

Senator Dick Durbin
Chair, Senate Judiciary Committee
Opening Statement
Hearing on the Nomination of Merrick Garland to be Attorney General
February 22, 2021

It is a great honor to serve on this Committee. The Senate established the Judiciary Committee by resolution on December 10, 1816, making it among the very first standing committees of the Senate.

This Committee has seen many consequential debates and approved many important nominations and landmark legislation.

In the Committee's history, there has only been one prior Illinois Senator to serve as Chair — Lyman Trumbull, who led the Committee from 1861 to 1872.

Trumbull's tenure as Chair was distinguished by the passage of historic legislation — from the Thirteenth, Fourteenth, and Fifteenth Amendments...to the Freedmen's Bureau Acts of 1865 and 1866... to the Civil Rights Act of 1866. The last of these was introduced by Trumbull and ultimately became the nation's first civil rights law.

As Chair, Trumbull saw a nation that was torn apart by its original sin — slavery — and widespread violence and injustices that continued even after the Thirteenth Amendment's passage, as African Americans throughout the nation faced institutionalized racism.

Our nation is still dealing with the consequences of these injustices. People of color face systemic racism. And we are still working to rid this nation of the horrific legacy of slavery and Jim Crow.

This Committee can make a difference. We have the jurisdiction and the opportunity to do so, through legislation, through oversight, and through nominations — including the nomination of Merrick Garland to serve as our nation's next Attorney General.

There have been few moments in history where the role of Attorney General — and the occupant of that post — have mattered more.

Judge Garland, should you be confirmed — and I have every confidence that you will be — you will oversee a Justice Department in an existential moment. After four tumultuous years of intrigue, controversy, and brute political forces, the future course of the Department is clearly in transition.

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

It came as little surprise, then, that the United States Department of Justice became the Trump Department of Justice. After all, General Barr had stated clearly that he believed the Attorney General to be the President's lawyer, not the nation's.

And what were the results?

Too many in the Department's senior roles cast aside the rule of law. Trump appointees in the Department sidelined career public servants — from line attorneys to FBI agents — limiting their roles, disregarding their nonpartisan input, overriding their professional judgments, and falsely accusing them of being members of the “deep state.”

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

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

Just consider this for a moment. President Trump sought to use the Justice Department — established as an executive department in 1870, but operating in the person of the Attorney General since the Judiciary Act of 1789 — for his personal, political agenda and upend 230 years of our constitutional government.

And so, Judge Garland, it's no overstatement to say that your nomination is one of the most critical in the Department's history.

When I reflect on this moment, I am reminded of two previous attorneys general— one a Democratic nominee, and the other a Republican nominee – Robert F. Kennedy and Edward Levi.

Kennedy entered office at a time of political turmoil.

Although the nation had started down the path towards civil rights, Attorney General Kennedy recognized that equal rights and equal justice under law was still an aspiration for far too many Americans, particularly people of color.

In June 1963, several years into his tenure as Attorney General, Kennedy testified before the House Judiciary Committee regarding a proposed bill, the Civil Rights Act of 1963.

He said:

“The demonstrations of the past few months have only served to point up what thinking Americans have known for years: that this country can no longer abide the moral outrage of racial discrimination.”

He continued: “If we fail to act promptly and wisely at this crucial point in our history, the ugly forces of disorder and violence will surely rise and multiply throughout the land — and grave doubts will be thrown on the very premise of American democracy.”

The moral outrage of racial discrimination remains with us today, as do the forces of disorder and violence.

And tragically, the Trump Justice Department fanned the flames of discrimination and division we now face.

But a restored Justice Department — a Department under new leadership — can, and I believe *will*, meet this moment.

There are great challenges ahead. The right to vote is under constant assault by those who wish to suppress the voices of communities of color.

We have a criminal justice system that is in urgent need of reform, especially with respect to its treatment of young Black men.

And too many Americans, whether because of race, national origin, disability, sexual orientation, or gender identity, face inequality in their daily lives.

It is high time for the Department of Justice to confront these realities that unfortunately continue to threaten “the very premise of American democracy.”

Judge Garland, when I think of what you face in restoring integrity and independence to the Justice Department, I also think of another of your predecessors — and a fellow Chicagoan — Edward Levi, who likewise assumed office at a time of great turmoil.

Levi had of course been President of the University of Chicago before his nomination to serve as Attorney General.

And when he came before this Committee for his confirmation hearing in 1975, he was asked about removing the Justice Department from the ambit of partisan politics.

This is how Levi responded: “I do not believe that the administration of justice should be a partisan matter in the sense that I do not think . . . cases should be brought to reward people or to punish them for partisan reasons.”

He continued: “I think it would be a bad thing for the country to believe that the administration of justice was not even handed because it was in some way tilted by partisan politics.”

Well, why was this question asked? And why was Levi's response so important?

Just two years earlier, another Republican President, Richard Nixon, had attempted to use the Justice Department as his personal law firm, ordering then-Attorney General Elliot Richardson to fire Archibald Cox, the Special Prosecutor overseeing the Watergate investigation.

Richardson rightly refused to fire Cox, as did his deputy, William Ruckelshaus. And so each was fired in what came to be known as the Saturday Night Massacre.

Richardson and Ruckelshaus refused to act in a way that was contrary to the rule of law. They refused to put partisan politics and the personal interests of President Nixon above fidelity to the Constitution and the principle of equal justice for all, even those who occupy the White House.

But in the wake of Nixon's actions, the Justice Department faced a reckoning. With the Department's legacy still tarnished and the public's confidence shaken, President Ford turned to Levi to restore honor, integrity, and independence.

Well, Judge Garland, the nation now looks towards you to do just that.

The public's faith in the Department of Justice has been shaken — the result of four years of Departmental leadership consumed with advancing the personal and political interests of one man — Donald Trump.

In fact, had it not been for several Justice Department attorneys threatening to resign this January, Trump might have gone even further than he did to overturn the election results. And that raises critical questions that this Committee and Judge Garland must reckon with.

Judge Garland, we are confident that you can rebuild the Department's once hallowed halls. That you can restore the faith of the American people in the rule of law. And that you can deliver equal justice for all.

I want to close by returning to the attempt to overturn the 2020 Presidential election.

For months, President Trump spread falsehoods far and wide about fraudulent voting. Before a single vote had even been cast he claimed that he could only lose as the result of widespread fraud.

Far too many gave credence to those unproven, dangerous claims. And we all know the result.

The President's attempt to subvert democracy culminated in the events of January 6th, when an armed mob stormed the Capitol; sought to disrupt the counting of Electoral College votes; violently targeted us, our colleagues in the House, our families, the Vice President, and staff; and ultimately caused the senseless deaths of Capitol Police Officers Brian Sicknick and Howard Liebengood and D.C. Police Officer Jeffrey Smith.

When you are confirmed, Judge Garland, you — along with the rest of this nation — will continue to grapple with the January 6th attacks.

But you will be in a unique position with unique responsibility. As the nation's chief law enforcement officer, you will be tasked with the solemn duty to responsibly investigate the events of that day; to prosecute all of the individuals responsible; and to prevent future attacks driven by hate, inflammatory words, and bizarre conspiracy theories.

You know what it's like to confront the specter of domestic terrorism. You led the investigation and prosecution of the Oklahoma City bombing and, in doing so, helped make this nation safer and bring some measure of peace and healing to the victims and their families.

I am confident, given this prior experience, that you are up to the task that the Department now faces in the wake of January 6th. In fact, I can think of no one better suited. I look forward to hearing your testimony.