

Congressional Transcript

Senate Judiciary Committee Hearing on Nomination of William P. Barr to be U.S. Attorney General

Day II, Thursday, January 16, 2019

GRAHAM:

Good morning, everyone. To our witnesses, thank you very much for sharing your testimony with the committee. We have nine very distinguished people. If you could keep it to five minutes, we'd appreciate it. We have your written testimony and will certainly look at all of it. Senator Feinstein, thank you. Yesterday, I thought it was a very good hearing, asked a lot of good, tough questions that were appropriate.

Nominating an attorney general is no small matter and I thought the committee acquitted itself well and Mr. Barr, I think, is a unique individual and I'm glad the president nominated him. Today, the purpose is to hear from people that have concerns and support and we are honored that you showed up. If you don't mind, I'll mention who's here, then turn it over to you. Is that okay?

FEINSTEIN:

That's excellent. Thank you.

GRAHAM:

Thank you. Our first witness will be the Honorable Michael Mukasey, former United States attorney, former U.S. district judge, and former attorney--former everything. Yeah, so--Mr. Derrick Johnson, President, Chief Executive Officer of the National Association for the Advancement of Colored People from Baltimore. Welcome. The Honorable Larry Thompson, former United States deputy attorney general. Welcome, Larry. Good to see you. The Honorable Mark Morel. Is that right, sir?

MORIAL:

Morial.

GRAHAM:

Morial. Sorry. President, chief executive officer of the National Urban League. Mrs. Mary Kate Cary, former speech writer for President George H.W. Bush and a senior fellow at the Miller Center at the University of Virginia. Professor Neil Kemp?

KINKOPF:

Kinkopf.

GRAHAM:

Kinkopf. Professor of Law, Georgia State University College of Law, Atlanta, Georgia. Professor Jonathan Turley, TV star, smart guy. That's enough. Reverend Sharon Washington Risher from Charleston, South Carolina, Mother Emanuel. God bless you. Thank you for coming. Mr. Chuck Canterbury, the National President for Fraternal Order of the Police. I will now turn it over to Senator Feinstein.

FEINSTEIN:

Thanks very much, Mr. Chairman. And I very much enjoyed your leadership yesterday and look forward to it in the future. So thank you. I'd just like to take a moment to thank our panelists today and that just a few comments, if I may, on the discussion that we had yesterday.

Yesterday, many of us from, I think, both sides of the aisle, asked Mr. Barr about his legal memo and that was allowing the special counsel to complete his work unimpeded and making the report at the end of the investigation public. His answers were good, he clearly understands the need for independence and the importance of protecting the department as well as Mr. Mueller from political interference. I was concerned by his equivocation regarding the report at the end of the special counsel's investigation.

Mr. Barr was clear that he would notify Congress if he disagrees with Mr. Mueller, which is--I'm grateful for, but his answers on providing a report to Congress at the end of the special counsel's investigation were confusing. When I first asked him about the report, he said he would make it available. However, it seems to me that as the day progressed, he referenced writing his own report and treating the Mueller Report as confidential. I intend--I'm going to follow up with him in writing on this.

I think it's essential that Congress and the American people know what is in the Mueller Report. I first met Bob Mueller when he was U.S. attorney and I was mayor in San Francisco. And I know his reputation, I know his integrity, and this is a big report and the public needs to see it and, with exception, a very real national security concerns, I don't even believe there should be very much redaction. So I am hopeful that that report will be made public, and my vote depends on that, Mr. Chairman because an attorney general must understand the importance of this to the nation as a whole, to us as a Congress, as well as to every American.

I also plan to follow up on questions that Senator Blumenthal asked about Roe and whether he would defend Roe if it were challenged. This is always been a critically important issue for me and, I believe, the majority of American women. And I very much regret that I didn't get to ask follow--follow-up questions.

Mr. Barr's nomination comes at a time when we are very divided on many issues ranging from immigration and civil rights enforcement to the very independence of the Justice Department and the witnesses today are going to speak to those key issues. For example, Professor Kinkopf from Georgia University served in the Justice Department's Office of Legal Counsel and he can speak today about issues he's focused on, primarily presidential authority, as I understand it, and separation of powers.

Sharon Risher is an ordained pastor who lost her mother and cousins to gun violence in the horrific hate crime that took place at Emmanuel AME Church in Charleston, South Carolina, and can speak to the importance of enforcing common sense gun laws. We will also hear from two prominent leaders of the civil rights community who can speak to the impact of the Justice Department's policies under President Trump. Mr. Marc Morial, where you Marc? Whose sister has been a colleague of ours and it's great to see you, the president and chief executive officer of the National Urban League now. And Mr. Derrick Johnson, the president of the NAACP. So I welcome, on behalf of the side, I welcome everyone here. Thank you, Mr. Chairman.

GRAHAM:

Thank you, Senator Feinstein. If it's okay, lead us off, Mukasey. Oh, sorry. I've got to swear you in first. Could you please stand, all of you? Raise your right hand. Do you solemnly affirm that the testimony you're about to give this committee is the truth, the whole truth, and nothing but the truth, so help you God?

MUKASEY:

I do.

GRAHAM:

Thank you.

All right. General Mukasey.

MUKASEY:

Good morning. Mr. Chairman, Ranking Member Feinstein, members of the committee, it is a tremendous honor, as well as a great pleasure, to be here to testify on behalf of Bill Barr to serve as attorney general. I don't know of any nominee who has had his background and his credentials for this job. Obviously the job is a lot--about a lot more than credentials, but he has done literally everything that you could possibly do, including serving as attorney general, to prepare him. Now obviously the Department of Justice is a different place today from the time that he served. It's different from the time that I served. But he's obviously well-equipped to deal with whatever problems he faces. He was with the CIA. He headed the Office of Legal Counsel, which is, I think, the office that attracts, along with the solicitor general's office, the best legal minds in the department. He headed that office. He was deputy attorney general, so he knows how the department runs. And of course he was attorney ge

neral. It's impossible to improve on that, not only what he did, but the way he did it. When he was acting attorney general he supervised a--the liberation of hostages at a federal prison in a way that prevented any casualties. And then follow that up by not taking any public credit for it. That's the kind of person he is, and that's the kind of judgment he has.

And as far as pressure from the White House, I mean, he was asked at one point whether he could come up with a theory to justify the line item veto, and he did a lot of research and found that while there was no precedent in our law, there was something that might be called common law going back to about the 15th century. He said there was a Scottish king who had done something that looked like a line item veto, but of course that Scottish king, as it turned out, was suffering from syphilis and was quite out of his mind. And so he would have to call that the syphilitic prerogative if you did it, Mr. President, and so the president decided not to assert the power. That's the kind of judgment he has. That's the kind of human--

GRAHAM:

You learn a lot on this committee. (INAUDIBLE)

MUKASEY:

Yeah, it's--it was a revelation to me, too. It's a terrific story, but it illustrates what he's like. He doesn't--he's not intimidated by questions or by the source of them. When I--a couple of months ago, when I--when General Sessions was leaving, I thought to write an article pointing out all the good things that he had done, and I called up Bill Barr to ask whether he would join in that article. He didn't hesitate for a nanosecond. He said he would. He said it was the right thing to do, it was the correct thing to do, and he was glad he had done it. And that, I think, tells you in--in--in substance what it is this person is about. He's an honorable, decent, smart man, and I think he would make a superb attorney general Thank you very much.

JOHNSON:

Good morning, Chairman Graham and (OFF-MIC). Is that better? Great--gr-- Thank you for allowing me to testify on the nomination of William Barr to be attorney general of the United States. My name is Derrick Johnson and since October of 2--2017 I have had the honor of serving as the president, CEO of the NAACP.

Founded in 1909 the NAACP is our nation's oldest, largest and most widely recognized civil rights organization. The NAACP opposes Mr. Barr's nomination and I urge every member of this committee to vote against his confirmation.

The Senate considers this nomination in extraordinary times. Under the Trump administration, we have experienced the worst erosion in civil rights in modern history. We have seen reversals and rollbacks of long-standing policies and--and positions that have enjoyed bipartisan support from their creation. We have seen an undermining of both substantive protections and the tools necessary for civil rights enforcements such as the desp--desperate impact--the desperate impact

method for proving discrimination and the use of consent decrees to address abuse by police agencies.

The next attorney general of our United States has the opportunity to reverse course and place the Justice Department back on the track to fulfill this historic role of safeguard--safeguarding our civil and constitutional rights. The Senate must seize this second chance for justice and insist upon attorney general--an attorney general capable of independence and willing to enforce our nation's civil rights laws with vigor and resolve.

After a thorough in--evaluation and review of the record William Barr is not that candidate. Mr. Barr's record demonstrates a lack of strong commitment to protecting the civil and human rights of all Americans. The communities served and represented by the NAACP will have a difficult time placing our trust in the Justice Department and by extension, the American criminal justice system overall even with the improvements just signed into law with the First Step Act.

The Justice Department's enforcement of our voting rights laws is a paramount--of paramount importance but the current department has jettisoned protections for the right to vote. It has reversed positions in lawsuits to support voter suppression measures and to purge voters from the rolls.

Because Shelby County versus Holder eliminated safeguards under Section 5 of the Voting Rights Act litigation under Section 2 of the Act is all very important. But the Justice Department has filed no Section 2 claims since this administration has been in place.

As the nation experienced rapid voter suppressions throughout the 2018 midterm elections the Justice Department stood silently as communities of colors across the nations were denied access to the polls. At a time when the Justice Department has abandoned voting right protections, the need for federal enforcement has never been greater. The U.S. Commission on Civil Rights recently supported that voter suppression is at a all-time high and unanimously called on the department to pursue more voting rights enforcement in order to address aggressive efforts by state and local officials to suppress the vote.

Mr. Barr's record on criminal justice is abysmal. As attorney general, he championed mass incarceration and deprived countless persons of color of their liberty and dramatically limited their future potential. His Justice Department tenure was marked by extraordinary aggressive policies that harm people of color.

He was a general in the war on the crime on drugs that rooted--that was rooted in racism. He literally wrote a book on the case for more incarceration which stands in contradict--in contradiction of the First Chance Act. But William Barr did not and does not recognize racially discriminatory impact of our criminal justice system policies.

In 1992, he said I think our system is fair and does not treat people differently. And just yesterday he told Senator Booker overall and I quote the system treats black and whites fairly. That--this statement is singly disqualifying. We need an attorney general who understands both the history and persistence of racism in our criminal justice system.

The--the--the government-sponsored inhumanity is inconsistent as it relates to this administration's enforcement of immigration rights. The NAACP we filed a lawsuit as it relates to DACA. We need an attorney general who respect the rights of individuals.

Finally, and I'm trying to rush through this quickly now. Mr. Barr recent action make his impartiality on the ongoing investigation into Russia interference in the 2006 election suspect and for the NAACP we are very clear.

Matters of international questions is not under our purview but any time a foreign nation used the worst common denomination in this nation's history of racism to suppress African-American votes to--and in an effort to subvert democracy it is a question of national sec--security and we need an individual who has the independence to stand up and be fair and make sure we protect the democracy. Thank you, members of the committee.

THOMPSON:

Good morning, Chairman Graham, Ranking Member Feinstein, members of the committee. It is my great honor to appear before you this morning in support of Bill Barr's nomination to serve our country once again as attorney general of the United States.

I have known Bill since 1992. I can attest to the fact that Bill has a deep, deep respect for and fidelity to the Department of Justice. Bill will go where the law leads him. In fact, as attorney general, he did not hesitate when required by law to appoint or seek to appoint various special or independent counsel in high profile matters. He served with great distinction as attorney general and is highly respected and admired on a bipartisan basis by the career prosecutors and investigators he oversaw in the department.

Importantly, Bill knows how to develop much needed partnerships with state and local law enforcement. He was very successful at this during his tenure at attorney general and created strong and effective joint task forces across the country to combat white collar and violent crime.

Bill believes that every citizen, no matter where he or she lives, deserves the full protection of the law. Bill also understands that federal law enforcement cannot do the job alone.

In 1992, Bill visited my hometown of Atlanta, Georgia and spoke with members of the Southern Christian Leadership Conference. He said that, when cleaning up crime infested neighborhoods, and I quote, "It cannot be a Washington bureaucratic project. It must be a project where the solutions are found in the community itself." He acknowledged to the Reverend Joseph Lowery that in the past decades the federal government's anticrime efforts have relied too heavily on prison construction and not enough on crime prevention.

Now, as a former general counsel of a large public company myself, I also appreciate and admire Bill's approach to his work in the private sector. Bill was very supportive of the lawyers who worked with him. He was collaborative with his colleagues. He welcomed input, dialogue, and

discussions. He created opportunities for everyone he oversaw to develop and grow in their careers, including many female lawyers and lawyers of color.

He was also supportive of diversity in the legal profession. In 2002, the company Bill served as general counsel received the North--Northeast region employer of choice award from the Minority Corporate Counsel Association for successfully creating a more inclusive work environment.

Finally, members of the committee, I think the most important point I can share with you is that Bill Barr is a person of very high integrity. He led the Department of Justice as attorney general with an unbending respect for the rule of law. As general counsel of a large public company, he emphasized the importance of complying with all laws, rules, and regulations, and he stood up for his corporate client a world-class compliance program.

Bill Barr's integrity is rock solid. He will not, and I repeat, will not simply go along to get along. Last January he resigned from his position as the director of an important public company board. Bill let his conscience and his integrity guide his decision.

As a citizen, I thank Bill for his willingness to return to public service. He is needed, and I look forward to his tenure again in service to our great country as attorney general. Thank you.

GRAHAM:

Thank you, Mr. Thompson. Mr. Morial?

MORIAL:

Thank you. Chairman Graham, Senator Feinstein and members of this committee, I want to thank you for the opportunity to testify on the nomination of William Barr to be attorney general of the United States. I'm Marc Morial and have the pleasure of serving as president and CEO of the National Urban League. Before doing so, I served eight years as the mayor of my beloved hometown, New Orleans, president of the national--the United States Conference of Mayors, a Louisiana state senator, a college professor and a practicing lawyer involved in one of the most important civil rights and voting rights cases to come before the Supreme Court in the 1990s.

The National Urban League was founded in 1910. It's a historic civil rights and urban advocacy organization with a network of 90 community-based affiliates, and we have affiliates in every town represented by the members of this committee. We have hard--worked hard and fought for civil rights, justice and equal opportunity, along with fairness, for our entire existence. My illustrious predecessor, the late Whitney Young, was one of the big six of civil rights leaders who worked for the 1964 Civil Rights Act, the 1965 Voting Rights Act and the 1968 Fair Housing Act. One of our prime missions is to ensure that each of these laws is aggressively, faithfully and consistently executed and enforced by every president, every Congress and every attorney general. That is why I am here today.

Mr. Chairman, on behalf of our entire Urban League movement across the country, I urge this committee and the entire Senate, based on a careful examination of this nominee's record, to

soundly reject the nomination of William Barr as the next attorney general of the United States. Let me tell you why. For the past two years the Justice Department has been led by an attorney general intent on restricting civil and human rights at every turn. This nation needs an attorney general who will dramatically change course and enforce civil rights laws with vigor and independence. Based on his alarming record, we are convinced that William Barr will not do so. Indeed, in a recent op-ed Mr. Barr called Jeff Sessions, the architect of these restrictive civil and human rights policies, an outstanding attorney general, and offered praise for his anti-civil rights policies. It's clear, based on the record, that Mr. Barr intends to follow Mr. Sessions down the same regressive, anti-civil rights roadmap.

The confirmation of William Barr who espouses former Attorney General Sessions' policies, would enormously exacerbate our nation's current civil rights crisis. When we submitted comments to the United States Commission on Civil Rights, raising concerns relative to Sessions' actions on various civil rights issues, they were as follows; overturning a memo from former Attorney General Eric Holder, aimed at reducing mass incarceration by avoiding mandatory sentencing, disproportionately subjecting African-Americans and other minorities to long-term incarceration, abandoning the Justice Department's Smart on Crime Initiative, ending the community-oriented policing services collaborative reform project, a Justice Department program that helped build trust between police officers and the communities that serve, announcing the Justice Department's School Safety Plan that militarizing schools, offering a sweeping review of consent decrees with law enforcement agencies related to police conduct, nothing but a subterfuge to undermine a crucial tool in the Justice Department's efforts to ensure constitutional and accountable policing. Mr. Barr has a troubling record that tells us that there will be no redress of Sessions' blunders.

Last year, after arduous work done by many members of this committee, we passed the First Step and the Juvenile Justice Reform Act of 2018, and I want to thank the committee for its support of that. Mr. Barr's record on criminal justice places these achievements at serious risk and gives us no confidence that these hard (INAUDIBLE) reforms are going to be carefully executed. Why? As attorney general, Barr pushed through harsh criminal justice policies, or rather he pursued them, that escalated mass incarceration and the (INAUDIBLE) war on drugs. His 1992 book, *The Case for More Incarceration*, argued that the country was incarcerating too few individuals.

Barr led an effort in Virginia to abolish parole, build more prisons and increase prison sentences by as much as 700 percent. Yesterday, Mr. Barr testified to this committee of his intent to implement the First Step Act. If that is the case, this committee should ask him for a commitment to rescind the guidance that Mr. Sessions issued on May 10, 2017, instructing all United States attorneys to seek the maximum penalty in federal criminal prosecutions. The attorney general has a duty to vigorously enforce our nation's most critical laws, to protect the rights and liberties of all Americans, to serve as an essential independent check on the excesses of an administration. And we feel the evidence is clear that Mr. Barr is ill-suited to serve as chief enforcer of our civil rights laws. And therefore we urge this committee, as a part of its deliberations, its duty and its responsibility, to reject Mr. Barr's nomination as our next attorney general. And I want to thank you for your time.

GRAHAM:

Thank you, sir.

GRAHAM:

Mr. Cary. Ms. Cary.

CARY:

Mr. Chairman, excuse me, Chairman Graham, Senator Feinstein, and members of committee, thank you for the invitation to testify today and I'm here to give my enthusiastic support for the nomination of William P. Barr as our next attorney general. My name is Mary Kate Cary and I was a White House speechwriter for President George HW Bush from 1989 to 1992.

In January 1992, I moved to the Justice Department from the White House for the final year of the Bush 41 administration to serve as deputy director of policy and communications, overseeing the speechwriters and the policy shop and serving as one of two spokesmen for the then new Attorney General, Bill Barr. When I first started working for general bar, I was 28 years old. I got to know him very well, as speechwriters do, and quickly learns the way he thinks.

I found that Bill Barr has a brilliant legal mind. He knows Mandarin, Chinese, and he plays the bagpipes. He's got a great sense of humor and an easy laugh. He is a kind and decent man, a dedicated public servant, and one of the best bosses I've ever had. He is always a gentleman.

Bill and I flew thousands of miles that year and a four-seater prop plane to towns and cities all over America where he met with local law enforcement leaders, small-town mayors, city council members, the victims' rights advocates, criminal justice reform leaders, residents of public housing, prison wardens, federal prosecutors, religious leaders, really, all kinds of people from every walk of life.

We were often traveling in support of Bill's visionary initiative, Operation Weed and Seed, which sought to remove violent criminals and drug gangs from underserved neighborhoods and then allow grassroots organizations and programs to flourish, bringing hope of a better life to residents through education, opportunity, and stronger civil rights. As we met with people in communities all over America, I saw that Bill was a good listener. He was masterful at drawing out people's concerns and he had a knack for finding the best solutions on the ground, figuring out what worked in the neighborhood, and then putting the right policies in place. He made sure politics never entered into it.

Bill Barr treated everyone with the same respect, whether they were an up and coming chief of police, a receptionist of the at the Department of Justice, or an 80-year-old resident of public housing. I believe this is why Bill Barr continues to be held in high esteem by the career, staff, and the civil servants at the Department of Justice and why he was such a successful attorney general. I also believe that, in addition to being good policy, Bill Barr's leadership style is why Operation Weed and Seed continued on for many years after he left office.

Everywhere we went that year, we were accompanied by rank and file FBI agents and he was admired by every one of them that I met. More than once I can remember being in very dangerous situations where the agents were concerned for his physical security. Every time, he was more concerned about my security. The fact that the attorney general of the United States was more concerned about the safety of a 28-year-old staffer than his own safety tells you volumes about him.

Despite his top-notch education and his stunning intellect, Bill Barr is not an ivory tower kind of guy. He went out of his way to build friendships at the department and across the United States, checking in when someone was sick, helping people get jobs, just staying in touch. He and his wife Christine came to my wedding and we have stayed friends for the 27 years since we have worked together.

Like President Bush 41 did, Bill Barr has a devoted and wide collection of friends, each of whom think of him as a really good friend. I remember when he was attorney general at the age of 42 and his three daughters were young girls. Despite the long hours he kept, the tremendous amount of travel, and the time spent away from his family, his daughters admired his devotion to the law so much that each of them later went to law school in order to follow in his footsteps. As a mother myself, that too tells me volumes about the way he has lived his life in the example he has given to young people, especially women.

It is no surprise to me that he's one of the few people in American history to be asked to be attorney general of the United States twice. It's an honor for me to highly recommend William P. Barr to you for confirmation. Thank you.

GRAHAM:

Thank you. Prof. Kinkopf.

KINKOPF:

My thanks to the committee for the honor and privilege to appear here today and testify on the nomination of William Barr to be attorney general. In his testimony yesterday, William Barr minimized his 2018 memorandum on obstruction of justice. He characterized it as a narrow analysis of a particular interpretation of a specific statute.

That's true in a sense, but to answer that very narrow question, he elaborated a comprehensive and fully theorized vision of the president's constitutional power. He declared without limit or qualification, and I quote, "Constitutionally, it is wrong to conceive of the president as is simply the highest officer in the Executive Branch. He alone is the Executive Branch. As such, he is the sole repository of all executive powers conferred by the Constitution. Thus, the full measure of law enforcement authority is placed in the president's hand and no limit is placed on the kinds of cases subject to his control."

That manifesto of an imperial executive has alarming implications for the Mueller investigation and for the whole of the Executive Branch. First, I wish to highlight two implications for the Mueller investigation. William Barr gave reassurances late yesterday regarding what he would or would not do. These assurances are beside the point. Because on Barr's theory, the power rests with the president. Therefore, the president does not have to ask bar to do anything. In--in his view, the attorney general and the special counsel are "Merely the president's hand." Again, a quote.

The president needs only ask the attorney general can I terminate the special counsel's investigation and Barr's answer to that question will be yes. This is not speculation or inference drawn from the Barr memo. The Barr memo takes this on very directly. Again, quoting the memo, "Say an incumbent U.S. attorney launches an investigation of an incoming president. The new president knows it is bogus, is being conducted by political opponents, and is damaging his ability to establish his new administration and to address urgent matters on behalf of the nation. It would be neither corrupt nor a crime for the new president to terminate the matter."

Well, President Trump has told us that that is exactly how he regards the Mueller investigation. Next, there was a great deal of discussion around the release of Mueller's report. First, it is clear that Barr does not mean--that Barr takes the DOJ regulations to mean that he should release not the Mueller report, but rather his own report. Second, he reads DOJ regulations and policy and practice to forbid any discussion of decisions declining to indict, declination decisions.

In combination with the DOJ view that a sitting president may not be indicted, this suggests that Barr will take the position that any discussion or release of the Mueller report relating to the president, who again cannot be indicted, would be improper and prohibited by DOJ policy and regulations.

I wish to close by noting one consequence of the Barr memo's theory of executive power that extends outside the Mueller probe. The memo asserts that the president has, and I'm quoting again, "Illimitable discretion to remove principal officers carrying out his executive functions." This would mean, for example, that the president may order the chairman of the Federal Reserve not to raise interest rates and to fire the chairman of the Federal Reserve if the chairman refuses to follow that order. The independence of the Federal Reserve, the SEC, the FEC, the FTC, the FCC, the dozens of administrative, of independent administrative agencies are unconstitutional under Barr's theory of executive power.

This, in spite of the fact that for over 30 years the Supreme Court has consistently upheld the constitutional validity of the independence of those entities. Mr. Barr's theory of presidential power is fundamentally inconsistent with our Constitution and deeply dangerous for our nation.

CORNYN:

Professor Turley.

TURLEY:

Thank you, Senator Cornyn. Also allow me to thank Chairman Graham, Ranking Member Feinstein, all of the members of the committee for the honor of speaking to you today.

I've known General Barr for many years in my capacity as both an academic and a litigator. I actually represented him with other former attorneys general during the litigation leading up to the Clinton impeachment. I can think of no better person to serve at--in this position and lead the Justice Department at this critical time.

I come to this as someone that holds different views of the Constitution from General Barr. I am unabashedly a Madisonian scholar and I admit I have always admitted in testimony that I favor the Legislative Branch in fights with the Executive Branch. I also have been a critic--critic of the expansion of executive power.

My default is in Article 1. General Barr's default is Article 2. He tends to take a robust view of executive authority. Despite our different defaults however, I've always admired him. I have always found him to be one of the most knowledgeable and circumspect leaders in the United States when it comes to constitutional history and theory.

Now I have already submitted written testimony addressing the 1989 and 2018 memos. I respectfully disagree with my friend Neil even though I found many of the things he said very compelling. We disagree on both what General Barr has said and also the implication of his views. But ultimately this committee has a difficult task regardless of the resume of a nominee.

You must try to determine what is the person's core identity and values. For me, that question has always come down to a rather curious and little-known fact about the seal of the attorney general that sits underneath the attorney general whenever he speaks. It has the familiar image of a rising eagle with the olive branch and the 13 arrows and talons but under it is actually a Latin legend that we continue to fight about how that legend was put on the seal.

What we know is that it appears to be derived from how the attorney general was introduced to the Queen. The British attorney general was introduced as one who prosecutes for our Lady the Queen. That phrase was clearly adopted by someone. There's a huge debate about who or when or even why but they made one change.

It would not do to use that language so they changed the last words to Domina Justitia, our Lady Justice. It wouldn't do for the attorney general to litigate or appear on behalf of any leader. The attorney general appears on behalf of the Constitution, not the president.

I know that Bill Barr understands that distinction. He has said so yesterday. He has maintained that position through his whole career. He has a record of specific leadership, not just at the Department of Justice but in this very position. He's only the second person ever to be nominated to fit--fill that position twice. There are few nominees in history as General Mukasey said who has the resume that Bill Barr has.

I won't go into depth about the discussion of the memo that Neil was talking about other than to say this, I--I do go into it in my written testimony. As--as Deputy Attorney General Ron Rosenstein

said it is not uncommon for former justice officials to share their views about issues that they believe concern the department.

Indeed General Barr wrote to other justice officials about the prosecution of Senator Menendez. He had no connection with Senator Menendez, no interest in that case. His interest was the theory of prosecution being used against Senator Menendez, that he was concerned swept too broadly under the criminal code.

The eight--the 2018 memo is vintage Bill Barr. It is detailed, it is dispassionate. It's the work of a law nerd and that's what he is. He's a law nerd, I should know because I'm a law nerd and I teach with 80 other law nerds.

When people are suspicious why would anyone write a memo this long spontaneously and send it to anyone that's because you don't know law nerds. Okay? We write these memos so that we don't follow strangers on the street trying to talk about the unitary executive theory. Indeed I think the best thing we could do for Christine and the family is to re-incarcerate Bill on the fifth floor of Main Justice where he can talk about this all day long.

Now the dispute about that obstruction provision is a real one. I'm a little taken aback by the criticism. From a civil liberties standpoint, I have been critical of the expansion of--of the obstruction theory. It sweeps too broadly for me and as a criminal defense attorney, I've been critical of it for a very long time.

The issue that he was raising is a real one. He raises it from the Article 2 standpoint, some of us have raised it from the civil liberties standpoint. What he really is arguing is not that the president can't be prosecuted. He says exactly the opposite. He says the president can be charged with federal crimes in office. He believes the president can be charged with obstruction in office. So he says the diametrically opposed thing to what many people are saying about him.

What he believes is just as Confucius said that, "the--the start of wisdom is to call things by their proper names." He wants to call this by its proper name. If the president commits a crime, he wants that crime to be defined. He does not say by the way that that same conduct cannot be another type of crime. He was only talking about the Residual Clause of 12--1512. Those were fair questions about statutory interpretation.

I don't agree with everything in his memo, I've said that publicly. I disagree in some of his conclusions but I wholeheartedly agree with him that this is a serious problem and it has to be defined.

Now ultimately, I believe if you read his testimony you will find that he is more measured than some of my friends have suggested. Even Clinton's own former appointees like James Clapper said that yesterday he went as far as he could go as attorney general giving assurances. But this is historic moment for the Justice Department. I hope it doesn't pass.

They need this man and they need it now. I brought my children today Aidan and Maddie(SP) because I think that they really should be here. I suspect they are here because they heard that

Senator Feinstein was giving out junk food to kids. But I hope that they will also understand the historic moment for what it is and I thank you for the honor of being part of this.

GRAHAM:

Thank you. Rev. Risher.

RISHER:

Good morning, Chairman Graham, Ranking Member Feinstein and members of the Senate Judiciary Committee. It is my honor to appear before you today to testify on the nomination of William Barr to be attorney general of the United States. My name is Rev. Sharon Risher, and I live in Charlotte, North Carolina.

My life, like so many other people's throughout this nation, has been forever changed by gun violence, gun violence that is preventable with effective enforcement and common sense safety laws. On Wednesday, June 17, 2015 is the day that my life changed. As a hospital trauma chaplain I have worked and experienced grief, and tragedy, and pain and loss as I worked with patients and families to comfort them. But that night I was the one in need of comforting when I received a telephone call that no American deserves to get. My beloved mother and two of my cousins had been shot and killed in the church along with six other parishioners at the Emanuel African Methodist Episcopal Church in Charleston, South Carolina.

In the Charleston community which I was raised, when the doors of the church was open, my family was in the pews. That Wednesday was no different. A young white man entered the church at the beginning of the Bible study. In the spirit of our faith, he was welcomed in by the congregation and sat near the pastor. After studying the Gospel of Mark, they held hands, and bowed their heads, and closed their eyes and held hands in prayer. That was the final moment for many in that church. That day that young man pulled out his gun and started firing. Some ran, some hid under tables, but they were gunned down.

A house of worship is supposed to be a refuge from the storms of everyday life, but that young man robbed my family and eight other families of their loved ones. Five people survived. Five people have to live every day with that tragedy in their hearts.

After the massacre in Charleston I struggled to answer why my loved ones and so many others had been killed. I was disturbed to learn that the shooting was premeditated and driven by hate. The shooter targeted parishioners at Emanuel simply because of the color of their skins. Along with so many Americans, I was baffled at how such a hateful man was able to get his hands on a gun. We later discovered that a loophole in our gun laws allowed the shooter to obtain the gun used to murder my mother and my cousins and the six others in that church. That loophole allowed hatred to be armed to kill. The person that killed my family members should have not been able to buy that gun. The National Instant Criminal Background Check System was designed to keep guns out of the wrong hands, including criminals, domestic abusers and unlawful users of controlled substances. The Charleston shooter had previously been arrested for drug possession, something that should have blocked him from obtaining a gun under our existi

ng laws. Yet he was able to legally purchase one because of a loophole in the federal law.

You see, if the FBI does not finish a background check within three days, the sale can proceed regardless of whether the check had been completed, and that's exactly how the man who killed my family exploited a loophole and got his gun. And he is not the only one. The FBI reported that in 2017 alone gun dealers sold at least 4864 guns to prohibited people before the background checks had been completed. Those nearly 5000 sales were primarily made to felons, domestic abusers or, like the man who killed my family, unlawful users of controlled substances. A strong background check system is the foundation for common sense safety laws that keep guns out of the hands of the wrong people. We cannot stop--we can stop hate from being armed, but we need background checks on all gun sales, and law enforcement needs enough time to complete the background check.

Each day I wake up motivated to ensure that hate will not win. As a member of the Everytown Survivor Network, I share my story to put a human face on our nation's gun violence crisis. Our community of survivor advocates for change to help ensure that no other family faces the type of tragedy we have experienced.

If he is confirmed as our nation's next attorney general, Mr. Barr will serve as our nation's top law enforcement officer in a position of great power and influence. I hope he will make it a priority to prevent gun violence and work with Congress to update our laws and close loopholes that enable guns to get in the wrong hand, just like that young man, filled with hate, murdered my family.

Nine lives were cut short in Charleston. Today I say the names of my mother, and my cousins, and the six other people to honor them in this most sacred place. My mother, Mrs. Ethel Lance, my two cousins, Mrs. Susie Jackson and Tywanda Sanders, my childhood friend, Myra Thompson, the pastor of the church, Rev. Clementa Pinckney, Rev. Daniel Simmons, Rev. Sharonda Coleman-Singleton, Mrs. Cynthia Hurd, Rev. Depayne Middleton-Doctor. I pray that whenever you hear their names you feel empowered to help bring about change.

Thank you for listening, and I will answer any questions that you have.

CANTERBURY:

Good morning, Mr. Chairman, Ranking Member Feinstein, and distinguished members of the of the Committee on the Judiciary. I am the elected spokesperson of more than 345,000 rank and file police officers, the largest law enforcement organization in the United States. I'm very pleased to have the opportunity to offer the strong and unequivocal support of the FOP for the nomination of William P. Barr to be the next attorney general of the United States.

In my previous appearances before this committee, I've been proud to offer the FOP support for a number of nominees with the expectation that they would be good leaders, that they would serve our country honorably and effectively. In this case however, there is no need to speculate whether or not Mr. Barr would make a good attorney general because he's already been a good Attorney

General in the administration of President George HW Bush. He had the experience the knowledge and the ability to lead the department then and he certainly does now.

Mr. Barr's career of public service began as a clerk for a judge on the U.S. Court of Appeals for the District of Columbia and he served a short tenure in the Reagan White House. He then joined the Bush administration as assistant attorney general for the Office of Legal Counsel in 1989. President Bush took note of his leadership, integrity, and commitment to law enforcement and promoted him to deputy AG in 1990.

In 1991, he was named acting attorney general and was immediately faced with a public safety crisis. At the Talladega Federal Prison, more than 100 Cuban inmates awaiting transportation back to their country staged a riot and took 7 corrections officers and 3 immigration and naturalization employees' hostage. In the first hours of the standoff, General Barr ordered the FBI to plan a hostage rescue effort. The Cuban inmates demanded that they be allowed to stay in this country and released one of the hostages.

Over the course of the nine-day siege, it was clear then that negotiations were--were failing. General Barr ordered the FBI to breach prison and rescue the hostages. They were freed without any loss of life and the incident was ended because of General Barr's decisive action. Following the successful resolution of this incident, President Bush nominated him to be U.S. attorney general. The Committee on the Judiciary reported his nomination unanimously in the Senate confirmed him as the 77th attorney general.

Through his service and his action, he demonstrated he was the right man for the job. The FO--FOP believes he is the right man for the job again today. Two years ago, just after his inauguration, President Bush issued three, excuse me, President Trump issued three executive orders on law enforcement and public safety. The first directed to the federal government to develop strategies to enhance the protection and safety of our officers on the beat.

The others created the task force on crime reduction and public safety and for the development of the National Strategy to combat transnational criminal organizations trafficking in human beings, weapons, and illicit drugs. Mr. Chairman, during his tenure as attorney general, Mr. Barr directed and oversaw a similar transformation at the Justice Department by re-focusing its resources, by making crimes of violence, particularly gang--gang violence, a top priority for law enforcement.

I submit to this committee that Mr. Barr is the perfect person to complete the work begun by General Sessions, with respect to focusing federal resources to fight violent crime because he's not only done it before, he's done it as the attorney general. President Trump has clearly made law enforcement and public safety a top priority. His nomination of William Barr to be the next attorney general demonstrates that these priorities have not changed.

We know Mr. Barr's record and abilities as well as his prior experience in that office. The FOP shares his views and we are confident that Mr. Barr will once again be a stellar top cop. We believe the president made an outstanding choice and for Mr. Barr to return to public service as the attorney general of the United States will serve this country well. The FOP proudly offers are full and vigorous support for this nominee and we urge this committee to favorably--favorably support this

nomination just as you did in 1991. Thank you for the opportunity to testify. I'd be glad to answer any questions.

GRAHAM:

Thank you all very much. I appreciate your testimony and I'll get it started here quickly.

GRAHAM:

Rev. Risher, thank you for your coming up here and sharing your loss, and your story and your hurt. Some comfort, I hope, is that Mr. Barr said if he is the attorney general he will pursue red flag legislation that I'm working on with Mr. Blumenthal and others, that would allow law enforcement, if they have appropriate information, to go and deny somebody a gun who is showing dangerous behavior. I think that's a real gap in our law. Most of these cases people are screaming before they act, and we're just not listening. The guy down in Florida did everything but take an ad out in the paper, I'm going to kill somebody. It would've been nice if the police would've had a chance to go in and stop it before it happened.

As to Dylann Roof, who is facing the death penalty in South Carolina, he applied for a gun in West Columbia, South Carolina. The system said he had just been arrested. During the three days of looking into the arrest--he had not been convicted--the FBI agent called the wrong solicitor's office. There's two counties in Columbia, and they did not find out the fact that he had admitted to being--possessing and using a substance that would have kept him from owning a gun. So we need to reform the laws, but that was sort of a mistake more than it was a loophole.

Mr. Turley, thank you very much for what you had to say. The special counsel regulation is 28 CFR 600.8. It says at the conclusion of the--conclusion of the special counsel's work here she shall provide the attorney general with a confidential report explaining the prosecution or declination decisions reached by the special counsel. So you think Barr will take this report seriously if given to him?

TURLEY:

Absolutely.

GRAHAM:

Okay. It also says the attorney general will have notified the ranking member and chairman of the Judiciary Committee in both bodies. Do you think he'll do that?

TURLEY:

Absolutely.

GRAHAM:

Okay. It also says to extent--to the extent consistent with applicable law, a description and an explanation of instances, if any, in which the attorney general concluded that a proposed action by the special counsel was so inappropriate or unwarranted under established departmental practices that it should not be pursued. So under this regulation if Mr. Mueller recommends a course of action and Mr. Barr says I don't think we should do that, he has to tell us about that event. Do you agree that's what the regulation requires?

TURLEY:

Absolutely.

GRAHAM:

Do you believe he will do that?

TURLEY:

Absolutely.

GRAHAM:

Okay. It also says the attorney general may determine that public release of these reports would be in the public interest to the extent that the release would comply with applicable legal restrictions. Do you think he will be as transparent as possible?

TURLEY:

Yes, and he said that. And I could add one thing to this, Mr. Chairman. The committee pressed him on what he meant by that. I know that Ranking Member Feinstein also raised this in her comments. But as James Clapper and other people noted yesterday, there's only so much that--as far that a nominee can go. You can't ask that he satisfy ethical standards when asking him to commit, in advance--

GRAHAM:

Right.

TURLEY:

--to release of information that he hasn't seen yet because part of his duty is to protect things like Rule 6(c) information, grand jury information and the derivative information, privileged information. He is duty-bound to review that. So the only thing a nominee can say is that he is going to err on the side of transparency and try to get as much of the report to Congress as possible.

GRAHAM:

Based on what you know about Mr. Barr, should we take him at his word?

TURLEY:

Absolutely. I have never known Bill Barr, in all the years that we have known each other, I have never known him to be anything but honest and straightforward. The last time he came in front of this committee the chairman of that committee, one of your predecessors, expressed--praised Barr. He said that this is a sort of a throwback to what committee hearings use to be like where the nominee actually answered questions. He's a very honest person. And if he said that he is going to err on the side of transparency, you can take it to the bank.

GRAHAM:

Okay. So Mr. Johnson, thank you for coming today. I--I listened to your concerns about Mr. Barr. I voted for Holder and Lynch. Do you think I made a good decision voting for them to be attorney general?

JOHNSON:

I do.

GRAHAM:

Why?

JOHNSON:

I think their presentation before this committee was honest, direct, but more importantly, they committed to protect our democracy. For African-Americans protecting democracy is to also (INAUDIBLE) enforce efforts to ensure that all citizens can cast their ballot.

GRAHAM:

Right.

JOHNSON:

They committed to that, and they demonstrated that while they were in office.

GRAHAM:

Okay, and you believe Mr. Barr will not be committed to that?

JOHNSON:

Well, I have serious reservations and concern.

GRAHAM:

Okay.

JOHNSON:

Those concerns first start with this administration, their lack of enforcing Section 2 of the Voting Rights Act.

GRAHAM:

How much of it is about this administration versus Mr. Barr?

JOHNSON:

In many ways it's difficult to separate the two.

GRAHAM:

So I just want to suggest something to you. There was a lot of concerns I had about the Obama administration. I will not bore you with my concerns. But I thought he chose wisely with Mr. Holder and Ms. Lynch because they have differences on policy than I because I'm a Republican, but I thought they would be good stewards of the law and they would be fair arbiters of the--being attorney general. It never crossed my mind that I would vote against them because I have policy disagreements. If that's going to be the new standard, none of us are going to vote for anybody on the other side. So thank you for your input.

JOHNSON:

But if I may, Mr. Chair.

GRAHAM:

Please.

JOHNSON:

Going beyond policy disagreement, this nation has had a long history of discriminatory practices, particularly in the criminal justice system. And anytime we have a nominee to come before this committee who truly don't appreciate the disparities in the criminal justice systems, as he stated yesterday, that goes beyond policy disagreement.

GRAHAM:

(INAUDIBLE)

JOHNSON:

That goes toward whether or not we understand the equal protection of the law should be afforded to all citizens.

GRAHAM:

Well, I want to make sure you understand what he said because I remember Senator Booker asked him, and he says yes, the crack cocaine sentences were disproportionate to the African-American individual, and that's why we changed the disparity between powder cocaine and crack cocaine. He acknowledged that, but in 1992 he thought the biggest victim of rampant violent crime were, you know, low-income, mostly minority communities. So I don't buy what you're saying about him not understanding their differences and how one group is affected, particularly in the drug arena. So I think what he was trying to do is talk about crime.

But here's what's perplexing to me. The NAACP has been in the fight for social and racial justice for a very long time, and I don't know how we got here, but you do a scorecard every year. And in 2017 every Democrat got 100 percent. I got 22 percent, Grassley got 11, Cornyn got 11, Lee got 11, Cruz got 11, Sasse got 6, Ernst got 11, Kennedy got 17, Tillis got 11, and Crapo got 6. There's a disparity here. I'd hope you think that I'm--because I disagree with your scorecard rating--that I'm not a racist, and I certainly don't know how to close this gap. I'd like to.

JOHNSON:

So I--right. So the NAACP, we're a nonpartisan organization. Our scorecard is not based on political parties. Our scorecard is based on our agenda.

GRAHAM:

Well how do you explain the differences?

JOHNSON:

If you'll allow me, our agenda is set by the delegates from across the country. And we're very clear that discrimination should not be a part of any agenda.

GRAHAM:

How many of them are Republicans?

JOHNSON:

Excuse me?

GRAHAM:

How many of them are Republicans?

JOHNSON:

I don't--we don't determine how many members are Republicans. We have Republicans among our membership on our National Board.

GRAHAM:

I don't want to--okay.

JOHNSON:

But if you allow me to explain the report card.

GRAHAM:

Please, please.

JOHNSON:

Right, and so we establish our agenda not based on political parties because we understand the political parties are nothing more than vehicles for agendas. And as many African-Americans were members of the Republican parties before the 1965 Voting Rights Act, many African-Americans may decide their agenda based on the party's platform. And if party platforms align with the needs and interests of our communities, then they will vote for a platform that support their needs, whether it's access to quality public education, ensure that all African-Americans and Americans can cast a fair ballot, fair housing policies, making sure we have true tests to determine disparate impact. Those are the issues we are concerned about. Those are not partisan issues. Those are policy issues. And individuals who run under party labels, they decide based on the platform that they believe, which party label they run under. We don't make partisan decisions. We make policy decisions. And it's informed by members acro

ss the country. Some are Democrats, some are Libertarians, some are Republicans.

GRAHAM:

You may not think that you're making--that your agenda is party neutral. All I can tell you is somebody wants to solve problems. It's pretty odd to me that every Democrat gets 100 percent, and I do the best as a Republican getting 22. Maybe the problem's all on our side. I don't think so. I think the agenda that you're pursuing in the eyes of conservatives is not as good for the country as you think it is, and it's got nothing to do about Republican and Democrat. It's more it has to do about liberal and conservative. You've got to ask yourself, why does every conservative on this committee, the best I can do is to get 22?

MORIAL:

Mr. Chairman.

JOHNSON:

Well, I think it's a different question. I think the members of the Republican Party should ask yourselves, are you willing to be expansive enough and inclusive--

GRAHAM:

(INAUDIBLE)

JOHNSON:

--to ensure the rights of individuals despite their racial background, their interests are met, not based on conservative or liberal tendencies, but based on those individuals' needs and--

GRAHAM:

Fair enough.

JOHNSON:

--and the interests that they advocate for.

GRAHAM:

Will you ask yourselves why I can't get better than 22 percent from conservatives?

JOHNSON:

Yeah, sure, we can go down each one of the policy agendas, and we can go through each one of them, and we can make a determination.

MORIAL:

Yeah, Mr. Chairman, let me--I want to--

GRAHAM:

That's a good discussion. (INAUDIBLE)

MORIAL:

I want to sharp--sharpen--sharpen this discussion because I think it's an important discussion, and give you what concerns me. When it comes to this entire discussion, this is about whether the nominee is going to aggressively, faithfully enforce the civil rights laws. And let me give you a couple facts.

GRAHAM:

Can I ask you one question? You can give me all the facts you want.

MORIAL:

Yeah.

GRAHAM:

Name one Republican that you would support.

MORIAL:

I'm not here to talk about Republicans and Democrats. I supported him when he was a Democrat.

GRAHAM:

I just can't think of a better person to pick than Mr. Barr if you're a Republican. So I don't know who's going to do better than him in terms of experience, judgment and temperament. So if this guy doesn't cut it, I'm at a loss of who we can pick.

MORIAL:

Well, (INAUDIBLE) let me make my point because I want the committee to be extremely clear on this, and I want to cite two examples. Attorney General Sessions--and we have to talk about his record because the question for us is whether Mr. Barr is going to continue the policies of Attorney General Sessions when it comes to enforcing civil rights laws. In two instances Attorney General Sessions, in his first days and months in office, had the Justice Department change sides in the middle of an important civil rights case.

GRAHAM:

Elections matter.

MORIAL:

Texas--but senator, the enforcement of the law does not. The enforcement of civil rights laws is neutral when it comes to elections. So what Attorney General Sessions had the Justice Department do is switch in a Texas voter ID law after the judge had made a finding, preliminary finding, that the Texas voter ID law was discriminatory. You know what it would be an example of? If Drew

Brees or Tom Brady, after leading his team to a lead, went in at halftime and came out with the jersey of the other team on. In the middle of the case. Secondly, in the Ohio voter purge case, the same thing occurs. Why did the Justice Department, without any discussion with the Congress, without any discussion with the civil rights community, switch sides miraculously and immediately? That should not have anything to do with who wins an election.

GRAHAM:

I will say this. I could have given you 100 examples of where Eric Holder and Loretta Lynch had a different view of a statute or a policy than I did. But if you don't expect elections to matter, that's a mistake. The policy differences we have are real. To expect Trump to win and everything Obama did stay the same is unrealistic. All I'm asking is that let's look at qualifications because a Democrat will win one day, and they will nominate somebody with a completely different policy view than I have. It will be a very simple decision. If I can find a difference, I'll vote no. The question I'm trying to ask the country is do you expect quality people to be chosen by the other side who has differences with you? If the answer is yes, then Mr. Barr is as good as it will get.

MORIAL:

Well, you know senator, lots of us thought you were going to be nominated as attorney general.

GRAHAM:

Would you have supported me?

MORIAL:

Hey, guess what, we would've had a--I know we would've had a discussion, and I wouldn't close the door on that.

GRAHAM:

Well, I appreciate that, but I don't think I'm nearly as qualified as Mr. Barr.

MORIAL:

So I'll say that. We thought you were gonna be nominated

GRAHAM:

I don't think I could hold a candle to him. But the fact you said that about me, I appreciate the hell out of it. And let's see if we can find a way to get me above 22 percent.

UNKNOWN:

Let's work on it.

GRAHAM:

All right.

FEINSTEIN:

Reverend Risher, I just want to say something to you personally. I will never ever forget your words, your motion, the truth you spoke and your feelings. And I just want you to know that there's so many of us that now know so many victims of guns in this country that we will continue to fight on to change this environment. So just know that and I'm so happy. You're one of the best witnesses I--I have ever heard and your words will not be lost. I hope your family is in a better place. Thank you.

RISHER:

Thank you so much.

FEINSTEIN:

Thank you. Mr. Kinkopf, if I may, Mr. Barr has stated that the memo that I spent all day reading and is very complicated, has state--has stated that that memo was narrowly focused on obstruction of justice. However, Mr. Barr's arguments outlined broad presidential powers. Please explain how his view of executive authority could impact the Mueller investigation.

KINKOPF:

Okay. Well, in any number of ways. I think most fundamentally is his claim without limit or qualification that the president is the Executive Branch and that, therefore, all executive power is vested in the president personally. That the president can personally exercise that power, and not leaving this to speculation or to chance, the memo specifically says that the president can control any litigation, any prosecution or investigation, including a prosecution or investigation of the president personally, and the president's family members. And further, it says that the attorney general, the special counsel, anyone serving under the president is merely the president's hands.

FEINSTEIN:

Well, it was certainly the case for the unitary executive and the all-powerful central figure. There's no question, I think, about that. In my mind, the question is, you know, how--does he really mean this? And it's hard if you don't know a man and he's here and he's in front of you for the first time and you meet him, it's very hard to make those judgments.

He's obviously very smart, he was attorney general before, no one can say he isn't qualified. The question comes--we are at a time and a place where there are a lot of other subjects that are

important. He has stated that his memo was narrowly focused. Mr. Turley, we've got a defense counsel, I guess, how do you see this, that same question I asked Professor Kinkopf?

TURLEY:

It's a--it's a fair question and Neil and I agree actually on a great deal because we both have really difficulty with the expansion of executive authority. We're both critics of aspects of the unitary executive theory but we disagree on--on the Barr memo. I--I think it was narrow. I mean, he says in the memo that he believes the president can be charged with obstruction in office. He believes that a president can be charged with other crimes in office.

And where I--where I disagree with Neil is that it is true that he says in his memos that the Constitution doesn't limit the power of the presidency, that--in--in these regards, and that's demonstrably true. It's not in the Constitution, there are not those limitations. But he has said repeatedly in writing and before this committee that he believes that a president can be charged for acts in--in office. He also believes that, if the president misuses his authority, it can be an abuse of power and it could be a violation of his--his duty to faithfully execute the U.S. laws.

FEINSTEIN:

Well, it doesn't mean that Mr. Mueller could recommend indictment of the president and Mr. Barr could disagree.

TURLEY:

On--on that I'm not sure where Neil is.

FEINSTEIN:

Now, that's an esoteric question. I understand, but it's along the line of your thinking.

TURLEY:

Yeah, and I agree with some of the senators on this committee. I have always said that a sitting president could be indicted in office. I disagree with the OLC on memos in that respect. Will--would general Barr change that position? My guess is he probably would not. Would--would the special counsel asked for a change? My guess is probably not. It's not really--if you look at the history of both of these individuals, they're--they're not likely to either disagree or move for a change.

FEINSTEIN:

In this--let me ask both of you or anyone that wants to answer this, this memo and the whole concept of the unitary executive, all-powerful, I think has never been better expressed in a contemporary way than I've read it in this memo. And I was thinking last night, obviously Mr. Barr is qualified, he is bright, he is capable, but it's hard for me to understand why, with our

Constitution, our Bill of Rights, why we want somebody that is all-powerful in every way to take these actions.

KINKOPF:

Senator, I think--

FEINSTEIN:

--My question was not well stated, but I think you got the gist of it.

KINKOPF:

Right. Senator, I think we don't. So I would agree that William Barr is amply well-qualified by virtue of experience, by virtue of intellect, by virtue of integrity. I have no doubt that he will stand out for his vision of the Constitution, and that's what I find so troubling because his vision of the Constitution is so expansive and alarming with respect to the president's power. Right, that's why I quoted it. It's not my characterization.

He says directly the president alone is the Executive Branch. He speaks repeatedly through the memo of the president's illimitable powers. And while it's true that the Constitution doesn't specifically authorize Congress to limit the president's prosecutorial discretion by its text, it also doesn't, by its text, give prosecutorial discretion to the president. All investigation and prosecution is done pursuant to the laws and enacted by Congress.

And within that authority to enact those laws is the authority to establish the parameters on that power. You do that and you do that validly and legitimately. The Supreme Court has said that repeatedly. And what is so alarming about the Barr memo is that it reads the Constitution in a way that frees the president from those constraints.

TURLEY:

If I--this is where I do disagree. And I thought the question was--was presented quite well because it does isolate where we depart. And that is, first of all, even though I don't like unitary executive theory, there are many, many judges and lawyers who believe fervently in it. Also, there is not one single definition of that theory. People--there's a sort of gradation of where you fall on that.

Bill Barr actually disagrees with the position of the trumped legal team. He--he--he expressly said that they are wrong, that it doesn't curtail a president's authority to prosecute him in office. So he is--he's not at the extreme on this. But the other thing I want to note is that I think where Neil and I disagree is that Neil is taking Barr's statement as to the constitutional footprint, the mandate of the--of the Constitution, which does not have a limit and limitations in these areas, from how they would apply where he said very clearly the president cannot do whatever he wants. There are consequences. He could even be prosecuted.

FEINSTEIN:

Thank you. Thank you, Mr. Chairman.

GRAHAM:

Senator Hawley.

HAWLEY:

Thank you, Mr. Chairman, and thanks to all of you for being here today.

GRAHAM:

That was interesting.

FEINSTEIN:

Yeah, it really is.

HAWLEY:

General Mukasey, can I start with you, I think? And thank you, general, for your long service, both as attorney general of distinguished service and on the federal bench. As a former attorney general yourself, of course, you know the office firsthand. You have done this job. You've done it at a time of great national security peril for this country. You referenced in your opening statement the qualifications that Bill Barr brings, would bring to this job, and the advantages, in some ways, he would have having done the job already. Can you just speak more to that? I mean I imagine if you were--if you were coming back to be attorney general again there are things you would do differently, knowing the job as you do now. So can you just elaborate for us why you think that his prior experience is a--is a major plus?

MUKASEY:

Quite simply, he doesn't have and won't have the same steep learning curve that I had coming out of Article III. He doesn't have to do DOJ 101 and learn how each office runs, and he doesn't have to learn how they interact. He doesn't have to contemplate from ground zero the powers and the authority of each of the offices under it. He's seen it and done it. But I don't want to overstate the degree to which his experience prepares him. Obviously we're living in a different time, and the issues are different. He's going to have to face that. But he's going to be able to devote 100 percent of his energy to doing that rather than learning the basics. That's what I-- that's what I meant.

If I can go back, if I may, to the conversation you were just having about--about our--about the president's powers, I do happen to believe in the unitary executive, unlike the other two folks, and it's just not a question of religious belief, and it's not some quirky attitude. The Constitution says, at beginning of Article II, "The executive authority shall be vested in the president of the United States." It doesn't say all except a little bit of it. It doesn't say most of it. It says the executive

power. That means all of it. Obviously, obviously the president can be removed, not only for crimes, but also for using his conferred powers in an improper way, and the president runs the political risk of having that happen every time he does something that--that--that comes close to the line or goes over the line. And that, I think, is the constraint. And it's so far been a reliable constraint. Everybody says that well he could remove Mueller. Perhaps he could, but guess what, he hasn't done it yet. And the

re is good reason why he hasn't done it yet because the earth would open up and swallow him. We all know that. So I think that that's really what's at stake here, the political risk.

HAWLEY:

General Mukasey, just staying with that point, I think this is interesting to get someone who has held this office, and advised presidents, and enforced the law as you have. You're familiar with Mr. Barr's views on executive authority Article II power. Do you think that those are out of the mainstream?

MUKASEY:

I do not.

HAWLEY:

Do you think that they're inconsistent with the Constitution?

MUKASEY:

No, they are faithful to the Constitution. That's what he is faithful to.

HAWLEY:

Go ahead. I mean, explain to us why you think it's important that the fact that Article II vests all executive power in one person, in the president of the United States, why that's an important concept and important for the functioning of our constitutional system?

MUKASEY:

It's important because it assures that there is going to be political responsibility lodged someplace. It assures that when people in the executive act in a particular way that they, and the person at the top, can be held responsible for what they do. People spoke about independent agencies. They are, in a sense, independent in the sense that they don't relate to other agencies. But they are not a fourth or fifth or sixth branch of government. They are within the Executive. And it's important that that be true because there's got to be somebody responsible for how that functions. People who wrote the Constitution were--if they were afraid of anything, what they were afraid of was their experience under the Articles of Confederation where there had been a very weak Executive and no ability of the government--of the country to defend itself. They needed a strong Executive, and

that was the Constitution they wrote. If we want to amend it, I guess we can, but--that's what's there.

HAWLEY:

Tell me this. In your view, the vesting--the fact that the vesting clause in Article II gives the executive power to a president of the United States, a single president of the United States, does that mean that this individual, that the president of the United States has illimitable power, or is able to do whatever he or she may please?

MUKASEY:

No, because the one duty that it imposes on a president--and this is also imposed by the Constitution--is to see to it that the laws are faithfully enforced. That is just as much a constitutional duty as any other. And if he doesn't do that, he's subject to removal. That is his obligation. That is his, really, principal obligation.

HAWLEY:

Thank you very much. Mr. Canterbury, I want to ask you--you lead the Fraternal Order of Police. It's incredibly important to me that the top law enforcement officer in this country, the attorney general, have the confidence in the--of the men and women of our nation's police forces. Can you just elaborate for us what the most important issues were for your members that led your group to support former Attorney General Barr, hopefully future Attorney General Barr, for this nomination?

CANTERBURY:

One is his past experiences, his job that he did in the prior administration. We've been around a long time, and we knew him then. We saw the way he administered the Department of Justice, the way he worked with state and local law enforcement. Regardless of who leads the Justice Department, if there's no outreach to state and local law enforcement, then it really doesn't transcend to the state and local level. Under former Attorney General Barr, he did just that, and as General Sessions did, and as Eric Holder did. You know, we--we've testified for a number of nominees over the years. Eric Holder had a tremendous reputation as a prosecutor in the law enforcement community. So I sat at this very table and testified for him. It's all based on the experiences that they had as either U.S. attorney, federal judges, or even in private practice.

HAWLEY:

Why do you think it's so important to police officers that they have a capable, effective, experienced attorney general?

CANTERBURY:

Just the administration of justice. I heard the complaints about the civil rights division, but we know from experience that a collaborative effort, rather than consent decrees, have real consequences in the cities. For instance, in Cincinnati when the administration entered a collaborative agreement and all parties were at the table, we came out with a plan to help bring that city back together. In the last election in Cincinnati the FOP endorsed a member of the NAACP to be a city council member. That would not have happened if they had not got to know each other sitting around a table, working together for the betterment of that community. We'd favor the collaborative approach for consent decrees because they're real circumstances other than just say you will do this or, you know, we won't leave. Then they do it, and then obviously nothing ever changes. But when it's collaborative and everybody's at the table, we saw real change.

HAWLEY:

Thank you very much. Thank you, Mr. Chairman.

CANTERBURY:

Thank you.

DURBIN:

Thanks, Mr. Chairman. Reverend Risher, thank you. Thank you for your testimony, thank you for your touching words about that telephone call. I'll remember that because so many people receive that telephone call about people that they love who are victims of gun violence.

I am honored to represent the City of Chicago. Sadly we have a lot of gun violence and a lot of victims, families just like yours who will never ever forget as long as they live what happened. I often think about what I'm going to say to them. I stopped saying let me tell you about a new law that I've got in mind.

I've stop saying that because we don't pass laws on gun safety in this United States Congress, we don't and it's unfortunate. We don't even pass the most basic and obvious things about background checks, we--we just can't do it, politically can't do it. A lot of reasons for it, I won't get into here.

But I'll just suggest to you that as fate would have it sitting to your left is a gentleman Mr. Canterbury representing 345,000 did you say members of the police who put their lives on the line every single day and those guns on the street are aimed at them many times. And if there's ever a moment when victims of gun violence like you Reverend Risher and Mr. Canterbury and the police ever come together on agreement on a piece of legislation call me immediately.

It will be a breakthrough moment. We can talk about gun safety with credible voices on both sides and Mr. Canterbury while on the subject thank you for the First Step Act. The endorsement of the Fraternal Order of Police and criminal justice reform and prison reform was historic and meaningful and made a difference.

It was also noteworthy that we had the support of the prosecutors, the criminal prosecutors across this country and the support of the American Civil Liberties Union. Go figure. How many times has this bunch ever gotten together? Not very often but I think we passed something historic as a result of that and I just want to personally thank you and publicly thank you for the role that your organization played in it.

Mr. Johnson, we're looking back on the history of Mr. Barr, things that he said, things that he's done and I give a speech that people have heard a few times now but they were startled the first time I gave it. The title of my speech is let me tell you about the worst vote I ever cast as a member of Congress.

It was over 25 years ago and all that you know what it was. It was 100-1 crack cocaine to powder cocaine. We were determined to stop this new narcotic in its tracks. It was super cheap, it was deadly, pregnant women who got hooked on crack cocaine would give birth to babies with lifelong problems. And we came down as hard as we could not just with 100-1 but mandatory minimum sentences on top it, three strikes and you are out for life and we hit them hard and we watched our prison population explode primarily with African-Americans.

I look back on it as a big mistake, one of the worst I ever made as a public official and I've tried to rectify it. We passed the Fair Sentencing Act eight years ago, we've now passed the First Step Act. We are starting to give to these men and some women a chance to start their lives again.

So now we look at Mr. Barr and some of the things he said were consistent with my vote and the votes of a lot of Democrats back in the day when we were getting tough on narcotics and he was as tough as they get. He was writing books about building more prisons and putting more people in these prisons. He's continued in that vein up until the last few years. So I just want to tell you I pray for redemption both personal and political.

Do you think Mr. Barr is entitled to a chance to redeem himself when it comes to this issue?

JOHNSON:

Thank you. Thank you, Senator Durbin. I think any individual is entitled to redeem themselves when they make a mistake. Our position on mass incarceration is just that. We've had a lot of individuals who have made mistake who should have been exonerated or not prosecuted to the extent they were.

I grew up in Detroit, Michigan, I lived through the crack epidemic in the 1980s. I seen the damage it did but I also seen many individuals who's thrown away for many, many years and for an individual who situated to acknowledge the history of what took place and as you just done say you know I made a mistake that's a good thing. I have not heard that from the nominee. That's my concern.

The other concern I have is goes back to the exchange earlier when we often times conflate civil rights issues, issues of democracy with partisan considerations. And should individuals have access to the vote it's not a partisan issue, it is an issue of democracy and any AG should vigorously

protect the right of individuals to vote especially when over the last two years we've seen more tactics of voter suppression than we've seen in the last 25 years.

Issues of equal protection under the law is not a partisan issue. It's an issue to ensure that all citizens of this nation are afforded equal treatment and so our objection to Mr. Barr's nomination is not a partisan issue, it's not an issue of disagreement, it's an issue of concern as it relates to the mass incarceration and the vigorous prosecution that took place in the '90s and whether or not we are considering a nominee who is still thinking in the 1990s frame or are we looking at a nominee who's really looking at the First Chance Act and the progress that's been made?

DURBIN:

I've only got a minute left but I want to take it to that issue you took it to and Ms.--I invite Mayor Morial to join in on this, too. This question of election integrity has become a code word.

When you hear a election integrity of the from the other political party it's about making sure that people who are not qualified and not legally eligible vote, don't vote and I don't think anybody disagrees with that premise. But there's something else going on in the name of voter integrity and that is obstacles to voting that are totally unnecessary and really discourage people from using this right which is fundamental to a democracy.

When I held hearings in this committee in Ohio and in Florida and asked them about ID cards and early voting and said what is the incidence of voting abuse in your state that led you to make it harder to vote there were none. I think it's just a policy, a political policy to fight demographics to try to keep people away from the polls who may change the outcomes of elections.

I don't--I didn't hear yesterday from Mr. Barr any commitment to voter integrity in terms of that you and I would probably discuss it and that concerns me. I am not sure I can expect to hear it under this administration but Mr. Morial if you close.

MORIAL:

Yeah, I think there is something important about what you're saying. I (INAUDIBLE) point the committee to exit polls that took place after the '18 election wherein people were asked do you believe that voter suppression or voter fraud was a greater issue?

Voter suppression won the poll of the American people overwhelmingly. These are exit polls where the numbers were sort of 58 and--and voter fraud was down maybe in the 30s or 40s. That's number one.

Number two, the Shelby case has done significant damage because it was post-Shelby that 40--the shenanigans of voter suppression, of cutting back on early voting, on voter ID laws, on restricting groups like the Legal Women Voters from Kentucky voter registration drives really, really exploded. Some 40 states had proposals to restrict access to the ballot box.

When I think about this, I think about it that we are waging war to quote promote democracy, Senator Graham, in Iraq, in Afghanistan. But right here on the home front how can we countenance efforts based on no evidence to restrict access to the ballot box? The Shelby decision I predict will be seen in history the way Dred was seen, the way Plessy was seen, as a bad ill-advised decision.

We need because what we are left with is the power of the Justice Department under Section 2 and under Sessions, not one single Section 2 case was brought even though you've had this explosion of voter suppression efforts. So what we need is an attorney general who says I'm committed to the utilization of my Section 2 of the Voting Rights Act powers to enforce the Voting Rights Act.

And I would a--certainly encourage that the nominee be asked his position on this because this is so crucial to the protection of democracy which is really what this nation is all about. Democracy and voting is at the foundation of our system.

GRAHAM:

Make a quick comment and then Senator Kennedy. I'm glad you mentioned Iraq and other places where we are fighting to help people.

There was an attack today on a restaurant, I think it's the same restaurant I visited with the Kurds and Arabs and others in Manbij, Syria to hold on to some representative government and unfortunately, I believe some American advisers were killed there by ISIS.

So this is not the subject matter of the hearing but I want to make a quick statement. My concern about the statements made by President Trump is that you would set in motion enthusiasm by the enemy we are fighting. You make people we are trying to help wonder about us and as they get bolder, the people we are trying to help are going--going to get more uncertain.

I saw this Iraq and I'm now seeing it in Syria. Every American wants our troops to come home but I think all of us want to make sure that when they do come home, we are safe and I don't know how we are ever going to be safe if people over there can't at least sit down and talk with each other.

The only reason the Kurds and the Arabs and the Christians were in that restaurant is because we gave them the space to be in that restaurant. You think what you want to about those people over there, they've had enough of killing. They'd love to have the opportunity that we have to fix their problems without the force of violence.

So I would hope the president would look long and hard of where he's headed in Syria. I know people are frustrated but we are never going to be safe here unless we are willing to help people over there who will stand up against this radical ideology.

And here's the good news, very few fathers and mothers over there want to turn their daughters over to ISIS, their sons over to ISIS. They just need our help. So to those who lost their lives today in Syria, you were defending America in my view. To those in Syria who are trying to work

together, you are providing the best and only hope for your country. I hope the president will look long and hard about what we are doing in Syria.

GRAHAM:

Senator Kennedy.

KENNEDY:

Thank you, Mr. Chairman. Pastor, I'm very, very sorry for your lost. I wanted to tell you that personally.

RISHER:

Thank you, senator.

KENNEDY:

Before I ask my soul question, which I'll direct to each of you to address briefly, if you could, I want to do a couple of things. I want to give a shout out to my former mayor, Mayor Morial. Many of you know him as the president and chief executive officer of the Urban League and I, of course, know him in that capacity as well, but I know him as our mayor in New Orleans and the head of the league of cities and a state senator. We still claim him in Louisiana.

MORIAL:

Always (INAUDIBLE).

KENNEDY:

I also want to recognize his sidekick, Senator Cravens, former State Senator Cravens. We miss him in Louisiana too. I listened to the discussion we had about the scorecard that--that Chairman Graham brought up. I'm going to make one very gentle observation that it--it may be appropriate in other areas, including, but not limited to, the challenges we face with the shutdown. And that is that so long as all of us on--on both sides and all sides and of every political persuasion are--are drunk on certainty and virtue, it's going to be hard to make progress. We probably ought to listen more, talk a little less.

Here's my question and--and if you don't care to answer it, that's okay or you don't have any thoughts, but I would like to know this, as you know, we--we have a Sixth Amendment right to counsel in America. It's part of our Bill of Rights. But in some instances, in too many instances it's a hollow promise. And--and I'd like to know your thoughts about our public defender system in America and whether you think it comports with the requirements of the--of the Sixth Amendment right to counsel. We'll start down here and just go down there, if that's okay. I would ask you all to be brief because I want everybody to have a chance.

CANTERBURY:

From our experience, the public defender system is in dire need of assistance. It--it leads to plea bargains that may not should have happened and we would definitely support more money for right to counsel and we don't take a backseat to anybody on your right to be represented in the system is woefully underfunded.

KENNEDY:

Okay, thanks. Pastor?

RISHER:

I believe our Public Defender Office needs resources. Most of the people that receive a public defender are marginalized people without resources and their opportunity to have the best counsel they have is not something they get. And I would want that office to be able to serve everyone, regardless of whether they have money or not.

KENNEDY:

Okay. Prosecutor?

TURLEY:

Senator, I'm particularly thankful for you to raise this issue. As criminal defense attorney, I can tell you that the public defense or system is an utter wreck. It is underfunded. Judges are sanctioning public defenders because they have too many cases and they can't get to court. And so public defenders are in this position where they can't handle all the cases and yet they are held in content, but they don't want to do a case in appropriately without zealous representation.

So they have this absolute impossible situation and it's even worse on the state system. I--I gave a speech in Pittsburgh and I--I sat down with some public defenders there. The public defenders in Pittsburgh that I had dinner with are all moonlighting as bartenders and waiters to try to continue to be public defenders and feed their family. I mean, that's how bad the system is.

KENNEDY:

Professor?

KINKOPF:

I--I agree that public defenders are heroic public servants. They are overworked, they were underpaid, and that the system of public defense and provision of counsel needs to expand far beyond even the limited area it applies to now, into municipal courts, into infractions that shouldn't but do end up leading to people serving jail time.

CARY:

Senator, I'm the daughter of a criminal defense lawyer, I'm married to a criminal defense lawyer, and he's the son of a criminal defense lawyer, so I'm all in favor of great lawyering available for all Americans who find themselves in front--in front of a courtroom. The thing that I--I would suggest is I'm aware here in Washington of--of many law firms who are partnering pro bono with criminal defense, I mean, public defender services to try and get young people in court and get them great--great experience while also giving good representation to people who need it. So maybe that's one of the answers that--that you can look into, but my understanding is they need all the help they can get and--and maybe young people can help.

KENNEDY:

Thank you, professor?

MORIAL:

A quick, couple of quick things. I had the great privilege and pleasure last year to speak in Atlanta to the Federal Public Defender Service at its convening gathering. And I would offer to the committee perhaps this is an example of a bipartisanship oriented initiative, which is this committee to hold hearings do an examination of both the federal public defender system, which may be in a little bit better shape, but underfunded and understaffed, as well as local public defender systems, and you'll get a real sense of what everyone has said, how stretched, how overworked, and how, in effect, damaging this is to the operation of justice and to the constitutional guarantee of the Sixth Amendment.

And the last thing I'd say, in the late 80s, Senator Kennedy, I was part of a small group of lawyers that actually challenged the very same issue in Louisiana. We challenged it by asking the State Supreme Court to conduct an investigation, which they did. They filed that the system was underfunded but then they took the position that, as the Supreme Court, they could not, "Instruct the Executive Branch to adequately fund the public defender system."

The bottom line here, I would offer this, and I'm glad you raised it as a important element of this discussion around criminal justice reform. And that is to repair, to fix, to reform the public defender systems, both at the federal, at the state, and also at the local levels across this nation.

KENNEDY:

Thank you, mayor.

THOMPSON:

Thank you, Senator Kennedy for raising this issue. As someone who served on the board at one time of the Atlanta Federal Defender Program, I think that the public defender program definitely, at the federal level, needs strengthening. However, at the state level, it is a total collapse. And I think with the Department of Justice can do, and you could pursue this with Attorney General

Nominee Barr, is through the Office of Justice Programs encourage OJP to develop programs, to assist state public defender offices, appropriate funds for that purpose in terms of grants because the Department of Justice is not the Department of Federal Prosecution, it's the Department of Justice. Thank you.

JOHNSON:

I certainly agree with the--the panelist today that the public defender system is in dire need. I served as a commissioner on the State of Mississippi Access to Justice Commission. And we reviewed this issue. Mississippi is one of the poorest states, similar to Louisiana, and what we found was a system so corrupt it was one of the primary factors for prison overcrowding. You have a large number of individuals who are sitting in jail pretrial--as pre-trial trial detainees because they have ineffective counsel or no counsel at all. So it's an issue that I agree with my colleague Marc Morial that this could be a bipartisan issue we can work on because the need is definitely there.

KENNEDY:

Judge?

MUKASEY:

My--senator, my--my experience I think is probably more limited than virtually the experience of all of the other panelists because Mike's parents is largely confined to one district in the United States. That said, my experience with Federal Defenders in the Southern District of New York is that they were people of unparalleled skill. It was competition to get those jobs and they were highly valued. Similarly, under the Criminal Justice Act, we appoint private lawyers to represent defendants.

Again, there's competition to get on that list, so you really get the--the lawyers by and large, in my court, who represented indigent defendants were by and large more skillful, and my experience, than the privately retained lawyers. Some of them were simply show boats. That said, I think the system is definitely in need of support, certainly at the state level, and I second Larry Thompson's call for having OJP target particular areas with--with grants so that there can be demonstration projects that would--would--would show the way.

KENNEDY:

Thanks to all of you. You honor us with your time and your testimony today.

WHITEHOUSE:

Thank you, Chairman, and thank you very much to the panel, particularly Rev. Risher. I'd like to join my colleagues in expressing my appreciation for your testimony here. I had the opportunity nearly three years ago to visit Emanuel AME Methodist Church with the Faith and Politics Institute. It was one of the most moving experiences of my life. It was remarkable. And to meet

with the survivors a few months later here in Washington was impressive. And I'm so glad that you are keeping that tragedy alive in our hearts because it should not be overlooked, and I appreciate it.

RISHER:

Thank you, sir, for your words. And the Emanuel Nine will be something that I will continue to talk about their lives to let other people know that they did not die in vain. And I thank you for your comments.

WHITEHOUSE:

Don't ever stop.

RISHER:

Thank you.

WHITEHOUSE:

Mr. Mukasey, I have some questions for you, and I want to let you know right off the bat that this goes back about 10 years, and so you will have full--I will give you every chance to answer more fulsomely in written answers, you know, the question for the record so that if there's anything that you don't recall now. But the reason I wanted to ask you your questions is that I view it, anyway, as a responsibility of the attorney general to fearlessly go where the evidence and the rule of law lead, and to allow, particularly in investigative matters, to let the evidence and the law be your guides.

Now, given the circumstances that surround the department, the willingness of an attorney general to be independent where evidence leads to the White House, is of, I think, particular moment. And that takes me back to the investigation into the removal of nine U.S. attorneys in 2006. That report was concluded in 2008 on your watch as attorney general. As you'll recall, it was a joint effort. Those don't happen all that often in the department, but this was a joint effort between the Department of Justice Office of Inspector General and the Department of Justice Office of Professional Responsibility. And the investigation led, both into White House files and into Office of Legal Counsel files. As to the White House files, the White House refused to cooperate and refused to provide access to your OIG/OPR investigators to close out their investigation. The OLC refused to provide un-redacted documents to members of their own department. The report that was issued in 2008 indicated that the investigation had

been, and I quote it here, hampered, and hindered, and left with quote gaps as a result of the failure of the White House and OLC to provide the necessary information to the investigators.

MUKASEY:

That was the OIG report?

WHITEHOUSE:

Yes, OIG/OPR. It was both of them together, as you may recall. So here's my concern. You were the attorney general at the time. You could have readily instructed OLC, knock it off, guys, provide these folks the documents. And while you can't instruct the White House in what to do, when the White House--when the investigation leads to the White House gates and the White House gates come down, to me it's the attorney general's responsibility at that point to walk down to the White House and say one of two things is going to happen; we're going to get cooperation in our investigation, or we're going to have a resignation because the Department of Justice needs to follow the law and the facts wherever, including into the files of the department.

As you know, there is no executive privilege issue as between the Department of Justice and the White House. That is a separation of powers issue, and it keeps things from us, but it doesn't limit documents within the Executive Branch. So I would like to get now your recollection in a more fulsome way, in a written fashion if you would like to elaborate, why it is that you felt that when the Department of Justice had an ongoing investigative matter that led to the gates of the White House it was okay for the White House to say no, we're not cooperating and for the Department of Justice to stand down because I think that would be a lousy precedent for now?

MUKASEY:

This goes to the qualifications of Mr. Barr to serve as attorney general, does it?

WHITEHOUSE:

To the extent that there is a concern about whether he would be willing to do that because--

MUKASEY:

My recollection is--

WHITEHOUSE:

We could get a replay of this, and if he's citing the Mukasey precedent, I want to know more about the Mukasey precedent.

MUKASEY:

I doubt that he's citing the Mukasey precedent, number one. Number two, my recollection of that, which has been over 10 years.

WHITEHOUSE:

Which is why (INAUDIBLE)

MUKASEY:

But nonetheless, older people have a better recollection of the distant past sometimes than they do of the recent past, so I do remember it to some extent.

WHITEHOUSE:

Yeah.

MUKASEY:

My recollection is that the investigation did not lead to the gates of the White House. It involved the circumstances under which nine U.S. attorneys were terminated, and those people were offered the opportunity to come back. They were also offered apologies by me, and that's the way the matter ended. That's my recollection.

WHITEHOUSE:

Okay, well I'd ask you to take a look at the question for the record that I will propound to you because that's different than what the OIG and OPR said at the time because they felt that they were hampered, hindered, and left with gaps in their investigation, which is--and it was White House files that were at issue. So my time is expired, but I hope we can settle this question because I do think it creates a difficult precedent in a world in which the Department of Justice may now have to ask similarly tough questions that take it into White House files.

MUKASEY:

Yeah, I seriously doubt that one investigation and how it was handled creates a precedent in any sense for another, but I'll answer your question.

WHITEHOUSE:

Thank you.

GRAHAM:

Senator Grassley.

GRASSLEY:

Yeah. First of all, for the Reverend, I don't understand how people can have so much hate that they do what they do. That's what comes to my mind all the time when I hear stories like you, and I remember it from the day it happened. Thank you for bringing it to our attention.

RISHER:

Thank you, sir, for listening.

GRASSLEY:

Mr. Canterbury, we've--you've talked some about the First Step Act. I want to go back to it. The Fraternal Order of Police was very instrumental in helping get it across the finish line, and obviously as the chairman of the committee at that time, I thank you for doing that. We appreciate your strong leadership. The First Step Act requires that the Justice Department and the attorney general implement a risk and needs assessment system, allow nonviolent inmates to receive earned time credit for participating in recidivism reduction programming and recalculate good time credit for all inmates.

Here's for you. Given Mr. Barr's past statements opposing criminal justice reform, especially sentencing reform, do you believe that he will be able to dutifully implement the system that the Fraternal Order of Police worked so hard to get passed? To be fair to Mr. Barr, yesterday he testified that he'd implement the law and not undermine it. Are you comfortable with that commitment?

CANTERBURY:

I think his past experiences in following the law speak volumes to his ability to be able to take what Congress sent to the president and the president signed and implement the program. We have full confidence in him.

GRASSLEY:

Now echoing what Senator Durbin said about the vast support that this legislation had from what I'd say extreme right to extreme left and everything in between, law enforcement, Judicial Branch, victim rights groups, civil rights groups, faith groups, in your opinion will Mr. Barr be able to work with these stakeholders to effectively implement the First Step Act?

CANTERBURY:

Yes sir, we have full confidence that he'll be able to do that.

GRASSLEY:

Yeah. Now to General Mukasey and to Mr. Thompson, I'm not questioning Mr. Barr's truthfulness when I ask you this question, but in the past Mr. Barr opposed our efforts at criminal justice reform. Mr. Barr also had concerns about the constitutionality of False Claims Act and opposed that law. Yesterday Mr. Barr testified that he'd implement the First Step Act and had no problems with the False Claims Act. We all know that the attorney general of the United States has the duty to enforce the laws in a fair and even manner and of course without personal bias. General Mukasey, in your opinion, will Mr. Barr be able to do that? Do you believe that Mr. Barr will be able to faithfully implement and enforce the laws that he may not personally agree with?

MUKASEY:

I certainly think he will. His record shows that he's--if he adheres to one thing it is to the requirements of the law, and I will tell you in my own case I was initially opposed to some part of the First Step Act. I later became a supporter of it. So I'm assuming that he will have the same open mind, at least the same open mind that I have.

GRASSLEY:

Okay. And Mr. Thompson, along the same lines, your opinion on Mr. Barr's ability to enforce the laws fairly, evenly and without personal bias.

THOMPSON:

Senator, as you know, I was a very strong supporter of the First Step Act. If you look at what Attorney General Barr did when he was attorney general in the Bush administration and his emphasis in the Weed and Seed Program on community collaboration, his admitted--his admitted statements to Rev. Joe Lowery, as I mentioned in my opening statement, about the failure of prison--putting more people in prison to help rid our crime infested neighborhoods, he understands the need to do something more than just lock people up. So I think he will faithfully implement the First Step Act, both in the spirit and literally.

GRASSLEY:

Also do you, Mr. Thompson, since you've worked with Mr. Barr so much and knowing him as you do, would you say that he'll be independent leader of the Justice Department, that we ought to expect and--and--well, let me finish this because I want General Mukasey also to speak to it, and maybe these questions come from the fact that we recently had an attorney general that referred to himself as the wingman for the president. So what's your opinion of Mr. Barr's ability to be independent head of the Justice Department? Do you have any doubt that he'll be able to stand up to the president? So it's kind of the same question to both of you.

MUKASEY:

I haven't got any doubt at all. He's done it in the past, number one. And he isn't anybody's wingman. And I think he understands that if he ever so behaved he would come back to the department to find a mound of resignations on his desk. So I don't think he would ever do anything like that and is not inclined to do it.

GRASSLEY:

Mr. Thompson.

THOMPSON:

I agree with General Mukasey. Bill Barr understands the many policies, traditions of the Department of Justice that have stood for a separation between the department and the White House on matters of criminal investigations, decisions to indict. I don't think that the men and women that he has led over the past years in--in the Department of Justice, I think he will understand their respect for these traditions, and I think he will--he understands the nuances that lead to why we have these policies and traditions, and I think he will faithfully follow them and support them.

GRASSLEY:

Yeah. And for Ms. Cary and Mr. Thompson, I think I'll kind of answer my first question. I think you would say about Mr. Barr's fitness to be attorney general of the United States, but could you tell us some observations you've had about him that lead you to believe he's the person that you've worked with and then, in turn, to be a good attorney general?

CARY:

The year that he was attorney general, 1992, you may recall, started with President Bush throwing up on the Japanese prime minister.

(LAUGHTER)

It was--so the beginning of a rough year. As General Mukasey pointed out, there was the Talladega Prison Riots. There was the crack epidemic that Senator Durbin was talking about. General Barr yesterday was pointing out that the violent crime rate had quintupled over the previous three decades. Hurricane Andrew--you may not remember this, but Hurricane Andrew hit South Florida particularly hard and knocked out a tremendous amount of federal law enforcement resources down there, and there was great fear that it was going to become sort of a lawless place where drug dealers and the Coast Guard would not be able to control things. And then there was also the Rodney King verdict and the LA riots. So it was a very dangerous year in a lot of ways, and I remember going to a press conference we were going to have in Richmond, I think it was, with the late great Jack Kemp was secretary of HUD at the time. And as the two motorcades pulled in with the attorney general and the secretary of HUD into this public housi

ng project that we were going to talk about how to make public housing projects more safe, right before we got there there was some sort of gang violence, and the law enforcement had come in and arrested a whole bunch of people, and there was gunfire. And so as we got out of the cars they came to Secretary Kemp and General Barr, and they said it's still a little dangerous here. There could be some stray bullets. We've got two bulletproof vests for the two of you. Why don't you put these on and head up to the podium? And General Barr points at me and says, well what about her? And the agents say, "Oh, I'm sorry sir, we only have two bulletproof vests." And he says, "Okay, well Mary Kate, you take mine." And the agent said, "No, no, no sir, that's not going to happen. You take the vest. You head to the podium with Secretary Kemp." And he turns around to me, and he says, "Well this is unacceptable. You get in the car, the armored limo, and just keep your head down."

And I thought at the time, boy, that tells you volumes about him that he even noticed that I was standing there. But really what was going on--the point of the story is that it was a very dangerous place, and there were people who lived there all their lives, and we were arriving in limos and going to be able to leave, and they couldn't. And that, I think, made a big impression on everybody involved of what people's lives were like in this crazy year, of how dangerous things were, how bad the violent crime rate was, and all he wanted to do was try and help some of these people who were in these horrible situations. And I think that tells you volumes about him and his motivations and the kinds of things he tried to do as attorney general. And I think I have no concerns whatsoever about his enforcement of the First Step Act because that's the kind of person he is.

THOMPSON:

Senator, I have observed Bill Barr in problem-solving situations. Yes, he will be the leader, but he listens to people very carefully. He has an open mind. He is respectful of different opinions. And he--he has a problem-solving personality in the sense that everything is collaborative, and I think he will be a terrific leader of the Department of Justice. And I have no doubt about that.

GRAHAM:

Thank you. It's been a terrific panel. Senator Klobuchar, then we'll take a break. You all have been going at it for two hours. We'll take a 10-minute comfort break after Senator Klobuchar, and we'll plow through until we get done. Thank you all for your patience.

KLOBUCHAR:

Thank you very much, Mr. Chairman. I'm going to talk, start talking here about voting rights. I asked a few questions of Mr. Barr about this and it has been such a problem across the country.

I come from a state as you know, Mr. Johnson, with one of the highest voter turnouts, the highest in the last election and part of that is because we have same-day registration, a bill that I sponsored to bring out nationally and I looked at the numbers that show states that have that. Whether they are more red or are more blue they always are in the top group for highest voter turnout.

It makes a huge difference to allow people to vote either with an ID or with a neighbor or with some other forms of identification and so I'm very concerned about the Supreme Court's ruling of course in the Shelby case. And yesterday I asked Mr. Barone about the state election officials in North Carolina who contacted the Justice Department to express concerns about the integrity of the elections nine months before the election and about allegations of voter suppression.

So he wasn't there of course at the time but I just wondering how you think the Department of Justice responded, how they should have responded when they first heard from those state officials?

JOHNSON:

From the NAACP perspective we are extremely concerned with the lack of responsiveness from the Department of Justice. Ever since the Shelby v. Holder case was decided we knew that Section 2 would be the vehicle--vehicle to protect voters. The lack of the current administration use of Section 2 is problematic.

Mr. Barr's commending AG Sessions' tenure as AG is also concerning. His lack of clarity on how he would use the Justice Department to ensure all Americans can cast a ballot free of vote--suppression or intimidation leaves a huge question mark for us.

Any individual who serve as AG should have a primary consideration, the protection of the right to vote of all citizens. It's not a partisan issue. It should not be seen as a partisan issue. It should be something that's above partisanship.

I'm a resident of Mississippi and we've seen the--the dog whistle politics for a very long time. In fact, if you look at the history of voting in the state of Mississippi some of the languages that were used during the (INAUDIBLE) redemption and after 1865 is being used today. Some of the tactics that was used in 1870 and 1890 is being used today.

So we need a Justice Department that can rise above partisanship and appreciate that in order for our democracy to truly work all citizens should be afforded free and unfettered access to the ballot box.

KLOBUCHAR:

Very good. Couldn't have said it better. Thank you. Mr. Mukasey you and I worked together when you were attorney general and as you know we had an issue in Minnesota and the U.S. attorney left and you worked with me to get a replacement which I truly appreciated. And you we put someone good in place in the interim in the office continues to be a very strong office so thank you for that.

Could you just briefly talk about when you were attorney general did you ever say no to the White House?

MUKASEY:

Yes.

KLOBUCHAR:

Okay. Can you remember some of the instances where you maybe some of them were public?

MUKASEY:

I remember one in particular. I can't--don't think I can discuss it here.

KLOBUCHAR:

Yeah.

MUKASEY:

But it involved position that the government would take in litigation and the White House was of a particular view and the department was of a particular view and we prevailed.

KLOBUCHAR:

So you think that's an important--I had a discussion with Mr. Barr yesterday just this concept of yes, you are the president's lawyer in that you are giving advice but you are also the people's lawyer and there's sometimes where those made conflict. Do you want to just expand on that?

MUKASEY:

Yeah, I mean when--when it comes to a pure legal position and the White House is taking a policy position that affects that legal position yes, it gets very delicate and it did in the one instance that--that I mentioned. And the solicitor was of a particular view and was told basically you do what you think the proper view is and let me take care of the politics.

KLOBUCHAR:

Very good. All right. Thank you. Mr. Morial, there have been discussion, bipartisan discussion up here about the First Step Act and could you just talk about some of the steps that we are going to need to take, that the attorney general will need to take immediately to implement it because you can put all of the laws you want on the books but if you don't--

MORIAL:

Certainly and let me just reaffirm my thanks to you and every member of the committee has supported that it was a very, very long and difficult effort to arrive where we arrived. We supported it early and continued to push for its improvement but it is the First Step Act.

The important I think step for the attorney general is to get this oversight committee in place with the right people on it. And I think the most important thing that's going to be in the attorney general's bailiwick is one, organizing the U.S. attorneys who are going to be responsive to those who are going to go back to the court where they were sentenced and request resentencing.

Because the resentencing for example for the crack cocaine disparity isn't automatic. It's going to require the public defender service, it's going to require private lawyers and my hope is that the United States attorneys' offices are not going to get in the way, not going to slow down the process, are going to move with speed and dispatch to facilitate and work with if you will criminal defense lawyers to identify those who might be eligible and get the Act in implementation.

But I also think the aspect of it which involves the work of the office of Justice, the Bureau of Prisons which is the and this was a great concern under the Act, whether the Bureau of Prisons was going to have the enthusiasm and the resources, senator, to execute the ability of people to earn more good time which requires them to participate and develop release plans and take steps towards preparing themselves for release. That's an entire effort.

I think you authorized some \$350 million in order to do that. That's got to be implemented, that's got to be executed and we don't need any foot-dragging in order to do that. So I think if the committee continues to have oversight over the work on resentencing and the work on the execution of the pre-release program. And then the third element of it will certainly be and this was a great concern of ours--

I think the nominee should be asked to rescind the Sessions guidance that wherein he directed U.S. attorneys to seek maximum sentences or the maximum prosecution. So if the nominee is going to be true to, I will implement the First Step Act then a good faith effort by him would be to rescind that guidance, right, to restore the discretion of the United States attorneys when it comes to charging decisions. So there's a lot of work to be done and I would urge the committee to maintain its oversight role in ensuring that these things are executed.

KLOBUCHAR:

Thank you and I'm out of time but I wanted to thank you, reverend, for coming forward and I will ask you on the record not now, some questions about our bill that we have on stalking because I know you've been supportive of that and on the boyfriend loophole. So thank you. And Mr. Canterbury, we want to move forward on that cops bill that we have with the training and the money for the officers and thank you for your support and work on that. Thank you.

GRAHAM:

Thank you. We will take a 10-minute recess to give you a comfort break. I'm going to have to go do something else and if Senator Blackburn would be kind enough to chair the hearing until we are finished, I would appreciate it and it's been a great panel. Thank you all for coming very, very much. So 10-minute recess.

BLACKBURN:

The committee will return to order. Senator Cornyn, you are recognized.

CORNYN:

Thank you, Madame Chairman. I was just complementing Senator Blackburn on her rapid ascension to chairman of the committee.

(LAUGHTER)

I've been on the committee for 16 years and haven't quite made it there. So congratulations. Well thank you all for--for coming and sharing your--sharing your views. I can't help but comment on the stark differences that we are hearing from the various witnesses about this particular nominee. He's either the most qualified person you could ever find, or he is the least qualified person and there doesn't seem to be much room and between. But let me ask some specific questions.

First, I want to talk a second about criminal justice reform because it strikes me that of all the topics that we've dealt with here recently, that's one of the areas that brings us together. And I'll just reflect, Mr. Johnson, I remember being in Dallas Texas maybe 10, 12 years ago. I was visiting with a number of African-American pastors and I asked them, I said, "What's the biggest problem in your congregation?" And they said, "Well, it's formerly incarcerated men who have a felony on their record. And it's--they can't find a job and they can't find a place to live." And that's sort of always haunted me a little bit.

But in light of some of the great work that's been done at the state level on prison reform, and I would have to say I'm proud of the efforts made in Texas and elsewhere to try to provide people opportunities when they are incarcerated, those who are willing to accept responsibility for their own rehabilitation, that we had some remarkable successes and people who have taken advantage of the opportunity to turn their lives around. And I think we've--our view as a--as a government and as a people has changed significantly.

Mr. Barr talked about 1992 and the violent crime back then and that there was a different attitude, and I think we learn from our experience. But I want to go--General Mukasey, one of the things that you testified to, I think in a previous Congress when we were talking about criminal justice reform, you said that's really the test, the ultimate test for the success of criminal justice reform is the crime rate. I think I'm quoting you correctly. Could you explain that because there were a lot of people who want to focus on other things like incarceration rates and other issues. But the crime rate, it strikes me public safety strikes me as the most important one.

MUKASEY:

Yeah, I think that is--that is the ultimate test for this--the statute that's just been passed and for future statutes. What does it do to the crime rate? The criminal justice system is there in substantial part to protect the public. If it's doing that and the crime rate is dropping, then bravo to the experience. And to ask certain extent, it's going to be an experiment. We'll see how people do when they get out. We'll see how much money is saved, and what it can be directed toward by way of prevention, and hopefully our situation will improve.

CORNYN:

Well, fortunately in the criminal justice field, we have actually used the states as laboratories of democracy and we tried this out before we implemented it at the national level. And I think we benefited from those state-based experiences. In my state, for example, we've reduced not only the crime rate but the recidivism rate and we've--we've closed plans to--to build new prisons, to incarcerate more people.

So it really strikes me as something that is one of those unusual scenarios where basically we were able to come together, people of dramatically different ideology and orientation, and come together and do something very positive for the country. And I'm we're going to keep an eye on that, on the crime rate. To me it is a litmus test of the success of what we try to do.

Professor Turley, I wanted to just first of all complement you on your article that you wrote in The Hill and just preface that. The title of course was "Witch-hunt or mole hunt? Times bombshell blows up all theories." I've been extraordinarily troubled, frankly, by the politicalization of the Department of Justice, including the FBI. And I think you pretty much, in this polarized world we're living in, you talked about cognitive bias. And depending on the lens you're looking through, you can see a narrative, you can build a narrative that tells your story. Would you take a minute to sort of explain the--the thesis of your article and the views you express there?

TURLEY:

Thank you, senator. What I thought was most interesting about the New York Times article was actually not the point of the article, which was that the president may have been investigated under the suspicion that he could be an agent of a foreign power. But what came out to me from the article was an insight into what and how the FBI was looking at this early in the Trump administration and we also have an insight at how the Trump administration was viewing with the FBI was doing.

And this gets to the issue of cognitive bias, that it's a well-known concept that you can look at a problem with a bias where you see things that reaffirm your suspicions. But in this case, the FBI moved early on with an investigation that--that the White House was aware of. That fulfilled their--the White House's own bias that this was a deep state conspiracy and the White House pushed back. And when the White House pushed back, it fulfilled the cognitive bias of the FBI that they're trying to hide something.

And if you take a look at the timeline, you see this action and reaction occurring where each side is reaffirmed by the actions of the other side. So what the--what the column raises is a distinct possibility that we might not have Russian collusion or a deep state conspiracy, that we may have two sides that are fulfilling each other's narrative and we've gone so far down this road that it's impossible now to stop and say well, what if neither of these things actually did exist?

In economics, it's called pathway dependence that you can invest so much into a single path that you can no longer break from it. And so what the column is suggesting is that perhaps we can actually use the stories and take a step back and, instead of assuming the worst motivations by both sides, look at this as--as whether both sides were trying to do what they thought was right or reacting to what they felt was correct, but they might have both been wrong.

CORNYN:

Madame Chairman, my time is up. Could I take one more minute?

BLACKBURN:

Yes, without objection.

CORNYN:

Yesterday I was asking Mr. Barr about Rod Rosenstein's memo that's entitled "Restoring Public Confidence In The FBI." And to me one of the most encouraging things about Mr. Barr's appointment is I think he's exactly the type kind of person who could do that, having done this 27 years ago and being willing to do it again for no other reason than his desire to help restore confidence in the Department of Justice and the FBI. So if you go back even further, back when James Comey was--and the FBI were investigating Hillary Clinton's email server and he took the unprecedented step of having a press conference on July 7, 2016, at which he essentially exonerated Mrs. Clinton while detailing all the derogatory information in the investigation and then later on had to come back because of that press conference when the Weiner laptop was identified and say hey, we found some more emails.

The idea that the FBI and the Department of Justice would come so tangled up in an election and potentially influence an election is really unprecedented in our country and very dangerous, from my perspective. And then of course, when Mr. Comey was fired by the president, then--then folks on the left thought he was St. James and--after he had been the devil, I guess, previously period when he was investigating Miss Clinton. So I think--I do think there is some of that cognitive bias going on here and we need to identify it and maybe step back from it and learn from it. Thank you. you, Madame Chairman.

BLACKBURN:

Senator Hirono.

HIRONO:

Thank you, Madam Chair. Rev. Risher, I, too, have had the opportunity to meet with some of the survivors of that tragic day, and so thank you very much for your heartfelt reminder of the work that remains for us to do.

RISHER:

Thank you.

HIRONO:

Professor Kinkopf, you've written a lot about the unitary executive, and that's something that Mr. Barr subscribes to, so I found it really interesting what you mentioned today because there were a lot of questions from so many of us seeking reassurances from Mr. Barr that he would not interfere with the Mueller investigation in any way, shape or form. And today, though, you said those were the--those assurances are irrelevant because under the unitary executive theory that if Mr. Barr

were asked can the president fire Mr. Mueller, then Mr. Barr would say yes. So there goes the entire investigation. I found that to be a really interesting statement on your part. So that means that--let's say that if the president does fire Mueller, and one would say that under a normal circumstance that kind of firing could be part and parcel of an obstruction of justice, kind of an investigation. But if the entire underlying investigation goes away because the investigator is fired, then where are we? So that's

very interesting as we sought to see the kind of reassurances that would enable us to feel that the Mueller investigation is, in fact, going to be able to proceed.

So you talked a little bit about what the impact of the unitary executive--and I do--that theory--and I do understand that there's a range. It's not, you know--there's--there's a continuum there. So I just want to ask under the unitary executive theory can a president commit obstruction of justice with impunity?

KINKOPF:

So I'll answer based on the memo that--

HIRONO:

Yes.

KINKOPF:

--Mr. Barr wrote last summer because, as you say, there's a range, and so the answer would be different depending where you are on the range. The Barr memo allows that there may be circumstances where a president can be understood to have committed obstruction of justice. Now that's different from saying the president can be charged with obstruction of justice, and in fact Mr. Barr yesterday during his testimony said he sees no reason to deviate from the department's policy that a sitting president can't be indicted. But even within that construct that a president can commit obstruction of justice, it's really difficult to see on his theory how that would end up happening because he says when the president exercises a legitimate executive power, that that cannot provide the basis for an obstruction of justice charge, and therefore if he exercises his authority to fire someone, James Comey is the discussion in the memo, then that cannot be the basis of an obstruction of justice charge. If Presid

ent Trump then used his authority to fire Mueller, that, by extension, wouldn't be something that could serve as the basis of an obstruction of justice charge on the theory set forth in the memo. And I think he should be at least asked in follow-up questions whether or not he would apply the logic of the memo to that situation. And he should be asked, if that were to transpire, would he resign because I think yesterday he indicated that that would be an abuse of power, and that's something an attorney general should resign if the attorney general sees.

HIRONO:

I think you have given us a further line of questions to submit to Mr. Barr. Regarding the Voting Rights Act--so this is for Mr. Johnson and Mr. Morial--we know that after the Shelby County decision there were many, many states that passed all kinds of legislation that would be considered by a lot of us as voter suppression. And yesterday Mr. Barr testified that he would vigorously enforce the Voting Rights Act, Section 2 of the Voting Rights Act for--to the two of you. Since there has not been a single Section 2 proceeding brought by the Justice Department, what specifically could Mr. Barr--what would you want Mr. Barr to do to vigorously enforce the Voting Rights Act as he testified yesterday?

MORIAL:

I think number 1, that he should review the decision by the Justice Department to switch sides in these two cases. One has been resolved. Number 2, he should ask the Voting Section of the Civil Rights Division to present to him all instances where the Justice Department has been asked to initiate Section 2 claims. Number 3, I believe that he should investigate, evaluate and review those states that have passed voter suppression laws to determine whether, in fact, they are discriminatory, and in fact, if they are discriminatory to initiate a Section 2 claim. The issue is for the attorney general and the many competent lawyers in the civil rights division at Justice to do their job without political interference, to make recommendations to him on what steps should be taken. A lot of stuff has been put into the deep freeze in the Sessions administration because he was just not interested at all in enforcing the Voting Rights Act because he disagreed with the Voting Rights Act and had had a long

career of disagreeing with the Voting Rights Act.

Well, the attorney general does not have an option to pick or choose which laws they want to enforce. They must enforce all laws that are vigorous--vigorously because it's your job as the Legislative Branch to pass those laws. So I think that there are a number of things that the attorney general can do, and most importantly, to publicly state that he will not follow the policy of Attorney General Sessions when it comes to the entire realm of civil rights. It's important for him to be on the record as forceful as possible, but also to commit to take the necessary steps to ensure that Section 2 is vigorously enforced, and also to look at those instances where the Justice Department has either switched sides--

HIRONO:

Yes.

MORIAL:

--or refused to take a position. The case I mentioned earlier in my testimony, the Chisholm case, which was a judicial reapportionment case in which I was a plaintiff--the case was brought in 1985. It was decided by the Supreme Court in 1991--was a case where the Justice Department sided with us during the Reagan administration. And so the consistency of the Justice Department in citing--taking an affirmative stand in voting rights cases, in support of those who've been aggrieved, is something that until the Sessions administration was a bipartisan matter. And I think that this

nominee should be asked whether he is going to restore that emphasis and that integrity to the enforcement of the Voting Rights Act.

HIRONO:

Madam Chair, I'd like to ask Mr. Johnson to respond.

JOHNSON:

I agree with my colleague, but I also think he should intervene in current litigation. There are several ongoing voting right cases that's taking place across the country. Secondly, he should work to fix the issue around Section 5, the House Special Committee on Voting Rights Act will be doing hearings across the country, from my understanding. And if he becomes attorney general he should seek to also support a fix in terms of Section 5. And then thirdly, review formerly-covered jurisdictions to see if, in fact, they've made changes in their policies, practices or procedures and if those changes were, in fact, voter suppression methods so we can document the record to show that without a proactive Justice Department and law, jurisdictions will revert back to past practices of discriminatory actions.

HIRONO:

Thank you.

BLACKBURN:

I recognize myself for questions at this time and Mr. Turley, I'd like to come to you first.

You spoke last December at the Press Club about privacy rights and security in a world with changing technology and the rising use of artificial intelligence and facial recognition technology and the--the challenges that that is going to pose for the Justice Dep--Department. I think we all realize they are going to be there and we will have to be confronted and no clear answers have emerged at this point as to who owns the virtual you, you and your presence online.

And more and more now on a daily basis, we are hearing from consumers who are wanting to make certain that there are privacy protections in a digital world, in--in that virtual space and that they are for everybody and that everybody plays for the rules. So Mr. Barr is going to have to address these issues because it is going to require greater enforcement from the attorney general and I'd like to hear from you on the role that you see the Department of Justice under Mr. Barr's leadership playing as we deal with companies like Twitter and Facebook and some of these edge providers in the technology space.

TURLEY:

Thank you, senator. Of those emerging areas, facial recognition technology is probably the fastest moving and the one that has to be addressed the soonest. I've already spoken with people at Justice

Department and to see if there's any way that the privacy community and the government and private industry could find common ground here.

I think that for privacy advocates we could no longer just simply say that all facial recognition technology is an evil and we're not going to work with it. Part of the reason is that the Fourth Amendment controls the government, it doesn't control private businesses and this market has-- has progressed to the point that you are not going to get that cat to walk backwards.

I mean this is an emerging market. The Chinese have put a huge amount of investment in it. If you just land at Shanghai you will see what facial technology is going to look like across the-- around the world. So the question is how do we then married the privacy values that we have with the legitimate security interests of the government and the answer is there's a couple of things that we can do.

One is that most of this technology is going to require a databank to be used effectively including facial recognition data. We can act proactively to try to create privacy protections for the access of that information, how long that information can be stored, for what reasons it can be used.

We need to really get ahead of this and frankly, Bill Barr is a perfect person to do this because not only does he have really the law enforcement chops in terms of understanding how technology is used but he spent a lot of time in private business at the highest level. And so I can't imagine anyone better on this issue quite frankly to tackle it.

BLACKBURN:

Mr. Thompson, let me come to you with another technology question because last fall DOJ met with some of our states' attorneys general to talk about the frustrations with Google and Amazon and some of these edge providers and their failure to protect consumer data and also their anticompetitive behavior.

And one of the things that came out of this was how Google prioritizes search results, theirs to give them a competitive advantage over Yelp. So we know that these challenges are only going to be resolved if there is a multifaceted strategy that includes a partnership with our states' attorneys general and if there is enforcement by the antitrust division and Consumer Protection Branch.

So with that in mind how would you advise Mr. Barr or how do you see him moving forward at DOJ to deal with big tech and these issues that they are really confronting consumers every day?

THOMPSON:

What I see with respect to your question, senator, is that this is something number one that I really do not know a lot about this but I think the attorney general nominee if he is selected would come in and review with career Department of Justice lawyers and other professionals in the department on issue, review the issues, listen to them carefully.

This is what he has done on other issues of import. But more importantly to your question is that I think he has great experience in the past of working with joint task forces, joint efforts with state and local authorities especially the state AGs and he knows how to do this. He has done it successfully in the past and I think he would be able to work with our state law enforcement colleagues and get at the answers that were raised in your--your question. Very important, very important matters.

BLACKBURN:

And the minute that I have left and before I yield Mr. Blumenthal will be next. I just want to thank each of you for being here. And Reverend Risher, I want to thank you for your testimony in the--

I came to the Senate from the House and we have passed some of the red flags legislation that Senator Graham had mentioned that he is working on here in the Senate. We look forward to some of those steps being taken and I know that is something that's important to you. And Mr. Canterbury we always thank you for the work you do for the thin blue line.

CANTERBURY:

Thank you.

BLACKBURN:

And the good work that you all are doing there. My time has expired. Senator Harris, you are actually next. You are recognized.

HARRIS:

Mr. Morial, it's--we've heard--there's been a lot of discussion about this nominee and the book that was entitled, The Case for More Incarceration, for which Mr. Barr wrote the foreword. There has been concern about his opposition to efforts to lower mandatory minimums. And so my question to you is based on your experience as the mayor of New Orleans. During the time you were mayor you saw a 60 percent reduction in violent crime. And as General Mukasey has talked about, and others, one measure of the effectiveness of criminal justice policy is a reduction in crime.

MORIAL:

Right.

HARRIS:

So can you talk a bit about what it is that, as mayor, you did and perhaps even best practices around the country that have led to a reduction in crime?

MORIAL:

Well, thank you very much for your question, and it was a powerful moment for our community when we changed the landscape of public safety. And I might add we embarked on a plan that was comprehensive in nature. There was a law enforcement component to it, but there was also a human services and youth development component to it. And I set aside the debate between the two and said that we needed to do both. So our law enforcement component was a comprehensive reform of what was at that time a very broken New Orleans Police Department. And that comprehensive reform included weeding out corruption, dealing with a very brutal police force. It involved discipline, and firing, and remaking of how we recruited, how we trained, how we paid, how we deployed, how we used technology. It was broad-based. It was highly successful. We did not have the problems whatsoever because we also put our foot down and said we were going to have responsible and constitutional policing.

So it is important in the context of the Justice Department. And when I took office there was a Justice Department investigation of the New Orleans Police Department. And instead of fighting the investigation, instead of trying to delay the investigation, I worked with the Justice Department and presented my own far-reaching, far-ranging plan which at that time went farther--we were prepared to go farther on a proactive basis than any department at that time had gone under a consent decree. That's number 1. But number 2--and this is part of the purview because justice, in addition to its law enforcement responsibility, runs mentoring programs, programs funded by the Office of Justice Programs, in the old days Weed and Seed. We also deployed and made full utilization of all of those initiatives, too, to invest in youth development, to expand recreation, to expand after school programs, to expand youth summer jobs. It was not just law enforcement. It was not just human services. It was a combination of the

two.

So I think it's important to understand that Justice has law enforcement responsibilities, but also Justice has responsibilities with respect to investing in the community, investing in youth. I would point this out, and I think this is important. At the time--and this was during the Clinton administration--the Clinton administration worked cooperatively with us, both to help us pursue violent crime through gun prosecutions and drug prosecutions, but also invested through Weed and Seed and Office of Justice programs. Also at that time you had the community-oriented policing program, which provided us with additional resources for police technology.

So the lesson to be learned--and I would say this--the consent decrees that are out there--and this is misunderstood by people--a consent decree is by its very definition a voluntary agreement between a city and its police department and the Justice Department. And most of those consent decrees that are entered into--have been entered into in lieu of litigation that the department had the right to do. So the idea that pursuing consent decrees is, in effect, a voluntary collaboration, and I think General Sessions was against consent decrees, but offered nothing in exchange, offered no other strategy in exchange. I'm just against consent decrees because I think that they negatively affect police morale--but didn't offer another approach. We need this nominee to indicate that he's going to be committed to constitutional policing, committed to public safety, but understand that public safety, we've learned, is not just crackdown law enforcement. It's something much more comprehensive. It's something much more proactive. Yes, you've got to prosecute violent

offenders, no doubt. But you've also got to ensure that there are reentry programs so that when people come out of jail they're not apt to repeat. And that is part of, I think, a sensible, smart on crime initiative. Hope that helps.

HARRIS:

And as a follow-up to your point, some of the best and most innovative initiatives we've seen in the last few--in a couple of decades on criminal justice policy, have been the result of the U.S. Department of Justice funding innovation in a way that supports local law enforcement, local prosecutors and local community groups to create the kind of collaboration that you're talking about.

MORIAL:

There used to be a local law enforcement block grant program--

HARRIS:

Right.

MORIAL:

--that provided money, which allowed you--because state government--city governments are strapped always for resources. That created a way for you to invest in some innovation, some collaboration, some differential sorts of things. And I think justice can play a proactive smart on crime role in helping make our communities safer.

HARRIS:

Thank you. Mr. Johnson, you've testified about your concern about the nominee's statements that have been made in the past about the fact that there is no statistical evidence of racism in the criminal justice system. He did mention during his testimony yesterday and acknowledged the disparities between crack and powder cocaine enforcement but did not acknowledge or mention any other of the disparities that we've seen in the criminal justice systems, such as arrest rates that relate to a variety of crimes, but in particular drug crimes, the disparities based on race in terms of who gets what amount of bail in the criminal justice system, and of course incarceration rates, which there are huge distinctions based on race in terms of the application of sentences. So if he is confirmed, what do you believe will be the ramifications or--of his failure to acknowledge that? And what do you--what would you recommend he do, if he is confirmed, to acknowledge and to be informed about these disparities?

JOHNSON:

An individual to serve as attorney general of this nation must recognize the long legacy of race disparity. As AG, I would hope that he would really look into the credible research, and it would be obvious that in the criminal justice system there is a huge disparity. Some of that can be

accounted for based on income, but much of it is accounted for based on the race--the racial make-up of juries. It could be accounted for selective prosecution. It could be accounted for as relates to a myriad of things. And as the attorney general, I would hope he would factor in that race is a problem. We are far from a post-racial society, and we must attack problems with a racial lens because there is very little in our criminal justice system that is race neutral.

HARRIS:

And just one more question, Madam Chair. The--he did--I requested that if within a period of time, if he is nomin--if he's confirmed, that he would meet with civil rights groups to understand the ramifications of any policies. He agreed to do that within the first 120 days, if confirmed. I think that we will all expect that he will do that, and I look forward to hearing about the result of those meetings. And thank you.

JOHNSON:

Thank you.

BLACKBURN:

Senator Cruz?

CRUZ:

Thank you, Madame Chairman. Let me say thank you to each of the distinguished witnesses for being here, for being part of this hearing. I appreciate your--your testimony and wisdom and judgment. Judge Mukasey, let me--let me start with you. You have store served as a federal judge, you have served as U.S. Attorney General, as--as has Mr. Barr, and--and you have built a long and distinguished career in public service. Can you share for this committee in your judgment the importance of rule of law and the importance of having an attorney general who is faithful to enforcing the law and Constitution, regardless of party, regardless of partisan interest?

MUKASEY:

It's really the only guarantee that we have because this country is defined by and is constituted by a law, the Constitution. This--it's not based on land, is not based on blood, it's based on a law. It all started with the law. And that's what we've built this society on, the notion that you can have a society in which--that operates fairly, in which neutral principles, neutrally applied, allow people to reach their maximum potential. If that's ever abandoned, if it's ever deviated from, if it's ever perceived to be deviated from, then were lost. Then we have no--nothing to define us because we are defined by law.

CRUZ:

Now, you've testified today that--that you know that Mr. Barr is a, "Supreme--superbly qualified nominee, that he has good judgment and, just importantly, that he has the wheeled to exercise that

judgment, despite pressure from any source." Can--can you share with the committee what, in your professional and personal experience, gives you confidence that--that Mr. Barr will once again well and ably carry out the--the response ability of attorney general of the United States?

MUKASEY:

As I mentioned, he has had a past history of doing that when he served as attorney general. Notwithstanding, that a desired--there was a desired result for the White House and he kind of deflected it and, as it were, laughed it off. He is somebody who has testified here that in--in view of the fact that most of his career is the rearview mirror, he doesn't really have to concern himself with the--the possible negative consequences of resisting pressure from an administration. So that's an additional--that's an additional guarantee.

But I think the person himself and who he's been over the years consistently really speaks to that and it's not just the question of his having nothing to lose. I think that is the way he's constituted. As--as Professor Turley said, he's a--he's a law nerd, meaning he is devoted in a--in a--in a way that very few people are to what defines this country. And that's--that's what he enjoys, that's his occupation, and his preoccupation. And that is, I think, an excellent guarantee for the way he's going to approach the job.

CRUZ:

Well, this committee in particular, I think, you will find no criticism for being a law nerd. We--we tend to attract more--more than a few of them. Mr. Thompson, you--you likewise have a long distinguished honorable career, marred only by briefly being my boss at the Department of Justice, and I apologize for all of my errant mistakes since then--that time. Let me ask you the same question I asked Judge Mukasey, which is in your professional and--and personal career and interactions with Mr. Barr, what gives you confidence that--that he will once again ably carry out the role of attorney general?

THOMPSON:

Thank you, senator. And I'm very proud to have you as one of my colleagues and former alums from the Deputy Attorney General's Office. You've certainly acquitted yourself well. Bill Barr has a long history in the Department of Justice. As I said my opening statement, he has a great love for the department. I think that may be one of the reasons he wants to return to public service. He has great fidelity to the department.

But in addition to some of the, sort of, sterile constitutional questions that we've been discussing this morning, important but still sterile, in my view, he understands the traditions of the Department of Justice. He respects the traditions of the Department of Justice. He knows the impact that his decisions will have on the men and women who are in the department, who were in the investigative agencies.

And there are reasons for these policies, there are good reasons for these traditions, not the least important of which is public perception that justice in this country, investigative decisions in this

country are carried out fairly without fear or favor of--of what your status is in society and, most importantly, without political considerations. He understands this. I think this makes him superbly qualified to be, again, the attorney general of the United States.

CRUZ:

Thank you. Ms. Cary, you--you have worked with Mr. Barr some two decades. One of the things you testified about was Mr. Barr's busy schedule, long travel hours, and yet in the midst of it all, juggling to find time to be a husband and a dad to his three daughters. As--as the father of daughters myself, I--I know how difficult that can be with public life. Can--can you share with the committee some of what--just what you saw firsthand about how he managed to carry out his responsibilities and that--and still--still be there for his daughters?

CARY:

Yeah, he was a tremendous father, as we saw yesterday, grandfather, and as I said in my testimony, the fact that all three of his daughters went into the law is--is huge. My husband is hoping that our daughters do not go into the law because he thinks it's becoming increasingly difficult profession.

But--but to your question about his--his demeanor and--and the way he conducts himself, which I think is an example to--to his daughters, we were in--in Houston and we were there for some events and as he was hearing from all these victims of crime and people talking about how high the violent crime rate had gotten, can he please do something to help, he spontaneously turned around to me and said what do you say we stop by the Harris County Jail? And it was not on the--on the agenda at all. For security reasons, you would never tipoff that the attorney general was going to a prison.

And--and the FBI basically kind of rang the doorbell of the prison and said, "We're here," and did an unannounced visit to the prison. And the attorney general--the prisoners did not know who he was. I was a we didn't announce it. He went around asking these guys with their lives were like, what'd they do to get in here, what's for lunch today, where you exercise, and--and as--as much of a law nerd as he is, it--this was a very compassionate side of him.

He was not showboating, he--there was no press involved, and--and to me it showed the way he could sort of shoehorn in a quick visit so that he could get back and see his family, but yet learn about what people's lives were like, see the impact not just of the violent crime on--on the victims, but also proposed reforms on the people who were actually on the prisons. And--and I would be willing to bet there are not a lot of attorneys general, present company probably excepted, who have been inside a cellblock like that on an unannounced thing so that he could get back to his family but also continue to learn the impact of the policies in a very real way.

CRUZ:

Thank--thank you for sharing that wonderful story. And I will say his grandson Liam has become a internet sensation.

CARY:

He stole the show.

CRUZ:

Not--not seen since John Robert's son Jack did Spider-Man at his announcement and he too had a--had--had a moment of glory.

CARY:

Right.

CRUZ:

Thank--thank you to each of you.

BLACKBURN:

Senator Blumenthal.

BLUMENTHAL:

Thank you, madame chairwoman. Thank you to every one of you and thank you for all of your written testimony which I will review. We have only seven minutes. Since, a matter of fact, we're in the middle of a vote right now so, I'm going to be quick with a number of you.

First of all, Reverend Risher, thank you for being here today telling your story so powerfully and eloquently, and making sure we understand that your mother and your two cousins would be alive today if that shooter could not get his hands on a gun. A dangerous person with a gun and, I assume, that you would support the legislation that's been introduced to improve the background check system as you probably--I'm sure you know that shooter was able to take advantage of a loophole-

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RISHER:

--Yes--

BLUMENTHAL:

--In the current laws. But, more broadly, Senator Graham and I have proposed bipartisan measure to take guns away from people who are deemed to be dangerous by a court after due process. And thereby, keep guns out of the hands of criminals and other dangerous people. I hope that you can lend your voice and your face to supporting that legislation.

RISHER:

I would support that legislation, sir, yes.

BLUMENTHAL:

Thank you very much.

RISHER:

Thank you

BLUMENTHAL:

Professor Turley, you and I are in agreement that the president can be indicted. I think we're in agreement.

TURLEY:

Yes.

BLUMENTHAL:

While in office, even if the trial has to be postponed. I articulated that position to Mr. Barr yesterday and asked him to agree with me, and he wouldn't. You implied this morning in your testimony that he did agree with it. Do you have some information that--

TURLEY:

--Oh, no, actually I have no--I've never spoken to him about it. I was saying that, if you look at the history of both Mueller and Barr, I would not expect that they would try to change this long-standing policy. From a constitutional standpoint, I've never really agreed with it as I think we share this view. The Constitution doesn't say that the president's immune from indictment. But indictment goes to the president as a person, impeachment goes to the president as an officeholder. That doesn't mean that a president is going to stand trial during a term, as you've noted ably. And indeed, as--as you also know as a--as a prosecutor, it's exceptionally unlikely that--that, when you got to the point of indictment, that a president would actually face a trials, let alone incarceration during that term.

Where Bill Barr falls on this, I really don't know. I--when we talk about him being a great advocate of the unitary executive theory, this is not--I don't--I don't share Neil's view that, even though I'm not a big fan of the theory, that it is so horrific, you know. He believes in clear lines. And I share that view of what's an executive function, what's a legislative function. And when we talk about the--the avoidance doctrine of courts and trying to interpret statutes to avoid conflicts, it's important to remember that same avoidance conflict protects Congress, where I--I tend to favor in terms of Article I. Courts also avoid conflicts interpreting statutes that might impede your own authority. So, I'm not too sure where he comes out on this specific issue.

BLUMENTHAL:

Let me ask you and I'm going to ask a couple of other members, I--I am deeply disturbed, and understatement, by some of the present's comments about the FBI, about judges, about our judicial system generally. And shouldn't the attorney general of the United States be someone who stands up for, you know, it's easy to say, "I'm for the rule of the law". But, when the rubber hits the road, he should be defending all of those institutions. Do you agree?

TURLEY:

I do. What I should caution is that I don't think that Bill Barr's the type that is going to take a public stance often against the president. But he is someone who I think would be quite firm in his support with the--with the department. I don't know what the president thought he was getting with Bill Barr, but I know what he's getting. He's going to get someone who identifies incredibly closely and intimately with that department. And I think he will be a vigorous defender of it.

BLUMENTHAL:

Judge Mukasey, let me ask you--and I'm--I know that you may wish to be referred to as general.

MUKASEY:

I don't. I've always been uncomfortable with that, even when I was in the position. I thought it was weird.

BLUMENTHAL:

As Att--as attorney general--

(LAUGHTER)

--as attorney general, I was referred to general for 20 years, and I never was comfortable with it either.

MUKASEY:

In--yeah, in the U.K., they call the attorney general, attorney which seems a lot more civilized and a lot more accurate, particularly when there are people in uniform around.

BLUMENTHAL:

As--as Professor Turley pointed out in his testimony about the seal, the U.K. has a very different system. And I thought, by the way, the--what your history of the seal was a--was really very pertinent in terms of showing the differences between the attorney general as an advocate of justice as opposed to an advocate for the queen or the president.

MUKASEY:

Thank you.

BLUMENTHAL:

But, let me ask you, aren't you deeply troubled by the president's attacks on the judiciary?

MUKASEY:

I disagree with them. I think it is extraordinarily unwise for him to do it. And in that sense--in that sense, I'm troubled. Obviously, there is a--or there is or should be a political price to be paid for that. And I think we're in the process of seeing it paid to a certain extent. But there has always been a certain level of tension between, and among, the branches. How it's expressed and how--how--how civilly it's expressed is a different thing. And I--I think we're probably in agreement there. But there is always a certain level of pulling and hauling that's built into the Constitutional system.

BLUMENTHAL:

And are you not also troubled by the president's attacks on the FBI and the Department of Justice, for that matter?

MUKASEY:

The--again, the--the FBI can function on a day-to-day basis without a rooting section in the White House or a razzing section in the White House. I think that some of the--some of his criticisms of the FBI may very well turn out to be warranted. So far as the department, that's a different story entirely. And I've articulated that. I think that the former attorney general had no choice but to recuse himself. He did, and that was not something that was--that was not a criticism that ever held any water.

BLUMENTHAL:

Well, I want to, again, thank you all for being here. I have a lot more questions. Maybe I'll contact some of you privately. My time has expired and I know the acting chairwoman and I have to go vote. But thank you all for being here today.

BLACKBURN:

Thank you. Without objection, and on behalf of Senator Grassley, I would like to enter this letter from taxpayers against fraud into the record. So, ordered. Thank you, all, for being here today and for your insight into how Mr. Barr would lead the Department of Justice in what it is a very challenging time--excuse me? (WHISPERING) All right, he is in. Justice, I am getting ready to end this hearing. Mr. Coons, you are recognized.

COONS:

Thank you, Senator Blackburn--

BLACKBURN:

--You just made it in under the wire.

COONS:

Yes, ma'am. Thank you to the panel. I appreciate your patience. There have been, as you know, votes and other issues happening in other settings.

Reverend Risher, we did have an opportunity to speak during the break, but I just wanted to reconfirm my sense of loss at what you shared with us, and the fact that I had the opportunity to visit and to worship and then to travel with Felicia Sanders and Polly Sheppard. It was a blessing to get to meet you today, and I look forward to your upcoming writing for such a time as this and talking about reconciliation work together. It's important and difficult work.

And I wanted to start, if I could, by asking both you and Mr. Canterbury, with whom I've had the honor of working on other issues, about background checks in particular. We talked previously about the ways in which the NICS system doesn't currently fully work to deny access to weapons to those who should, under the law, be denied access to weapons.

Senator Toomey and I introduced a bipartisan bill in the last Congress, the NICS Denial Notification Act, that would make a simple improvement to how we enforce our current laws. If you lie and try, if you go into a gun dealership and fill out the form and say I'm entitled to buy a gun, they run the background check and come back and say, um, we're really sorry, but you've spent five years in a federal penitentiary for armed robbery, we're not giving you a gun today, and you storm out, in my home state nothing more happens. In his home state, because the state police conduct that NICS notification, they know that they can now go have a conversation with you about for what purpose were you purchasing this weapon.

This bill, if it were to become law, would require notification, simple notification to a state or local law enforcement contact. And these cases--these so-called lie and try cases are rarely prosecuted at the federal level, partly because of a lack of knowledge, partly because of a lack of resources.

Mr. Canterbury, I'd be interested--I'm grateful for what I understand is the FOP's support for the concept in the bill. I wondered if you'd be willing to advocate with Attorney General Barr, should he be confirmed, for the resources to enforce lie and try laws and to make sure that our NICS system is working as it should.

CANTERBURY:

Absolutely. We've been very critical of the lack of resources for the NICS system and the fact that a lie and try normally goes without prosecution. So, we--you know, we've supported that bill in the past. We're with you and Senator Toomey on that. And obviously, with that will come the necessary appropriations and authorization to enforce.

COONS:

That's our hope. Reverend Risher, would it have made any difference in the Dylann Roof case if he'd been denied the opportunity to purchase a weapon?

RISHER:

Yes, it would have made a difference. I believe if he was not able to secure his gun at that particular day, that maybe tragedy in Charleston may not have happened. One of the things that we are up against is the three day waiting period that I know that needs to be expanded in order to be able to have a complete background check. And I think things would have been different if those things were in place at the time he bought the gun.

COONS:

Thank you, reverend.

As the co-chair of the Law Enforcement Caucus, I intend to work in this Congress as I did in the last to try and find ways that both parties can support that would strengthen law enforcement and our system of denying access to weapons to those who shouldn't have them.

Professor Kinkopf, if I might, there was some vigorous back and forth about the unitary executive theory. We could have a very long conversation about this, but I'm just going to ask a focused question. Tell me specifically, the unitary executive theory is just that. It's theory. It's not currently the law of the land. Am I right about that?

KINKOPF:

That's correct. In fact, the Supreme Court has rejected it repeatedly in every case beginning with Humphrey's Executor.

COONS:

Yet, you suggested that if we were to have an attorney general with a very expansive view of executive power, it might have some negative implications and it might have some negative implications that would have some current relevance. Could you just explain that just a little bit more?

My superficial and ill-informed view of this is that the founders did not actually say all executive power is given to the president, that it was the executive power, and then there are examples of ways in which executive power is actually shared with other branches historically. I don't want to

get into a wonderful law nerd fight, but I'm interested in what are the practical implications if we have an who has a very broad and expansive view.

My predecessor, Senator Biden, when he was Chairman Biden, although he was very complimentary of Mr. Barr, did express real concern about how broad his executive power theory was.

KINKOPF:

Right. So that reading of the executive vesting clause was argued by President Harry Truman in the steel seizure case, and specifically rejected by the Supreme Court. But that didn't kill it. It keeps coming back. Lawyers in the Justice Department earnestly believing in it, applied it in the Torture memo, most infamously. So it's something we keep hearing. And the Torture memo is a good example in the sense that it illustrates that much of what the Justice Department does never gets into court, right, and so the attorney general is such an important position because very often the attorney general is the rule of law. It is only the attorney general's willingness to not only stand up for what the Constitution says, but to recognize what the Constitution actually says. I have no qualms about William Barr on the first score. It's on the latter that I have real trouble.

And so the attorney general is a crucially important figure from that standpoint for issues we can't even begin to contemplate, and we may never know about. But as the issues we do know about, that we can be quite certain, and even issues that may end up in court one day, that role is crucially important. Suppose the president decides he wants to tell the Federal Reserve how to run monetary policy. Now that's something that might end up in court, but the Myers' case, sort of the first case of the modern approach to the president's removal power, is a case where Woodrow Wilson fired Frank Myers, the postmaster first class in Portland, Oregon, right, while he was president. His presidency ended in 1921. The Myers' case was decided by the Supreme Court in 1927. Can you imagine six years of a cloud hanging over the independence of the Federal Reserve? So even if ultimately the Supreme Court vindicates the proper view of the Constitution, we have potential enormous chaos in the markets, and that's just one example of one independent agency and the important role it plays in our lives.

COONS:

(INAUDIBLE) And you previously cited a list of independent agencies and Humphrey's Executor, and this is a line of questioning I pursued with our most recently confirmed Supreme Court justice. I am very concerned about how this view, which begins with a Scalia dissent and now has expanded significantly in terms of its adherence, what its real consequences might be. If I might, with the deference of the chair, ask one last brief question.

BLACKBURN:

Very brief--

COONS:

Very brief (INAUDIBLE)--

BLACKBURN:

--because I've not noted.

COONS:

Mr. Morial, about 67,000 Americans every year are dying of overdoses. Mr. Barr once said I don't consider it an unjust sentence to put a drug courier in prison for five years. The punishment fits the crime. I've come to the conclusion we can't incarcerate our way out of the opioid crisis. Do you believe Mr. Barr will advance policies to help those suffering from addiction get the help they need without needlessly prosecuting and incarcerating large numbers of low-level drug couriers?

MORIAL:

I don't think we heard anything from him--I wasn't here yesterday--or anything in his record that would suggest that. I think it's going to require strong congressional oversight. It's not the--if the--the way we treat the opioid crisis mirrors the way we treated the crack crisis. We're just continuing the ill-advised policies of mass incarceration. And they certainly do not work, particularly for the user class, the user class. And what we did in the crack cocaine crackdown is it was users who were incarcerated for 18 months, two years, three years. Sometimes they repeated, and they went back to jail a second time. And the opioid crisis is an opportunity, now that we're losing 60,000 people a year, more than we're losing to gun violence, to break from those policies and treat the opioid crisis for what it is. It's a public health crisis, just like the crack and cocaine crisis. These are people with deep problems of substance abuse. It's not to exonerate the pusher. It's not to sanction it. But it is to come up with a more intelligent approach. So I don't know if the nominee is there if--and I think that this Congress and this committee is going to have to force him to get there.

COONS:

Thank you, Mr. Morial. Thank you to the whole panel. Thank you to the chair for your forbearance.

BLACKBURN:

And we thank you all for helping to give us a clearer picture of what you perceive to be the judgment and the understanding and the commitment of Mr. Barr, and this concludes the hearing to consider William Barr as attorney general. I will remind the senators that the record will be open until 5:00 p.m. on January 22 to submit questions, and we request your timely response. This hearing is adjourned.

List of Panel Members and Witnesses