

WHY MERRICK GARLAND IS A BETTER ATTORNEY GENERAL PICK THAN YOU THINK

Politico reports that, Joe Biden will pick Merrick Garland to be Attorney General. As I was discussing this morning, it was fairly clear that Biden was delaying this decision until after the Georgia race, which made it clear that Garland was likely going to be his choice if Dems took both seats. Pending Biden's decisions on other positions, this pick is better than you think.

First, Garland's resignation from the DC Circuit opens up a judgeship that Biden can fill right away, with confidence his judge will be confirmed. He is likely to pick someone far more liberal than Garland. The candidate will almost certainly be a person of color, probably a Black woman. And she's likely to be in her 40s. In short, Garland's resignation allows Biden to start counteracting the damage Trump has done to courts right away, and in the second most important court in the country. Biden will start his Administration with an important judicial appointment that will likely have an impact for decades.

The other positions that matter are Deputy Attorney General – who is the person who runs DOJ on a day-to-day basis – and the Assistant Attorneys General, especially at the Criminal Division and Civil Rights Division. Reporting has said that Biden will emphasize diversity in these roles, and he's likely to pick people to Garland's left (because most candidates will be to his left). If that is right, then it means the people running DOJ day-to-day will be more liberal Democrats, with someone who is viewed as a well-respected, fairly non-partisan person leading the department.

In general, that will give Republicans confidence that Biden is not simply replacing a hyper-partisan Barr with someone as partisan as Barr was, even while ensuring that the people who do much of the work will be solid liberals.

I also think this makes it *more* likely that DOJ could investigate and prosecute Trump. As AG, Garland would only have oversight over a select set of decisions in such an investigation. For example, he would likely have to approve subpoenaing Trump Organization to figure out if Trump got a bribe via an Egyptian bank during 2016 (though such a subpoena would be easier to do after Trump is out of office and if New York State charges other corruption crimes). The most important step Garland would have to approve would be any charges of Trump (or presumably those close to him).

But Garland would not be involved in the day-to-day investigation. He would sign off on any major steps against Trump, but prosecutors well below Garland's level will conduct the investigation (including investigations already in process that implicate Trump).

That's honestly how Democrats should prefer any prosecution of Trump, that they be sufficiently well-predicated and substantiated enough to get Garland's blessing. And if any hypothetical prosecution of Trump does have his blessing, it'll be more likely to be viewed as a legitimate prosecution, not payback.

My biggest concern about this appointment is criminal justice reform (something that would be pursued in the Criminal and Civil Rights Divisions). One item of note, however: Garland has been recusing on death penalty cases in recent weeks, obviously in anticipation that he might get this appointment. One reason he would do so is an expectation that Biden might change policy significantly in this regard. At the very least, it suggests it is something that has come up in conversations between the two.

Garland is not my first choice: Doug Jones would

have been. But there are advantages this appointment gives Biden that Jones does not.

Update: And here are those other positions.

Biden is expected to announce Garland's appointment on Thursday, along with other senior leaders of the department, including former homeland security adviser Lisa Monaco as deputy attorney general and former Justice Department civil rights chief Vanita Gupta as associate attorney general. He will also name an assistant attorney general for civil rights, Kristen Clarke, the founder of Lawyers' Committee for Civil Rights Under Law, an advocacy group.

Gupta and Clarke are precisely the kinds of people who will attend to civil rights issues. It will genuinely be exciting to have the two of them working on these issues, as both are superb (as someone noted on Twitter, Clarke's pinned tweet right now is about her lawsuit against the Proud Boys for damaging a Black church in DC).

In addition to being Obama's Homeland Security Assistant, Lisa Monaco was also a top lawyer at DOJ, including at FBI. I think she'll bring real weight at FBI, without needing to swap out Chris Wray. Ironically, she is the one person in Obama's orbit who had a direct role in Mike Flynn's efforts to undermine Russian sanctions (which she largely imposed), because Tom Bossert consulted with her on how the Russians were responding to the sanctions and then reported back to his bosses, including Flynn, minutes before Flynn called Kislyak.