts to undermine the rule of law, both at home and abroad.

I am proud of the work that the department has done on each of these fronts. We are strengthening the norms that protect the department's independence and integrity. We are securing convictions for a wide range of criminal conduct related to the January 6th attack on the Capitol. We are disrupting, investigating, and prosecuting violence and threats of violence targeting those who serve the public.

And we are working closer than ever with our Ukrainian partners in defense of democracy, justice, and the rule of law. We will continue to do so for as long as it takes. Second, keeping our country safe. The Justice Department is using every resource at our disposal to keep our country safe. We are working to counter, disrupt, and prosecute threats posed by nation states, terrorist groups, radicalized individuals, and cyber criminals.

And together with our partners across the country, we are continuing to combat the rise in violent crime that began in 2020. All 94 of our US attorneys offices are working alongside their state and local partners to pursue district specific violent crime reduction strategies. The department's grantmaking components are providing financial assistance to local law enforcement agencies.

At the same -- same time, they are supporting community led violence intervention efforts. And our law enforcement components are working with state, local, tribal, and territorial counterparts to apprehend the most dangerous fugitives and seize illegal drugs and illegal guns. For example, last year DEA and its partners seized enough fentanyl laced pills and powder to kill every single American.

We are also aggressively prosecuting the crimes that inflict economic harm on the American people. We are prioritizing the prosecution of schemes that impact older Americans and vulnerable populations, as well as schemes involving pandemic and procurement fraud. In our corporate criminal enforcement, we are prioritizing and securing -- and securing individual accountability, and we are vigorously enforcing our antitrust laws.

Our enforcement actions have already resulted in the blocking or abandonment of mergers that would have stifled competition and harmed consumers. Third, protecting civil rights. Protecting civil rights was a founding purpose of the Justice Department, and it remains an urgent priority. The department's storied civil rights division has been at the forefront of efforts to protect the right to vote, ensure constitutional policing, and enforce federal statutes prohibiting discrimination in all of its forms.

But now, protecting civil rights is also the responsibility of every Justice Department employee every single day. We are working across components to combat hate crimes and improve hate crimes reporting. In the wake of the Supreme Court's decision to overturn Roe and Casey, the department has pulled together to protect -- protect reproductive freedom under federal law.

And the department recognizes that communities of color, indigenous communities, and low income communities often bear the brunt of harm caused by environmental crime, pollution, and climate change, so we are prioritizing cases that will have the greatest impact on the communities most burdened by those harms.

I am proud of the work of the department's employees, the work they have done to uphold the rule of law, to keep our country safe, and to protect civil rights. The department's career workforce has demonstrated extraordinary resilience after years of unprecedented challenges. They have conducted themselves with the utmost integrity without regard to any partisan or other inappropriate influences, and they have done their work with a singular commitment to the public we all serve.

The employees of the Justice Department are dedicated, skilled, and patriotic public servants. It is my honor to represent them here today. Thank you for the opportunity to testify. I look forward to your questions.

DICK DURBIN: Thanks, Attorney General. You grew up in Lincolnwood, Illinois, if I'm not mistaken, at least part of your life.

MERRICK GARLAND: That's true.

DICK DURBIN: It's not far from Highland Park, is it?

MERRICK GARLAND: That's also true.

DICK DURBIN: And we know what happened last 4th of July when the people of Highland Park gathered for a 4th of July parade. A gunman went on -- on the roof of a business downtown and fired off 83 rounds into the crowd in 60 seconds. Even the armed good guys, the policemen who were there trying to protect the public, had trouble locating that person, and certainly, sadly, could not have the time to respond to what he had done until it was finished.

When he was finished, there was an eight year old, Cooper Roberts, who will be paralyzed for life. There was a young man, two year old Aiden McCarthy, who was -- became an orphan because both of his parents were killed. Seven total lives were lost. 50 people were injured. It is hard for me to imagine that some disciple of originalism believes that our Second Amendment envisioned what happened in Highland Park.

To think that there is a weapon out there, a military style weapon, and the rounds and clips that are available to fire off multiple rounds into innocent crowds just, to me, makes little or no sense when you read the basic language of the Second Amendment. And so Congress did something, and I want to credit Senator Cornyn for being a participant in this effort -- a leader in this effort, with Senator Murphy of Connecticut, to try to pass a bill to make it better.

The bipartisan Safer Communities Act addressed issues of straw purchasing, which we have discussed before, the terrible death of a Ella French, a Chicago policeman, because of the straw purchase made in the state of Indiana, and this situation with the shootings of innocent individuals in Highland Park. I'd like to ask you, what have you seen, if anything, that's changed for the better since we passed our law?

MERRICK GARLAND: I think it's a very important law, and I'm grateful to the members who sponsored it and to the overall Congress that passed it. It's done several things for us. First of all, it has, as you said, established a standalone crime for straw purchasing and a standalone crime for trafficking in illegal weapons.

We have already --

DICK DURBIN: And are these being prosecuted?

MERRICK GARLAND: Yes. In -- in both cases, we have already brought trafficking cases. I think we already have two gun trafficking cases and several straw purchasing cases as a consequence of this law. In addition -- in addition, the law provided for enhanced background checks for people under 21, and we have largely completed the process of making those possible so that juvenile records that disclose prohibited conduct and make somebody a prohibited possessor would now be identified.

That's another thing we've done. The statute also provided funds under the burden program and additional programs for violence intervention and for helping states deal with red flag laws so that people who have been subject to a court order barring them from obtaining a gun, we would be able to get those kind of systems provided.

And we've already given out grants in both of those areas.

DICK DURBIN: Senator Graham basically challenged me, and I accept the challenge, to show as much concern about the gun deaths -- show as much concern about fentanyl deaths in this country. And I want to do that. He noted, I believe, and correct me if I'm wrong, that the number one cause of death in people 18 to 45 is drug overdose.

I don't know if it's fentanyl specifically, but a drug overdose. And I -- I know that reality. But the number one cause of death to children under the age of 18 is gun violence in America too. We can do both. We must do both. So, let's address the fentanyl issue for a minute. We had a hearing in this committee two or three weeks ago which talked about the social media platforms and what they are peddling to Americans, particularly to our children across America.

There were mothers sitting near where you're sitting today who brought color photographs of their children who died as a result of their trafficking of information on social media. And there's little or no responsibility accepted by these platforms. Section 230 absolves them from civil liability when they broadcast things which harm children, whether it's bullying or harassment or something as basic as this choke challenge, which unfortunately claims the lives of children as well.

I think there was a general consensus on this committee, which is saying something, that we need to do something about social media platforms. And I coincidentally had a meeting just a day or two later with Anne Whigham from the Drug Enforcement Agency. She described for me the sale on the Internet and social media platforms of phony drugs.

Senator Graham made the reference to a person who thought they were buying Percocet and bought fentanyl and died as a result of it. I asked her how common this was. She said very common, and they have -- the sellers even have valet services where they will physically deliver boxes of these phony drugs to people at their homes on their porches.

This is out of hand. Do you believe that we need to do more to regulate and control the use of social media platforms that are currently exploiting families and children across America?

MERRICK GARLAND: Senator, I agree with both you and Senator Graham with respect to how horrible this situation is. I have personally met with the families of children and teenagers and young adults and even the elderly who have taken these pills, often thinking that they're taking Adderall or Oxycodone or Percocet, a prescription drug, but when in fact it is filled with fentanyl.

And as the DEA administrator's testimony demonstrated, six out of ten of those pills are a fatal dose. The cartels that are creating these pills and that are distributing them within the United States are the most horrid individuals you can imagine. And unfortunately, they are doing it on social media advertising as if they are prescription pills.

So, the DEA has a program of going out to the social media companies and urging them to advise DEA when they see this and advising --

DICK DURBIN: Ms. Whigham told me that, when they approach the social media and ask for the algorithms so that they can get to the root cause of this death and destruction, these social media platforms plead Section 230 and refuse. What do we do?

MERRICK GARLAND: Well, I think we do have to do something to force them to provide information to search their own platforms for sales of illegal drugs. This is a --

DICK DURBIN: I -- I tell you, I mean, I don't want to put words in your mouth, but I think Section 230 has become a suicide pact. We have basically said to these companies you are absolved from liability, make money. And they're at it in overtime, and deaths result from it. And we have a responsibility. I think the committee really spoke to it. We may see it differently, but on a bipartisan basis -- and I've spoken to Senator Graham and I want to make sure that when we agree it also is publicized.

We both feel very strongly that this committee needs to be a venue to take on this issue. I hope we have your support and the support of the president when we do that.

MERRICK GARLAND: You certainly have our support with respect to finding a better way to get the social media companies, whether it's civil or criminal, to take their -- these kind of things off their platforms, to search for them, to not use algorithms that recommend them. I totally agree with that, Senator.

DICK DURBIN: Thank you. Senator Graham?

LINDSEY GRAHAM: Thank you. Again, welcome, Attorney General. I'm gonna do something maybe a bit different. I want to try to find a consensus where we can, see how far we go. Do you agree that the Wagner organization associated with Russia should be a foreign terrorist organization under US law?

MERRICK GARLAND: I think they are a organization that's committing war crimes, an organization that's damaging the United States. I think they've already been designated as a trans --

LINDSEY GRAHAM: Yeah.

MERRICK GARLAND: As a --

LINDSEY GRAHAM: Criminal -- yeah, something. Yeah.

MERRICK GARLAND: Yeah, TCO. I'm trying to get the --

LINDSEY GRAHAM: I want to go up a notch. Are you OK with that?

MERRICK GARLAND: I understand. This is a -- the -- the way in which determinations are made for -- with respect to terrorist organizations come through the State Department. They have to make determinations of what the consequence is for countries that are -- that have them in them.

LINDSEY GRAHAM: Do you object to me trying to make them a foreign terrorist org?

MERRICK GARLAND: I think -- I don't object. I think, though, that I would defer in the end to the State Department on this.

LINDSEY GRAHAM: I gotcha. Yeah. Well, I -- I bet we'll all come together on that one. Fentanyl; fentanyl deaths are more than gun and accident deaths combined in United States. Did you know that?

MERRICK GARLAND: Yes, sir.

LINDSEY GRAHAM: I mean, this is -- how would you describe the fentanyl problem in America?

MERRICK GARLAND: It's a horrible epidemic.

LINDSEY GRAHAM: OK.

MERRICK GARLAND: But it's an epidemic that's been unleashed on purpose by the Sinaloa and the new generation of Jalisco cartels.

LINDSEY GRAHAM: OK. Let's just stop and absorb that for a moment. This is a horrible epidemic. It kills more people than car wrecks and gun violence combined. And the question is what are we going to do about it. Under current law, fentanyl loses its Schedule I status by the end of the year. You oppose that, I -- I assume.

MERRICK GARLAND: I certainly do. Fentanyl -- all fentanyl related drugs should be scheduled, permanently scheduled.

LINDSEY GRAHAM: Do you support mandatory minimums for people dealing in fentanyl?

MERRICK GARLAND: I think we already have mandatory minimums for people dealing with --

LINDSEY GRAHAM: Do you think they should be increased?

MERRICK GARLAND: I think we -- we have more than enough ability now to attack this problem.

LINDSEY GRAHAM: Well, would you agree with me, whatever we have is not working well?

MERRICK GARLAND: Well, I --

LINDSEY GRAHAM: Whatever we're doing is not working.

MERRICK GARLAND: I agree with that because of the number of deaths that you pointed out.

LINDSEY GRAHAM: Yeah. So --

MERRICK GARLAND: So, the --

LINDSEY GRAHAM: So, just keep an open mind that what we got on the books is not working. If somebody gave a pill to another person with arsenic or ricin, could they be charged with murder because that will kill you?

MERRICK GARLAND: Absolutely.

LINDSEY GRAHAM: OK. If somebody gave a candy shaped pill full of fentanyl, could they be charged with murder?

MERRICK GARLAND: Well, they -- they can be charged with drug trafficking leading to death. I don't know -- I don't think the statute says murder --

LINDSEY GRAHAM: OK.

MERRICK GARLAND: But it does say --

LINDSEY GRAHAM: Yes.

MERRICK GARLAND: Specifically aims at that. We have brought prosecutions, I know, having discussed this with the US attorney in Colorado and the US attorney in the Southern District of New York.

LINDSEY GRAHAM: So, Senator Cotton's got a proposal to dramatically increase the penalties associated with fentanyl. I'd like to work with you and the chairman, if we could, to find a bipartisan solution to this problem to create deterrence that doesn't exist. Mexican drug cartels, should they be designated foreign terrorist organizations under US laws?

MERRICK GARLAND: Yeah, I think it's the -- the same answer I gave before. They're already designated in any number of ways and sanctioned by the Treasury.

LINDSEY GRAHAM: Would you oppose some of us trying to make them foreign terrorist organizations?

MERRICK GARLAND: I wouldn't oppose it. But again, I want to point out there are diplomatic concerns. We need the assistance of Mexico in this, and designating --

LINDSEY GRAHAM: Is Mexico helping us effectively with our fentanyl problem?

MERRICK GARLAND: They are helping us, but they could do much more. There's no question about that.

LINDSEY GRAHAM: Well, if this is helping, I would hate to see what not helping looks like. So --

MERRICK GARLAND: Well, I think --

LINDSEY GRAHAM: The bottom line for me is they're not helping, and we need to up our game when it comes to fentanyl. Gitmo, are you familiar with -- with the Gitmo prison?

MERRICK GARLAND: I -- I haven't been there, if that's what you're asking me.

LINDSEY GRAHAM: No. I mean, but you know that we have foreign terrorists --

MERRICK GARLAND: OK, yeah.

LINDSEY GRAHAM: Housed there. Is that right?

MERRICK GARLAND: I -- I certainly do.

LINDSEY GRAHAM: Do you agree with me that, under the law of war, an enemy combatant properly designated can be held to the end of hostilities?

MERRICK GARLAND: Yes. That's a -- a law both of the circuit I stood --

LINDSEY GRAHAM: Right.

MERRICK GARLAND: I was on before, and the Supreme Court.



LINDSEY GRAHAM: Right. So, do you agree with me that ISIS and al-Qaida is still at war with us?

MERRICK GARLAND: Yes, I do.

LINDSEY GRAHAM: So, you agree that anybody associated with these organizations could be held indefinitely if they present a risk to the American people.

MERRICK GARLAND: I think they could. I think that a determination of whether they present a risk and how they should be dealt with is a determination to be made by the Defense Department.

LINDSEY GRAHAM: Yeah.

MERRICK GARLAND: And the Defense Department is making that determination.

LINDSEY GRAHAM: But legally they can be held as long as they're a risk, and that could be for the rest of their lives, correct?

MERRICK GARLAND: I think that's right. It obviously depends on the facts of --

LINDSEY GRAHAM: Right.

MERRICK GARLAND: A determination of risk.

LINDSEY GRAHAM: Totally agree. Do you believe Russia is committing crimes against humanity?

MERRICK GARLAND: I do.

LINDSEY GRAHAM: OK. That's a pretty bold statement. Should we create an international court to support charges of crime of aggression? Do you support that idea?

MERRICK GARLAND: So, the United States supports what is now being developed in The Hague, sponsored by Eurojust, looking into the possibility of creating that court. There are concerns that we have to take into account with respect to how that might deal with our own service members and other circumstances. We have to be sure that the appropriate guardrails are up. But we support any number of different ways in which war crimes, crimes against humanity, and the potential for crimes against aggression are investigated.

LINDSEY GRAHAM: I'd like to work with you in that regard. I think that's something we could do.

MERRICK GARLAND: I would be happy to.

LINDSEY GRAHAM: When it comes to federal prisons, are you aware that 1,200 prisoners are requesting to be sent from a male prison to a female prison?

MERRICK GARLAND: I'm not, no.

LINDSEY GRAHAM: OK. What is our policy when it comes to allowing a male prisoner to be transitioned into a female prison?

MERRICK GARLAND: I think if you're generally asking the question of how trans people are dealt with in the Bureau of Prisons, my understanding is that these are -- determinations about where they're placed or where people are placed in general have to do with individualized determinations regarding the security of that individual and the management of the prison.

These are done on a case by case basis. That's my understanding.

LINDSEY GRAHAM: Are you aware of any policy guidelines that they use to make that determination?

MERRICK GARLAND: I think there is a policy guideline along the lines that I just said, that -- that they are --

LINDSEY GRAHAM: I would -- I would like for the Bureau of Prisons to send it to us. Are you concerned that, if a biological male is sent to a female prison, that could be a risk to female prisoners?

MERRICK GARLAND: I think every person in prison has to be dealt with with dignity and respect. The determinations of the safety questions you're talking about have to be made on an individualized basis and not categorically.

LINDSEY GRAHAM: OK. Finally, let's end where we started, fentanyl. If this drug is killing more Americans than car wrecks and gun violence combined, do you believe that the policies we have today in effect are working?

MERRICK GARLAND: I -- I've been involved in the problem of drug crime and drug trafficking for more than 40 years, including those --

LINDSEY GRAHAM: That's not my question. It's not how long have you been involved. Are they working?

MERRICK GARLAND: They're -- they are not stopping fentanyl from killing Americans, if that's the question you're asking.

LINDSEY GRAHAM: Do you say they're woefully inadequate to the task?

MERRICK GARLAND: We are putting all the resources that Congress provides to us into doing this. The DEA is doing -- we are starting at the precursor level when precursors are sent from China to Mexico. We are then working on attacking the labs.

LINDSEY GRAHAM: No, but I -- my time is up. Mr. Attorney General, they're are not working. And we're going to help you, if you'll work with us, to give you more tools. I hope you will meet us in the middle. Thank you.

MERRICK GARLAND: Happy to have more tools, Senator.

DICK DURBIN: Before I recognize another colleague, I want to apologize in my reference to the DEA administrator. Her name is Anne Milgram and I mispronounced it. So, I want to, for the record, clarify that. Senator Whitehouse?

SHELDON WHITEHOUSE: Thank you, Chairman. And thank you, Attorney General, for being here. I appreciate it. Good to see you. Methane is probably the -- one of the most dangerous greenhouse gases. We see plumes of it miles long floating across the United States. It takes multiple levels of enforcement, federal, state, local, and private, to address these massive leaks.

What can you tell me you are doing to assure that there is that coordinated multi-jurisdictional enforcement operation in place?

MERRICK GARLAND: You are exactly right. And we now have the benefit of overhead commercial satellites, which are able to actually see methane with respect to the infrared spectrum. So, we have -- we are in the process of establishing a working group between our Environment and Natural Resources Division and the Justice Department, the EPA, the Interior Department, and affected US attorneys offices across the country to make use of the tools -- the scientific tools we have, and also some of the funding that was provided in the bipartisan Infrastructure Act.

SHELDON WHITEHOUSE: That is good news, and I hope that that effort will include advisory participation from state law enforcement, from local law enforcement and from private litigant experts in this space.

MERRICK GARLAND: All -- all of our work in the law enforcement field involves partnering with state and local law enforcement. Always happy to have the expertise provided, but our law enforcement working groups are confined to law enforcement as a general matter.

SHELDON WHITEHOUSE: I just got a document from a insurance publication that says, I'm just reading here, at least 1,375 climate change related lawsuits have already been brought in the United States. These include suits filed by local municipalities and by states, Rhode Island is one of them, as well as shareholder suits. Given all of that government litigation taking place in this space, I would ask you, is there anyone looking at federal DOJ involvement in that area in the Department of Justice?

And if so, who is that person?

MERRICK GARLAND: So, I -- I really don't, as a general matter, want to describe our internal decision making processes on these. I can assure you that the Environmental and Natural Resources Division has taken a very close look at this question. But beyond that, I really can't say.

SHELDON WHITEHOUSE: OK. Well, you may recall that the last time the Department of Justice took a really close look at this question, they got the standard of decision wrong, applied a criminal standard of review to civil litigation. So, I hope that the seriousness of the look that's been taken, what I would like to call an honest look, is actually in fact taking place, because the record from before your time is not very convincing.

MERRICK GARLAND: I -- I agree with you, Senator, that the criminal standard of beyond a reasonable doubt is not appropriate for fraud cases.

SHELDON WHITEHOUSE: Yeah.

MERRICK GARLAND: Correct.

SHELDON WHITEHOUSE: And we're --

MERRICK GARLAND: I'm sorry, for civil fraud cases.

SHELDON WHITEHOUSE: Civil fraud cases, correct, criminal cases. Congress right now is on the wrong side of a bunch of OLC opinions that relate to executive privilege. And there are some specific ones that relate to so-called absolute immunity that are on the books at OLC that have been specifically rejected in quite forceful language by actual Article 3 judges, and yet those OLC opinions are still on the books.

They're still available to other agencies, who are making determinations about whether to block congressional oversight based on those OLC opinions. I would like to ask you -- let me go back a step. OLC says that they don't ordinarily review opinions of their own, even after they've been discredited by Article 3 judges, unless they've been asked.

And you're one of the people who can ask them. So, I'm asking you, will you ask them to review the OLC opinions that are now publicly on the books of the Department of Justice that have been discredited by specific findings of Article 3 judges they relate to absolute immunity.

MERRICK GARLAND: So, my understanding of the longstanding process at OLC is not to reevaluate old opinions unless they are now relevant for -- for a current controversy.

SHELDON WHITEHOUSE: That's the problem.

MERRICK GARLAND: And I also believe that their process is that, if a court of ultimate jurisdiction determines that -- that they are wrong, then they will evaluate it. My understanding of these --

SHELDON WHITEHOUSE: So, Ketanji Brown Jackson was one of the authors of one of the opinions that said OLC opinions were wrong. She's a pretty credible judge, I think. She's now sitting on the United States Supreme Court. And those OLC opinions hang out there for review by other executive agencies even if there's no direct ask to the department that would trigger that OLC review.

MERRICK GARLAND: So --

SHELDON WHITEHOUSE: It's sort of like executive branch jurisprudence that sits on its own, independent from Article 3 jurisprudence. And somehow we've got to figure out how to connect those two things, because at the moment you have OLC opinions that appear to be flat out wrong by the determinations made by those whose job it is to say what the law is, the Article 3 judges.

And there's no effort to ask them in that fairly unique circumstance to go back and -- and fix it.

MERRICK GARLAND: So, again, I think all the circumstances you're talking about are about individual judges, sometimes a single judge on a court of appeals, sometimes a judge speaking in dicta. But no decision -- if there were a decision of the United States Supreme Court that was inconsistent or of a court of appeals, I believe OLC would reevaluate.

Otherwise, there are lots of judges who criticize OLC opinions, and the Justice Department. And as a former judge, that's perfectly appropriate for Article 3 judges to do. But we have to allocate our resources to cases where -- which are active cases, and that's what OLC does.

SHELDON WHITEHOUSE: Well, I will continue to pursue this, because I think it is wrong for OLC to insist on developing its own jurisprudence that is separate from and independent from what Article 3 judges decide. And if the only way you can change an OLC opinion, which is controlling on the entire executive branch, is to get the Supreme Court to overturn it, then you've created a really lasting obstacle to the proper separation of powers in our Constitution.

So, to be continued. Attorney General, thank you for being here today.

MERRICK GARLAND: Thank you.

DICK DURBIN: Thank you, Senator Whitehouse. Senator Grassley?

CHUCK GRASSLEY: At last year's FBI oversight hearing, Wray committed to protecting whistleblowers that have approached my office about wrongdoing at the department and the FBI. Do you commit to me, this committee, and the Senate as a whole that any retaliatory conduct against whistleblowers will be disciplined?

MERRICK GARLAND: I do, Senator. And -- and you know well, more than any other member of this committee, that I've been a staunch supporter of whistleblowers and of the False Claims Act during the entire period of my role as a judge as well.

CHUCK GRASSLEY: I'm going to set up a hypothetical pack -- fact pattern for you and ask you to tell me how you would handle it. The Justice Department and FBI received information from over a dozen sources. That's the first one. Second, those sources provide similar information about potential criminal conduct relating to a single individual.

And third, that information was shared with the department and FBI over a period of years. According to department policy and procedures, what steps would the department take to determine the truth and accuracy of the information provided by those sources?

MERRICK GARLAND: I'm sorry. These are whistleblower -- so, they're internal sources? Is that what you're saying? I'm not sure.

CHUCK GRASSLEY: Doesn't matter where that comes from, just the fact that I want to know you got that information. How -- how would you go about handling it?

MERRICK GARLAND: Yeah. So, reports of wrongdoing are normally reported to whatever the appropriate department component is. It might be US attorney's offices in the district in which it allegedly took place. It might be to the -- directly to FBI components and to FBI task forces. In cases involving whistleblowers, of course, there are specific provisions for making complaints to the inspector general's office or the Office of Professional Responsibility or the inspections division of the FBI.

CHUCK GRASSLEY: Recent lawfully protected whistleblower disclosures to my office indicate that the Justice Department and the FBI had at one time over a dozen sources that provided potentially criminal information relating to Hunter Biden. The alleged volume and similarity of the information would demand that the Justice Department investigate the truth and accuracy of the information.

According to what -- accordingly, what steps has the Justice Department taken to determine the truth and accuracy of information provided? Congress and the American people, I think, have a right to know.

MERRICK GARLAND: So, as the committee well knows from my confirmation hearing, I promise to leave -- I promised to leave the matter of Hunter Biden in the hands of the US attorney for the District of Delaware, who was appointed in the previous administration. So, any information like that should have gone or should -- or should have gone to that US attorney's offices and the FBI squad that's working with him.

I have pledged not to interfere with that investigation, and I have carried through on my pledge.

CHUCK GRASSLEY: In April 2022, you testified to Senator Haggerty that the Hunter Biden investigation was insulated from political interference because it was assigned to -- as you just now told me, to the Delaware attorney's office. However, that could be misleading because, without special counsel authority, he could need permission of -- of another US attorney in certain circumstances to bring charges outside the District of Delaware.

I'd like clarification from you with respect to these concerns.

MERRICK GARLAND: The -- the US attorney in Delaware has been advised that he has full authority to -- to make those kind of referrals that you're talking about, or to bring cases in other jurisdictions if he feels it's necessary. And I will assure that, if he does, he will be able to do that.

CHUCK GRASSLEY: Does the Delaware US attorney lack independent charging authority over certain criminal allegations against the president's son outside of the District of Delaware?

MERRICK GARLAND: He would have to bring -- if it's in another district, he would have to bring the case in another district. But as I said, I promise to ensure that he's able to carry out his investigation and that he be able to run it. And if he needs to bring it in another jurisdiction, he will have full authority to do that.

CHUCK GRASSLEY: If you provided the Delaware US attorney with special counsel authority, isn't it true that he wouldn't need permission from another US attorney to bring charges?

MERRICK GARLAND: Well, it's a kind of a complicated question. If it -- under the regulations, that kind of act, he would have to bring to me under -- to the attorney general. Under the regulations, those kind of charging decisions would have to be brought. I would then have to, you know, authorize it and permit it to be brought in another jurisdiction.

And that is exactly what I promised to do here already, that if he needs to do -- bring a case in another jurisdiction, he will have my full authority to do that.

CHUCK GRASSLEY: Has the Delaware US attorney sought permission from -- permission of another US attorney's office, such as in the District of Columbia or in California, to bring charges? If so, was it denied?

MERRICK GARLAND: So, I -- I don't know the answer to that. I do -- and I don't want to get into the internal elements of decision making by the US attorney. But he has been advised that he is not to be denied anything that he needs. And if that were to happen, it should ascend through the department's ranks. And I have not heard anything from that office to suggest that they're not able to do everything that the US attorney wants to do.

CHUCK GRASSLEY: Well, let me give you my view. If Weiss, the US attorney there in Delaware, must seek permission from a Biden appointed US attorney to bring charges, then the Hunter Biden criminal investigation isn't insulated from political interference as you've publicly proclaimed. If the Justice Department received information that foreign persons had evidence of improper or unlawful financial payment paid to elected officials or other politically exposed persons and those payments may have influenced policy decisions, would that pose a national security concern and demand a full investigation?

And when Wray was here, he seemed to answer that question in -- that it was a national security concern. I want your opinion.

MERRICK GARLAND: In the way that you're -- if I -- if I follow the question exactly right, if it's an agent of a foreign government asking someone and paying someone to do things to support that foreign government in secret, yes, I definitely think that would be a national security problem.

CHUCK GRASSLEY: OK. My last question is to whistleblowers have confidentially asserted that the DOJ's public integrity unit -- I think I'm going to leave that question for another round. Thank you, Mr. Chairman.

MERRICK GARLAND: Thank you, Senator.

DICK DURBIN: Thanks, Senator Grassley. Senator Klobuchar?

AMY KLOBUCHAR: Thank you very much, Attorney General Garland, for being here. I know a major goal of yours was working to build morale in the department, filling a number of the jobs. And I want to personally thank you for the work of the US attorney's office in Minnesota and our US attorney, Andy Luger, who I know you know.

And he actually, at his swearing in, announced a major strategy to address violent crime that directed federal law enforcement to prioritize cases including carjackings. We've had a rash of those cases in Minnesota, and the trafficking of firearms. Under his leadership, every federal prosecutor, as you are aware in your leadership in the office, will now take on violent crime cases.

Can you talk about how the department's approach to focusing on violent crime is centered on partnerships with local agencies and what you're doing?

MERRICK GARLAND: Yeah, I -- I want to begin by saying that we well recognize that there is a terrible problem of violent crime. A very first -- and the reason violent crime is important to the -- to the federal government is because it -- it makes it impossible for people to go about their ordinary lives, and carry out their civic responsibilities and their family responsibilities without fear.

So, the department is very seized with this problem. One of the very first things I did after becoming attorney general, this was in -- I think in May, is to establish an anti violent crime strategy which involves the kind of partnerships that you're talking about, and -- and the kind of individual district by district determination that US Attorney Luger has made in his own district as to what is most necessary in that district to fight violent crime.

AMY KLOBUCHAR: OK.

MERRICK GARLAND: Our plan involves three sets of partnerships. One is among all federal law enforcement, FBI, DEA, marshals, ATF, and Homeland Security and other agencies so that there is no turf fighting, that we all work together in joint task forces, that those partnerships at the second level be expanded to state and local law enforcement, police and sheriffs.

There are not enough federal law enforcement in the world to deal with the problem of violent crime. This is largely a state and local issue and problem, and we are -- they are our force multipliers and we are their resource and expertise multipliers. So, in every jurisdiction, the US attorney is responsible for creating a task force of federal and state.

And then finally, there has to be relationships with the community. As a -- a former violent crime prosecutor myself, I know we don't get witnesses to testify in violent crime cases unless the community trusts us. The community doesn't trust us if we don't -- if law enforcement doesn't engage with them, show that we're being honest and transparent about our work, and -- and through our funding mechanisms provide grants for violence interruption and violence intervention.

AMY KLOBUCHAR: OK. Thank you.

MERRICK GARLAND: That -- that in a nutshell is the violent crime program.

AMY KLOBUCHAR: Thank you for the thorough answer. I'm going to just now do a bit of a rapid round follow up on some of these.

MERRICK GARLAND: Sure.

AMY KLOBUCHAR: You mentioned law enforcement. You noted in your testimony that the COPS office has dedicated \$224 million to help law enforcement. Senator Murkowski and I have long championed the COPS hiring program through the COPS Reauthorization Act. I assume you continue to support that and continue to support the work that needs to be done to address police officer recruitment and retention issues.

MERRICK GARLAND: Yeah, absolutely. In the previous fiscal year, I think we had \$100 million to distribute, which we did for COPS hiring, for recruitment and retention. In the next fiscal year, we expect over \$200 million for the same purpose. We know how difficult police departments are -- how much difficulty they're having with respect to recruitment and retention.

And we are trying to do everything we can, both in terms of grants and in terms of expertise, to help.

AMY KLOBUCHAR: OK, very good. Minnesota, currently a backlog of around 3,800 DNA cases awaiting testing. Senator Cornyn and I are working together on the Debbie Smith Act. And would that help law enforcement have the tools they need? This is just -- actually, these numbers just came out yesterday, so it's very timely.

MERRICK GARLAND: Yeah. No, absolutely. I think that that needs to be re-upped, and we are very strongly supportive of providing more funds to state and locals for DNA rape kits and -- and thing -- forensic analysis of the like.

AMY KLOBUCHAR: OK. I want to leave two minutes for antitrust, so just one quick other follow up. Senator Capito and I asked what steps the department has taken to stop the trafficking of fentanyl on the dark web. I know some of my colleagues have asked about fentanyl. Any update you want to give on that? Or you could give it in writing afterwards.

MERRICK GARLAND: Well, I'll give you more detail in writing. As you know, we had a major takedown of two different dark web websites which were trafficking in fentanyl. And we are continuing to investigate, using our cyber tools, to take those websites down and to arrest the operators.

AMY KLOBUCHAR: OK. Thank you. Senator Grassley and I worked together on passing, as you know, the changes to the merger fees. It was kind of a lot of drama at the end of the year. And we're very pleased that that went through. And it had, I think, 88 Senators supporting an amendment at the end of the year on the budget.

And I assume you're going to use those resources in a good way as they start coming in. And -- but I really wanted to focus on some of the legal changes we'd like to see. Senator Lee and I were pleased the venue bill passed that he led, and I know we also have a bill on the marketing side on Google. We're going to be having a hearing coming up on that topic.

And I know the department recently announced a new antitrust case against Google for its blocking competition in digital advertising. But could you talk a little bit about, beyond that, what you think legal changes, law changes would be helpful as we're seeing a changing Internet economy? And on the privacy kid's side, which Senator Durbin asked about, we haven't seen any changes to our laws.

But also on the antitrust side, on the marketing and the self preferencing of their products, whether it's Amazon or Apple, we haven't seen changes. And Senator Blackburn and Senator Blumenthal have worked together on the app store bill. Talk about what you'd like to see to give you the tools to better combat the issues that we're seeing.

MERRICK GARLAND: So, first, gratitude for the merger fees increase. It gives us the opportunity to staff up and be able to have enough lawyers and economists to oppose private sector, which has way more than we do. And we still have fewer antitrust employees than we had in the '70s, the last time I was in the Justice Department.

With respect to --

AMY KLOBUCHAR: You have the biggest companies the world has ever seen to try to deal with, yes.

MERRICK GARLAND: Yeah.

AMY KLOBUCHAR: OK.

MERRICK GARLAND: Exactly. On the legislation side, we have supported -- I -- I think it's called the Online Choice -- American Innovation and Online -- Line Choice Act. Did I get it right?

AMY KLOBUCHAR: Yeah.

MERRICK GARLAND: Thank you. And the Open Apps Act, I think that's close to the correct title, has -- we've had testimony by Assistant Attorney General Cantor with respect to the Open Apps Act. We are always interested in working with Congress to modernize the antitrust laws to take account of the kind of network effects that the -- and two sided platforms that we now have in our high technology companies.

AMY KLOBUCHAR: Well, thank you. And of course you joined a number of Republicans, as well as the NFIB has made this a huge priority in terms of passing these bills. Thank you.

DICK DURBIN: Attorney General, of course Senator Klobuchar has a recommendation for your reading pleasure on the subject of antitrust. Senator Cornyn?

MERRICK GARLAND: I -- I -- as Senator Klobuchar would say, channeling Taylor Swift, I know that all too well.

AMY KLOBUCHAR: Thank you for bringing up the Ticketmaster hearing that Senator Lee and I conduct -- I'm sure we will have follow up in writing, or maybe Senator Lee could ask a question about that. Thank you.

MERRICK GARLAND: I can't match all of Senator Lee's quips on this one, but I'm pretty familiar with Taylor Swift so I'll do my best.

DICK DURBIN: Now you've got it started. Senator Cornyn?

JOHN CORNYN: Attorney General Garland, you've, of course, served in the judiciary for many years and -- and before you became attorney general. Let me just ask, do you prefer to be called General Garland or Judge Garland?

MERRICK GARLAND: The senators of this committee can call me anything that they want.

JOHN CORNYN: Well, with -- we will with all appropriate respect.

MERRICK GARLAND: I appreciate that part.

JOHN CORNYN: Are you familiar with the strategy of the transnational criminal organizations that are flooding migrants across the border, overwhelming Border Patrol and other law enforcement authorities, so that then the drug traffickers can move illicit drugs across the border? Are you familiar with that --

MERRICK GARLAND: I --

JOHN CORNYN: What I would call a business model?

MERRICK GARLAND: I am, and I set up -- specifically directed the establishment of a task force on anti-smuggling and anti-human trafficking for just the reason you said. It involves our civil rights division, our criminal division, and the US Attorney's offices all along the border, as well as our offices in the Northern Triangle countries -- countries and Mexico.

JOHN CORNYN: I think you and I had this conversation earlier, maybe at your confirmation hearing, but I think the attorney general has the toughest job in -- in government, I believe, because you have to wear two hats. You are the chief law enforcement officer of the country and you are also a political appointee and a member of President Biden's cabinet.

But I think you also told us at the hearing, your confirmation hearing, you repeatedly said that the executive branch cannot simply decide, based on policy disagreements, that it will not enforce the law. Is that still your position?

MERRICK GARLAND: Yes, it is Senator.

JOHN CORNYN: On September the 11th, 2001, we lost about 3,000 Americans to a terrorist attack. We declared a war on terror. The Congress issued an authorization for the use of military force. If you took the size of an average 737 or a passenger jet today, holds between 145 and 185 passengers. If you were to rack up all of the deaths that we've seen as a result of drugs coming across the southwestern border as a result of this successful business model that the cartels have employed, you would be talking about the equivalent of a passenger jet per day crashing, killing everyone on board.

I have been just astonished at the lack of sense of urgency to deal with this issue. It seems we become so desensitized to it that that sense of urgency is simply gone. But I will tell you that it's directly related to the open border policies of the Biden administration, where people continue to come across the border, turn themselves in to a broken asylum system, or simply get away from law enforcement because they're overwhelming the Border Patrol's capacity.

This is intentional. As you -- as you acknowledged, it's a business model of the cartels. And they are getting rich, and students like those parents, who I met with last week in Johnson High School in Hays County, Texas, right outside of Boston, are losing their sons and daughters to fentanyl overdoses, because of exactly this successful business model by the cartels.

I want to ask you a little bit about the prosecution policies of the -- of the Garland Attorney General's Department of Justice. Sort of the bedrock standard for prosecuting crimes has historically been that the prosecutor shall -- should pursue the most serious, readily provable offense, and that that's been the bedrock of -- of policy for -- for -- over decades.

We know that Eric Holder, when he was attorney general, changed that standard. And specifically what I want to ask you is about two different memos that you've issued to prosecutors with regard to mandatory minimum sentencing. And specifically, in the charging memo -- one of the charging memos, you said the proliferation of provisions carrying mandatory minimum sentences has often caused unwarranted -- unwarranted disproportionality in sentencing and disproportionately severe sentences.

Now, just to be clear, mandatory minimum sentences are statutory, correct? In other words, they're passed by Congress and signed into law by the president.

MERRICK GARLAND: Yes, that's right.

JOHN CORNYN: And here you -- you suggest that prosecutors should not enforce or charge with -- charge defendants with a crime which carries a mandatory minimum under certain circumstances, correct?

MERRICK GARLAND: I did -- it's not exact -- if I can just have a moment to explain. I'm very familiar --

JOHN CORNYN: Well, if you'd just answer the question. So, the memo says specifically -- I'll just read it to you, said for this reason, charges that subject a defendant to a mandatory minimum sentence should ordinarily be reserved for instances in which the remaining charges would not sufficiently reflect the seriousness of the criminal -- defendant's criminal conduct, danger of the community, harm to victims, or other considerations outlined above.

So, basically your charging memorandum says that prosecutors can exercise their discretion to charge less than the most serious offense because you don't like the mandatory minimum sentences that Congress has -- has passed, correct?



MERRICK GARLAND: No, Senator. This is a question of allocating our resources and focusing them on violent crime. Later on in that --

JOHN CORNYN: I thought you said -- I thought you said that your job was to enforce the law with regard -- without regard to policy differences.

MERRICK GARLAND: It's not a question of policy differences. It's a question of the resources.

JOHN CORNYN: You don't have enough money? You don't --

MERRICK GARLAND: We don't --

JOHN CORNYN: Have enough people?

MERRICK GARLAND: Have enough people. We don't have enough money. We don't have enough jails. We don't have enough judges. But --

JOHN CORNYN: Well, you're arrogated to yourself the -- the -- the decision to make policy by saying that, in spite of the fact that there are mandatory minimum sentences for many of these drug crimes, which are now causing untold death and destruction across America, you're telling prosecutors don't charge those if they involve a mandatory minimum sentence.

MERRICK GARLAND: With -- with respect, Senator, the memorandum makes clear that that general analysis doesn't apply in violent crime, doesn't apply in drug trafficking, doesn't apply in cases in which there's injury.

JOHN CORNYN: So, you're cherry picking which cases that you will charge with a mandatory minimum sentence and not applying them uniformly, and charging the most serious crime that can be proven at trial.

MERRICK GARLAND: If we apply it to every single crime, we will not be able to focus our resources on violent crime, on significant drug trafficking, on the cartels, on the people who are killing people with fentanyl. So, the purpose here is to focus the attention of our prosecutors and agents on the things that are damaging the American people in the largest possible respect.

That's what the -- what this policy says.

JOHN CORNYN: At 108,000, roughly, Americans who died as a result of drug overdoses last year, 71,000 roughly of fentanyl overdoses, do you consider your current policies successful?

MERRICK GARLAND: We -- as I said an answer to another question, we have a huge epidemic, a fentanyl problem created by intentional acts by the cartels. We are doing everything we can within our resources to fight that. We have our DEA working to prevent transfer of precursors into Mexico, to capture the labs, to -- to extradite the cartel leaders, to arrest them in the United States.

We are focusing on fentanyl with enormous urgency. I have personally twice traveled to Mexico to try to get greater cooperation from the Mexicans on exactly the problem you're talking about. I have separately talked twice in person with the Mexican attorney general for exactly the problem that you're talking about.

The -- we are focusing on this with enormous urgency. This is a priority of the Justice Department, but this is a whole of government problem. The border is the responsibility of the Department of Homeland Security. We do what we can do with respect to the jurisdictions that we have.

DICK DURBIN: Thank you, Senator Cornyn. Senator Blumenthal?

RICHARD BLUMENTHAL: Thanks, Mr. Chairman. Let me begin by thanking you, Mr. Attorney General, and all of the very dedicated professionals, all of the employees of the Department of Justice for the great work that they do day in and day out, a lot of it underappreciated. I say that as an alumnus of the Department of Justice, a former United States attorney, but the work that you and your team have done to restore the confidence and trust of the American public in our Department of Justice I think is one of your enduring contributions.

Let me begin with areas where I think we have a high level of bipartisan agreement. First of all, on the Wagner group, Senator Graham and I are the principal sponsors, along with Senator Whitehouse, of a measure to declare the Wagner Group a foreign terrorist organization. You would agree that, assuming that the State Department goes along with us, that it is worthwhile doing.

MERRICK GARLAND: Yeah. Look, Mr. Prigozhin, who runs this thing, is in my view a war criminal. And maybe that's inappropriate for me to say with -- as a judge before getting all the evidence. But I think we have more than sufficient evidence at this point for me to feel that way. And I believe that that group, which is responsible for the attacks on Ukrainians in the Donbas, including by bringing in prisoners from Russian prison camps as cannon fodder, it's just -- it's unfathomable what they are doing.

And everything we can do to stop them, we should do.

RICHARD BLUMENTHAL: Senator Whitehouse and Graham and I have been working on aiding Ukrainian prosecutors in bringing to justice those war criminals, not only Prigozhin but others who tied the hands of women and children behind their backs, shot them, buried them in mass graves, which I have visited among my three tree -- trips to Ukraine.

Can you commit the Department of Justice will support the Ukrainian prosecutor, who is hard at work right now, in trying to bring to justice those war criminals?

MERRICK GARLAND: Not only will I commit, I'll tell you I've done that. I have met twice in person with the current prosecutor general, Prosecutor Kostin. I met in Ukraine with the previous prosecutor general. We have established a war crimes task force in the Justice Department to assist. Our -- our forensic agents are on the ground now in Ukraine to assist, to teach, to assist in the development of the forensics necessary to do those.

I have met with Eurojust and to -- and Europol to work on the -- help them develop the kind of infrastructure necessary to prosecute these cases.

RICHARD BLUMENTHAL: Thank you.

MERRICK GARLAND: You have our whole hearted support in your efforts here.

RICHARD BLUMENTHAL: Thank you. Next week Senator Hawley and I are going to have a hearing on Section 230 reform, the first of a number of hearings that I hope will lead to legislation. I hope it will be bipartisan legislation. The solicitor general, in her argument on Gonzales, I think made a number of important points on differentiating third party content from platform design.

In other words, Section 230 could cover content that users post, but when YouTube or others design their products in specific ways that cause -- cause harm or take steps to amplify or change content, that goes beyond the intent and the statutory language of Section 230, one example of the ways that I think we can achieve steps toward Section 230 reform.

Another is the EARN IT Act, which Senator Graham and I have sponsored, and we will introduce it again this year. I recognize that these are general principles. I hope the Department of Justice will support this effort. I -- I hope that you will as well support efforts to take action against monopolistic endeavors like Ticketmaster.

I understand that you commented briefly on it. Can you confirm that Ticketmaster is under investigation now?

MERRICK GARLAND: Yeah. So, the -- the department doesn't confirm or deny the existence of these kinds of investigations until they reach an overt stage, as -- as you know from your time as a US attorney. But, as I told Senator Klobuchar, we know "all too well" the importance of competition in this industry, as in all other industries.

And so, you can be confident that, in all of our work, we approach it with an understanding that highly concentrated industries are a problem for competition.

RICHARD BLUMENTHAL: In -- in that concentrated -- concentrated situation, where power is concentrated and you have violation of consent decrees twice, wouldn't it be appropriate for the Department of Justice to investigate?

MERRICK GARLAND: As I say, I really am happy to talk in the hypothetical, that in a case where someone violates the consent decree, of course it would be appropriate to investigate. But I just don't want to talk about individual investigations and whether they're ongoing.

RICHARD BLUMENTHAL: Let me ask you, the -- the American public right now is hearing about investigations involving COVID, the sources of COVID in China, conclusions with low confidence, high degree of confidence. Can you, as an official in charge of intelligence and interpretations of intelligence, explain to the American people what it means for there to be low confidence or higher confidence when there are conclusions about, for example, the sources of COVID, whether it came from natural sources in China or from a lab leak, what does that designation mean?

MERRICK GARLAND: I would have to say, to -- to my knowledge, I mean, these are -- are labels that are applied by the intelligence community. So -- so, while I read -- read the results, I'm not sure I can exactly define it, but I believe it is just as you would think, that if asked to make a decision and say yes or no, you say yes or no depending on the degree of confidence that you have that your yes or no answer is correct.

So, low confidence means you think the answer is yes, but you don't have high -- you know, you have low confidence in it. Medium is medium. You might answer we don't know at all, but that's not what -- that's not what you're asking about.

RICHARD BLUMENTHAL: So, it's more than a hunch or a guess, but not quite --

MERRICK GARLAND: Yeah.

RICHARD BLUMENTHAL: Something to take to the bank.

MERRICK GARLAND: Yeah. So, there's a lot of -- of criminal law from -- ranging from Terry stops to probable cause to convictions. There -- I don't think there is any law in the intelligence community that defines those specifically.

RICHARD BLUMENTHAL: You -- you wouldn't sanction a search or an arrest based on low confidence.

MERRICK GARLAND: Well, search and arrest require probable cause. That's all I can say.

DICK DURBIN: Thank you, Senator Blumenthal.

RICHARD BLUMENTHAL: Thank you.

DICK DURBIN: After Senator Lee asks, we're going to take a brief intermission. Senator Lee?

MIKE LEE: Thank you, Attorney General Garland. I want to echo briefly what Senator Klobuchar described. I hope you'll look at our letter and investigate thoroughly those issues. As you know, I -- I've long respected you and I've long respected your department. I have become concerned recently that, notwithstanding the great men and women who serve and have served for generations in the Department of Justice, there are some things that lead me to wonder whether there's -- whether some actions are being politicized within the department.

One example of this relates to 18 USC Section 1507. Ever since the leak of the Dobbs opinion and then the issuance of the Dobbs opinion by the Supreme Court last summer, we've had protesters who have been showing up at the homes of Supreme Court justices carrying signs, picketing, shouting. It's very clear that they're trying to influence, in one way or another, those serving on the United States Supreme Court, trying to influence jurisprudence.

And yet not one person, to my knowledge, has been prosecuted for such things under 18 USC Section 1507. About two weeks ago, this committee invited some officials from the Department of Justice to brief committee staff on protests at the justices' homes and ask about any arrests that have been made or might be made for people engaged in that behavior.

The briefers came to the briefing and informed staff that they hadn't read Section 1507. I assume you've read it, of course. I'm just wondering why the department would schedule such a briefing on a statute without having read it, and especially why no -- no actions have been brought under Section 1507 for these actions.

You -- I want -- I've got a lot to cover. Can you just -- can you answer that in one or two sentences?

MERRICK GARLAND: I've tried to answer all the -- all these questions --

MIKE LEE: Look, no. --

MERRICK GARLAND: Together --

MIKE LEE: Just -- just tell me, am I right in concluding that -- that you haven't brought any charges under 1507?

MERRICK GARLAND: So, I -- I don't know the answer to that. We have -- the thing that mattered, and as soon as the Dobbs draft leaked, I ordered the marshals to do something that the United States Marshals had never in history done before, which was protect the justices' homes, residence, and lives 24/7. No attorney general had ever ordered that before, and no Justice Department had ever done that before.

We sent more --

MIKE LEE: Which is terrific. That's -- that's fantastic. I -- I'm talking about --

MERRICK GARLAND: So, I'm getting to why -- to the why. So, we sent more than 70 US marshals for this purpose. Those marshals' priority is protection of the lives of the justices and their families. They are on site, but their priority job is protection. That is why, when someone did come to assault Justice Kavanaugh, he had to walk -- go away from -- from where they were because there were two marshals in front of the house.

And eventually, he self-reported himself. The marshals have been advised and they know, the marshals on the ground, they have full authority to arrest people under any federal statute, including that federal statute. But they have to make the determination on the ground whether they can do that in a -- in a manner that is safe and -- and able to protect their main mission.

Now, there are also state and local entities which have similar authorities, and which I understand the Supreme Court marshal has asked them to -- to do this as well. I don't know whether they have done any of those things.

MIKE LEE: OK. Thank you. I'd love to follow up with you more on that later. It is concerning to me. When you show up at the home of a public official, you're sending the message of implicit violence. You're sending the message we know where you sleep. We know where you and your family are most vulnerable. And it's very concerning to me. I assume you're aware of the overly aggressive arrest and prosecution of Mark Houck, who's a pro-life activist and father of seven in Philadelphia, based on the fact that he had -- had pushed a protester -- a protester who -- or a Planned Parenthood escort, rather, as -- as he was demonstrating outside of an area in the Philadelphia region.

He pushed this person after this person got in the face of his 12 year old son and was yelling vile, insulting, demeaning, implicitly threatening things, denigrating his father, denigrating his faith, and yelling vile sexually suggestive things to his 12 year old son, so he shoved him. And then, before they knew it, Mr. Houck was facing FACE Act prosecutions.

A highly militarized group of DOJ law enforcement showed up to enforce a warrant. They showed up at about 7 a.m. on a Friday morning. And as his -- as Houck's wife put it, a SWAT team of about 25 came to my house with about 15 vehicles and started pounding on the door, and then had about five guns pointed at my husband, myself, and basically my kids.

This concerns me. You know, Mr. Houck ended up facing these charges and, not surprisingly, the jury acquitted him of that. And I'm just wondering how -- it doesn't seem justifiable to me to have that overwhelming show of force for conduct like that. In the meantime, in 2022 and for the first couple of months of 2023, DOJ has announced charges against 34 individuals for blocking access to or vandalizing abortion clinics.

And there -- there have been over 81 reported attacks on pregnancy centers, 130 attacks on Catholic churches since the leak of the Dobbs decision, and only two individuals have been charged. So, how do you explain this disparity by reference to anything other than politicization of what's happening there?

MERRICK GARLAND: The FACE Act applies equally to efforts to damage, blockade clinics whether a pregnant resource -- whether they are a pregnancy resource center or whether they are an abortion center. It applies equally in both cases, and we apply the law equally. I will say you are quite right. There are many more prosecutions with respect to the blocking of the -- of the abortion centers, but that is generally because they are -- those actions are taken with photography at the time during the daylight, and seeing the person who did it is quite easy.

The -- those who are attacking the pregnancy resources centers, which is a horde thing to do, are doing this at night in the dark. We have put full resources on this. We have asked -- put a rewards out for this. The Justice Department and the FBI have made outreach to Catholic and other organizations to ask for their help in identifying the people who are doing this.

We will prosecute every case against a pregnancy resource center that we can make, but these people who are doing this are clever and are doing it in secret. And I am convinced that the FBI is trying to find them with urgency.

MIKE LEE: OK. I see my time's expired, Mr. Chairman. I'd like to submit for the record a copy of a letter sent by Representative Andy Biggs from Arizona regarding a case involving Philip Esformes, an individual who was granted clemency by the prior administration and who's now apparently being prosecuted. I hope to discuss this in a subsequent round.

DICK DURBIN: Without objection, it'll be entered in the record. We're going to recess for five minutes. The committee stands in recess. [Off-mic] Resume. Senator Padilla?

ALEX PADILLA: Thank you, Mr. Chair. Attorney General, as we've discussed on prior occasions, you know that hate crimes in many United States cities are at their highest levels since the FBI began collecting data in the 1990s. Los Angeles alone has seen almost 700 – or saw almost 700 hate crimes in the year 2022, its highest total ever.

Hate crimes are also known to be widely underreported, so the real numbers are very likely to be much higher. Now, hate crimes based on antisemitism in particular are rising at alarming rates. According to the Center for the Study of Hate and Extremism at California State University San Bernardino, Los Angeles faced 80 antisemitic hate crimes from January to October of last year, a nearly 10 percent increase over the previous year.

And this past month, federal prosecutors charged a 28 year old man with hate crimes after he fired at two Jewish men as they walked home from their synagogue in Los Angeles. So, my question is this. Do we have adequate resources being devoted to hate crime investigation and prosecution, and are there any solutions that you believe we should be considering to help us help you do this job?

MERRICK GARLAND: I'm grateful for the question. And obviously, if anybody wants to give me more resources in any area of the Justice Department's responsibility, I'm happy to take them. We have been focused like a laser on hate crime since I first came into the department. I think my memorandum to department to develop a anti-hate crime task force was one of the very first memorandums I issued.

As we were making our developments in that respect, the – the Anti-Hate Crime Act was passed by the Congress providing us with additional funding, which was very helpful. I've established a hate crimes coordinator in the department, and each of our US Attorney's offices is on the case looking into these matters.

And the FBI has elevated hate crimes and civil rights violations into their highest band of threats. So, I would say we are examining this with the highest degree of urgency that's possible, and we are putting the resources of our department into stopping these heinous acts.

ALEX PADILLA: Well, appreciate that. And in addition to resources, if there's specific policy changes or initiatives that you would like for us to consider –

MERRICK GARLAND: I –

ALEX PADILLA: Please bring them forward.

MERRICK GARLAND: I – my staff would be happy to – to work with yours if you have ideas in this regard. I think we're pretty – right now, I feel like we have the statutes and techniques required. But there's always room for improvement in everything, and we would be happy to work with you in that regard.

ALEX PADILLA: Now, a second area I wanted to raise is the issue of labor – exploitation of children, and in particular migrant children. I'm hoping you caught a recent New York Times report of their investigation, which put a spotlight on the vast use of migrant child labor across states and across industries. I was particularly alarmed to learn that some of these children are working full adult shifts in food processing facilities, in factories after school.

Children are being placed in occupationally dangerous situations where they're putting their lives at risk and given little break from grueling work. And many of these children were formerly under the care of the Department of Health and Human Services as unaccompanied minors, but have not received adequate follow up services once released to the care of a sponsor.

I'd ask consent to enter this article into the record.

DICK DURBIN: Without objection.

ALEX PADILLA: Now, the Biden administration on Monday did announce that it will direct agencies to crack down on the use of child labor. And as part of the new initiative, it's the Department of Labor who will investigate and enforce penalties on these unscrupulous employers and make criminal referrals as needed. Now, the Department of Labor is also going to lead an interagency task force to combat child labor exploitation.

So, my question is, will the Department of Justice be coordinating with the Department of Labor on criminal referrals and possibly join this interagency task force?

MERRICK GARLAND: Of course I read the same article that you're talking about. I was horrified by the reporting. Our criminal division and our civil rights division are reaching out to the Labor Department and HHS to try to be of assistance as much as possible. There's only a limited number of criminal statutes that would apply.

I would point out we do have a forced labor task force which has been very active in general, and it includes problems with respect to children, obviously. And I met with them the other -- just yesterday, and they have assured me that they would be reaching out as well.

ALEX PADILLA: OK. Look forward to following up on that. But I also can't help but acknowledge some of the dynamics that lead to these situations, right? We know that, from the private sector, we have heard that there is a need to address the demand for workers. There's a workforce shortage in America today across a number of industries and sectors.

There's a reported 11 million unfilled jobs, many of which have historically been filled by immigrants, you know, permanent, temporary, but we've seen migration numbers drop in recent years. So, with no migrants to fill these jobs in 20 -- since 2018, the US Department of Labor has seen a 69 percent increase in children being employed unlawfully by companies.

So, it seems like employers, particularly unscrupulous employers, they're going to find their workers somewhere. And if they're not finding them through traditional lawful means, children become the victims. Further disturbed by proposals I see from Republican legislators in states including Iowa, Ohio, Arkansas, and others, where they're proposing to loosen child labor laws.

That's not the solution here. Proposing 14 and 15 year olds work in meat coolers, industrial freezers, and other environments, this cannot be the answer to our nation's labor problems. So, I absolutely look forward to following up with you on this crackdown of unlawful child labor in the United States. My -- my time is up, but I'll have some further follow up questions in the second round, I hope.

Thank you. Thank you, Mr. Chair.

DICK DURBIN: Thank you, Senator Padilla. We're on a roll call, to -- just to alert the members. And Senator Cruz is next.

TED CRUZ: Thank you, Mr. Chairman. General, welcome.

MERRICK GARLAND: Thank you.

TED CRUZ: As you know, as I observed at your confirmation hearing, you had built a long record on the Federal Court of Appeals and a reputation of being relatively nonpartisan. And so, I had hopes that your tenure as attorney general would continue that record. I have to say I'm deeply disappointed in what the last two years have shown.

In my judgment, the Department of Justice has been politicized to the greatest extent I've ever seen in this country. And it has done a discredit to the Department of Justice, to the FBI, and the administration of law in this country. Let me start with a simple question. General Garland, is it a federal crime to protest outside of a judge's home with the intent of influencing that judge as to a pending case?

MERRICK GARLAND: The answer to that is yes, but I also want to at least respond to your characterization of the department --

TED CRUZ: Sure.

MERRICK GARLAND: Which I vigorously disagree with. I believe the men and women of the department pursue their work every single day in a nonpartisan and an appropriate way.

TED CRUZ: General Garland, there are thousands of men and women who do that. And I'll tell you, I hear from prosecutors at the Department of Justice. I hear from agents at the FBI who are angry that it is treated as the enforcement arm for the DNC instead of upholding the law in a fair and evenhanded manner. So, you are right there are thousands of men and women that are -- that are doing the job, but it is the political leadership that you're responsible for.

So, you just said, yes, it's a crime to protest at the home of a judge. Same goes for jurors, by the way, with the intent of influencing a case. But in the wake of the leak of the Dobbs decision, when rioters descended at the homes of six Supreme Court justices night after night after night, you did nothing.

The department did nothing when extremist groups like Ruth Sent Us and Jane's Revenge openly organized campaigns of harassment at the homes of justices, you sat on your hands. When these same groups posted online information about where the justices' worship or their home addresses or where their kids went to school, you again sat on your hands and did nothing.

Your failure to act to protect the safety of the justices and their families was an obvious product of political bias. You agree with *Roe vs. Wade*. You disagree with the *Dobbs* decision. And the Department of Justice, under this president, was perfectly happy to refuse to enforce the law and allow threats of violence.

And as you know, those threats finally materialized with Nicholas Roske, a 26 year old man from California, who traveled across the country, was arrested outside the home of Justice Kavanaugh armed with a handgun, a knife, and burglary tools. And he said he came there to kill Justice Kavanaugh because he was enraged by the leaked opinion.

Now, of course you're prosecuting that individual for attempted murder. But did you bring even a single case to enforce this law, or did the Department of Justice to decide this law doesn't apply if it's harassing justices for an opinion we don't like?

MERRICK GARLAND: When the *Dobbs* draft was leaked, I did something no attorney general in the history of the department had ever done before. For the first time in history, I ordered United States Marshals 24/7 to defend every residence of every justice.

TED CRUZ: General Garland, as a judge, you're familiar with asking counsel to --

MERRICK GARLAND: I'm --

TED CRUZ: Answer a question.

MERRICK GARLAND: I am answer --

TED CRUZ: Has the Department of Justice enforced this statute? Have you brought a single case against any of these protesters threatening the judge -- justices under 18 USC Section 1507? Have you brought even one?

MERRICK GARLAND: Senator, you asked me whether I sat on my hands, and quite of the opposite. I sent --

TED CRUZ: OK, let me --

MERRICK GARLAND: 70 United States Marshals --

TED CRUZ: Try again.

MERRICK GARLAND: To defend -- and let me --

TED CRUZ: Have you -- has the Department of Justice brought even a single case under this statute? It's a yes/no question. It's not a get -- give a speech on the other things you did.

MERRICK GARLAND: The job of the United States Marshals is to defend the lives of the --

TED CRUZ: So, the answer is no.

MERRICK GARLAND: Is to defend the lives of the justices, and that's their number one priority. They have full --

TED CRUZ: Why are you unwilling to say no? The answer's no. You know it's no. I know it's no. Everyone in this -- in this hearing room knows it's no. You're not willing to answer a question. Have you brought a case under this statute, yes or no?

MERRICK GARLAND: As far as I know, we haven't. And what we have done is defended to the lives of the justices with over 70 US Marshals.

TED CRUZ: So, how do you decide -- how do you decide which criminal statutes the -- the DOJ enforces and which one it doesn't?

MERRICK GARLAND: The United States Marshals know that they have full --

TED CRUZ: Yeah, I recognize you want to give a separate speech.

MERRICK GARLAND: No, I don't want to give a --

TED CRUZ: How do you decide which statute you enforce and which ones you don't?

MERRICK GARLAND: The marshals on scene make that determination in light of the priority of --

TED CRUZ: The marshals do not make a determination over whether to prosecute. You, the attorney general, make a determination. And you spent 20 years as a judge, and you're perfectly content with justices being afraid for their children's lives, and you did nothing to prosecute it. Let's shift to another area.

MERRICK GARLAND: That -- that is -- can I answer the question?

TED CRUZ: No, you cannot.

MERRICK GARLAND: The attorney general --

TED CRUZ: You have refused to answer the question.

MERRICK GARLAND: I am answering your question. The attorney general --

TED CRUZ: How did you choose --

MERRICK GARLAND: Does not decide whether to arrest --

TED CRUZ: How did you choose not to -- not to enforce this statute?

MERRICK GARLAND: The marshals on scene --

TED CRUZ: Marshals don't make that decision.

MERRICK GARLAND: They do make the decision of whether to make an arrest.

TED CRUZ: To prosecute someone? No, they don't.

MERRICK GARLAND: If they make a -- if they make an --

TED CRUZ: Marshals do not have prosecute authority.

MERRICK GARLAND: If they make an arrest, then it goes to the marshals.

TED CRUZ: All right. Let's -- let's change topics, because our -- our time is limited. We've also seen across the country violent attacks against pregnancy centers by similar left wing terrorist groups, including one -- one graffiti of a -- of a firebombed building said Jane was here. There have been attacks all over the country.

And yet the Department of Justice has not brought these violent criminals to justice. You contrast that. If you're a violent criminal and you attack a crisis pregnancy center, that is not a priority in the Biden Department of Justice. Contrast that to Mark Houck, who's a pro-life activist. He's a sidewalk counselor.

And he had an altercation with someone who allegedly inter -- interfered with his son's personal space and threatened him -- his son, and he pushed him. Now, in an ordinary world, pushing someone would be maybe a simple misdemeanor assault, but not under the Biden Department of Justice. If you're a pro-life activist, what can you expect?

Well, in this instance, according to Mr. Houck's wife, two dozen agents clad in body armor and ballistic helmets and shields and a battering ram showed up at his house pointing rifles at his family. Why do you send two dozen agents in body armor to arrest a sidewalk counselor who happens to be pro-life, but you don't devote resources to count to -- to prosecute people who are violently firebombing crisis pregnancy centers?

MERRICK GARLAND: It is a priority of the department to prosecute and investigate and find the people who are doing those fire bombings. They are doing it at night and in secret, and we have found -- we have found one group which we did prosecute. We are --

TED CRUZ: You've found one. How many of there been? How many attacks have there been?

MERRICK GARLAND: There have been a lot. And if you have any information specifically as to who those people are, we would be glad --

TED CRUZ: Let me ask you something. Did --

MERRICK GARLAND: We would be glad to have that --

TED CRUZ: Did you personally authorize 20 agents go into Mr. Houck's house?

MERRICK GARLAND: I --



TED CRUZ: And he offered to turn himself in through counsel, but you didn't want that. The Department of Justice wanted to make a show of it. Did you personally authorize it? And do you want to apologize to Mr. -- Mrs. Houck and her seven children for being terrorized?

MERRICK GARLAND: To decisions about how to do that are made at the level of the FBI agents on scene. And the --

TED CRUZ: Did you know about it?

MERRICK GARLAND: I did not know about it until -- the way you're describing it. And my understanding is the FBI disagrees with that description.

TED CRUZ: Was it a mistake?

DICK DURBIN: The senator's time has expired. I'm going to allow the witness to respond to any of the questions that were asked.

TED CRUZ: Was it a mistake?

DICK DURBIN: I'm going to chair the committee, Senator. I'm sorry. You're not. I'm going to --

TED CRUZ: You said you'd allow him to respond. But I repeated the question I asked, which is was it a mistake to send --

DICK DURBIN: You --

TED CRUZ: 20 agents to arrest him at the crack of dawn?

DICK DURBIN: You had your time and more than any --

TED CRUZ: You just said you'd allow him to respond. You just said I'm going to allow him to respond to the question, so I repeated the question. Was it a mistake?

DICK DURBIN: You asked the questions you want to ask --

TED CRUZ: That was the pending question.

DICK DURBIN: I'll ask the questions I want to.

TED CRUZ: That's the question I had already asked.

DICK DURBIN: Well --

TED CRUZ: You just said you'd let him respond.

DICK DURBIN: I'm going to let him respond right now.

TED CRUZ: Good.

DICK DURBIN: Please don't interrupt him. Thank you.

MERRICK GARLAND: The decisions about how to do tactical arrests are made by the FBI agents in the field. The FBI has publicly stated that it disagrees with the description you gave of what happened in that example. I don't -- that's the best I can answer.

DICK DURBIN: At this point, we're going to go to Senator Ossoff.

JON OSSOFF: Thank you, Mr. Chairman. Attorney General, good morning. Last year, with Senator Grassley, I introduced and passed into law bipartisan legislation that requires DOJ and the Bureau of Prisons to strengthen and upgrade security systems at BOP facilities across the country. This includes the closed circuit camera systems, public address systems, intercom systems.

Through extensive investigation of failures at the BOP, we've identified the inadequacies of these security systems as posing a threat not just to inmates and staff, but to the broader community. This implicates public safety. And indeed, we found that at US Penitentiary Atlanta failures of systems like this one allowed widespread criminal conduct within the facility, escapes from the facility, putting the entire southeast region at risk.

And that's in the words of the BOP's own internal investigators. Our bill is now law, and the department has a deadline upcoming next month to present a plan to Congress for upgrades to strengthen these security systems at federal prisons. So, my first question for you, Attorney General, is whether the department is on track to meet that deadline.

MERRICK GARLAND: Senator, first, I want to say we're grateful for the work you and your committee did on this matter. And I know that you've met with the director of the Bureau of Prisons, who is adopting the recommendations that you've made. I believe we are on track to satisfy the requirements of the statute, but I'd be very happy to be sure that she or our staff meet with your staff to ensure that your expectations are being met.

JON OSSOFF: Well, thank you, Attorney General. And I've worked diligently to develop the kind of trusting relationship with the new director. She has a task ahead of her to reform a bureaucracy that's been mismanaged, with significant human costs as a result, long predating your tenure. And I want to suggest that it's a necessary condition of demonstrating that the department is taking this seriously that this deadline be met and that we move forward expeditiously to strengthen these security systems.

Remaining on the -- on the subject of conditions in -- in prisons, the department announced in September of 2021 that it was conducting a civil investigation, a pattern of practice investigation into conditions of confinement in Georgia's state prisons. So, that was about 18 months ago. And the abysmal conditions in Georgia's state prisons which, as in the case of federal facilities, threaten public safety in the surrounding communities and are a major public safety hazard, those failures of management, in my view, in Georgia's state prison system are appalling.

They're life threatening and have, I believe, resulted in loss of life, and they undermine community safety. So, I -- I want to ensure that the department remains committed to seeing that investigation through and bringing results that can be made public and result in change.

MERRICK GARLAND: So, the Civil Rights Division is charged with these pattern and practice investigations. They are very committed to ensuring that the conditions are changed that you're talking about. These pattern of practice investigations normally do end in a public report to -- to the state agency involved and to the public at large.

I don't know the specifics of how the -- this investigation is going, but I can assure you the Civil Rights Division is fully behind this investigation.

JON OSSOFF: But the investigation is ongoing? It's proceeding and it's going to get a result, yes?

MERRICK GARLAND: Yes.

JON OSSOFF: Thank you. An additional investigation I led last year concerned the department's implementation of the Death in Custody Reporting Act. And one of the disturbing findings was that reporting under this statute, known as DCRA, had undercounted by at least -- almost a thousand deaths the deaths in state and local custody.

And in our engagements with the department, it came to my attention and I was dismayed that the department is not making DCRA data -- data available to the public. I'm going to ask unanimous consent, Mr. Chairman, that this report from the Leadership Conference and POGO titled A Matter of Life and Death, the Importance of the Death and Cost Reporting Act, be entered into the record

SHELDON WHITEHOUSE: Without objection.

JON OSSOFF: And I want to ask you, Attorney General, whether the department will commit to making DCRA data available to the public.

MERRICK GARLAND: Yeah. So, first on -- on the first part of your question, we're obviously having trouble getting full reporting. This has to be voluntary on the part of the states. I believe the statute did give us some appropriations, which we're able to use as incentives for -- for more reporting. We're very charged with the importance of -- of doing that.

I have to say I don't -- I'm not familiar with the specifics of DCRA. If it provides for public reporting of the numbers we have, then we should be providing it. I don't know whether it does or not. I just -- I'm not familiar with it at that level.

JON OSSOFF: You've got a lot on your plate, Attorney General. I recognize that. This is a serious concern for me and for the Senate. And I did not, after those investigations, come away with the impression that there was sufficient attention at a high level being committed to ensuring that this is being fixed. So, will you commit to getting up to speed and taking this matter personally into your portfolio?

MERRICK GARLAND: I will. You now have high level attention, if you didn't have it before.

JON OSSOFF: Well, I -- I think -- good. I -- I think we -- we should have gotten that based upon the results of investigation last year. I appreciate that commitment today. This needs to be fixed. Folks are dying in prisons and jails. The public needs to know who's dying, where they're dying. You at the department need to know who's dying, where they're dying in order for you, for example, to bring the kinds of civil rights enforcement that you're pursuing in Georgia.

Let's talk about domestic violence for a moment. The Crime Victims Fund, as you know, is a critical resource for the funding of domestic violence shelters, child advocacy centers, and other nonprofits. And, you know, I'm hearing consistently from providers of victim services in Georgia that awards from this fund are still much lower than previous years due to some issues with VOCA reauthorization.

Will you work with my office and commit a member of your team to meet with my staff to make sure that we're identifying every opportunity to increase the resources for victims and survivors of domestic violence in Georgia and across the country, and that we are expediting the provision of those resources?

Because lives are literally on the line in my state and nationwide.

MERRICK GARLAND: Yes, I -- I will. The VOCA fix was very helpful in allowing us to put deferred prosecution, delayed prosecution, non-prosecution agreements into the VOCA fix. We do, by the way, believe that we're on track to be fiscally responsible all the way through 2024.

JON OSSOFF: Thank you. And with my colleague's indulgence, one final question for you. Senator Grassley and I have introduced legislation again this Congress. It passed the Senate last Congress. We need to get it through the Senate and the House this Congress to strengthen federal protections against the sexual abuse of children and to crack down on predators who use online services to target children for trafficking, for the production of child sex abuse material, and other heinous crimes.

We need to make sure that the law keeps up with technology. And we're seeing, in Georgia and across the country, children are targeted routinely and exploited online. Will you commit --

SHELDON WHITEHOUSE: But keep it brief, because Senator Hawley and others are waiting, both you and the Attorney General.

JON OSSOFF: Thank you, Mr. Chairman. Will you commit to ensuring that this remains a top priority for the Department of Justice?

MERRICK GARLAND: Yes, I will.

JON OSSOFF: Thank you, Attorney General.

SHELDON WHITEHOUSE: Senator Hawley?

JOSH HAWLEY: Thank you, Mr. Chairman. Attorney General Garland, let -- let me just ask you, does your department have a problem with anti-Catholic bias?

MERRICK GARLAND: And our department is -- protects all religions and all ideologies. It does not have any bias against any religion of any kind.

JOSH HAWLEY: Well, you could have surprised me because, given the resources that you are expending and the apparently intelligence assets that you are deploying against Catholics, it appears, and other people of faith while simultaneously turning a blind eye while people are executed gang style on the streets of our cities, including in my home state, your answer frankly surprises me. Let's talk about the Mark Houck case, for example.

You've been asked about this already today, and frankly your answers really astound me. This is a case where a Catholic pro-life demonstrator, father, was accused of disorderly conduct in front of an abortion center. The local prosecutor, the Philadelphia district attorney, who is a Democrat, a liberal, very progressive, declined to prosecute.

There was a private suit that got dismissed. And then after all of that, your Justice Department sent between 20 and 30 armed agents in the early morning hours to the Houck's private residence to arrest this guy after he had offered to turn himself in voluntarily. Here's the photo once again. You can see the long guns.

You can see the ballistic shields. You can see that they're wearing bulletproof vests. Why did the Justice Department do this? Why did you send 20 to 30 SWAT style agents and a SWAT style team to this guy's house, when everybody else had declined to prosecute and he'd offered to turn himself in?

MERRICK GARLAND: Determinations of how to make arrests under arrest warrants are made based by the tactical operators in the district. They are not --

JOSH HAWLEY: But you certainly looked into it by this point, right?

MERRICK GARLAND: They --

JOSH HAWLEY: You -- you know the answer, surely.

MERRICK GARLAND: They -- all I know is what the FBI has said, which is that they made the decisions on the ground as to what was safest and easiest.

JOSH HAWLEY: So, you're --

MERRICK GARLAND: They do not agree with your description of what happened on the scene.

JOSH HAWLEY: If you don't agree with my description, I'm pointing out what the photo is. There are agents here who have long guns and ballistic shields. Let's take a look at the hardened criminals that your Justice Department sent these armed agents to go terrorize on that morning. Here they are. Here they are at mass.

Here's the seven children with Mr. Houck and his wife. In this early morning, they were all at home. Mrs. Houck has said repeatedly the children were screaming. They feared for their lives. You've got these agents demanding that he come out. They've got the guns, she said, pointing at the house and at them.

He has offered to turn himself in. And this is who you go to terrorize. What's really interesting to me is this seems to directly contradict your own memorandum about the use of force at the Justice Department. You say officers may use only the force that is objectively reasonable to effectively control an incident.

Are you telling me that, in your opinion as attorney general, it was objectively necessary to use 20 or 30 SWAT style agents with long guns and ballistic shields for these people?

MERRICK GARLAND: What I'm saying is that decisions about how to go about this were made on the ground by FBI agents.

JOSH HAWLEY: So, you're saying you don't know?

MERRICK GARLAND: I'm -- I'm saying what I just said, that those --

JOSH HAWLEY: Which is that you're abdicating responsibility?

MERRICK GARLAND: I'm not abdicating responsibility.

JOSH HAWLEY: Then give me the answer. Is -- do you think, in your opinion -- you are the attorney general of the United States. You are in charge of the Justice Department. And yes, sir, you are responsible. So, give me an answer.

MERRICK GARLAND: The FBI does not agree with your description --

JOSH HAWLEY: I'm not asking about the FBI. You are the attorney general. Give me your answer. Do you think that it was objectively reasonable and they followed your guidelines in sending 20 to 30 armed agents to terrorize these people, yes or no?

MERRICK GARLAND: The facts I have, which are those presented by the FBI, are not consistent with your description.

JOSH HAWLEY: So, you think it was reasonable?

MERRICK GARLAND: I'm saying the facts are not as you describe.

JOSH HAWLEY: What, that the children weren't there? That there wasn't -- that there weren't long guns there? That there weren't --

MERRICK GARLAND: That's --

JOSH HAWLEY: Agents? What wasn't -- what -- what do you dispute? What's the factual premise you dispute? Be specific.

MERRICK GARLAND: FBI said they don't agree with your description of --

JOSH HAWLEY: Be specific. They don't agree with what?

MERRICK GARLAND: Of how many agents, of the agents who were there, and what their roles were. They don't agree. That's all I can say.

JOSH HAWLEY: Do you know -- the jury in this case acquitted Mr. Houck, as I'm sure you're aware. Do you know how long it took them?

MERRICK GARLAND: I -- I am aware, and we respect the decision of the jury.

JOSH HAWLEY: Do you know how long it took them?

MERRICK GARLAND: I don't know.

JOSH HAWLEY: One hour, one hour. Philadelphia district attorney declines to prosecute. The private suit's dismissed. You use an unbelievable show of force with guns, that I'd just note, liberals usually decry. We're supposed to hate long -- long guns and assault style weapons. You're happy to deploy them against Catholics and innocent children, happy to. And then you haul them into court and a jury acquits him in one hour.

I'd just suggest to you that that is a disgraceful performance by your Justice Department and a disgraceful use of resources. I notice a pattern, though. The FBI field office in Richmond on the 23rd of January of this year issued a memorandum in which they advocated for, and I quote, the exploration of new avenues for tripwire and source development against traditionalist Catholics, it's their -- their own language, including those who favor the Latin mass.

Attorney general, are you cultivating sources and spies in Latin mass parishes and other Catholic parishes around the country?

MERRICK GARLAND: No, the Justice Department does not do that. It does not do investigations based on religion. I saw the document you have.

JOSH HAWLEY: What'd you do about it?

MERRICK GARLAND: It's appalling. It's appalling. I am in complete agreement with you. I understand that the FBI has withdrawn it and it's now looking into how this could ever happened.

JOSH HAWLEY: How did it happen.

MERRICK GARLAND: That's what they're looking into. But I'm totally in agreement with you. That document is appalling.

JOSH HAWLEY: I'll tell you how it happened. The -- this memorandum, which is supposed to be intelligence, cites extensively the Southern Poverty Law Center, which goes on to identify all of these different Catholics as being part of hate groups. Is -- is this how -- the FBI, under your direction and leadership, is this how they do their intelligence work?

They look -- they look at left wing advocacy groups to target Catholics? Is this what's going on? I mean, clearly it is. How is this happening?

MERRICK GARLAND: The FBI is not targeting Catholics. And -- and as I've said, this is an -- an inappropriate memorandum, and it doesn't reflect the methods that the FBI is supposed to be using, should not be relying on any single organization without doing its own work.

JOSH HAWLEY: Let me just ask you, as my time expires here, a very direct question. How -- how many informants do you have in Catholic churches across America?

MERRICK GARLAND: I don't know, and I don't believe we have any informants aimed at Catholic churches. We have a rule against investigations based on First Amendment activity, and Catholic churches are obviously a First Amendment activity.

JOSH HAWLEY: Well --

MERRICK GARLAND: But I don't know a specific answer to your question.

JOSH HAWLEY: You don't know the specifics of anything, it seems, but apparently on your watch this Justice Department is targeting Catholics, targeting people of faith specifically for their faith views. And Mr. Attorney General, I'll just say to you, it's a disgrace.

DICK DURBIN: Senator Coons?

CHRISTOPHER COONS: Thank you, Chairman Durbin. Thank you, Attorney General Garland, for your leadership of the department and for testifying here today. I appreciate all you're doing to restore to your order -- excuse me, to restore to your office its critical role in our constitutional order. Violent crime is a concern many members of both parties have raised today in this oversight hearing.

I just want to share with you that my home town of Wilmington, Delaware, which had had a longstanding challenge with violent crime and in particular murders, saw significant decreases over the last few years. Murders were down 58 percent in the past year to a 15 year low. Shootings were down 30 percent. Robberies were down 20 percent.

And in meeting with the mayor and chief of police recently, when I spoke with them they credited federal and local law enforcement partnerships, including in particular group violence intervention strategies as being central to their successful efforts. Congress and the Biden administration have together given \$200 million to fund these programs for the first time.

Why do you think investments in things like violent intervention strategies have been so effective?

MERRICK GARLAND: Yeah. So, I appreciate your asking that. I was just in Saint Louis and East Saint Louis to look into the way in which these violent -- violence intervention strategies have been effective. They are part of our whole of department approach to violent crime, which involves both law enforcement and support for state and local law enforcement and grants to state and local law enforcement, but also grants to communities to prevent the violence in the first place.

There are many kinds of these community violence interruption programs and intervention programs. They generally rely on having credible messengers, of people who the community trusts for any number -- a variety of reasons, who go into the community, try to -- to explain to the community that the police are on their side, that they need to be witnesses, be supportive, and to develop trust between law enforcement and the communities.

That's -- that's the bottom line of all this.

CHRISTOPHER COONS: That's certainly what we've seen in Wilmington. And frankly, our chief of police just went to Saint Louis to be their new chief of police, and I -- I wish him well. I co-lead the law enforcement caucus with Senator Cornyn of Texas. One of the things we've recently been talking about is the NICS Denial Notification Act, which Senator Cornyn and I led last year, the president signed into law.

It requires federal law enforcement to notify state and local authorities when someone fails a background check when they lie and try to buy a gun. It's been in place since September. We've already seen 44,000 denial notifications go to local law enforcement. Can you just speak briefly to the value of this information for local law enforcement to prevent dangerous individuals from being able to acquire weapons?

MERRICK GARLAND: Right. Well, this particular example is really the nub here. Somebody who is not lawfully allowed to get a gun who goes to try to get one anyway, I'd say there is a higher probability that person wants to do something nefarious with that gun. And now, thanks to this legislation, the state and local police will know about that and will be able to investigate to determine what it was that person was about to do with an unlawful weapon.

CHRISTOPHER COONS: It's something that the sheriffs and the local chiefs in Delaware have been very excited about, and I look forward to working with you to make sure that it's fully and promptly implemented. I am chairing the Intellectual Property Subcommittee of this committee in this Congress. And as you know, I'm very concerned

about the threat of foreign nations to our innovation and our intellectual property.

I think it's important that our response to this is coordinated across the whole government. So, I was glad to learn about your collaboration with the Department of Commerce, in particular on the Disruptive Technology Strike Force. Could you just speak to your strategy, jointly with the secretary of Commerce, for protecting American innovation in coordination with other agencies?

MERRICK GARLAND: Right. Well, on – that particular task force is very focused on new technologies, AI, for example, very advanced microchips, which could be very dangerous, obviously, in the hands of an adversary, which are being exported and are evading export controls. So, what – we're working with the – part of the Commerce Department, which enforces export controls, and on our side on our national security division, to identify these kinds of transfers and to prevent them from happening.

You know, a very good example is what's happened on the battlefield in Ukraine. We're getting – some of the Quadra Copters and other kinds of drones, and even some of the missiles that are landing in Ukraine turn out to have parts that came from American manufacturers. And we have to find out how they were able to evade our export controls.

CHRISTOPHER COONS: Well, thank you. I look forward to working with you – with you on that, and to strengthening our protections for copyright violation, patent, trademark trade secret violation. I've led, with Senator Wicker, now for some time a bipartisan bill to address the counterproductive practice of debt based driver's license suspensions.

The county Police Department I had the opportunity to supervise commented on a number of occasions in the decade I was in county government that being essentially a collections agency for the courts was the least constructive use of their time, to have traffic stops really just based on an outstanding request for a warrant or request for police action based on a failure to pay certain fines and fees.

Last year Delaware took steps to repeal these suspensions of driver's licenses, and became a national leader on access to justice for the poor. And I appreciate this administration's work to restore the Office of Access to Justice, which previously under President Obama had issued a best practices letter on such fines and fees and how they impact those who simply cannot afford to pay low level fines.

Can you speak to your priorities for this office, the Office of Access to Justice, and the opportunity it has to help lead on fines and fees, whether by convening relevant stakeholders or reissuing a best practices letter?

MERRICK GARLAND: Well, I'll start with the fines and fees. I think the additional, and maybe the most pernicious aspect of taking away someone's license is then they can't be employed. They can't go to their job, where they would make the money necessary to repay the fines and fees. So, I know that's an underlying basis of your concern and of the concern for these statutes.

The Office for Access to Justice has been recreated. I've appointed a director. One of the things that the office does is serve as organizing unit for the Legal Aid Roundtable, which has been reinvigorated across the government for assistance for providing pro bono work and legal assistance for the poor, who are otherwise unable to – to – to really do the most basic legal tasks because they just can't afford it. It's also the center of the Justice Department's own pro bono efforts.

Justice Department employees every day provide pro bono legal services to help veterans fill out the necessary forms, to help people with their wills, to help service members with respect to their debt and various other things. And that's another organization – organizing section of this office.

CHRISTOPHER COONS: Well, thank you, Mr. Attorney General. I look forward to working with you and with that office. We were just one vote shy of getting this bill into law at the end of last year, and I look forward to partnering with you on finding ways to reduce these driver's license suspensions and – and debt and fee issues.

Thank you, Mr. Chairman.

DICK DURBIN: Thanks, Senator Coons. Senator Cotton?

TOM COTTON: Mr. Attorney General, I want to explore the dangerous crisis at our southern border and your role in causing that crisis. Asylum traditionally is reserved for people who face things like religious persecution, persecution for their political beliefs, or violence because of their race or ethnicity. In June of 2021, you changed

the department's asylum rules so they could apply to individuals with significant gang violence in their home country.

Is that 2021 interpretation still in place?

MERRICK GARLAND: It is. It reinstates a previous interpretation the department had had of the same asylum rules, yes.

TOM COTTON: OK. Do you know the most recent murder rate in Honduras?

MERRICK GARLAND: I'm sure it's enormously high.

TOM COTTON: It's 36 per 100,000 people. What about Colombia?

MERRICK GARLAND: I don't know.

TOM COTTON: 23 per 100,000. Guatemala?

MERRICK GARLAND: Again, I don't know, but I believe it's very high.

TOM COTTON: Seven -- 17 per 100,000. What about Mexico, right across our southern border?

MERRICK GARLAND: I also think it's very high.

TOM COTTON: 28 per 100,000. So, as a -- since you rewrote the rules of asylum based on the perceived degree of violence in these countries, a little surprised you didn't know those. But let's look a little bit closer to home. Do you know the murder rate in New Orleans last year?

MERRICK GARLAND: Well, I don't. But I want to be clear. This wasn't based on violence. This was based on threats, specifically to individuals on gangs where the country was unable to protect the person.

TOM COTTON: So -- so --

MERRICK GARLAND: That's what it was about. It wasn't about violence in general.

TOM COTTON: Well, OK. Well, you're partly responsible for protecting Americans. So, let's say Honduras's government can protect its own people except for 36 out of every 100,000 for murders, Guatemala, 17 out of 100,000. The murder rate in New Orleans last year was 70 for every 100,000. What about Saint Louis?

MERRICK GARLAND: Again, very high.

TOM COTTON: 68 per 100,000. What about Baltimore?

MERRICK GARLAND: Also very high.

TOM COTTON: 58 per 100,000. Should American citizens in places like New Orleans and Baltimore and Saint Louis begin to seek asylum in countries like Honduras and Guatemala under your asylum principles?

MERRICK GARLAND: Again, I'm saying that the principle here is protection of specific individuals who are being threatened by the gang and where the local country is unwilling or unable to protect them.

TOM COTTON: So -- so, is the United States government and the city governments of Saint Louis and Baltimore and -- and New Orleans unwilling or unable to protect its own citizens?

MERRICK GARLAND: I don't believe that -- I don't believe they're unwilling.

TOM COTTON: Well --

MERRICK GARLAND: They are doing everything that they can. We are supporting them in every way they can. The examples that you're talking about are ones where they are unwilling to protect from gangs.

TOM COTTON: So, Mr. Attorney General, one of the reasons we have a crisis at our border, where we have illegal aliens running to our Border Patrol, not away from our Border Patrol, is this interpretation of asylum, that anyone anywhere who lives in a dangerous or poor country can come here and seek asylum as opposed to seeking it, as is traditionally the case, for things like persecution on religious belief or political practice.

MERRICK GARLAND: That --



TOM COTTON: But let's move on. Let's move on, Mr. Attorney General. I want to come back --

MERRICK GARLAND: But that's not the standard. I want to be clear.

TOM COTTON: I want to come back to a question that Senator Cornyn started, your -- your unprecedented memo in December of 2020 to direct your prosecutors not to pursue the most serious, readily provable offense. I have got numerous, numerous contacts in my office from your prosecutors who are shocked that you have overturned this decades long bipartisan standard.

You said this was about allocating resources. What -- what resources are you talking about?

MERRICK GARLAND: No prosecutor --

TOM COTTON: I --

MERRICK GARLAND: No prosecutor was directed to not to bring a case again. In fact --

TOM COTTON: Your memo specifically says if they feel that it's not warranted or only if the other offenses are not sufficient, they should not pursue what has been the standard for decades --

MERRICK GARLAND: And, well --

TOM COTTON: For generations of US attorneys and their assistants.

MERRICK GARLAND: I'm well aware of the standard because I helped write the standard originally when the first principles --

TOM COTTON: Because it was a Carter administration standard.

MERRICK GARLAND: That's right.

TOM COTTON: Not specifically known for being tough on crime.

MERRICK GARLAND: Well, it was the first time the principles of prosecution were reduced to a book which explained what they were. It was included in it. Every assistant US attorney is able to use their discretion to bring these kinds of cases. No one's being directed to not do anything.

TOM COTTON: You -- you specifically said that they should not pursue the most serious, readily provable offenses in cases where mandatory minimums are present because it's not warranted. You specifically said that.

MERRICK GARLAND: But I said --

TOM COTTON: That's the -- what does mandatory -- what does mandatory mean?

MERRICK GARLAND: I'm trying to say the --

TOM COTTON: Does it mean that prosecutors get a choice not to pursue it?

MERRICK GARLAND: The --

TOM COTTON: Did you write the law in that way?

MERRICK GARLAND: The memorandum said that that -- that of cases of violent crime, which is specifically what you're asking me, are ones where in fact most likely that they should be bringing the highest and --

TOM COTTON: Is it --

MERRICK GARLAND: The mandatory minimum.

TOM COTTON: Is it your assertion here that drug trafficking is not a violent crime?

MERRICK GARLAND: No, and --

TOM COTTON: It's build on an entire foundation and edifice of violence.

MERRICK GARLAND: Yes, and it includes an exception, in the -- in the same memorandum we're talking about, for significant drug trafficking as well as for violent crime. That's right.

TOM COTTON: So, let's -- let's get your specific answer. I -- I wrote it down here I was so surprised by it. You said to Senator Cornyn this is about allocating resources.

MERRICK GARLAND: Yeah.

TOM COTTON: What -- what resources are we allocating? If one of your assistant US attorneys had some criminal lowlife who could be charged with 12 offenses, but they don't charge the two most serious, readily provable offenses because of your memorandum, they're still charged with ten offenses. They have to go to grand jury.

They have to go to trial. They have to have a pre-sentencing report. They have to have a sentencing hearing. How is that conserving resources that you don't charge them with the most serious, readily provable offenses that would lock these lowlifes up for the longest time possible?

MERRICK GARLAND: Well, lowlifes that you're worried about and have expressed worried about, the drug -- large drug traffickers, the violent criminals, they are to be charged to the max.

TOM COTTON: I ask again. What resources were you talking about? You said to Senator Cornyn specifically it was about allocating resources. What resources?

MERRICK GARLAND: These include our investigators and how much we have to investigate in order to establish the requirements for mandatory minimums, the prosecutors who have to prove those cases, the judges who have to try those cases, and the jails that have to hold those cases -- those individuals for longer terms.

TOM COTTON: Well, if the jails are -- I don't see how jails could be a problem. You only have 158,000 prisoners now. Ten years ago was 219,000. Do you need more prisons?

MERRICK GARLAND: Well, I think that --

TOM COTTON: Mr. Kennedy's an appropriator. I bet he could get you more prisons.

MERRICK GARLAND: Well, I think that many of the Senators have complained that the jails are too -- too filled, that they're overcrowded, that we're not able to provide the level of protection and security for guards and for prisoners that we would like. But that is not what this is about. Again, I want to be clear. The memorandum was crystal clear that they are to charge the most serious, provable offense in exempt cases involving violent crime and drug trafficking.

TOM COTTON: OK. Let' -- let's turn to another example of you overriding Congress's will. Congress has repeatedly decided to impose stiffer penalties for crack cocaine than powder cocaine, done Originally at the request of members of the Congressional Black Caucus, voted for by -- by Senators like Senator Durbin, the chairman of this committee.

Ten years ago, they made a change to that. They specifically kept the ratio higher and they didn't make it retroactive. Now, you have directed your prosecutors, when they are dealing with crack cocaine, to charge it as if it was powder cocaine, something that this Congress has repeatedly refused to do, which we refused to do as recently as December when Senator Booker tried it on the floor and I blocked it. How do you explain overriding Congress's decision on this distinction between crack and powder cocaine to suit your own policy preferences?

MERRICK GARLAND: The long standing rule is that the Department of Justice uses its discretion in which charges to bring, regardless of which ones are available, which ones are to -- to bring. Every bit of evidence we have is that there's no difference between powder and crack. Governor Hutchinson testified to that fact.

TOM COTTON: Those are legislative -- those are legislative decisions. Those are not prosecutorial decisions. If this Congress wants to do it -- maybe it will one day and maybe I'll be outvoted. But those are legislative decisions. Those are not prosecutorial decisions. You said at your confirmation hearing that you had to follow the law as it was written, that the executive branch could not rewrite the law.

What you are doing is rewriting the law. It's not a single prosecutor out on the front lines making one decision. You are directing every federal prosecutor to override the law that has been written by Congress.

MERRICK GARLAND: We're using our discretion as to which charges to bring in which circumstances, which ones are appropriate. That's what we're doing. That's a longstanding history of prosecutorial discretion in the United States.

DICK DURBIN: Senator Hirono?

MAZIE HIRONO: Thank you, Mr. Chairman. Mr. Attorney General, aloha.

MERRICK GARLAND: Aloha.

MAZIE HIRONO: As I have sat listening to some of the questions, the -- the phrase badgering the witness comes to mind, but I commend you for the calm way that you have comported yourself at this hearing. You have been accused of selective prosecution around the abortion issues. I want to note that, since 1977, anti-choice extremists have been responsible for 11 murders, 26 attempted murders, 42 bombings, 194 arsons, and thousands of other criminal incidents by anti-choice extremists.

And of course, we should prosecute all violence and threats of violence by those on both sides of the abortion issue. But isn't it the case that our prosecutorial focus should be on the most violent acts?

MERRICK GARLAND: Yeah. Well, just --

MAZIE HIRONO: Mr. Attorney General?

MERRICK GARLAND: Let me just say, look, we prosecute without respect to ideology, but we do focus on the most violent acts, the most dangerous actors, the cases that are most likely to lead to danger to Americans. But we don't care what -- the ideology of the person who is threatening that act or who is taking that act. We will prosecute regardless.

MAZIE HIRONO: That is what I would expect of any attorney general who observes the rule of law and -- and who abides by it, regardless of whatever the -- the -- the religion and all of that. So, that's -- that is what I expect from the attorney general. In the wake of the Supreme Court's, in my view, disastrous ruling in Dobbs, because that ruling has led to fear and chaos all across the country, and abortion is now a crime in over a dozen states, but it is not a federal crime.

What affirmative steps is the department taking to ensure that states are not infringing women's constitutional right to travel across state lines for whatever purpose?

MERRICK GARLAND: We do not see anything in -- in the Dobbs case to suggest in any way that states can interfere with travel between states. In fact, at least one of the justices made clear that that was not within the scope of Dobbs. And so, we are looking closely. I'm not familiar with any state that has tried to criminalize interstate travel.

But if there were, we would make the appropriate filings. We have supported the Veterans Department, the Department of Defense, in their policy decisions to support people to travel out of state to receive the necessary reproductive care.

MAZIE HIRONO: Well, Mr. Attorney General, there are people who are trying to make it ever harder for persons who get pregnant in this country to be able to access abortion services and other reproductive services. In fact, we are awaiting a decision by a federal judge in Texas whether or not he should impose a national injunction on the use of mifepristone, which is the -- the drug that is most often used for early stage abortion.

It's also a drug that is -- that is used to treat miscarriages in the early stages. So, you have a federal judge that has the power to impose a -- this kind of an injunction, and it would affect every state in the country, including all those states like Hawaii, which was among the first to decriminalize abortion.

So, I would say that the efforts do not stop there. So, whatever you can do to make sure that women in this country know that they can travel to -- to other states to get whatever services that they seek. The department awards billions of dollars in grants to state, local, and tribal law enforcement each year.

The department also operates joint task forces and provides access to forensic and surveillance resources. This sort of collaboration can be good when put to good use fighting criminals who prey on our communities, but these resources could also be used against women seeking reproductive care. How -- I -- I've just sent a -- a letter to the president expressing my concerns about the -- the use of these federal -- federal funds by local law enforcement to basically hunt down women who are seeking abortion.

So, how is the department working to ensure that states and local partners do not use federal resources to enforce state laws restricting women's access to reproductive care?

MERRICK GARLAND: On your first question, just to be clear, we have filed in support of the FDA and the law -- mifepristone, the lawsuit that you're talking about. And we are hopeful that the result will not be the one that your concern -- that you -- that you describe.

MAZIE HIRONO: Well, there was judge shopping to make sure that it's this particular Texas judge who would get this case.

MERRICK GARLAND: We have -- we have filed the appropriate briefs in that -- in that.

MAZIE HIRONO: Thank you.

MERRICK GARLAND: On the second question, I -- I personally haven't looked into it. I don't know the answer to that. So, if we could have some people in the department get back to your staff on that, I'd be happy to do that.

MAZIE HIRONO: Thank you very much, with the perspective that these kinds of federal resources should not be used by states to go after women who are seeking reproductive services. I hope that is the perspective that you bring to the issue. I want to get to the issue of domestic terrorism and white supremacy. Last fall, our colleagues on the Homeland Security and Government Affairs Committee released a report on the federal response to domestic terrorism.

In it, they noted that, I quote, national security agents now identify domestic terrorism as the most persistent and lethal terrorist threat to the homeland, end quote. They also explain that, quote, this increase in domestic terror attacks have been predominantly perpetuated by white supremacists and anti-government extremists individuals and groups, end quote.

This fits with a recent Department of Homeland Security assessment that the country, quote, "remains in a heightened threat environment", end quote, and that some of the potential targets include, quote, faith based institutions, the LGBTQ community, schools, and racial and religious minorities. Do you agree that white supremacist terrorists pose a significant threat to our country, and especially to racial and religious minorities and the LGBTQ+ community?

MERRICK GARLAND: Yes. As the FBI reported in -- in that report you're talking about, racially motivated violent extremists as a group are the most dangerous of the domestic violent extremist groups. And within that, the white supremacists are the most dangerous and most lethal, yes.

MAZIE HIRONO: So, what -- what more can the department do to combat -- combat this rise in these kinds of domestic terrorist activities?

MERRICK GARLAND: Well, we -- we've allocated a significant amount of resources for this purpose. Our -- the national security division has stood up a domestic violent -- violent extremist unit to further track and try and interdict these actions. The FBI is treating this with enormous seriousness of purpose, and we are going to do everything we can to deter and prosecute.

MAZIE HIRONO: Thank you. Mr. Chairman, I think my time is up. Thank you.

DICK DURBIN: Thank you, Senator Hirono. Senator Kennedy?

JOHN KENNEDY: Thank you, Mr. Chairman. Thank you, General, for being here. Good afternoon.

MERRICK GARLAND: Thank you.

JOHN KENNEDY: I read this somewhere. I don't remember who said it, but -- or wrote it, but I remember it. It was once observed that -- that a parent who stops loving their children -- if a parent stops loving their children, the children will not stop loving the parent. The children will stop loving themselves. I know we can agree that we should encourage parents to be involved in their kids lives.

MERRICK GARLAND: Absolutely.

JOHN KENNEDY: And I'm sure we can agree that we should encourage parents to make their kids do their homework.

MERRICK GARLAND: Yes, although sometimes some resistance to that.

JOHN KENNEDY: Right, right. And to make sure they get sleep at night so they can be ready for school.

MERRICK GARLAND: Yes.

JOHN KENNEDY: Here's what I'm -- I've always been confused about. Didn't you understand the chilling effect that it would have to parents when you issued your directive, when you directed your criminal divisions and your counter terrorism divisions to -- to investigate parents who were angry at school boards and administrators during COVID?

MERRICK GARLAND: So, Senator, if you'd just give me a moment to put the full context, I did not do that. I did not issue any memorandum directing the investigation of parents who were concerned about their children. Quite to the contrary, the memorandum that you're talking about says at the very beginning of the memorandum that vigorous public debate is protected by the First Amendment.

And the kind of concerns that you're talking about are -- as expressed by parents are of course completely protected. The memorandum was aimed at violence and threats of violence against a whole host of school personnel. It was not aimed at parents making complaints to their school board. And it -- it came in the context of a whole series of other kinds of violent threats and violence against other public officials.

JOHN KENNEDY: Well -- well, let's walk through this. Your directive to your criminal division and your counter terror -- terrorism division came in a response to a letter from the National School Boards Association. Did it not?

MERRICK GARLAND: In part to the letter and in part to news reports of violence and threats of violence.

JOHN KENNEDY: And the National School Board Association said these parents ought to be investigated under the Patriot Act as potential domestic terrorists.

MERRICK GARLAND: And you'll notice, Senator, that I said nothing like that in my --

JOHN KENNEDY: I understand, but that's what the letter said.

MERRICK GARLAND: There -- there was a reference to that in the letter, something I disagree with.

JOHN KENNEDY: And your employees helped them write the letter, didn't they?

MERRICK GARLAND: I don't know anything to suggest that that's true.

JOHN KENNEDY: I --

MERRICK GARLAND: No, I don't.

JOHN KENNEDY: Thin it is true.

MERRICK GARLAND: Well --

JOHN KENNEDY: And the White House helped them write that letter, didn't they?

MERRICK GARLAND: I -- I don't know. I have no knowledge about that. But certainly I don't know anything about my employees --

JOHN KENNEDY: And so --

MERRICK GARLAND: Helping write that letter.

JOHN KENNEDY: And so, you get this letter from the National School Board Association asking you to investigate parents that your employees helped to write and that the White House helped to write, and you issue a directive to your criminal division and to your counterintelligence -- or counterterrorism division to start investigating parents who are angry.

What did you think was going to happen?

MERRICK GARLAND: I'll say again, Senator, that I -- nothing in my memorandum says to investigate parents who are angry, quite the opposite. It says that the First Amendment protects that kind of vigorous debate. The only thing we wanted was for an assessment to be made out in the field about whether federal assistance was needed to prevent violence and threats of violence.

JOHN KENNEDY: Well, one of your field -- that's not the way your -- your -- your department implemented your directive. One of your field offices actually opened an investigation. You set up a -- a Web site and a hotline to report parents. And a state --

MERRICK GARLAND: OK. I don't think -- we didn't set up a specific hotline about this. This was a reference to the FBI's hotline.

JOHN KENNEDY: A state Democratic Party official contacted you. They said that some Republicans were inciting violence by expressing public displeasure with school districts' vaccine mandates, and one of your field offices opened an investigation, which is a permanent part of their record.

MERRICK GARLAND: Senator, I don't know anything about the specific thing that you're talking about.

JOHN KENNEDY: You're completely out of --

MERRICK GARLAND: They used to say -- they used to say in high school this was going to be on your permanent record. I don't believe there is any such thing with respect to the -- to this.

JOHN KENNEDY: Oh, I think there is that the FBI, General, and you and I both know there is. There -- there was a lady and -- and a mom in Michigan. She has a special needs kid. And the kid was doing pretty well, and she got upset with her local school board over its closures and -- and virtual learning policies. And she went to the meeting.

And -- and she made an intemperate comment. She -- she -- she accused them of being a bunch of Nazis. Why would the FBI open an investigation of her?

MERRICK GARLAND: Again, I don't know anything about the specifics of the case, but accusing people of being Nazis, while I find bad, is certainly not criminal. It's totally protected by the First Amendment.

JOHN KENNEDY: I mean, I think --

MERRICK GARLAND: And I've said that over and over again. This is not the first time we've discussed this.

JOHN KENNEDY: But that's not -- that's not what your department did.

MERRICK GARLAND: Well, I -- this is about a third time I'm being asked the -- about the same memorandum, and each time I've said, and I hoped that the Senators would go ahead and advise their constituents in the same way, that this is not what we do. We are not in any way trying to interfere with parents making complaints about the education of their children.

JOHN KENNEDY: But don't you understand, General, and -- and I -- I believe you, but don't you understand that this looks like you were just giving in to the teachers unions and politicizing the disagreement, the honest disagreements? I mean, we only as -- a result of some of our school board policies, we only experienced the largest learning loss for our kids in modern history.

Don't you think parents had a right to be upset?

MERRICK GARLAND: Absolutely.

JOHN KENNEDY: Instead of what is a -- I mean, you -- you implemented -- what's the threat tag?

MERRICK GARLAND: I didn't implement the threat tag. What you're talking about there is a part of internal FBI operations.

JOHN KENNEDY: Yeah, you --

MERRICK GARLAND: And as far as I can --

JOHN KENNEDY: You directed your folks, though, to open threat tags on these parents.

MERRICK GARLAND: I -- I didn't --

JOHN KENNEDY: And -- and -- and investigate them.

MERRICK GARLAND: Yeah, I did not direct that. My understanding from testimony by the FBI is that, when somebody makes a complaint and it involves -- if somebody gives a tip that a -- a school official is being threatened, then there's -- in order to look at trends, they mark it as a -- as a -- in the tip involving a school Official, they make -- have the same set of threat tags with respect to a complaint that suggests somebody is making a threat against a Supreme Court justice.

These aren't complaints. These are tips that -- of violence or threats of violence.

JOHN KENNEDY: A threat tag on a parent for being concerned at a school board meeting.

MERRICK GARLAND: It's not on the parent. It's not on whoever. It's on -- to indicate that a threat was made against or at least alleged that a threat was made against a school board member or a school official or a teacher or a school. Some of these turned out to be bomb threats.

CORY BOOKER: Senator -- Senator Kennedy, we're going to have a second round of questioning on behalf of Chairman Durbin, who is going to vote. I'm going to call on --

JOHN KENNEDY: You're blaming it on Durbin. I understand. I apologize.

CORY BOOKER: I take full responsibility.

JOHN KENNEDY: Thank you, General.

CORY BOOKER: Thank you, Senator Kennedy, for the grace, and thank you very much for being here. I just want to confirm because I've heard some misstatements. Fentanyl is permanently schedule -- scheduled at Schedule II, correct?

MERRICK GARLAND: Yes, sir. The discussion is about fentanyl analogs.

CORY BOOKER: So let's go to fentanyl analogs. Fentanyl analogs are schedule now at Schedule 1. They are not expiring this year. Fentanyl analogs are Schedule II the expiration date for which is at the end of 2024. Correct?

MERRICK GARLAND: It might be the fiscal year. I'm not sure exactly, but --

CORY BOOKER: I believe it's not 2023. It's at the end of the year 2024 fiscal or not.

MERRICK GARLAND: I'm not exactly sure of the time. I know that there's a short time on this and we believe it should be re-upped.

CORY BOOKER: OK. I want to jump into the executive order from President Biden on policing. It took really important steps to ensure that federal law enforcement agencies are engaging the best practices to make themselves and the public safer. Some of these policies, the department has adopted and is making great progress on including limitations on chokeholds, guidelines, for no knock warrants, which is extraordinarily dangerous for police officers themselves and a cleaner standard for the use of deadly force.

Even the Trump EO -- EO though included the need for us to have a database that is I guess called an accountability database to serve as a repository for officer misconduct records within the next eight months, which is now this past January. Trump's executive order which was issued in June of 2020 also directed the internal attorney general to create such a database to collect this information.

What's the status now on that?

MERRICK GARLAND: Yeah, there's a working group run by the deputy attorney general to stand this up. As you can imagine, there are difficulties with respect to getting reporting and also difficulties with respect to defining what a determination has been made. Like we are seized with this, and we are working full speed ahead to get this done.

CORY BOOKER: I'm grateful and hope we can continue to communicate on that. It's -- it's invaluable. And the EO directed you to encourage state and local agencies to contribute to the database. How's that going?

MERRICK GARLAND: Yeah, we are -- we have made outreach to all the major law enforcement organizations who support this proposition. We are making outreach to state and local law enforcement. We are making progress. I can't really say more than that at this point, not because I don't want to say, but because I don't know.

CORY BOOKER: OK. The Biden administration in cooperation with the Congress acting in a bipartisan manner has put significant amounts of money into the COPS grant program. In fact, I think under the last Congress, it was one of the higher -- highest rating -- highest amounts of money given to programs that help local police departments really Proud.

President Biden did that. I'm just curious what processes are in place to ensure that the funded funds are being used for intended purposes? Does the department audit those grants?

MERRICK GARLAND: Yeah. When – whenever a government agency gives out grants, there's always a risk. And so we have pretty tight, very tight auditing and review processes for these grants.

CORY BOOKER: And do you have the resources you need to adequately audit the grants in your estimation or is that something that might – Congress might act to give you the more resources?

MERRICK GARLAND: I'm going to say again to you and I've said before. Whenever anybody wants to offer me more resources, I'm happy to have them. But I think we're – we're capable of doing what the Congress wanted us to do with the resources we have right now.

CORY BOOKER: Right, I appreciate that wise response. In December of 2021, you said the department would exercise its discretion to ensure that people released on home confinement under their CARES Act would not unnecessarily return to prison. My – my experience, I've been visiting prisons since I was a law student and I usually go in and ask wardens who are often tough men and women who really are about the protection of their officer, their community at large.

And I always ask, are there people here that are a waste of taxpayer money? And they will often tell me stories about elderly folks, infirmed folks. But here now we had a pandemic as you know, and there was a release program with really high standards to meet for anyone being released. And I appreciate your comments on this matter in the past.

I just want to ask. can you confirm that the department will not revoke individuals released under the CARES Act for minor violations? We always know there's so-called status violations where somebody might cross a county line or do something that is a technical violation, which is often minor. They're not a threat to public safety.

Can you confirm again that the department will not revoke individuals that are released under the CARES Act for these so-called status violations once the public health emergency expires?

MERRICK GARLAND: So just to give the full context. The CARES Act allowed us to put people in home confinement who we ordinarily would not have been able to do because of the length of time remaining on their sentence. A question was raised whether that – whether those people would have to go back after the expiration, which is now going to be in – in May, I believe.

The Office of Legal Counsel interpreting the statute found that they would not have to go back, that all that was necessary was that the attorney general put them into home confinement. When I say the attorney general, I mean the Justice Department and the Bureau of Prisons, and that they could remain subject to what the normal rules are having to go back.

So if somebody commits the kind of violations that would normally require somebody to go back to prison from home confinement, those would apply, but no special rules to people who came under the CARES Act. And let me also say in support of what you said, there has now been enough time to have statistical data on recidivism as found that the people out on the CARES Act, a number of – of serious crimes committed is extremely tiny and not of – of concern.

All right. On July 16th, my last question – my penultimate question. On July 16th, 2022, you said that the Justice Department is examining marijuana policy and will be addressing the issue in the days ahead. And then October of 2022, President Biden urged an expeditious review of the schedule of cannabis and directed individuals federally incarcerated for cannabis possession be expunged.

CORY BOOKER: What is the current state of the review of cannabis at the Justice Department and when can we expect policy changes on this important issue?

MERRICK GARLAND: I think everything that you said is correct. The president commuted sentences and this is still working its way through the system to get the final certificates of commutation. But that – that – that is accomplished. The HHS is working on the question of scientific analysis of marijuana. And within the department, we are still working on a marijuana policy for the department.

I have to say that the crack powder thing came first in my list of things that had to be done first. That was accomplished as you already know. And I think that it's fair to expect what I said at my confirmation hearing with respect to marijuana policy that it will be very close to what was done in the Cole memorandum.

Deputy Attorney, General Cole in the Obama administration. We're not – we're not quite done with that yet.



CORY BOOKER: Well, I'm very eager to get to hear more about that and I'm hoping that you can do that -- review the complicated policies as more and more states red and blue are moving. It'd be good to hear that as quickly as possible. And I just would like you to respond for the record. There are some scurrilous statements out there that you're dissatisfied with your chief of staff and would like him to be replaced by his eldest son.

So if you could respond on the record for me at some point about that.

MERRICK GARLAND: The only bad mark in his resume is that he worked for you once.

CORY BOOKER: Thank you, sir.

DICK DURBIN: Senator Blackburn.

MARSHA BLACKBURN: Thank you, Mr. Chairman and Mr. Attorney General. Thank you for your time today. Listening to the questions and the answers and your responses, what is coming clear to me as I listen to this is basically in your DOJ, the Biden DOJ, there are two tiers of justice. There are one for people with conservative values for parents, for people of faith.

And then there is another tier of justice that applies to the Washington liberal elite, political elite. And what I want to do is dig down a little bit on how you and the department have applied this discretionary form of -- of justice. It's something that concerns Tennesseans. And when I'm across the state, we have 95 counties.

I visit each of them every year. And Mr. Attorney General, that comes up quite a bit. Much of it has come up in relation to the Dobbs decision and the attacks and the violence there has increased from groups on the far left. It has not increased from pro-life groups. And since the Dobbs leak, there have been 70 pro-life pregnancy centers that were targeted.

Only two of these activists have been indicted. There are 25 individuals that have been indicted under the FACE Act in just five months. So you see the disparity there. I appreciate you said that most of these attacks are carried out at night and that the protests take place during the day. So you say it's easier to identify and go after people that are carrying out a peaceful protest during the day rather than a firebombing at night.

Is that correct?

MERRICK GARLAND: Yeah, If I -- if I could just say, I wish you would assure your constituents and all the counties that the Justice Department does not treat people in the way that they describe it. We treat like cases alike. We do not have one view.

MARSHA BLACKBURN: OK, then let's talk about a specific case in Tennessee, the Hope Clinic. Are you familiar with that?

MERRICK GARLAND: I'm not familiar with it.

MARSHA BLACKBURN: OK. So the Clinic for Women is a pregnancy resource center in Nashville. And currently you have gone out of your way to prosecute 11 individuals in Tennessee under the FACE Act. And are you aware that this clinic was the subject of an attempted firebombing with a molotov cocktail?

MERRICK GARLAND: So we are very concerned about these kind of fire bombings, and I agree with you there are happening around the United States. The FBI has put its resources into this. We are investigating it in every way. We've offered rewards for anyone who has information.

MARSHA BLACKBURN: Then let's talk about these groups get classified. When we talked about the way parents of children were treated and because they were concerned over what was being taught in schools, Senator Kennedy just went through that with you. You applied domestic terrorism as a term in couching that activity. Now under federal law, which you have cited, this is how you term domestic terrorism and I'm quoting; "activities that involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any state." So under that definition, would you agree that firebombing a crisis pregnancy center constitutes an act of domestic terrorism?

MERRICK GARLAND: I would say yes, but I want to again disagree with your earlier characterizations. There was no memorandum about parents complaining and their -- to their school boards and there was --

MARSHA BLACKBURN: Talking about bombing -- firebombing pregnancy centers.

MERRICK GARLAND: I understand and there was no reference in that memo to using domestic terrorism.

MARSHA BLACKBURN: Would you agree that bombing -- firebombing -- is domestic terrorism

MERRICK GARLAND: Where it said -- yes, fire bombing -- is at least domestic violence extremism.

MARSHA BLACKBURN: OK. Let's talk about the far-left group, Janes Revenge because they claimed responsibility for that. They went so far as to spray paint their name on the wall. So do you intend to prosecute them?

MERRICK GARLAND: We intend if we find them to do that, there is a --

MARSHA BLACKBURN: Oh, so you can't find them.

MERRICK GARLAND: If you have information about those, we would be happy to.

MARSHA BLACKBURN: That is your job.

MERRICK GARLAND: That's right. And we are putting heavy resources into this. We have found a group that -- that's --

MARSHA BLACKBURN: That they are a domestic terrorist organization.

MERRICK GARLAND: I would say it depends on -- it depends on the people.

MARSHA BLACKBURN: Who took credit for this, spray painted their name on the wall. Let me ask you a couple of questions before my time runs out. We've talked a little bit today about the targeting at the justices' homes. Have you released any type of memorandum that explicitly condemns the acts of intimidation outside of the Supreme Court justices' homes?

MERRICK GARLAND: I have directly instructed the Marshal Service to send over 70 United States marshals to prevent acts of violence and threats of violence outside those. I don't need to do a memo because I spoke directly to the marshals about this topic.

MARSHA BLACKBURN: All right. Have you watched any of the footage of the protesters outside the justices' homes?

MERRICK GARLAND: Unless I caught it on the news, I haven't specifically watched it.

MARSHA BLACKBURN: Are you investigating any of those individuals? You said, you know, you investigate protesters because they do their activity then in the light of day. And most of the fire bombings and things take place at night, but I would think the FBI knows how to investigate --

MERRICK GARLAND: As I explained, our principal responsibility here is to protect the lives of the justices. We've put the United States

MARSHA BLACKBURN: But you haven't watched any of that footage?

MERRICK GARLAND: The United States marshals are on scene watching what happens on scene.

MARSHA BLACKBURN: Any of those individuals that were protesting at the justices' homes, were there for any reason other than to try to intimidate the justices?

MERRICK GARLAND: The marshal's job is to protect the lives of the justices and they will arrest people who they think are threatening the lives of the justices. That's their job.

MARSHA BLACKBURN: Thank you, Mr. Attorney General. I have to say people in Tennessee talk a lot about their frustration. They want to trust the DOJ. They want to be able to trust their government. They are very concerned about what appears to be by actions two tiers of justice and this is something that they do not see as equal treatment under the law.

Thank you, Mr. --

DICK DURBIN: Thank you. Senator Blackburn. Senator Welch.

PETER WELCH: Thank you very much, Mr. Chairman, Mr. Attorney General. I appreciate the work you've been doing on election infrastructure and security. We have our town meeting in Vermont next week. We're pretty proud of that. You raise your hand and decide publicly how you're going to vote or you can do it privately.

And I just wanted to ask you about the Department of Justice. You have taken important steps to protect election workers and the right to vote, and that includes by establishing the election threats task force. Let me ask you. What steps to the department take in 2022 election to defend our democracy in the election workforce.

And are there any lessons learned that can help us going forward?

MERRICK GARLAND: So we have as you note established an election threats work -- task force aimed at investigating threats against state and local election workers. The FBI has been tracking those kind of threats that come in on their tip line and making those investigations. There have been a number of prosecutions and convictions regarding those threats.

I'm not sure if that fully answers the question, but that's what we're doing.

PETER WELCH: That's good. You know, there's -- from here time to time, there's threats to local election officials that might happen in one state and then it might be another. What things can you do to be helpful in responding to specific threats against election workers.

MERRICK GARLAND: Yeah. So obviously the first line of defense out of state and local law enforcement, what we bring to this is a particular both resources and legal tools that can be used to track the use of the Internet to make those threats, emails to make those threats, text messages, telephone calls to make those threats.

And that's a lot of what we do is to help the state and locals identify the source of those threats and then to go out and knock on doors and investigate, you know, whether violence was actually contemplated.

PETER WELCH: And you have the resources that you believe you need in order to make certain that our elections are safe and sound.

MERRICK GARLAND: I think we have the resources that we need to develop -- to investigate these threats to the people who are really the foundation of our democracy, volunteers, who are, you know, running our elections. That's the way we do things in the United States. Of course, state and local elected officials are also being threatened, but so also are the volunteers who are election judges, you know, put the ballots in the boxes, etc.

PETER WELCH: All right, Thank you. The other area I wanted to talk to you about was broadly speaking antitrust, but specifically how it's impacting our health care system. My view is that one of the big challenges we have with affordable and accessible health care is the cost. And there's a number of factors that are driving up the cost and I think that includes some anti-competitive activities.

For example, you know, hospital consolidation is a big issue. When you go to the hospital, you get one of those bills. You just can't believe it. If you get out healthy, when you get the bill, you're going to be sick and consolidation of physician practice groups, big tech and private equity. Private equity companies bought up all of these human resource companies when we had the need for these visiting nurses and just exploded the rates and it pulverized the budgets of our small hospitals in rural America.

And just last month, the Wall Street Journal reported that CVS would purchase primary care provider, Oak Street Health, Broadening CVS's Market domination is a parent entity of a -- is a firm pharmacy benefit manager. Now I know you can't speak specifically about any particular case, but there's a consolidation trend and market power trend that I think is escalating these prices to the detriment of the taxpayer to employers who are working hard to provide employer sponsored health care and obviously to individuals.

In the past year, the DOJ has taken steps to update its antitrust guidance. It has heard from patients and providers and advocates about how to bolster antitrust enforcement. I want to just give you an opportunity to tell us your view on this and the role you see. The -- the -- the antitrust division of the Department of Justice making certain that we have competitive pricing are trying to get some semblance of competitive pricing.

MERRICK GARLAND: Yeah, I appreciate the question. We have tried since I've been attorney general to reinvigorate the antitrust division to more urgently evaluate mergers and to bring cases against exclusionary behavior by dominant firms. Thanks to the Hart-Scott-Rodino merger filings fees legislation that was passed. We now have more money that we can use to build up again the resources of the department.

As I mentioned earlier, I was stunned to learn when I came to the department that there were fewer lawyers in the unit and economists in the antitrust division than there were when I first entered the Justice Department in 1979, and you can imagine this. That's amazing and the number -- and particularly when you think of how big the companies are now.

So we're doing two things in the merger field, of course on -- on the very large mergers which are subject to Hart-Scott-Rodino. We are doing a very careful scrub and making determinations of whether we should challenge it. But I think what you're talking about is also quite important, which are smaller markets, but are still what economists call relevant markets where the price is affected regardless of whether it's a nationwide roll up. If it's -- if it's a roll up of health care providers in one entity, and really the only place that people who need health care locally can provide it. So we have brought and will continue to examine those kinds of cases as well.

You are -- you know, the bottom-line theory about antitrust is that there are multiple players in the market, they will compete with each other and we will get the best pricing, marginal cost being a -- being -- being the price where it meets the supply curve. But that's not the case where you have dominant firms where there's only a few places to go. And in those situations, price will almost always be above the competitive price.

PETER WELCH: OK. Thank you very much, Mr. Attorney General and thank you for your service on the bench before. And Mr. Chairman, I yield back.

MERRICK GARLAND: Thank you, Senator.

DICK DURBIN: Thank you. Senator Welch. You're the first to do that. Senator Tillis.

THOM TILLIS: I was actually going to thank Senator Welch for that. I think Mr. Chair, we probably ought to have four-minute rounds, so we have a reasonable chance of them getting done in seven minutes. General Garland, I guess I'm your ticket to lunch. I've just got a couple of questions to ask you. In your opening statement, I'm sorry, I had to come in and out.

I want to spend most of my time in the hearing. You have 115,000 people working in the DOJ and I think most of them are great people, purpose, service driven and I thank them for their work. But we're not all angels. We probably have some that need to be held accountable. And you made a comment about returning to some of the norms that maybe have drifted over time or focus on them.

Can you briefly describe to me a couple of those where you see positive trending?

MERRICK GARLAND: Yeah, I think the most important is the principle that we treat like cases alike that we don't have one rule for Democrats or Republicans rich, poor powerful powerless based on ethnicity. Another important norm is that we decide our criminal investigations and affirmative civil law enforcement investigations without any interference from the White House or frankly from the Congress, that these decisions are made on the merits without any policy or political interference.

THOM TILLIS: I think one thing that would be helpful for -- I'm a data driven person and I think one of the things would be helpful for you is to try to the extent that you can to measure, you know, some of those so that you come back equipped with data that may -- maybe refute some of the -- the misconceptions about your priorities.

I want to talk briefly about my favorite subject when I get on law enforcement. Have you seen the 3.12 March? All right, this is a subpage.

MERRICK GARLAND: March 12th?

THOM TILLIS: I'll shoot you a link. This is the subpage. It's been out there for a while. It's actually a sub page from ActBlue [ph], which is the largest aggregation engine for many of my colleagues on the other side of the aisle for hard dollar contributions to their campaigns, which I don't begrudge. We have an equivalent platform.

What's notable about this is this is still on the website; they're trying to raise \$1.312 million. They've already received contributions. They keep it on the website. Now let me just tell you what the run's about. They say why 3.12 miles. Because 3.12 equals ACAB and ACAB equals All Cops Are Bastards. This is out there.

I wish I know that the vast majority of my Democratic colleagues did not embrace that. Some of them may -- may, but I think it's time to remove this website and remove this crap that they're trying to talk about law enforcement. In 2020 and 2021, I introduced a bill called Protect and Serve. And it was specifically focused on increasing penalties for law enforcement officers who were assaulted or murder not getting into any sort of policy recommendations.

But it seems to me at a time when we're having dramatic reductions and people willing to go into the academies where we're seeing mayors get elected out of office because of community safety and maybe a little bit too much soft on law enforcement. And when we deem it to demonize law enforcement, we are really hurting ourselves.

I know the FBI is doing relatively well with recruiting, but we're not doing well in local and state agencies. So can you see with respect to the implementation, we've talked about increasing penalties in other places. Can you talk to me about the merits or concerns you would have if we're successful with getting protect and serve pass this Congress?

MERRICK GARLAND: Every day, I meet with Law -- our own law enforcement agencies. Multiple times a year, I meet with national leaders of state and local law enforcement, police, chiefs, sheriffs. And multiple times during the year, I travel all around the country to our US Attorneys offices where I meet with the state and local law enforcement agencies.

They are the ones who are on the front lines every day.

THOM TILLIS: They're getting killed.

MERRICK GARLAND: And I should have added -- I've been to many memorials. I've been to all the memorials happen every year. I've sat at -- stood and sat at the bedside of federal law enforcement agents who've been shot. I've been to a memorial for a federal law enforcement agent who was killed. I'm well aware of the risks that they run to protect us. We are extremely supportive of law enforcement.

THOM TILLIS: Well, I'm sorry to interrupt. It's not my style, but what I'd like to do is really get some feedback. We are going to file the bill again. We do have interest from the Democratic side. I'm always interested in policy that makes it easier to implement. So we would like to get a commitment to take a look at this and give us advice on things that could improve it are potential unintended consequences.

I don't see anybody [inaudible].

MERRICK GARLAND: Absolutely. We be happy to do that. I do want to say I agree with your problems about recruitment and retention. That's why we gave out \$100 million for Under the Cops grant just for that purpose and we're going to do another 200 million this coming year.

THOM TILLIS: Now I want to talk a little bit about -- I'm going to submit some questions for the record on various topics and look forward to your response. But in my remaining time, I want to talk about the implementation of the Bipartisan Safer Communities Act or what I think your department and I like the term calls BSCA. I had a discussion with ATF earlier this week and you know it has been described as a once in a generation bill.

That bill went from the initial meeting that I attended to the time that we were voting on the Senate floor in 30 days. That required a lot of hands-on involvement by the Senate members on both sides of the aisle that brought that about. What's very important to me unless we want another generation to pass before we're able to make reasonable progress is the implementation of this bill.

I'm curious, I'm not going to get into specifics because I think I'd rather do it justice by just submitting them to questions for the record. I want to know about states that have applied for and been provided. the -- the extreme risk protection orders. It was very clear that we wanted minimal standards for due process.

We don't want to reward states and incidentally the red states and blue states that I don't think have adequate due process protections for the person who may be denied their Second Amendment rights. So we want to go through the grant streams or approvals that have occurred at that time and whether or not it satisfies the letter or the spirit and the Congressional record that I'm very familiar with That was last June that we got it done.

I also want to compliment NECs with their implementation of the enhanced background checks. We need to make sure that that there are following again the letter in the spirit of the law with respect to the length of time and having a proceed presumption if we don't have meaningful information in the first three days.

And -- and then the final proceed order and the next ten days. Trudie and the folks out at NEX have done a great job and we've found some really good outcomes from that that we need to share better with the public. The last thing I want to leave you, I'm over time I can't believe it Mr. Chair. last thing I want to leave you with is I would like to get a -- a breakdown of the 17 cases under the straw purchase and trapping -- trafficking language in the bill.

And I'm particularly interested. I heard at least one alluded to gang organization that it was brought up on. We need to say that that bill I think is going to age well. It's why I supported it, why I'd be willing to pursue other ones as long as I can go back to the people that I worked with to vote for the bill and say that the spirit and the contours that legislation has been implemented faithfully.

Thank you.

MERRICK GARLAND: I'll be happy to do that. I'll have our staff talk directly with yours to be sure to answer exactly the questions you're asking.

DICK DURBIN: Thank you, Senator Tillis. We're going to take a ten-minute recess and we'll have a second round and that depends on the presence of members when we return and they will be recognized in the order that they appear here. I know Senator Cornyn has got an early bird rule, but let's take a 10-minute recess and come back.

[Recess] As I mentioned at the outset, there's a second round of three minutes, which will be strictly enforced. You'll hear the gavel at three minutes. I'm going to wait and save my questions to the very last. And so I begin this round of questions, the second round of questioning. Senator Whitehouse.

SHELDON WHITEHOUSE: Thank you, Chairman, and thank you again, Attorney General. I'm going to go to a topic that was addressed earlier by Senator Blumenthal and Senator Graham, and that is the question of the freezing, seizing, and forfeiture of Russian oligarch and kleptocrat assets. One of the problems that we are running into is that for the highly valuable assets that can be seized from the Russian oligarchs like massive yachts or Faberge eggs or other works of very expensive art, the value is well above \$500,000. And right now, we have an administrative forfeiture procedure that applies for assets that are valued only up to \$500,000. Above that, you have to go through a different procedure.

The nutshell way that I think about this is that the simpler administrative forfeiture procedure allows the government to proceed in rem against the asset, and people have to show up if they have a claim to the asset. It's a little bit like what the Department of Justice did with botnets. They had a proceeding in rem against the botnet, and anyone who laid claim to that botnet and asserted a right not to have it taken down, they were welcome to show up in court and present themselves.

They probably would have gone off in handcuffs, but they certainly had that right. With respect to the assets above \$500,000 that are associated with the Russian oligarchs, who are associated with the really criminal war that Putin has launched into Ukraine, we would like to see the law changed. Senator Graham supports this, Senator Blumenthal and I support this.

We have legislation to support this. And I just wanted to take my moment here with you to make sure that you and I, the Marshal Service, your forfeiture offices, are all properly aligned so that we can move quickly to get this changed. At the moment, having to identify the owner of an asset, which is often hidden in Russian nesting doll layers of faraway bank accounts, shell corporations, Cyprus holding companies, really puts a major crimp in our ability to proceed fairly.

And I don't think there's any national interest or public interest in having Russian oligarchs who've supported this war treated better than American citizens, simply because their assets are more valuable. So would you please tell your team to greenlight working with us to get this bill passed quickly out of this committee and into legislation on the floor?

MERRICK GARLAND: As you can imagine, I'm wholeheartedly in favor of the team working with you on this. As you know, we recently, thanks of the work of the Congress, were able -- I was able to certify for transfer to Ukraine money that was seized from one oligarch Malofeyev. And most recently, our Task Force KleptoCapture succeeded in forfeiting \$75 million from Viktor Vekselberg.

They have done an enormous amount of work to find nesting within nesting within nesting of shell corporations. It would be easier if that weren't required. So we'd be happy to work with your team on this, yes, of course.

SHELDON WHITEHOUSE: Thank you very much. Thank you, Chairman.

DICK DURBIN: Thank you, Senator Whitehouse. Senator Grassley.

CHUCK GRASSLEY: Thank you, Mr. Chairman. Thank you for -- General Garland, for being here. My first question is a follow-up to a line of questioning you had with Senator Cotton. You told this committee that, quote, "the executive branch cannot simply decide based on policy disagreements that it will not enforce a law at all," end of quote.

Then you released a December 16, '22 memo instructing prosecutors to disregard the law that establishes sentencing differences between cocaine and cocaine base. Your decision not to enforce the law ended congressional discussions at that particular point for a compromise. If DOJ claims that it will ignore the law by declining to prosecute a law that grew out of a bipartisan compromise forged in this committee, it's hard to see how members can trust the department about following any further bipartisan deals.

So I'm going to ask you, would you withdraw your memo so that a meaningful legislative discussion can resume? And if you don't have agreement with me, why wouldn't you do that?

MERRICK GARLAND: Yeah, Senator, I want to be clear. We're not in any case saying that we won't enforce the law. In all the examples that we're talking about here, people are being prosecuted for violation of the Controlled Substances Act. It's only a question of what sentence we will seek, and this has been a matter of prosecutorial discretion.

We are not in any way limit the judge. We have to honestly tell the judge what the drug was and what the amounts was. But this is -- goes to the question of what we will charge and seek, but we will -- but we are charging these people with violations of the Controlled Substances Act.

CHUCK GRASSLEY: On another point, the Department of Justice charged Nicolas Maduro with narcoterrorism and drug trafficking offenses, and the Office of Foreign Assets Control sanctioned him. Since then, the Biden administration has released \$3 billion in foreign Venezuelan assets and authorized Chevron to drill. Does the Department of Justice still consider Nicolas Maduro a fugitive of US justice?

And if so, do you commit to diligently pursue his arrest?

MERRICK GARLAND: I -- to be honest, Senator, I really don't have any information. I know who Maduro is, obviously, and I know that he was charged. I don't know what his current status is. I'll be happy to look into that for you, though, Senator.

CHUCK GRASSLEY: Will you answer in writing?

MERRICK GARLAND: Of course, of course.

CHUCK GRASSLEY: This will have to be my last question. I have strong concerns about competition problems in different areas of the economy. Example, I've conducted oversight and drafted legislation to address abuses in pharmaceutical agriculture and high-tech industries. Can you tell us what the antitrust priorities are for the Justice Department under your leadership, and are your resources follows -- following that priority?

MERRICK GARLAND: Yeah, so our priority are both to prevent increased concentration in industries that are already concentrated. Agriculture is a very good example. Pharmaceutical is another very good example. Therefore, to closely look at mergers and thank -- and to investigate them. And our other priority and closely related is exclusionary conduct by dominant firms.

And we are doing quite a bit of that kind of work, as referenced by some of the cases, you know, we've filed. There are also -- we're also looking at criminal violations of the price fixing statute and others. With respect to resources, this is an area where we could always use more resources. We are faced on the opposite side with companies with virtually unlimited resources.

I expressed gratitude for the Senate and the House for the Hart-Scott-Rodino Fees bill, merger fees bill, which has given us more money to even up the playing field a little bit.

DICK DURBIN: Senator Blumenthal?

RICHARD BLUMENTHAL: Thanks, Mr. Chairman. Thank you again, Mr. Attorney General. I want to thank you for the supportive comments you made about the Open Apps Market Act. As you know, I'm hoping that the Department of Justice will support us, because right now we have a duopoly in the mobile apps' stores -- Apple, Google. And this measure would stop those two companies from exacting rents and boxing out competitors.

I'm hoping that the Department of Justice will support this measure.

MERRICK GARLAND: As I said, Senator, Assistant Attorney General Cantor has already testified in support of the bill. So we hope to be able get the administration on board as well. But he has already, and that represents my views as well.

RICHARD BLUMENTHAL: Thank you. I want to talk about the Foreign Intelligence Surveillance Act.

MERRICK GARLAND: Yeah.

RICHARD BLUMENTHAL: Specifically Section 702. Not exactly the topic of major inquiry here, but enormously important.

MERRICK GARLAND: Yeah.

RICHARD BLUMENTHAL: And without going into any classified information, that provision I believe was instrumental in preventing major catastrophic aggression against our nation. And also helping our allies like the Ukrainians with intelligence that was extremely critical to pushing back the Russians, and knowing what they needed to know on the battlefield.

Could you comment on the importance of reauthorizing Section 702?

MERRICK GARLAND: Yes. Senator, this is a statute that I was -- you know, we didn't have the last time I was at the Justice Department. So I really didn't know what to expect when I came in this time. I will tell you that every morning I have a all-threats briefing with the FBI, with an intelligence community briefer, with our national security division.

A enormously large percentage of the threats information that we're receiving comes from 702 collection. All the examples that you're talking about, Ukraine, threats by foreign terrorist organizations, threats coming in from adversaries from China, from North Korea, from Iran from Russia. A lot of what we do in the area of cyber and particularly in ransomware investigations, of finding out who is behind the ransomware investigation, and sometimes of obtaining the keys comes from information that is at least part fed by Section 702. We would be intentionally blinding ourselves to extraordinary danger in my view, and this is not a view that I jumped on -- you know, have always held.

This is something I've learned as I've been at the department.

RICHARD BLUMENTHAL: And blinding on our allies as well. Thank you.

MERRICK GARLAND: Oh yeah, and our allies as well, yes.

DICK DURBIN: Senator Cornyn.

JOHN CORNYN: General Garland, I'm sure you will agree with me that the independence of the federal judiciary is one of the crown jewels of our form of government. And historically, federal judges have had a hard time defending themselves against attacks of various kinds. And I just want to raise with you my concerns that we're seeing not only attacks like those from former staffers of this committee who happen to now be on the outside in special interest groups, saying that now when reporters cover the story of cases being decided by a judge, they ought to cite the partisan affiliation of that judge.

And saying it's important to say, for example, it's not just Chief Justice Roberts, or say that he's a Republican, not a conservative leaning justice. This is happening in the press. It's happening on social media. As you've already discussed with some of my colleagues, this has led to political protests at the justices' homes and even a threatened assassination of a member of the Supreme Court of the United States.

But unfortunately, it's not just limited to -- to the outside partisan rabble rousers. It includes speeches made by United States Senators on the floor of the Senate. Mr. Chairman, I'd ask unanimous consent that a copy of this speech dated February 16th be made a part of the record.

DICK DURBIN: Without objection.

JOHN CORNYN: This is -- this is a speech by a United States Senator trying to discredit a judge who happens to be in Texas, Matthew Kaczmarek, that Senator Cruz and I recommended and who was appointed and now serves it with lifetime tenure as a federal judge; calling him a life-long, right-wing activist, a partisan ideologue, an anti-abortion zealot.

And he goes further to say that regardless of how Judge Kaczmarek may decide this particular case, that it will inevitably be affirmed by the activist 5th Circuit Court of Appeals, and then surely rubber stamped by the United States Supreme Court. I find this sort of rhetoric, particularly by a United States Senator, to be appalling.

And I wonder if you will join me in condemning that sort of attack on the independence of the federal judiciary.



MERRICK GARLAND: When I first got on the judiciary, I and several of my colleagues pounded our heads against the wall trying to get the reporters to stop -- and this is 20 -- more than 25 years ago -- to stop reporting the name of the president who appointed us and/or the party. Unfortunately, this is -- this is -- this is a battle that has -- has not been won.

And I don't think, obviously, given the authority of the First Amendment and its importance, is one that we're not going to be able to win. I come from a kinder and gentler era and a kinder and gentler court, even in terms of the way the members of the court treat themselves. I -- I don't know what else to say.

JOHN CORNYN: General Garland, you are the chief law enforcement officer of the United States. Will you condemn it?

MERRICK GARLAND: Yeah. I am against divisive rhetoric of all kinds, but I do not have authority in this matter. As you know, the speech and debate clause --

JOHN CORNYN: You have moral authority.

MERRICK GARLAND: My moral authority is against divisiveness from all sides and all quarters, and from all arguments to be made on the merits. That's -- that is my moral authority.

DICK DURBIN: Senator Lee.

MIKE LEE: That's the concern that I've got, is that you don't seem to condemn the divisiveness if it's on the left. I want to go back briefly to the text of Section 1507. Section 1507 is pretty darn clear. I personally don't see how anyone could protest outside the home of a Supreme Court justice, especially while engaging in issue advocacy related to a case that they've taken or are currently hearing.

It doesn't violate 18 USC Section 1507. So the fact that you've put US Marshal Service in charge of protecting our homes, great. The fact that not a single arrest has been made, not a single set of charges have been made, is very disconcerting. As is the fact that even if the marshals don't choose to make an arrest there, which is stunning to me that they haven't. But even if they hadn't, there's video footage, you can identify folks.

You've proven your ability to do that. And the fact that you're not bringing that is deeply disturbing -- disturbing to me, as it was when on the day of the Dobbs decision, the Department of Justice took what I believe was a pretty unprecedented step of issuing a scathing statement. Not just saying we disagree or we're disappointed with the outcome, but making arguments that I believe called into question the legitimacy of the court.

I have never seen the Department of Justice do that. It is cause for additional concern when I see people like Phillip Esformes, having received clemency is now having to face the prospect of being prosecuted again, after having received clemency by a prior president. You add all this up with the fact that by the end of this year, we're going to see the expiration of Section 702 of the Foreign Intelligence Surveillance Act. The department's already asking and chomping at the bit to be asking us to simply reauthorize that.

Notwithstanding the fact that there are all kinds of examples of how this has been politicized, how Section 702 has been misused. The current standard for a warrantless back-door search of the content of communications of Americans -- American persons is reasonably likely to return evidence of a crime. But the ODNI's recently declassified semiannual report released on December 22nd -- 21st of 2022, reports all kinds of noncompliant searches.

These are just the ones we know about, just the ones that the ODNI report was able to identify Involving US persons, including the -- the -- the searches of prospective FBI employees, members of a political party, individuals recommended to participate in the FBI Citizens Academy, journalists and even a congressman.

The politicization of the department is a problem. And you can tell your department not a chance in hell we're going to be reauthorizing that thing without some major, major reforms. Your department is not trusted because it has been politicized. I know you are a good person. You have the ability to rein it in. I ask that you do so promptly.

DICK DURBIN: Thank you, Senator Lee. Senator Cruz.

TED CRUZ: Thank you, Mr. Chairman. General Garland, the Department of Justice should enforce the law regardless of politics. I do not believe that has been what is happening in the last two years. Among other things, I believe you very much want to indict Donald J Trump. Toward that end, the Department of Justice has leaked that DOJ is investigating and intends to indict Hunter Biden.

The purpose of those leaks, I believe, was to set the predicate for an indictment of Trump; to say look how evenhanded we are. We're indicting a Biden; we're indicting a Trump. Those leaks are not law or enforcing the law. They are politics. Did you know about the leaks, about the Hunter Biden investigation?

MERRICK GARLAND: I don't know about the leak that you're talking about, and I'm not -- leaks are in violation of our -- our regulations and our requirements. So the answer is --

TED CRUZ: But the leaks are consistently on one side of the aisle advancing one political agenda. As you know, the FBI raided Donald Trump's Mar-a-Lago home. And subsequent to that raid, there have been multiple leaks about what was discovered there, including a photograph of documents that were discovered there. Did you know about the leaks from that raid?

MERRICK GARLAND: The photo -- the photograph was a filing in court in response to a motion filed by Mr. Trump. It was not a leak.

TED CRUZ: So you're testifying there haven't been leaks about the Trump raid and investigation?

MERRICK GARLAND: I'm responding to the point about the --

TED CRUZ: Do you know about the leaks that have occurred concerning the Trump --

MERRICK GARLAND: I've read the leaks. They are inappropriate. We also don't know where they come. Witnesses on the --

TED CRUZ: But what's interesting is when the shoe was on the other foot, I believe your intention -- and I believe it's a political intention -- to indict President Trump became infinitely harder when classified documents were discovered repeatedly at President Biden's multiple residences. According to the public record, those were first discovered on November 2nd, six days before the prior election.

Department of Justice was notified on November 4th, and yet miraculously, there was no leak about the classified documents at President Biden's home. When it politically benefited the effort to go after and charge Donald Trump, DOJ leaked. When it potentially harmed the Democrat President, DOJ did not leak.

Does that strike you as -- as at all a double -- double standard?

MERRICK GARLAND: Leaks under all circumstances are inappropriate, and they were not directed by anyone in the Justice Department.

TED CRUZ: Well, let me say in particular on Hunter Biden. I very much hope that an investigation of Hunter Biden is focused not just on his own personal substance abuse issues, but on connections to his father and potential corruption. That is the matter of public concern and why people are concerned. And it was striking that the leak that came out from DOJ suggested this is just going after some poor -- poor person struggling with drugs, instead of looking at the very real evidence of corruption.

Will you commit that the investigation will actually examine the public corruption aspect and not simply scapegoat Hunter Biden as an individual?

MERRICK GARLAND: I can't comment about the investigation, other than to say that all the matters involving Mr. Hunter Biden are the purview of the US attorney in Delaware. He's not restricted in his investigation in any way.

TED CRUZ: Well, you don't comment here, but then you leak at the same time.

DICK DURBIN: Senator Hawley.

JOSH HAWLEY: Thank you, Mr. Chairman. Attorney General Garland, you said in our last exchange that it's your practice to defer to FBI agents in the field when it comes to investigations, apprehensions of subjects. I was interested given your answer to read in this morning's Washington Post that the FBI is saying that you overruled them when it came to raiding ex-President Trump's personal residence.

Washington Post reports this morning, showdown before the raid, that senior FBI officials who would be in charge of leading the search resisted doing so as too combative, and proposed instead to seek Trump's permission to search his property. These field agents wanted to shutter the criminal investigation altogether in early June, the Post reports, but they were overruled by main DOJ. So I guess in light of your earlier testimony just this morning, my question is, how often do you overrule FBI field agents for political purposes?

MERRICK GARLAND: I have skimmed that article. It is not -- that's not an accurate reflection of what the article says, and I'm not able to comment on the investigation. My comment earlier was about tactics on the ground in particular cases.

JOSH HAWLEY: Wait, wait, wait, wait, wait, wait. You said it's not -- I'm reading to you from the article. Quote, "Senior FBI officials who would be in charge of leading the search resisted the plan as too combative, and proposed instead to seek Trump's permission to seek his property, according to four people who spoke on condition of anonymity to describe a sensitive investigation," end quote.

MERRICK GARLAND: Again, I have to say I'm not able to describe the investigation. I will say as a general matter and at a high level of generality that, in my experience, long experience as a prosecutor, there is often a robust discussion and in -- and it's encouraged among investigators and prosecutors, and a decision is made.

JOSH HAWLEY: Attorney General, my time is very -- yes, and you made the decision, right?

MERRICK GARLAND: I did -- that's not --

JOSH HAWLEY: You said you did.

MERRICK GARLAND: No, I'm sorry, what I said was I approved the decision.

JOSH HAWLEY: So you didn't make the decision to raid?

MERRICK GARLAND: I approved the decision to seek a search warrant after probable cause --

JOSH HAWLEY: Overruling the FBI agents who did not want to do so. Did you talk about this with the White House beforehand?

MERRICK GARLAND: The memorandum does not -- that Washington Post article does not say what you're saying. I'm sorry, and I'm not able to describe this in any further detail.

JOSH HAWLEY: Well, I think given that, Mr. Chairman, I'll just ask that this entire article be entered into the record.

DICK DURBIN: Without objection.

JOSH HAWLEY: And we can read for ourselves. I invite people to go and look. It says exactly that FBI field agents did not want to conduct the raid, and they were overruled by DOJ. So it doesn't seem to me, Attorney General, that the FBI has a lot of confidence in you, because what they're doing clearly is trying to distance themselves from your decisions.

They're out there leaking, left, right, and center, and saying it wasn't us. We didn't want to do it. He made us do it. What does that say about their confidence in your leadership?

MERRICK GARLAND: No, the previous senator said that they're leaking all in favor of the left. Now, you're saying they're leaking all in favor of the right.

JOSH HAWLEY: I'm asking you my question. Answer my question based on this evidence, Don't dissemble, Attorney General.

DICK DURBIN: Time is expired.

JOSH HAWLEY: Answer my question.

DICK DURBIN: Time is expired. Senator Cotton.

TOM COTTON: Mr. Attorney General, I want to return to the illegal protest outside of Supreme Court justices' homes last summer. It's plainly unlawful to protest outside of a judge's home to influence the outcome of a pending case. You testified earlier that as far as you know, no charges have been brought against those protesters.

But you never really explained why. Why have no charges been brought against those protesters?

MERRICK GARLAND: The decision about making arrests is left to the marshals on scene. Their principal --

TOM COTTON: Marshals are -- marshals are law enforcement officials. They're not prosecutors. I did not say arrests. I said charges.

MERRICK GARLAND: There can't be --

TOM COTTON: People were not criminal masterminds. They posted videos of themselves on their social media accounts. They advertised the protests in advance. It is possible to arrest someone for an offense after the offense has occurred, is it not?

MERRICK GARLAND: It is, and we're --

TOM COTTON: Why did you not send anyone to arrest those protesters in the days after the protests?

MERRICK GARLAND: We're allocating our resources towards protecting the lives of the justices and their -- and their families. Decisions have to be made on the ground as to what is the best way to protect those lives.

TOM COTTON: Mr. Attorney General, do you not think that it would perhaps provide a deterrent effect if you arrested some of these criminal protestors and charged them and threw them in federal prison?

MERRICK GARLAND: We are trying to protect the lives of the justices. That is our principal priority. And I'm leaving it to the Marshal Service to make determinations on the ground. They have to make determinations about what they see on the ground.

TOM COTTON: Look, consider the efforts your department has put into tracking down everyone who was even on the Capitol grounds on January 6, 2021. You've dedicated million of manhours to study videotape, to do forensic analysis of computers and devices, to go knock and conduct interviews. You can't allocate just a few agents to look at people's social media account to say they were present outside of a justice's home; we're going to go arrest them and charge them?

It's a black letter violation of the law.

MERRICK GARLAND: Our priority is violence and threats of violence, and protection of the lives of the justices, and that is what we're doing.

TOM COTTON: Again, these are not criminal masterminds. They posted pictures and videos of themselves protesting. You could probably go arrest one today from a cold start. Why can't you do that?

MERRICK GARLAND: I'm saying again, our purpose is to protect the lives and safety of the justices. That's how we're allocating resources.

TOM COTTON: You sent the FBI, as several senators pointed out, to do an early morning raid on Mark Houck's home in front of his children for the grave crime of singing hymns and saying prayers outside of an abortion clinic; charges of which he was acquitted by a jury of his peers within an hour. You can't send the FBI to track down anybody who was protesting outside the home of a Supreme Court justice?

MERRICK GARLAND: And I want to be clear, our purpose here is to protect the lives and safety of the justices. That's why we're doing that.

TOM COTTON: I think the answer is -- the answer is that you are sympathetic to the protesters, that you didn't like the decision the justices were about to issue. I think we all know what we -- you would do if a bunch of conservative protesters were outside the home of a Democratic appointed justice to the Supreme Court.

MERRICK GARLAND: No one has ever been arrested under that statute under those circumstances.

TOM COTTON: You're sympathetic -- it's a simple black letter violation. You will not send a single agent to conduct a single arrest and charge them on something that they have zero defense for. It's because you're sympathetic to left-wing protesters.

DICK DURBIN: [Inaudible]

MARSHA BLACKBURN: Thank you, Mr. Chairman. And Mr. Attorney General, I want to go back to what we discussed earlier with the two tiers of justice. And the answers you've given us, you're very subjective in how you approach decisions. You don't seem to be rules-based in how you make these decisions. As a matter of fact, you come across as being very political in the decisions that you make.

And politicizing your work is something that really offends most Tennesseans. But I want to ask you about this two tiers of justice, particularly in the way you've responded to Congressional oversight investigations. The House Judiciary Committee recently requested that you turn over documents relating to the special counsel

investigation of President Biden's mishandling of classified documents.

But your DOJ so far has stonewalled the House request, claiming you can't turn over documents on an open matter. Now, let's compare that with your decision -- obviously, very subjective -- to fully cooperate with document requests from the House January 6 committee, Your FBI had no problem at all turning over documents and information to that committee, even though they related to an open investigation.

Do you see this comparison here? Do you appreciate this? This is a prime example of two tiers of justice, your two tier system. Who you're going to cooperate with and who you are not. So why have you cooperated with the document requests that were made from Democratic-led committees, but you have refused Chairman Jordan and you have refused the House Judiciary Committee when they are requesting documents that pertain to President Biden's mishandling of classified documents?

MERRICK GARLAND: So we greatly respect the oversight responsibilities of the committees of the Congress. And at the same time, we have to protect our ongoing investigations. I do not believe we turned over information to the January 6 committee about ongoing investigations --

MARSHA BLACKBURN: Attorney General, your response is you give one set of responses for Republicans, another for Democrats. You have one tier of justice for people that are conservatives and another for those that are on the left. You told me earlier that you didn't know who Jane's Revenge is. They are all over Twitter. I'm going to do you a favor.

I am going to send you a letter with a whole lot of Twitter and different feeds to help you in that investigation for the Hope Clinic.

DICK DURBIN: Thank you, Senator Blackburn. Senator Graham has told me he's on the way, so I'm going to take my three minutes now. Run the clock, please. First, there was a reference made earlier to the drug war, the war on drugs legislation of about 25 or 30 years ago. As a member of the House, I voted for it. It was an overreaction to crack cocaine, a nominally new narcotic that scared us to death.

It was cheap, it was addictive, it was lethal and heavily damaging. And we did what most people do in reaction to such a phenomena. We raised the penalty to an unimaginable height. The sentencing penalty went from 1 to 1 to 100 to 1. The net result is exactly the opposite of what we had hoped for. Price of the drug on the street went down, the usage went up, and we filled federal prisons primarily with African-American prisoners.

It backfired on us. I don't want to make that same mistake again when it comes to fentanyl. It's a deadly, dangerous situation. And I hope that just the initial reaction of getting tough and sentencing and mandatory minimums is not a sum and substance of all that we do. The second point I'd like to make is it is interesting to try to step back and follow what you face today, in terms of the resources of the government protecting elected officials when it comes to Supreme Court justices.

We hear from the other side, you just didn't do enough; you've got to do more. And I can understand that sentiment. But when it comes to school board members, the fact that you would send out a memo suggesting that they may be in danger at a school board meeting has been translated into some invidious diminution of the freedom of speech in this country.

I think you have to make a decision on a daily basis as attorney general where you're going to apply the resources of the government. I hope that you share, and I believe you do, the bottom line that violence is unacceptable from either side politically, at any circumstance. And I think if we use that standard and use it objectively that it's going to be an effective standard for the future.

The last point I'll make to you here should be said again; it was said at the outset. You have authorized special counsel to investigate the classified materials both at President Biden's home as well as former President Trump's home. Special counsels have some independence by their designation. Could you explain why you did that?

MERRICK GARLAND: Yeah, to the extent I've already publicly explained why we appointed special counsel in those two cases, with respect to President Trump, he had announced that he was a candidate for President, and President Biden had indicated that he would be a candidate. I thought that's an extraordinary circumstance and well-fitting within the regulations to provide a level of independence and accountability that fit within the purpose of the special counsel regulations.

DICK DURBIN: Thank you. I think I've just used my three minutes, so I'm going to try to set an example. Senator Graham, take it away.

LINDSEY GRAHAM: Number one, you deserve a Purple Heart for being here all day.

MERRICK GARLAND: Thank you.

LINDSEY GRAHAM: So really, I have enjoyed working with you and your team regarding Ukraine, oligarch seizures. And I want to compliment you. You've all have done a really good job of going after oligarchs, and hopefully we will seize some of their assets and send it to the Ukrainian people. And I want to help work with you as much as we can, create some international tribunal to let Putin and his cronies know you're going to pay a price here.

There's no forgiving him for getting in this war. You picked a fight, you picked the wrong fight, and they need to pay a price. Do you agree with that?

MERRICK GARLAND: I do.

LINDSEY GRAHAM: OK. Now, some areas of disagreement. There are four states -- Arkansas, Mississippi, South Dakota and Utah, and more are coming -- that have enacted legislation that regulate certain medical and surgical interventions on minor children, 21, 18, whatever the state is, regarding transgender surgeries and puberty blocking medical procedures.

You -- your office wrote a letter March 31, 2022, to states suggesting that if a state passed a law saying, you know, banning medical procedures to transition minor children, that they may be running afoul; the state may be running afoul of the equal protection or due process clause of the 14th Amendment.

Is that your position?

MERRICK GARLAND: So the department believes that all people in the United States are entitled to be treated with dignity and respect. That the situation that you're talking about has to be evaluated by doctors, by families, by the individuals, and they have to make those determinations.

LINDSEY GRAHAM: But states have passed laws, OK? We have 50 states here. They have passed laws and more are coming prohibiting this procedure, because the state in question believes that allowing transition medical procedures on a minor is a life-altering event and it should be not -- shouldn't be done until you're older, so you really better appreciate what you're doing.

States have taken that view, and I think more of them will take that view. Is it the position of the Department of Justice that such laws are unconstitutional?

MERRICK GARLAND: The position is that categorical across the board, prohibitions on certain kinds of -- of surgeries and not others have to be evaluated on a case-by-case basis. And the civil rights division will do that with respect to each of the laws that you're talking about when the time comes.

LINDSEY GRAHAM: OK. So the bottom line is the four laws in question, have you looked at the laws in Arkansas, Mississippi, South Dakota and Utah?

MERRICK GARLAND: I haven't. I don't know whether the civil rights division has.

LINDSEY GRAHAM: Do me a favor and just look at them and get back to me, and -- and answer my question. Are they constitutional in the eyes of the Department of Justice? Thank you. I did it in three minutes.

DICK DURBIN: I appreciate the attorney general appearing before the committee, and the record of the hearing will remain open for a week. Questions for the record may be submitted by senators before 5 p.m. on Wednesday, March 8. Attorney General Garland, please provide these answers on a timely basis. With that, the hearing is adjourned.

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