

**Giglio Feds:**

**The void of ethical leadership within federal law enforcement**

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Fidelity. Bravery. Integrity. Three little words that mean a lot ethically. These words are the motto of the Federal Bureau of Investigation.<sup>1</sup> Three little words that mean nothing to the leadership of that agency as their actions speak instead to their antonyms of Infidelity, Cowardice, and Treachery.

The principles of fair play within the legal process and investigating crimes as opposed to individuals are important tenets of our Anglo-American legal tradition. The doctrine of *habeas corpus* i.e., present the body. This means that providing the evidence of the crime is fundamental of our understanding of the way legal matters should be conducted ethically. We seek the perpetrator of the crime, not seek the crime that an individual has committed, especially when, due to the vastness and vagueness of the criminal code, the average American professional “likely committed several federal crimes day.”<sup>2</sup> In fact, in Harvey Silverglate’s book, *Three Felonies a Day: How the Feds Target the Innocent*, he quotes former Attorney General Robert H. Jackson, who said that the federal law books are “filled with a great assortment of crimes [and a prosecutor] stands a good chance of finding at least a technical violation of some act on the part of almost anyone.”<sup>3</sup> This is why our criminal justice system is supposed to be crime-focused, not target-focused.

This paper will examine the ethical and legal standards for investigations and criminal proceedings and evidence how federal law enforcement is violating those standards, potentially to a level that could lead to the inability of these agencies to be credible enough to successfully prosecute legitimate offenders.

### **The Supreme Court and Ethical Behavior in Law Enforcement**

The Supreme Court of the United States (SCOTUS), as the final arbiter with regards to appeals within the United States has heard many cases in relation to ethical behavior related to law enforcement in general. These cases have revolved around matters of integrity, ensuring due process, behavior whilst undercover, and corruption. Much of the precedent set has been built on a foundation of prior precedent.

#### Due Process

Due process, in its simplest of understandings, is the right to be treated fairly by government actors. This has clear ethical connotations. The right to due process under the U.S. Constitution is found in two separate amendments. The Fifth Amendment requires that no one shall be “deprived of life, liberty or property without due process of law” by the federal Government.<sup>4</sup> The Fourteenth Amendment, uses the same eleven words to incorporate the same right to deny the ability of the government to violate an individual’s right to life, liberty, and property to the States.<sup>5</sup>

Procedural Due Process goes back to Magna Carta (1215).<sup>6</sup> However, there is debate over the issue as to whether the right to substantive due process exists. For example, Justice Clarence

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<sup>1</sup> “Mission & Priorities,” accessed November 11, 2022, <https://www.fbi.gov/about/mission>

<sup>2</sup> *Three Felonies a Day: How the Feds Target the Innocent*, 1st ed. (New York: Encounter Books, 2009), xxx.

<sup>3</sup> Ibid.

<sup>4</sup> U.S. Constitution, amend. 5

<sup>5</sup> U.S. Constitution, amend. 14, sec. 1

<sup>6</sup> “Charter of King John of England (1199–1216), Granting Liberties to the English People (‘Magna Carta’): Runnymede, 15 June 1215.” Western Manuscripts, 1215).

Thomas, wrote "the Fourteenth Amendment's Due Process Clause is not a secret repository of substantive guarantees against unfairness."<sup>7</sup> However, others believe that the Due Process Clause does include protections of substantive due process. Justice Stephen J. Field wrote that "the Due Process Clause protected individuals from state legislation that infringed upon their 'privileges and immunities' under the federal Constitution."<sup>8</sup> The following cases guide our understanding of due process.

### *Napue v. Illinois*<sup>9</sup>

In the case of *Napue v. Illinois*, the principal witness for the State of Illinois testified in court that he had received no promise of consideration in return for his testimony, perjuring himself. The prosecution failed to correct this false testimony. Other evidence was introduced that the public defender had promised "to do what he could" for the witness. Despite this, SCOTUS held that this additional evidence did not "remove the taint" of the false testimony, despite it only affecting to the credibility of the witness, and that the failure to correct the testimony violated the petitioner's due process rights.

### *Brady v. Maryland*<sup>10</sup>

Following on from *Napue* came the landmark decision of *Brady v. Maryland*. In this case, evidence favorable to the accused, who confessed to murder but claimed to be a party to it, (rather than the principal), was suppressed until after conviction and sentencing. After the petitioner learnt of this evidence, he was allowed to appeal only his punishment. While SCOTUS agreed that his rights were not violated by only allowing him to appeal his punishment, rather than his conviction, his due process rights were violated by suppressing the exculpatory evidence in the first place.

Out of this decision, two major procedures became practice. These are Brady motions and Brady lists. Brady motions are now standard pretrial motions where all exculpatory evidence held by the prosecution must be released to the defense.<sup>11</sup> A violation will occur if the evidence might have changed the course of the trial, even if the prosecution acted out of ignorance or incompetence, rather than intent.<sup>12</sup> Brady lists are opposed by police unions, as they are not always correct and can damage an officer's career, however these are lists of officers who have damaged their credibility, either by lying in court or through their actions, and are unable to testify in court as their lack of credibility will potentially jeopardize prosecutions.<sup>13</sup>

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<sup>7</sup> *Perry v. New Hampshire*, 565 U.S. 228, 249 (2012), in LexisNexis Academic, <https://advance-lexis-com.eu1.proxy.openathens.net/api/permalink/e0e41189-74a6-4752-8358-32f19581117c/?context=1516831>

<sup>8</sup> *Slaughter-House Cases*, 83 U.S. 36, 94-128 (1872) in LexisNexis Academic, <https://advance-lexis-com.eu1.proxy.openathens.net/api/permalink/a5cef3d5-476c-4095-8676-97f2c0c0264d/?context=1516831>

<sup>9</sup> *Napue v. Illinois*, 360 U.S. 264 (1959), in LexisNexis Academic, <https://advance-lexis-com.eu1.proxy.openathens.net/api/permalink/c9b6e086-861b-42b9-804d-e8c8136d4413/?context=1516831> (accessed November 11, 2022).

<sup>10</sup> *Brady v. Maryland*, 373 U.S. 83 (1959), in LexisNexis Academic, <https://advance-lexis-com.eu1.proxy.openathens.net/api/permalink/631f00e3-c6d5-4081-a2df-fd7c43c79eaf/?context=1516831> (accessed November 11, 2022).

<sup>11</sup> Joycelyn M. Pollock, *Ethical Dilemmas and Decisions in Criminal Justice*, 10th ed. (Boston, MA: Cengage Learning, 2017), 272.

<sup>12</sup> Pollock, *Ethical Dilemmas and Decisions in Criminal Justice*, 272

<sup>13</sup> Pollock, *Ethical Dilemmas and Decisions in Criminal Justice*, 165

*Giglio v. United States*<sup>14</sup>

In this case, during the appeals process, defense counsel discovered new evidence that the first person to deal with the petitioner's coconspirator, an Assistant U.S. Attorney promised the coconspirator that he would not be prosecuted if he turned witness for the government. That testimony was the main evidence in the case against the petitioner. As such a promise was unauthorized and deemed that it would not affect the jury's verdict, the court's denied a motion for a new trial. However, SCOTUS ruled that:

1. the Assistant United States Attorney's promise was attributable to the government;
2. evidence of the agreement or understanding was relevant to the coconspirator's credibility; and
3. the nondisclosure of this evidence affecting the coconspirator's credibility violated due process and justified a new trial, irrespective of the government's good faith or bad faith.

Due to this, they reversed the judgment of conviction and remanded the case for a new trial. The ruling in *Giglio* extended the decision in *Brady* to include information suggesting a witness may not be credible.

*United States v Agurs*<sup>15</sup>

In this case, the prosecutor failed to voluntarily disclose the victim's past criminal record, which included offenses for assault and carrying a deadly weapon in a murder case. The court found that the prosecutor had no duty, under the Due Process Clause<sup>16</sup> to voluntarily disclose exculpatory matter absent a pretrial request for specific evidence. In the context of the entire record the omitted evidence was not "material," i.e., it did not create a reasonable doubt that did not otherwise exist.

The court in *Agurs* held that prosecutors only had a duty to voluntarily disclose exculpatory matter if it had materiality to the case being decided.

*United States v. Bagley*<sup>17</sup>

The case in *United States v. Bagley* revolved around the failure to declare that witnesses for the prosecution were being paid, which is impeachment evidence. *Bagley* finalized the *Brady* rules by creating a test that if the prosecutor's failure to assist the defendants by disclosing evidence useful in cross-examination, there is a constitutional error only if that evidence is both material and it is reasonably probable that the outcome would have been different had the defense been made aware of that evidence.

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<sup>14</sup> *Giglio v. United States*, 405 U.S. 150 (1971), in LexisNexis Academic, <https://advance-lexis-com.eu1.proxy.openathens.net/api/permalink/13a0ebec-6e47-4f5d-9eba-966fa2389a02/?context=1516831> (accessed November 11, 2022).

<sup>15</sup> *United States v. Agurs*, 427 U.S. 97 (1976), in LexisNexis Academic, <https://advance.lexis.com/api/permalink/83fec3d5-7752-4454-9c5a-a28a3d9c03c9/?context=1516831> (accessed November 11, 2022).

<sup>16</sup> U.S. Constitution, amend. 5

<sup>17</sup> *United States v. Bagley*, 473 U.S. 667 (1985), in LexisNexis Academic, <https://advance.lexis.com/api/permalink/d3c6bf26-5201-44ec-9c85-d1b66792f87d/?context=1516831> (accessed November 11, 2022).

## Behavior of undercover operatives

An important facet of law enforcement operations is often the use of undercover officers and informants. However, this has its own ethical challenges regarding what level of authorized criminality is acceptable to pursue a prosecution. Authorized criminality is defined by Elizabeth Joh as the “practice of permitting covert police officers [and others] to engage in conduct that would be criminal outside of the context of an investigation”<sup>18</sup> which aligns with the FBI’s reference to the practice as “otherwise illegal activity.”<sup>19</sup> The following case guides our understanding of acceptable behavior of undercover operatives.

### *United States v. Russell*<sup>20</sup>

In this case, an undercover federal agent supplied the defendant with an essential ingredient for the manufacture of methamphetamine in return for one-half of the drug produced. The ninth circuit court of appeals found that defendant was entrapped because the conduct of the agent created an intolerable degree of governmental participation in the criminal enterprise. However, the precedential standard for the defense of entrapment contains the principal element that the individual was predisposed to commit the crime. SCOTUS found that the lower court was wrong to broaden the principles laid down in those cases by introducing an unmanageably subjective standard based upon the conduct of the police that was contrary to the holdings of applicable case law. In the case at bar, the defendant conceded that there was evidence to support the jury's finding that he was predisposed to commit the crime, meaning a finding of entrapment was not possible.

## Corruption

Corruption of public officials can cover a multitude of different offenses. Generally, this can be considered to cover any action, within this paper, that amounts to misfeasance or malfeasance by a law enforcement officer against understood standards of conduct. The following cases guide our understanding of unacceptable behavior of law enforcement officers.

### *Bivens v. Six Unknown Named Agents*<sup>21</sup>

In this case, an individual filed a Section 1983 lawsuit against federal narcotics agents, the plaintiff seeking recovery for humiliation and mental suffering resulting from the agents' conduct, under claim of federal authority, in connection with an arrest and search relating to alleged narcotics violations by the plaintiff. The plaintiff alleged that the agents, acting without a warrant and without probable cause, had entered the plaintiff's apartment, had used unreasonable force in effecting the arrest, had searched the apartment, and had later interrogated the plaintiff

<sup>18</sup> Elizabeth E. Joh, "Breaking the Law to Enforce it: Undercover Police Participation in Crime," *Stanford Law Review* 62, no. 1 (2009) 157. <http://www.stanfordlawreview.org/wp-content/uploads/sites/3/2010/03/Joh.pdf>.

<sup>19</sup> US Department of Justice, *The Attorney General Guidelines on Federal Bureau of Investigation Undercover Operations* (Washington, DC: [2002]).

<sup>20</sup> *United States v. Russell*, 411 U.S. 423 (1973), in LexisNexis Academic, <https://advance-lexis-com.eu1.proxy.openathens.net/api/permalink/2125701c-1efa-4de0-8da9-ecd2e3eb58d8/?context=1516831> (accessed November 11, 2022).

<sup>21</sup> *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), in LexisNexis Academic, <https://advance-lexis-com.eu1.proxy.openathens.net/api/permalink/813629fb-715d-4aa1-88ed-910a71f15884/?context=1516831> (accessed November 11, 2022).

and subjected him to a visual strip search. The lower courts found against the plaintiff, but SCOTUS ruled that he was entitled to monetary damages as there was no other federal remedy that could be applied.

The ruling in this case created a rule that it will infer a private right of action for monetary damages where no other federal remedy is provided for the vindication of a constitutional right, under the understanding that there must be a remedy for every wrong. SCOTUS ruled that there is a presumption allowing all possible recoveries allowed by a civil action, so long as it has not been explicitly curtailed by Congress. Lawsuits of this nature are now referred to as *Bivens* actions.

## Expected Ethical Leadership Standards

### Secular

The installation and maintenance of ethical standards within law enforcement agencies is a tough task for even the best leaders.<sup>22</sup> However, such standards are necessary as wrongful conduct reduces the public confidence in the agency, reducing the much-needed public cooperation with the agency.<sup>23</sup> Additionally, criminal activity increases as corrupt police fail to set a positive behavioral standard within society.<sup>24</sup> Finally, such conduct destroys effective leadership and departmental morale within an agency.<sup>25</sup> When effective leadership successfully establishes a values-orientated program within their agency, it aids the officers to effectively judge their behavior and that of their peers against those values, allowing them to take ownership of their conduct and the conduct of the department. Values-Orientated programs tend to revolve around the six pillars of trustworthiness, respect, responsibility, fairness, caring, and civic virtue and citizenship.<sup>26</sup>

The International Association of Chiefs of Police (IACP) is the world's largest and most influential professional association for police leaders. With more than 32,000 members in over 170 countries, the IACP is a recognized leader in global policing, committed to advancing safer communities through thoughtful, progressive police leadership.<sup>27</sup> Since 1893, the association has been serving communities by speaking out on behalf of law enforcement and advancing leadership and professionalism in policing worldwide. It adopted the Law Enforcement Code of Ethics at the 64th Annual IACP Conference and Exposition in October 1957. The Code of Ethics stands as a preface to the mission and commitment law enforcement agencies make to the public they serve. The Code of Ethics, amended and adopted by many agencies globally, is shown in the Appendix.

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<sup>22</sup> Paul M. Whisenand and Jennifer K. McCain, *Managing Police Organizations*, 8th ed. Pearson Education, (2014) 33.

<sup>23</sup> *Ibid.* 34.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> Whisenand, *Managing Police Organizations* 37

<sup>27</sup> "About IACP," accessed November 11, 2022, <https://www.theiacp.org/about-iacp>

## Christian

For Christians within law enforcement agencies, the expectations of the police subculture or values of their agency can be a corrupting influence.<sup>28</sup> The subculture will often be at odds with Christian ethical behavior and the values required by the agency will often set the bar lower than is required by the Christian faith. However, a Christian in law enforcement can aid their decision making in areas that may be ‘gray’ secularly yet are more black and white from a Christian perspective. This ability to exercise ethical discretion with a more certain frame than others could also aid in the promotion of Christian officers into leadership roles. From there, as a leader, you can guide, both by defining the standards and by setting an example, the agency to adopt values with a firmer foundation, by applying the standards of Christian ethics. Obviously, due to first amendment considerations relating to the establishment of religion and freedom of and from religion,<sup>29</sup> this application would need to be without a spiritual component.

### **Evidence of the Void of Ethical Leadership**

There have been numerous examples throughout the history of federal law enforcement within the U.S. that point to a lack of ethical leadership within these agencies. If the issues were contained to sparse occurrences at local field offices, it might be reasonable to argue from the rotten-apple position.<sup>30</sup> However, when we look at the issues, historically and in the present, these issues seem to occur more at the senior levels and at agency headquarters. This would imply that it is a leadership issue and support a rotten-barrel position.<sup>31</sup> Part of this is that there is an understanding that politics and the law should be kept separate, unlike what happens in many banana republics. We do not jail our political opponents on flimsy charges nor use the justice system as a tool for those in power.<sup>32</sup> Or do we? This is a practice called stealth authoritarianism and we have seen a rise in this within our justice system. This section will investigate historical and current examples of events and individuals that put the credibility of the agencies as legitimate law enforcement agencies in jeopardy.

## Historical

### *Watergate*

In 1972, the campaign to re-elect President Nixon wiretapped the Democratic National Congress at the Watergate Hotel. This later would become known as the Watergate scandal. The whole affair was orchestrated by a former FBI agent and current CIA agents, with collaboration from other former and currently serving (at that time) FBI agents. What is clear from the

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<sup>28</sup> University of the Cumberland, October 13, 2020, <https://www.ucumberlands.edu/blog/keeping-christian-faith-criminal-justice-career>.

<sup>29</sup> U.S. Constitution, amend. 1

<sup>30</sup> The rotten-apple argument contends “that the officer alone is deviant and that it was simply a mistake to hire him or her.” Pollock, *Ethical Dilemmas and Decisions in Criminal Justice* 195

<sup>31</sup> Rotten-barrel theory contends that “policing that is the fertile soil from which police deviant behavior springs” i.e., that the organization cultivates deviant behavior. Catherine Griffin and Jim Ruiz, “The Sociopathic Police Personality: Is it a Product of the ‘Rotten Apple’ Or the ‘Rotten Barrel?’”, abstract, *Journal of Police and Criminal Psychology* 14, no. 1 (1999), 28-37. doi:10.1007/BF02813860.

<sup>32</sup> Pollock, *Ethical Dilemmas and Decisions in Criminal Justice* 235

Watergate tapes is that there was an attempt by the head of the FBI to silence the investigation at the direction of President Nixon.<sup>33</sup>

### *COINTELPRO*

COINTELPRO refers to the counterintelligence program between 1956-1971 was a series of covert and illegal projects actively conducted by the FBI aimed at surveilling, infiltrating, discrediting, and disrupting domestic American political organizations.<sup>34</sup> This program predominantly targeted groups deemed “subversive”, including the NAACP, along with hate groups, such as the KKK, and sovereign citizen organizations.

### Recent

#### *IRS Conducting Targeted Audits*

In the run-up to the 2012 midterms, the Internal Revenue Service selectively targeted conservative organizations, including the Tea Party Movement for increased scrutiny under the guise of enforcing the tax laws.<sup>35</sup> This was to preoccupy them with tax audits, rather than effectively competing in an election. Even following an investigation and admonishment by the Treasury Inspector General for Tax Administration (TIGTA), similar practices were continued through the Obama presidency, with unequal treatment in the processing of applications for tax exempt status under 26 U.S.C.S. 501(c)(3) and (4) by applicants whose names might suggest certain<sup>36</sup> political orientations.<sup>37</sup>

#### *FBI Director James Comey*

While his earlier career showed signs of having an ethical reputation, as someone who always stood up for what he believed to be right.<sup>38</sup> However, he was also reported as being somewhat egotistical and self-righteous,<sup>39</sup> which might explain why his reputation was mired due to his conduct post-2015. He was fired in May 2017 following two major scandals where he had shown himself to have a corrupted ethical compass. These were the Clinton laptop and the Crossfire investigations.

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<sup>33</sup> President Richard Nixon, conversation with Harry R. Haldeman, Conversation No. 741-2, White House Oval Office, June 23, 1972.

<sup>34</sup> Select Committee on Intelligence, *Book III - Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans*, 94th Cong., 2d sess., 1976, S. Rep. 94-755, 1-78.

<sup>35</sup> Treasury Inspector General for Tax Administration, [TIGTA], *Inappropriate Criteria were used to Identify Tax-Exempt Applications for Review* (Washington, D.C. [2013]).

<sup>36</sup> For certain read conservative or Republican.

<sup>37</sup> *True the Vote, Inc. v. IRS*, 831 F.3d 551 (2016), in LexisNexis Academic [https://advance-lexis-com.eu1.proxy.openathens.net/api/permalink/b9392659-8990-48c8-8672-72b55471e1e3/?context=1516831](https://advance.lexis-com.eu1.proxy.openathens.net/api/permalink/b9392659-8990-48c8-8672-72b55471e1e3/?context=1516831) (accessed November 11, 2022).

<sup>38</sup> “During the Bush administration in 2004, as...acting AG...refused to sign a reauthorization of National Security Agency surveillance programs he believed were legally flawed. When he heard that [they]...were attempting to get AG Ashcroft’s signature ... in a hospital, [he] rushed over and...stood in the door [preventing access to the sick AG].” Pollock, *Ethical Dilemmas and Decisions in Criminal Justice* 235

<sup>39</sup> *Ibid.*



### *Hillary Clinton's Laptop*

During her tenure as the 67<sup>th</sup> United States Secretary of State, Hillary Clinton used a private, and insecure, email server to conduct government business (including classified material), in direct contravention of national security legislation.<sup>40</sup> This included email then-President Barack Obama on multiple occasions, including on July 1, 2012, when in Russia.<sup>41</sup>

Comey's response to this was, without the approval of Attorney General Loretta Lynch, to give a press conference admonishing Clinton for her actions but stating that no action would be taken, and the investigation was closed as intent to mishandle classified material was needed to prove a crime.<sup>42</sup> However, intent is not a prerequisite for prosecution of these crimes. On October 28, 2016, he informed Congress that the investigation was reopened due to connections with Anthony Weiner's laptop, which was also under federal investigation.<sup>43</sup> Hacked emails, that may or may not have been forged, were released stating that the investigation into Clinton was going to be squashed, which seems likely as AG Lynch was seen having a private tarmac meeting with President Bill Clinton on June 27.<sup>44</sup> Mere days before the general election, Comey closes the Clinton investigation on November 6.<sup>45</sup>

### *Spygate/Crossfire*

Spygate is the name given to the investigations into candidate and the President Donald J. Trump. The FBI conducted these investigations under the overarching name of Operation *Crossfire*, with *Crossfire Hurricane* being the specific investigation into President Trump. It has since become clear that the agencies involved knew that there was no legitimate evidence to support the Russian collusion narrative.<sup>46</sup> They also knew that the evidence they were using to justify their investigation had been fabricated by the Clinton campaign.<sup>47</sup> This investigation was conducted at the highest levels of the FBI, with direction from the White House.

Comey confirmed the existence of an investigation into the Trump campaign in March of 2017. However, they had tried to get a FISA warrant in mid-June of 2016 but were denied for lack of a case and they officially opened a case in late July 2016. Comey also denied claims that President Obama ordered the wiretapping of Donald Trump.<sup>48</sup> However, given the political basis for the investigation into President Trump, the fact that Obama for America was paying Perkins Coie for legal services while Perkins Coie were funding Fusion GPS's operations against the Trump campaign,<sup>49</sup> and the deception related to the existence of the investigations, the credence

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<sup>40</sup> Pollock, *Ethical Dilemmas and Decisions in Criminal Justice* 236

<sup>41</sup> Dan Bongino and Denise C. McAllister, *Spygate: The Attempted Sabotage of Donald J. Trump*, ed. Matt Palumbo (Nashville, TN: Post Hill Press, 2018) 197.

<sup>42</sup> Pollock, *Ethical Dilemmas and Decisions in Criminal Justice* 235

<sup>43</sup> Ibid.

<sup>44</sup> Ibid. See also Bongino, *Spygate: The Attempted Sabotage of Donald J. Trump* 200-1

<sup>45</sup> Pollock, *Ethical Dilemmas and Decisions in Criminal Justice* 236; See also Bongino, *Spygate* 203

<sup>46</sup> Kevin R. Brock, "New FBI Document Confirms the Trump Campaign was Investigated without Justification," *The Hill*, May 27, 2020. See also Glenn Greenwald, "Robert Mueller did Not Merely Reject the Trump-Russia Conspiracy Theories. He Obliterated them." *The Intercept*, April 18, 2019, para. 3

<sup>47</sup> Senator Grassley of Iowa speaking regarding the Russia Investigation, *Cong. Rec.*, 117<sup>th</sup> Cong, 2<sup>nd</sup> sess., 2020, Vol. 168, no. 90: S2647-8.

<sup>48</sup> Pollock, *Ethical Dilemmas and Decisions in Criminal Justice* 236

<sup>49</sup> "April 12 – Marc Elias, a lawyer for Perkins Coie representing the Clinton campaign and DNC, retains Fusion GPS...April 19 – The DNC pays a six-figure expense to Perkins Coie. April 25 – Obama for America begins paying Perkins Coie." Bongino, *Spygate* 199

of Obama (and/or Hillary Clinton) directing the investigation is high. Additionally, when you have very senior FBI attorneys like Kevin Clinesmith convicted of doctoring evidence to refute, rather than confirm, the fact that an individual is working on behalf of the United States, so you have justification to spy on him, you know that they both had no case, and that the agency has severe problems.<sup>50</sup>

### *Attorney General Merrick Garland*

Claims were made that Merrick Garland was a highly principled man and beyond political actions when he was nominated by President Obama for late-Associate Justice Antonin Scalia's seat on SCOTUS. His nomination expired as the Senate refused to consider the nomination, in line with their implied powers to advise and consent to nominations.<sup>51</sup> However, following his appointment as the 86<sup>th</sup> Attorney General of the United States, Garland has shown himself to be a highly political actor, oblivious to even the most blatant ethical concerns.

On October 4, 2021, AG Garland weaponized the FBI and U.S. Attorneys' offices to address "criminal conduct directed towards school personnel"<sup>52</sup> and establish a task force to address the issue. What was this criminal conduct? It was parents standing up to school board personnel, demanding action over the things that were being taught to their children and safety concerns over the environment their children were being taught in. The main issues were the teaching of the 1619 project,<sup>53</sup> Critical Race Theory,<sup>54</sup> pornographic and age-inappropriate sex and gender related materials, and the issues of masks in the classroom and transgender bathroom policies. Most of the parents were only exercising their first amendment rights and committed no criminal acts. The major case where one parent was arrested was because he was baited by trans-activists who were calling his daughter, who had been raped by a gender fluid student, a liar.<sup>56</sup> This amounted to the AG *de facto* designating parents as domestic terrorists. It was later found out that AG Garland's son-in-law's job is the distribution of the very textbooks into the schools

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<sup>50</sup> Josh Gerstein, "Ex-FBI lawyer spared prison for altering Trump-Russia probe email," *Politico*, January 29, 2021.

<sup>51</sup> In line with the doctrine of checks and balances, the power to advise and consent to presidential nominations includes the right to not consent and refuse to consider someone outright. US Constitution art. II sec. 2

<sup>52</sup> U.S. Department of Justice, "Justice Department Addresses Violent Threats Against School Officials and Teachers," 21-960, October 4, 2021, <https://www.justice.gov/opa/pr/justice-department-addresses-violent-threats-against-school-officials-and-teachers>.

<sup>53</sup> The 1619 Project is a revisionist history curriculum that teaches that the history of the U.S. started with the arrival of the first slaves and that nothing of importance happened in the U.S. apart from slavery. Even its author says it is not factually based but a story. Becket Adams, "1619 Project Founder Claims Her Project is Simply an 'Origin Story,' Not History," *Washington Examiner* Jul 28, 2020. <https://www.washingtonexaminer.com/opinion/1619-project-founder-claims-her-project-is-simply-an-origin-story-not-history>.

<sup>54</sup> Christopher F. Rufo, "Liberals were losing the argument over critical race theory in schools — time to call in the FBI," *New York Post* October 6, 2021. <https://nypost.com/2021/10/06/liberals-are-losing-crt-in-schools-time-to-call-in-the-fbi/>

<sup>55</sup> Critical Race Theory is a Marxist theory that claims race is a social construct designed to have a class of the oppressors and the oppressed. As society is structured that way, a person is pre-ordained with lesser opportunities and therefore, the entire system needs to be destroyed. Christopher Boosey et al., "Understanding Critical Race Theory in Christian Ethics," (group presentation in CJUS 350 at Liberty University, Lynchburg, VA, December 6, 2022).

<sup>56</sup> "Loudoun County Schools had a father arrested to cover up his daughter's rape by a skirt-wearing male student in a girls' bathroom," *Standing for Freedom Center* October 13, 2021. <https://www.standingforfreedom.com/2021/10/loudoun-county-schools-had-a-father-arrested-to-cover-up-his-daughters-rape-by-a-skirt-wearing-male-student-in-a-girls-bathroom/>

that the parents were objecting to.<sup>57</sup> He claimed that this caused no conflict of interest or ethical concerns and refused to have his actions independently reviewed by an ethics panel.<sup>58</sup>

### Conclusion

This paper has shown the ethical standards that the American people expect from their federal law enforcement agencies and how, sadly, the American people must be disappointed as they fall far short of this standard. When we look to the legal standards that we expect, it is clear that there needs to be trust that those engaged in law enforcement activities should have integrity and a fidelity to the U.S. Constitution and the principles that this country was founded on, which does include biblical principles. However, this is not the case, and the general public is waking up to this and showing their lack of trust in these agencies.

Federal Law Enforcement is on a path towards an eventuality when they will be unable to prosecute cases either through malfeasance and misfeasance in the way they conducted the investigation, or, and this is the more worrying scenario, that the testimony of a federal law enforcement officer will be less trustworthy than those they seek to convict. Then we would have *de facto* Giglio Feds, law enforcement officers in name only as they cannot be trusted to enforce nor give evidence in prosecutions. It doesn't have to be this way. However, wide-reaching reform, including the removal of individuals from their positions of leadership, will be needed to turn the tide.

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<sup>57</sup> Callie Patterson, "AG Garland's son-in-law's education company supports critical race theory," *New York Post* Oct 13, 2021. <https://nypost.com/2021/10/13/critical-race-theory-firm-linked-to-ag-garlands-kin-serves-schoolscompany-co-founded-by-ag-garlands-son-in-law-serves-over-20k-schools/>

<sup>58</sup> The Hill, "Did You Seek an Ethics Opinion? Cruz Fights with Garland Over Son-In-Law's Business," YouTube video, October 27, 2021. <https://youtu.be/edk8d0mJt8o> <https://youtu.be/edk8d0mJt8o>

## Appendix

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice, or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession... law enforcement.<sup>59</sup>

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<sup>59</sup> "Law Enforcement Code of Ethics," accessed November 11, 2022, <https://www.theiacp.org/resources/law-enforcement-code-of-ethics>.

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