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Merrick Garland was historically snubbed — but he's emerged more respected than ever

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If the secret to life is good timing, then Judge Merrick Garland was the right man at the wrong time. Garland will be remembered as the Supreme Court nominee who dangled in the wind for eight months in 2016, waiting for a Senate hearing that never came. To Democrats, it was an outrage and a raw display of political power. To Republicans, it was an election-year gamble that paid off. Four years later, with the nomination of Judge Amy Coney Barrett, his name is back in the headlines — once again the rallying cry for a process critics say has been corrupted by partisanship and hypocrisy. “He is a martyr of the judicial wars,” says Ilya Shapiro, author of [“Supreme Disorder: Judicial Nominations and the Politics of America’s Highest Court.”](#) In the nation’s history, Garland’s nomination was one of only 10 that the Senate refused to consider.

Even Republicans who blocked Garland’s confirmation never had a bad word to say about the man. In fact, they made a serious effort to recruit him as director of the FBI after President Trump fired James B. Comey in 2017 — arguing, without irony, that they wanted a man of unimpeachable integrity who would receive bipartisan support in the Senate.

Garland declined and stayed on the U.S. Court of Appeals for the District of Columbia Circuit, the second-most-powerful court in the country. The past four years have been an ongoing vindication, of sorts, filled with honors and accomplishments. Most failed confirmations shrink the person; Garland may be the first in modern history who emerged with his reputation not only intact but enhanced.

He has never publicly addressed the ordeal. The closest he came was in February of this year, when [he passed the gavel of chief judge](#) to one of his colleagues but remained on the court.

“For all of us, judges and staff alike, the past seven years have been filled with everything from disappointments to family health scares to family tragedies,” he said. “I have just been overwhelmed by the way in which the members of our court family have pulled together at such times — pitching in to get the work done, donating money or leave, or just offering moral support. If I were the kind of person who teared up when speechmaking, I would be tearing up now.”

Timing is everything. Had Justice Ruth Bader Ginsburg lived a few more months, a vacancy on the Supreme Court would have happened after the election and without bringing Garland's name into the endless debates about fairness and precedent. Garland, as is his habit, did not comment for this article.

“He certainly was disappointed and thought it was unfair,” says Judge Laurence Silberman, a close friend who serves on the appeals court alongside Garland. “I tried to convince him it wasn’t personal. This was strictly a party-line decision, and he’s recovered from it.”

Still, it stung. Garland had been shortlisted twice before by President Barack Obama, who nominated Sonia Sotomayor and Elena Kagan instead. Widely respected as a centrist, Garland's 2016 nomination to replace Justice Antonin Scalia was, in part, an appeal to Republicans: If Hillary Clinton became president, they believed she would nominate a far more liberal judge for the open seat. There was even a plan to persuade senators, if Clinton won, to confirm Garland in the lame-duck session before the inauguration.

It was all for naught.

After Trump won, Garland — who typically works 10 to 12 hours a day — took some time off. He and his wife, Lynn, hosted a few dinner parties to thank friends, colleagues and former law clerks who had fought for his confirmation. Silberman and another colleague on the appeals court, Judge David Tatel, hosted a dinner in January 2017 at the Metropolitan Club to welcome him back to work.

Garland threw himself into the court, where he has served as a judge since 1997. “He is very, very good at it,” Tatel says. “He’s a wonderful, easy colleague to work with. It was that way before the nomination, and it’s been that way ever since.”

Adds Silberman: “He’s a very serious man who has always regarded the role of a judge as a culmination of his profession.”

Then, a month after Trump appointee Neil M. Gorsuch was confirmed instead, Garland's name popped back into the news in an unexpected way. “Instead of a special prosecutor, @realDonaldTrump should nominate Merrick Garland to replace James Comey,” Sen. Mike Lee (R-Utah) tweeted. Senate Majority Leader Mitch McConnell (R-Ky.) weighed in, saying he had encouraged the president to nominate the man he had blocked for the Supreme Court. “I think it would make it clear that President Trump will continue the tradition at the FBI of having an apolitical professional,” McConnell told Bloomberg News.

What seems like a far-fetched idea at the time was actually a serious bid to recruit Garland, a former federal prosecutor who supervised the Oklahoma City bombing investigation. Then-Deputy Attorney General Rod J. Rosenstein personally approached Garland to ask whether he wanted to be considered for the job. The case for Garland was strong: “Intellectual acuity; high-level federal law enforcement experience; familiarity with national security issues; reputation for integrity; commitment to the principles of the Department of Justice; bipartisan support in the Senate,” says someone familiar with the selection process who spoke on the condition of anonymity because they were not authorized to speak about it publicly.

There were other candidates, but Garland probably would have been easily confirmed by the Senate and led the FBI during the height of Robert S. Mueller III's investigation — which leads down another trail of What Ifs.

“We discussed it, and my advice was that it would be good for the country but not for him,” Silberman says. “It was primarily a management job, and his interest is in policy and law.”

There is a less generous theory about the offer: Had Garland taken the FBI job, it would have opened a seat on the appeals court, giving McConnell another opportunity for a lifetime appointment to the second-most-powerful court in the nation. In any event, Garland declined; the job ultimately went to former Justice Department official Christopher A. Wray.

Instead, the judge launched new initiatives to improve the court and its workplace. He allowed for live-streaming of oral arguments. He developed a policy for court cybersecurity. He revamped the way law clerks are recruited, giving law students a fairer process to be considered for the prestigious jobs. Chief Justice John G. Roberts Jr., who served with Garland on the appeals court, named him to chair the executive committee of the Judicial Conference, which oversees the federal judiciary's ethics and policy.

Most noteworthy, Garland led the initiative to overhaul the system for reporting misconduct and sexual harassment in the federal court system. "Judges are used to having their own chambers be their own fiefdom," says Jamie Gorelick, a close friend from college who was Garland's boss when they worked at the Justice Department. Charges of sexual harassment, she adds, are so serious that they should not be left to the discretion of individual judges.

There were personal things, too: He hosted monthly lunches for judges with speakers outside the legal profession to broaden their worldview. And every year, Garland held an Employee Appreciation Day for staff at the courthouse.

"The bottom line is that this is one of the finest federal judges in the country," Tatel says. "He was before this all happened, and he is now still. And he also happens to be a wonderfully decent human being."

Even the most dogged reporter is hard-pressed to find a discouraging word about Garland. He may have — the details are fuzzy — been disqualified from a foot race in elementary school. And he cannot be trusted around an office candy jar filled with chocolate.

"In my office, his then-secretary would fill the bowl with Hershey's Kisses or other chocolates, and he would just polish them off," Gorelick says. "I mean, he would eat all of them."

Other than that, he's a devoted husband ("I want to thank Lynn, who is responsible for every good thing in my life," he told colleagues in his February speech) and a father of two daughters he dotes on. He has to be dragged out of the office to have fun: Skiing, a little tennis or gardening. He's tutored students at a D.C. school for two decades, something he's continued remotely during the pandemic for his current charges, two sixth-grade twins. His favorite dish is bluefish.

The worst thing anyone said for this article was that he was "not really a colorful guy."

Garland's court is widely regarded as the home of future Supreme Court justices: Roberts, Ginsburg, Clarence Thomas and Brett M. Kavanaugh all served there before their nominations. (When Obama picked Garland in 2016, Kavanaugh called him "supremely qualified" and a "role model to me in how he goes about his job.")

But conventional wisdom says Garland, 67, will not get another chance. Those seats now go to younger judges in their 40s and 50s who will hold the lifetime appointment for decades.

In his February "pass the gavel" speech, Garland said he first walked into the courthouse in 1980 as a young Justice Department attorney.

"This has always been more than just a building to me," he told his colleagues. "It has been a place to revere for the dedication shown by its occupants to the rule of law. Even now, so many years later, coming to work in this temple of justice never ceases to fill me with awe."

