

# Merrick Garland Will Not Deliver Your Catharsis

Progressives want a dramatic de-Trumpification of the Justice Department. But the attorney general has a different theory of how to heal America.



By **David Montgomery**

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**M**errick Garland, now more than four months into the job of attorney general, is on a quest to slay a monster — a monster that he won't name and he pretends doesn't exist. On March 11, his first day, he stood in the Great Hall of Justice Department headquarters and addressed the agency's 115,000 employees, most watching virtually. It was a homecoming of sorts for Garland, 68, who started at the department as a 26-year-old lawyer in 1979, rising to lead major investigations including the Unabomber case and the [Oklahoma City bombing](#) prosecution in the 1990s before spending the past two decades-plus as an esteemed federal judge on the U.S. Court of Appeals for the District of Columbia

Circuit. “The only way we can succeed and retain the trust of the American people is to adhere to the norms that have become part of the DNA of every Justice Department employee,” he said in his first speech as attorney general. “Those norms require that like cases be treated alike. That there not be one rule for Democrats and another for Republicans, one rule for friends and another for foes, one rule for the powerful and another for the powerless.”

What he didn’t say — what he never says publicly — is that there are good reasons the department might have lost the trust of the American people in the past four years. During President Donald Trump’s administration, there wasn’t always one rule of law for all, as when presidential friends Roger Stone and Michael Flynn had their prosecutions massaged and softened; or when former attorney general Bill Barr launched an outside investigation of the investigators to see if Trump was unfairly targeted in the Russia probe; or when Barr spun findings by the special counsel and the inspector

general in ways most advantageous to Trump; or when Barr changed procedures so U.S. attorneys could dive into Trump's false claims about election results before the vote tallies were certified.

But when Garland is asked about questionable actions that took place at the Justice Department during the previous administration, he offers a version of a response that he gave during a Q&A session with reporters in June: "I am not going to look backward."

This is deeply unsatisfying to Democrats, government watchdogs and anyone who wants catharsis after four years of Trump's insistence on his "absolute right to do what I want to do with the Justice Department," as he put it to the New York Times in 2017. Those voices are calling for investigations of the politicization of the department under Trump, a public reckoning of the damage done, the spectacle of heads rolling. They speak of "truth commissions" and "de-Trumpification." That is how you restore confidence in the institution,



they say.

Garland has a different theory of the case, according to those who know him inside and outside the department. If you go directly at the monster — that is, Trump’s legacy at Justice — you only extend the legacy and give the monster life. You look like a partisan warrior with a different color uniform. Garland alluded to this way of thinking when he was asked during the media Q&A whether he would heed calls to investigate politicization: “I don’t want the department’s career people to think that a new group comes in and immediately applies a political lens,” he said.

What you do instead is firmly, methodically and undramatically return to the old, good way of doing things, and the ship will right itself. That is Garland’s faith. He stands as a kind of radical institutionalist, a stickler for regular order, a true believer in the norms and processes put in place after Watergate that weathered nearly every storm until Trump. “I would like ... to turn down

the volume on the way in which people view the department,” he said at his confirmation hearing in February.

To that end, rather than instigate a sweeping de-Trumpifying review of where things went off the rails, he is leaving it to existing departmental structures — mainly the [inspector general’s office](#) — to address problems on a case-by-case basis. This is how Garland the institutionalist quietly grapples with the disgrace of the past. “What some people dismiss as ‘institutionalism’ is really a commitment to the bedrock this institution is built on, the rule of law,” a senior Justice official told me. “The only way you’re going to restore confidence in the rule of law is by doing the right thing over and over and over again.”

Garland has been less accessible to the media than many of his predecessors, taking reporters’ questions just a handful of times in four months; indeed, his public reticence borders on mysterious. (He declined to be interviewed for this

story.) To understand how he is navigating his predicament, I recently spoke with two dozen lawyers, judges, former colleagues and critics. The choices he faces are emblematic of post-Trump America. Trump's abnormal presidency triggered temptations to unleash equal and opposite anti-Trump reactions in fields as widespread as intelligence, entertainment, sports, journalism, religion and business. At Justice, Garland is running a demonstration project on not overreacting. Is simply reasserting norms an adequate corrective to abnormal times? Garland may not give Democrats catharsis, but he might strike a blow for normality. Would that, in the end, be the greater victory?





Merrick Garland, then principal associate deputy attorney general, speaks to journalists in Oklahoma after a hearing for bomber Timothy McVeigh in April 1995. (Rick Bowmer/AP)

**L**ate one afternoon in September, a relaxed-looking Merrick Garland was dressed in a blue blazer and green polo shirt fielding questions over video for a virtual audience in New Hampshire. It was two months before Joe Biden would be elected president, three months before Garland's name would surface on Biden's shortlist of potential picks for attorney general. His last chance to cap his career with something bigger than circuit judge seemed to have passed in 2016 when Senate Republicans refused to hold a hearing on his nomination by President Barack Obama to the Supreme Court.

The interviewer — Maggie Goodlander, an adjunct professor at

the University of New Hampshire's Franklin Pierce School of Law whom Garland would later hire in his office at Justice — asked him where his lifelong passion for public service came from. “This is going to make me choke up,” Garland warned.

He told the story of his grandparents fleeing anti-Semitism and finding refuge in America. “It’s not just that I might otherwise be living in Belarus; it’s that I wouldn’t be living at all,” he said. His grandmother and two of her four siblings made it to the United States, while one was sent back at Ellis Island. The other never tried. “Those two died in the Holocaust,” Garland said, his voice breaking. “So there is little doubt that the same would have happened to my grandmother. ... At bottom the reason that I ... try to do as much public service” as possible is “to pay the country back for the sanctuary that it provided to my family.” At every fork in the road of his career, he chose the path where he thought he could do the most public service — right up to his latest challenge of seeking to rescue the Department of Justice.

Garland grew up in a middle-class family outside Chicago and attended Harvard College on a scholarship. He initially wanted to become a doctor because he thought the health-care profession did the most good, but organic chemistry foiled him, so he set his sights on law and graduated from Harvard Law School. After a pair of judicial clerkships he went to work as an assistant to Attorney General Benjamin Civiletti in 1979. Civiletti was the third of the trio of post-Watergate attorneys general tasked with reforming the Justice Department after a culture of corruption and criminality had been revealed during the scandal. Garland's ringside seat at that restoration of the rule of law was a touchstone experience.

A couple of years later, he joined the prestigious Washington firm of Arnold & Porter, making partner before he was 35. He got married, and he and his wife, Lynn, raised two daughters in the Maryland suburbs. At Arnold & Porter, Garland was an antitrust specialist and corporate litigator. One day he was cross-

examining a witness in a fraud case.

During a break in the arguments, he recounted later, the judge called Garland to his chambers. The judge had been watching the young partner's skill at handling the case. "You're wasting your life," said the judge, who had once been a federal prosecutor. "You should be a prosecutor."

Within a month Garland abandoned his hard-earned and high-paid partnership for a chance to become a line prosecutor in the D.C. U.S. attorney's office. He traded an office with a window for a desk in which, on his first day, he found a pile of stale cigarette butts.

"To be a partner at one of the finest law firms in this universe, and then to give that up to become a file attorney with a metal desk?" Thomas B. Griffith, a former federal judge who served with Garland on the D.C. Circuit, told me. "There are few of us who are willing to give up the trappings of power and prestige for that. ... That's a test that shows a commitment to public service that's

Bill Clinton’s presidency brought Garland to Justice headquarters. On the morning of April 19, 1995, he watched the first televised images of people being pulled from the rubble of the Murrah Federal Building in Oklahoma City. “He just turned to me and he said, ‘I need to go,’ ” recalls Jamie Gorelick, then the deputy attorney general, for whom Garland served as principal associate deputy attorney general. Gorelick and Attorney General Janet Reno sent Garland to Oklahoma City to oversee the investigation. “We wanted an investigation and a prosecution that were above reproach,” Gorelick told me.

Two elements from Garland’s weeks on the ground in Oklahoma City are once again present today. First: the moments of chaos and crisis that caused him to assert the primacy of process and old-school rules. Second: the looming threat of domestic terrorism.

To head off second-guessing by



defense attorneys or conspiracy theorists, Garland insisted all the proper paperwork, warrants and subpoenas be scrupulously filed, according to Donna Bucella, then a Justice Department official who accompanied him. “That’s just his moral fiber,” she told me.

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He made sure the victims' families were treated compassionately and the defendants fairly. He carried with him the funeral program for the 168 who died. Years later, Republican Stephen Jones, who was appointed to defend bomber Timothy McVeigh, paid Garland the ultimate compliment of writing to Obama in support of Garland's nomination to the Supreme Court: "By his leadership of the prosecution ... he demonstrated, as few can, the capacity for independent judgment, resolution of difficult issues, discretion, and the absence of partisanship."

In 2013, Garland spoke to the Oklahoma City National Memorial & Museum for an oral history of the bombing, calling it the "most significant thing" he'd done in his career thus far. "I was able to make the biggest personal contribution to something," he said. With a lurch of emotion, he added: "You go into public service to *serve*, and this was the best chance I'd ever had."

Nominated to the appellate bench by Clinton two years after the bombing

and confirmed with bipartisan support, Garland settled into a reputation as a careful, collegial, consensus-building judge, somewhere in the ideological middle. “He really is a person who thinks about getting the law right,” says Danielle Gray, a former clerk of Garland’s. “What is consistent with rule-of-law principles and rule-of-law norms, and what is the fair and just result?”

Garland saw his 2016 nomination to the Supreme Court as yet one more step in serving his country. Many Senate Republicans admired him, but they wanted to keep the seat open in case Trump won. “Until the very end, I think he thought that he could get confirmed, that if Hillary Clinton had won there would be a very strong argument for renominating him,” Gorelick says. After Trump was elected, Garland threw himself back into the work of being chief judge of the D.C. Circuit. “He’s not the type to brood,” Griffith says.

Once a week he would make his way from his chambers to J.O. Wilson Elementary School, where he had

been tutoring D.C. public school children in reading and math since he became a judge. “He’s just so relatable and so down-to-earth,” says Andrea Tucker, whose twins, Aaron and Alyssa, 11, were tutored by Garland for the past few years. “The kids are drawn to him.” When he was nominated to be attorney general, among the first people he told were Aaron and Alyssa. The tutoring would have to be put on hold. “He didn’t just, like, disappear on them,” Tucker told me. “He promised them that he would get back to them, and I’m sure he will.”

By the time Garland arrived at the witness table before the Senate Judiciary Committee as the attorney general nominee, he was, in the words of legal analyst Benjamin Wittes writing at Lawfare, “the closest thing American political and legal life offers in this polarized time to a figure above politics.”





Garland is sworn in as attorney general by Vice President Harris in March. At center is Garland's wife, Lynn. (Demetrius Freeman/The Washington Post)

**O**n his first day as attorney general, in March, Garland visited the U.S. attorney's office in D.C. to get up to speed on the investigation into the Jan. 6 attack on the Capitol. The attempt to violently disrupt the certification of the presidential vote only heightened the urgency of his mission to restore stability and public confidence in the Justice Department.

He receives near daily updates on progress in the investigation, and on Thursdays he participates in a complete review of where things stand in the case. By late June, he was able to [announce](#) that there had been 500

arrests, with more to come.

His oversight of the Jan. 6 investigation is emblematic of the new tone he is trying to set. He is not micromanaging the case or personally signing off on plea deals; he trusts supervisors at headquarters and prosecutors in the field to use their judgment. After an administration where morale was low among some career prosecutors who felt undermined and overruled by the attorney general's office, Garland is making good on his promise to support the integrity and professionalism of career agents and prosecutors.

“You’re seeing this attorney general, [deputy attorney general](#) and their senior staff not have a heavy hand on the direction of politically sensitive or politically charged investigations,” says Brandon L. Van Grack, a top prosecutor on the Michael Flynn case, now in private practice, who withdrew from the case just before senior political appointees [moved to drop the prosecution](#) in 2020. “Such actions help improve morale at the

department and at the FBI, and will be one of the biggest drivers of creating that confidence” in the department.

The Jan. 6 investigation is just one of a dizzying array of vital matters demanding Garland’s attention. In his early months, he found ways to thread the needle of charting a post-Trump Justice Department without appearing overtly to take on Trump’s legacy. He refocused resources and attention to such areas as hate crimes, civil rights and environmental justice, and began restoring the department’s former approach to immigration — moves that could be seen as part of the normal transfer of power between administrations with different policy priorities.

He resuscitated the agency’s authority to monitor police departments for patterns of unconstitutional behavior — an oversight power that Jeff Sessions had **crippled** — but it was notable that Garland and his deputies recommitted to this vigilance in a way that managed to please the Rev. Al Sharpton, a police reform advocate,

without alienating the Fraternal Order of Police. “He has exceeded my expectations,” Sharpton told me. Patrick Yoes, national president of the police organization, says, “We’ve been able to have good, meaningful discussions on how to improve the criminal justice system, and that’s something we welcome.”

**G**arland’s institutionalist honeymoon ended abruptly. In late May and early June, progressives exploded in disappointment and anger. They had harbored illusions that sooner or later Garland would smite the practices and bad actors of the Trump era with a swift sword of justice. Instead, the department under Garland sided with Trump and Barr on key questions. Outraged congressional Democrats fired off letters of protest. Pundits feasted on the irony. “Who knew Attorney General Merrick Garland would ride to predecessor Bill Barr’s rescue?” chortled the Wall Street Journal’s editorial board. A headline in Slate lamented, “Merrick Garland’s Job Is to Root Out Trump-Era Corruption at DOJ. He’s Failing.”



The issues at the center of the uproar explain everything about Garland's cautious approach — both its limitations and its potential for restoring faith in the department. He or his subordinates took several controversial positions in quick succession: [withholding part of the internal memo](#) that Barr claimed supported his conclusion, following the release of the Mueller report in 2019, that Trump had not obstructed justice; [continuing to defend](#) Trump against the defamation lawsuit filed by E. Jean Carroll, who accuses Trump of raping her in the 1990s, though Trump allegedly defamed her — “totally lying,” “she’s not my type” — while he was president; [moving to dismiss](#) a lawsuit filed by civil libertarians over the violent clearing of peaceful Black Lives Matter demonstrators from Lafayette Square just in time for Trump to stage a photo op in front of St. John’s Church in June 2020; and arguing to withhold from congressional scrutiny some documents related to the unusual lease Trump enjoyed for his Washington hotel from a federal agency — the General Services

Administration — that he oversaw as chief executive.

In all four instances, Garland's Justice Department followed its reflexive imperative to preserve the prerogatives of both the institution and the executive branch. Taken together, they raise a philosophical question as much as a legal one: When does following Justice Department precedents and protocols — precisely the norms Garland is bent on reaffirming — work against a larger sense of what it means to do justice?

In the critics' view, the previous Justice Department wasn't normal, so deference to its debatable decisions amounts to a perversion of justice masquerading as institutionalism. "Garland believes that a thorough de-Trumpification of the Justice Department would ... be called partisanship and would call into question the institution of the Justice Department, but the institution has already been called into question," says Jeff Hauser, executive director of the Revolving Door Project of the Center for Economic and Policy

Research. “Sessions and Barr came in with a goal of assaulting and undermining the institution of the Justice Department, and it’s just weird to presume that they failed. We presume that they succeeded. They were in the building. They hired their minions. They assessed people. They politicized everything. Garland presuming that the previous Department of Justice was behaving in good faith requires the same suspension of disbelief as believing dragons are real in a fantasy novel.”

In the case of the confidential memo to Barr, the critics appear to have an ally in U.S. District Judge Amy Berman Jackson. She wrote in a [scathing opinion](#) that Barr had been disingenuous about the purpose of the memo and that it should be released: “So why did the Attorney General’s advisors, at his request, create a memorandum that evaluated the prosecutive merit of the facts amassed by the Special Counsel? Lifting the curtain reveals the answer to that too: getting a jump on public relations.”

Garland’s team does not want that

curtain raised fully, seeking to preserve the privacy of internal deliberations. Justice lawyers tried to meet Jackson partway, releasing a portion of the memo but appealing to keep the rest secret. The case is pending.

In the defamation case, the Justice Department argues that while Trump's words were crude and disrespectful, there is ample precedent for shielding presidents from defamation claims for statements made in office. As for the Lafayette Square protest lawsuit, it would undermine the ability to protect presidents, according to federal lawyers — and the hotel lease documents, they say, are properly kept private.

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**behaving in good faith requires the same suspension of disbelief as believing dragons are real in a fantasy novel,” says one critic.**

The problem with all of this, argues Noah Bookbinder, president of Citizens for Responsibility and Ethics in Washington, which sued for the release of the memo, is that defending institutional turf because technical legal precedents may be at stake conflicts with Garland’s mission of restoring justice. “Whatever the parochial legal interests in taking a certain legal position are, they’re not worth throwing down with people who abuse democracy in ways that could have really damaging effects in the long term,” he says.

Bookbinder, who served in the Justice Department’s public integrity section

during the Clinton and George W.

Bush administrations, adds: “If you want to change the way the department works going forward, and you want to really restore the American people’s confidence in it, you have to come clean about what happened. You have to show that you are taking concrete steps to reverse the actions ... and have some kind of accountability for people who abused the department. This attitude of ... ‘We’re going to defend the department’s prerogatives because that’s what the Department of Justice does’ is understandable, but I think it gets it wrong.”

What the critics are suggesting, in essence, is that Trump’s flouting of norms was so extreme and pervasive that to reset the balance, Garland should judiciously use his discretion to depart from standard practice. Maybe it’s not worth going to the mat to preserve the secrecy of this particular memo. Maybe the alleged defamation of an alleged rape victim is not worth dignifying with a defense by a Justice Department lawyer.

“That would lead you to a lawlessness,” Gorelick said when I raised with her the possibility of Garland making exceptions in such cases. “Reaching a result that would hurt the former Trump administration” is not worth the price of straying from “the long-standing precedents and rules and norms of the department,” she argued.

Garland’s institutionalist defenders accept that it’s legitimate to debate whether he made the right call on any given case. But they insist that if he allows his decisions to be based on anything other than following legal norms, then he just becomes part of the politicized problem he is trying to fix. “If you want the Justice Department to do things for maximum political advantage, Garland is not your guy,” says Jack Goldsmith, who served in the department during the George W. Bush administration. Speaking of the Barr memo, he adds, “There’s an important principle here about executive branch deliberation that goes far beyond this case. ... This is a great example” of Garland playing it

straight. “His job is not to please the left or the right. His job is to do the right thing under the law. And it’s not always obvious what the right thing is. But that case strikes me as an example of doing the right thing, even though it’s politically unpopular.”

“You would think there might be some folks on the left who would say, ‘This just proved this is the guy we wanted to put in there,’ ” a former Justice Department lawyer, who served during part of the Trump administration, told me. “It’s amazing how people jump from ‘Merrick Garland, centrist hero, fair-minded judge, who was unfairly denied a chance to be on the Supreme Court’ to” accusing him of a “cover up” for Trump and Barr. “That’s what he has to struggle against.”

During a hearing in June, Democratic Sen. Patrick Leahy asked Garland about the memo and the defamation suit. “I know about the criticisms,” Garland said. “Look, the job of the Justice Department in making decisions of law is not to back any administration, previous or present.



... Sometimes it means that we have to make a decision about the law that we would never have made and that we strongly disagree with as a matter of policy.”

Of course, all the criticism from the left hasn’t bought Garland any goodwill among Trumpist conservatives. In June, when Garland announced the administration’s new domestic terrorism strategy — with its finding that the top violent extremist threat comes from white supremacists — Laura Ingraham of Fox News displayed a collage portrait of Garland and the accused Capitol rioter known as the [QAnon Shaman](#) with the headline, “Who’s Really Terrorizing America?” Later that month, after Garland announced the department was [suing the state of Georgia](#) over voting rights, Georgia Gov. Brian Kemp fumed: “The Biden administration is weaponizing the Department of Justice to serve their own partisan goals.”

The thankless predicament of any attorney general in 2021 is that it’s become the default position of

partisans on both sides to see the Justice Department as a political institution. Even worse, any move to fix that perception is itself viewed with deep suspicion.



Garland announces that the Justice Department will file a lawsuit challenging a Georgia election law in June. (Ken Cedeno/Reuters)

**G**arland seems to have a model in mind for his job: Edward Levi, the attorney general President Gerald Ford appointed in 1975 to save the rule of law and restore the reputation of the Justice Department after the

Watergate scandal. Garland hung a portrait of Levi in his conference room and keeps a copy of Levi's speeches on an office coffee table, according to a source at Justice. He cites Levi often, crediting his legendary predecessor with establishing the very rule-of-law norms that he is seeking to uphold.

But how closely is Garland following in Levi's footsteps? Levi, for one thing, seemed to recognize the value of providing the public with catharsis by frankly addressing the misdeeds of the past. He exposed the scope of the secret files filled with political dirt that former FBI director J. Edgar Hoover had kept on protesters, civil rights leaders and members of Congress. He also spoke openly about the "crisis of legitimacy" the nation had just endured.

Levi's most lasting contribution, however, was to reform the Justice Department as an institution. He didn't just seek a return to old norms. He boldly set about creating a new architecture of norms — advocating for laws and internal policies

governing wiretaps, limiting political contacts and protecting the independence of prosecutors from partisanship. The work Levi set in motion was completed by his two immediate successors, Griffin Bell and Civiletti, Garland's old boss.

It isn't yet clear whether Garland will go as far as many observers — both on the left and in the center — want him to go in pushing new institutional safeguards and reforms. When Garland invokes Levi's name in speeches, it's usually to imply that everything will be better if the department simply rededicates itself to the norms Levi espoused. He doesn't suggest that, after Trump, those norms might need reinforcing or updating with new standards.

It's early in his tenure, but thus far, Garland has only tiptoed into this realm. In the wake of revelations that the Trump Justice Department had [subpoenaed reporters' phone records](#) in leak investigations, Garland promised to prohibit the collection of reporters' records and to work with Congress on legislation to address the

issue. But beyond that, he has been vague about what he thinks needs fixing. He said in a statement in June that Deputy Attorney General Lisa Monaco is “working on surfacing potentially problematic matters deserving high level review.” When evidence of a problem emerges, he routes the matter to Inspector General Michael Horowitz. Horowitz is looking into the collection of reporters’ records and congressional accounts; whether Justice Department officials improperly tried to overturn the presidential election; and the circumstances of a U.S. attorney in Georgia abruptly resigning after Trump pressed officials there to question the vote count.

Garland’s reliance on the inspector general frustrates reform advocates who want to see a more hands-on effort by the attorney general himself. I spoke to a number of people who have proposals that they say could help build bipartisan confidence in the department.

Adam Schiff, chairman of the House Permanent Select Committee on

Intelligence, is planning this summer to reintroduce the Protecting Our Democracy Act, which he co-sponsored in the fall. The original version of the bill would require, among other measures, the attorney general to keep a log of communications with the White House, and the inspector general to report to Congress any improper political interference.

Schiff told me he has received early “pushback” against elements of the bill from the administration and didn’t know whether Biden and Garland would support the package. “The administration and the leadership at the Justice Department need to recognize that we are not in the same circumstances as a new administration usually finds itself,” he says. “This administration finds itself taking over after one of the most destructive, institution-breaking regimes we’ve had in this country. And I think that means that both the administration generally, and the [Justice] Department in particular, are going to have to err on the side of transparency and reform.”

Sen. Sheldon Whitehouse, a Democrat on the Judiciary Committee, proposes the formation of a commission made up of respected Justice Department alumni from both parties to draw lessons from the past. “When you’re dealing with norms, you’re dealing with things that are, by definition, hard to enforce,” Whitehouse, a former U.S. attorney himself, told me. “There may be times where you have to go back and say, ‘Look, this is a norm, but we’ve really got to put it in writing or build a procedure around it.’ ... And somebody needs to be thinking about that.” (I also contacted the offices of the seven Republicans on the Judiciary Committee who voted against Garland to ask what their proposals might be. None of the senators agreed to be interviewed.)

“I’m very fond of and a great admirer of Attorney General Garland,” Whitehouse added. “But he comes out of an ivory tower judgeship, far away from a lot of the political mischief. And I’m not sure how much situational awareness he has about the forces that are operating ... around the department and operated through

the department, it appears, during the Trump administration.”

Even supporters of Garland’s approach so far want bold action — at least in the realm of norm-building. In their book “After Trump: Reconstructing the Presidency,” Bob Bauer, a former White House counsel to Obama, and Goldsmith, the veteran of the George W. Bush administration, propose numerous ways to buck up Justice Department norms to reduce the opportunity for political meddling. The ideas include reinforcing the so-called 60-day rule that bars disclosure of major decisions related to investigations too close to Election Day; making clear the attorney general should obey the same strictures against discussing investigations in public that line prosecutors follow; formalizing the factors that trigger counterintelligence investigations of political candidates; and adding language to internal manuals and training to ensure that improper partisan motivations do not guide actions. They also propose legislation, such as a statute clarifying the circumstances under which the



department could charge a president  
with obstruction of justice.

“Even if we can be confident that ...  
the administration will stay on the  
right path under Merrick Garland, the  
point here is to establish standards  
that other administrations are going  
to have to confront,” Bauer told me.

Following Levi’s example of engaging  
the public in the discussion could also  
help. “The reason for him to speak  
publicly to these issues at some point  
in adopting some of these measures is  
to underscore that this is institutional  
reform,” Bauer continued. “It’s not  
just a moment of shift in policy at the  
Department of Justice, it’s an  
institutional moment in which a  
marker is laid down and other  
administrations are going to have to  
confront it in the future.”





Garland leaves the Roosevelt Room of the White House with President Biden in June after Biden announced a plan to curb gun crime. (Oliver Contreras/Bloomberg)

**A** former colleague of Garland's likens him to the character of Sir Thomas More in the play and movie "A Man for All Seasons." There's a scene beloved by lawyers of all stripes — Justice Antonin Scalia used to cite it — where someone is trying to persuade More to prosecute a bad man just because he is bad, not provably criminal. More refuses, vowing that he would give the Devil himself "the benefit of law" because that is what the rule of law requires. In America today, for many people, the Devil is Trump. "Those who don't understand how Merrick Garland could apply the law neutrally when it involves someone as odious as Donald Trump don't understand the power of the idea in this scene," his former

Garland seems determined to carry out a steady, understated application of this principle. It's hard to know what he's thinking, though, since he takes so few questions. And when discussing his approach in public, he tends to default to robotic repetitions of his definition of the rule of law. Then again, the paradox of his position is that if he declares his grand strategy for depoliticizing the Justice Department, he will be accused of politicizing the Justice Department, and his work will be ruined.

“By running the place as it's supposed to be run, by baking it in, you're building resilience” in the institution, says the senior Justice official.

“Everyone who's been in a meeting with him sees it, feels his commitment to doing things the right way.”

I was struck by how many people I spoke with told me they didn't know enough about, say, the Barr memo or the defamation lawsuit to opine on the merits of those matters. But they

trusted Garland's judgment because ...

he is Merrick Garland. Who he is — his biography, his evident integrity, his humble manner — may be his strongest asset in building trust, as much as any specific action he takes. “Is he going to succeed in acting with integrity?” asks Goldsmith. “I’m sure that he will. Whether he can do it in a way that doesn’t seem political” — to one side or the other — “is a different question.”

Garland's patient strategy of acting every day with reassuring consistency will turn down temperatures in a healthy way, says Van Grack, the former prosecutor on the Flynn case: “I think over time, you’ll see the department avoid the political spotlight. And as a result, you’ll hopefully begin to see the media not characterizing the department’s actions through a political lens, but through the merits of the investigative actions themselves.”

Yet land mines lie ahead — among them, ongoing probes of the Russia investigation, Hunter Biden and Rudy Giuliani. And is someone at Justice

considering an obstruction case against Trump, now that he's out of office, based on evidence amassed by Robert Mueller? How Garland explains decisions in such matters will test his ability to keep the public believing in the Justice Department.

Gray, his former law clerk, recalls that, at the beginning of the Obama administration, the department was buffeted by criticism over how it handled controversies left from the previous administration. Those got resolved, and the department set in motion its own proactive agenda. The same will happen for Garland, she predicts, and his time will be defined by the priorities Biden and he have already announced, such as voting rights, racial justice and criminal justice reform. "Those are the really big and exciting problems and challenges that I'm eager to see him tackle," Gray says. "Those are the things that we'll be ... judging this Justice Department on."

If the equanimity of the Garland era holds, when the next Republican takes the White House, the new

administration will pursue its priorities at Justice within a more or less shared understanding of legal norms. Of course, given the volatility of American politics right now, the odds of that happening are far from assured. And so, we'll also be judging Garland by another standard: how well his approach fortifies the institution against a future administration that once again disrespects norms and politicizes the rule of law.

*David Montgomery is a staff writer for the magazine. Staff researcher Alice Crites contributed to this report.*