

Merrick Garland on the hot seat

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By Terry A. Hurlbut

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Merrick Garland



on the hot seat

Attorney General Merrick Garland has placed himself on the hot seat. None of his predecessors in office have done anything comparable (although John Mitchell, during the Nixon administration, came close!) His latest gambit now has even his boss disavowing him and other prominent Democrats barely managing a kind word. Furthermore, he has split even the Mainstream Media over his laying on of the Trump Raid.

What they're saying about Merrick Garland

The Washington Post tried to portray Merrick Garland as a good public servant who “triggered a political firestorm.” They even said he had pledged to de-politicize the Department of Justice. That might have been impossible on its face. But the Trump Raid is only the *latest* in a *series* of overtly political actions this Attorney General has taken. The *Post* is silent about that, preferring instead to discuss Big Bad Trump and how Merrick Garland succumbed to pressure to Do Something! Now! Today! This instant!

Of *The New Yorker's* screeed, the less one says, the better. “Silence is not an option,” they say, referring to his habit of giving the typical prosecutor’s answer, “I don’t comment on pending cases,” or some other variation on that theme. Essentially *The New Yorker* says he

has a tiger by the tail, and in career terms it's do or die.

The Tennessean (Nashville, Tennessee) printed a column that, unlike these other pieces, takes Merrick Garland somewhat to task. Columnist Cameron Smith simply refuses to believe that Title 18 USC Section 2071 was all there was to it. No matter what Marc Elias says,

The media is missing the really, really big reason why the raid today is a potential blockbuster in American politics. 🖱️ pic.twitter.com/3Bdl9NA9Az

— Marc E. Elias (@marceelias) August 9, 2022

a document mishandling case will not justify the Trump raid in the public's mind. Particularly since Garland's Democratic predecessors pursued then-Candidate Trump on a basis they knew, or should have known, was false.

The New York Post went further yesterday. If Merrick Garland doesn't talk fast about why he laid on the Trump Raid, he just re-elected Trump.

Shameless apologists

In contrast, Jennifer Taub at *Slate* offers a rah-rah propaganda piece. To her, whether anything like this has ever happened before, the country needed to make it happen. One must wonder how she would feel if it happened to Hillary Clinton, or Barack Obama. Or how she might feel if it happens to Hunter Biden, or his father. This illustrates the worst part of the American political divide. On the other side, some people are such monsters that they no longer deserve the protections of the Constitution. When they say that, they say that *we*, who love our freedom, are the monsters.

Mark Weaver, writing in *Newsweek* as ex-Justice Department spokesman, is not so ready to throw caution to the winds. For one thing, he says that even to say the FBI was looking for mishandled documents was illegal. (Yesterday, CNN had quoted three "Messrs. PFWTS" with that leak. "PFWTS," pronounced "Piff-Wits," means Persons Familiar With The Situation.) Second, partisanship has so colored the investigation that Merrick Garland can do only one thing. To save the credibility of his office and Department, he must appoint a special prosecutor.

Sorry, Counselor Weaver, but a special prosecutor won't serve this time. Who shall nominate him but Biden, whom Weaver admits is the least popular President in "generations"? (*CNAV* would say *history*.) What kind of Senate shall confirm him, but a 50-50 Senate with a cackling maniac casting the tie-breaking vote?

Another insight on motive

The motives of Merrick Garland appear to be legion. Mr. Weaver, for instance, reminds us that the Senate Republican Conference did Merrick Garland out of a Supreme Court seat. Or so Garland would see it, and that would give him a motive for petty revenge.

Andrew McCarthy, writing in *The New York Post*, doesn't buy the Title 18 USC Section 2071 explanation. To the Marc Eliases who say this was how Garland was going to disqualify Trump from running again, McCarthy says:

I doubt that. The Justice Department well knows that the qualifications for a presidential candidate are set out in the Constitution. They may not be altered by statute, precisely because the Framers did not want the executive branch to be dominated by the legislature, as would happen if Congress could disqualify incumbent or potential presidents simply by passing a law. The Constitution's qualifications for the presidency are minimal – one must be over 35 and a natural-born citizen. Being a felon is not a disqualification, so even crimes potentially far more serious than mishandling classified information are not a bar to seeking the presidency.

McCarthy goes on to say that the only way to disqualify a President, Vice-President, or civil officer from serving again is through impeachment. The Democrats had that chance, and blew it.

Is Merrick Garland trying to build a January 6 case?

McCarthy says the FBI were fishing for tasty ones relating to the January 6 event. That would include a showing that Donald Trump knew that the Election of 2020 was fair, "the most secure in history," all the things the apologists for that election have said and keep saying. And in the face of what the Democrats call absolute fact, Trump tried anyway to subvert the Congress' counting authority.

That, says McCarthy, explains other warrants targeting those closest to Trump. And it explains the raid.

But when he says that, McCarthy makes the conduct of Merrick Garland worse. We hear second-hand that a warrant exists. Apparently the agent leading the raid showed it to one of Trump's attorneys, then took it back. *They did not leave a copy.* We keep hearing that "a federal judge" issued it. We don't hear who. Two candidates exist, but for any warrants they issued, they sealed the supporting documents. *So we don't even know that any of these is **the** warrant.*

So how do we know that Merrick Garland didn't draw up a "warrant" on his own? And if what that agent showed to Trump's lawyer didn't mention the January 6 event, and since Trump turned those National Archives boxes back over to them back in January, what did they take, and why? *How, in short, do we know that Merrick Garland did not simply draw up a "writ of assistance" letting the FBI seize anything and everything they might think could nail Trump?*

Definition

A *writ of assistance* is a general search warrant that *does not* specify the place or object of search. In colonial days, King Charles II used them extensively. The first challenge to them came from James Otis, in the Superior Court of Massachusetts in February 1761.

The Constitution makes writs of assistance *illegal* and *unconstitutional*. The Fourth Amendment sets forth three requirements for any search or arrest warrant. They are probable cause, support by oath or affirmation, and *particular description* of the place and object of search.

Violations of the Constitution and of the Constitutional oath

Every civil or military officer (or military enlistee!) of the United States swears an oath to

support and defend the Constitution of the United States against all enemies, foreign and domestic.

Your editor swore that oath as a “house officer” at the Nashville Veterans’ Administration Medical Center. He swore it again when he “did the Census” in 2000.

Merrick Garland has breached the Constitution in several ways. First, given that Trump was cooperating with the National Archives, Merrick Garland did not have probable cause. Second, again, we don’t know whether any federal magistrate judge has seen anything to establish probable cause. The allegation that Bruce Reinhart, former staff counsel for Jeffrey Epstein, is that “federal judge” does not convince CNAV. (Judicial Watch seems to think a magistrate judge in southern Florida *did* issue a search warrant. So they have filed a motion to unseal it.)

Furthermore, if Andrew McCarthy is even half correct, that warrant (if it is one) violates the “particular description” clause. Courts routinely *exclude* evidence that police seize that does not appear on a warrant as an object of search. This Exclusionary Rule has defeated many a drug prosecution.

Also, as Gov. Ron DeSantis (R-Fla.) pointed out yesterday, we see from Merrick Garland *inconsistent application of the law*.

The raid of MAL is another escalation in the weaponization of federal agencies against the Regime’s political opponents, while people like Hunter Biden get treated with kid gloves. Now the Regime is getting another 87k IRS agents to wield against its adversaries? Banana Republic.

— Ron DeSantis (@RonDeSantisFL) August 9, 2022

Finally: Rep. Scott Perry (R-Pa.-10th) reports that three FBI agents accosted him and seized his cellphone. His colleague Lauren Boebert (R-Colo.-3rd) says this happened after he filed Articles of Impeachment against Merrick Garland.

Rep. Scott Perry files articles of impeachment against Merrick Garland.

Garland sends the FBI to retrieve his private cell phone.

This is America, and these Gestapo tactics are not welcome. There will be a reckoning.
<https://t.co/747N6KLdT9>

— Lauren Boebert (@laurenboebert) August 9, 2022

Disclaimers

CNAV has mainly repeated various allegations, testimonials, and opinions from others. But in addition, CNAV has drawn one conclusion others have *not* drawn from the available evidence. Specifically, we suspect Merrick Garland *did not* go to a federal judge for any warrant for the Trump raid. We remind our readers of Carter Page’s experience with lacking, or at least invalid, warrants. Furthermore, Scott Perry made a serious allegation against the FBI that the FBI *will* have to answer. And that allegation is of behavior *consistent with* raiding the Trump mansion on nothing more than a “writ of assistance.”

If the Attorney General, or any official spokesperson for him, or an officer of the United States District Court for the Southern District of Florida, or anyone else who cares to claim any knowledge of this matter, wishes to dispute the allegation or any other suggestion CNAV has made, let such person(s) leave a comment(s). The comment space is always open, subject to administrative moderation to screen out obscene language, off-color images, “spam,” etc.

Furthermore, if any editorialist whom CNAV has quoted, believes CNAV has misrepresented his/her work or otherwise treated him/her unfairly, such a person may *also* leave a comment.

Anyone who does leave a comment, may expect *some* reply. But the usual aphorism applies:

| If you can’t stand the heat, stay out of the kitchen!

Update: Merrick Garland must answer to a judge

We now know that Judge Bruce Reinhart was in fact the magistrate judge, and at least one of the warrants he issued last Friday was/were the warrant(s) relevant to the Trump Raid. Judicial Watch filed a motion to unseal the warrant(s) and supporting affidavits and other evidence. Now Judge Reinhart has ordered that the government respond to the motion.

On or before 5:00 p.m. Eastern time on August 15, 2022, the Government shall file a Response to the Motion to Unseal. The response may be filed *ex parte* and under seal as necessary to avoid disclosing matters already under seal. In that event, the Government shall file a redacted Response in the public record. If it chooses, the Government may file a consolidated Response to all Motions to Seal.

Separately, the White House continues to disavow any prior knowledge of the raid. CNAV takes that with a grain of salt and remembers this famous line from episodes of a memorable television program from the Sixties and Seventies:

As always, should you or any member of your I[mpossible] M[issions] Force be caught or killed, the Secretary will disavow any knowledge of your actions.

“The Secretary” or “Person on the Tape” from Mission: Impossible

Donald Trump disputes that disavowal.