



New York Stories: Preet Bharara (12/12/19)

(applause)

00:00:37 Alice M. Greenwald: Good evening and welcome. My name is Alice Greenwald, I'm president and C.E.O. of the 9/11 Memorial & Museum, and it is my distinct pleasure to welcome all of you to the museum's final public program of the fall program season. And what a special program it is. As always, we are delighted to see our museum members here with us and we thank you for your support. We are deeply honored by the participation of tonight's speaker. I don't think he needs the introduction, but I'm gonna do it anyway.

00:01:12 Former U.S. Attorney for the Southern District of New York Preet Bharara. In 2009, Bharara was nominated to become U.S. attorney for the Southern District by President Barack Obama. He served in that post until March 2017. In that time, his office oversaw the investigation and litigation of cases involving terrorism, trafficking, fraud, cybercrime, public corruption, organized crime, and civil rights violations.

00:01:43 As an advocate for trying terrorists in criminal courts rather than in military commissions, Bharara established the Terrorism and International Narcotics Unit. Its convictions have included Osama bin Laden's son-in-law, Sulaiman Abu Ghaith, and the Times Square bomber, Faisal Shahzad.

Since 2017, Bharara has remained devoted to the cause of justice. He is a distinguished Scholar-in-Residence at New York University School of Law, and his recently published book, "Doing Justice: A Prosecutor's Thoughts

on Crime, Punishment, and the Rule of Law," is a "New York Times" bestseller.

00:02:25 A beloved public figure, Bharara is also the host of Cafe's "Stay Tuned with Preet," an extremely popular podcast which explores and distills topics in the news through the lens of power, policy, and justice. On 9/11, Preet Bharara was an assistant U.S. attorney in the Southern District of New York.

00:02:47 Having grown up in Monmouth County, New Jersey, and attended Columbia Law School, he already had a long-established set of ties to New York City. I don't know if he remembers this, but our paths would cross some years later, when I and a group of staff working to develop the museum's historical exhibition went to the offices of the SDNY to discuss the possibility of exhibiting materials that were still held in evidence for the 1993 World Trade Center bombing.

00:03:19 I remember Preet saying to his team that they should do everything in their power to make materials available for our project, a project that, at that time, few people believed would ever be realized. His endorsement and his support meant the world to us. I understood from that early meeting that this was a man who believed fiercely in the imperative of presenting the facts and in the power of truth to teach.

00:03:50 Tonight, we are privileged to have him here to reflect on the impact of 9/11 on the criminal justice system and the challenges associated with prosecuting terrorism. Without further ado, I hope you'll join me in welcoming Preet Bharara, in conversation with executive vice president and deputy director for museum programs Clifford Chanin.

(applause)

00:04:20 Clifford Chanin: Thank you, Alice. We're ending our season on a bang tonight, everybody. So this is going to be good.

Preet Bharara: Well, I, let's wait and see how it...

Clifford Chanin: No, no, no...

Preet Bharara: ...how it goes-- a lot of pressure here. >>

Clifford Chanin: We've been predicting the outcomes of programs before the programs end lately, so... You know, we put this program out under the rubric of our "New York Stories," because we have had various prominent New Yorkers over time come talk about the impact of 9/11 not just on themselves, but on their ambit in the life of the city. So if you would, I'd like to go back to 9/11, you are an assistant U.S. attorney.

Preet Bharara: Yeah.

00:04:56

Clifford Chanin: You are in the Southern District, and I'd like to know the impact-- of course, it's a mixed story-- on you, but the Southern District had already been involved in terrorism prosecutions. So, in certain government circles, your colleagues, yourself, were aware that this was a threat, even if it hadn't necessarily materialized to this degree. So tell me about the day and then tell me about what was going on in the office in response.

00:05:19

Preet Bharara: So I was pretty junior. I was a narcotics assistant, so I was in my second year at the U.S. attorney's office. I was getting ready to go to work that morning. I'd just come back from vacation with my wife and my four-month-old daughter. And then saw what was happening on television, um, at about 8:48 or so, a.m., that morning, and then tried to call in, call friends of mine, and at some point very soon after that, the office evacuated, so I never made it to work that, into work that day-- Tuesday. We didn't get back to work until the following Monday, which I think is true of a lot of folks, um...

00:05:53 The impact on me, like it is for so many people, was profound. I was already in a place where I was serving the public and... making sure that you cared about public safety. And I didn't know what unit I was gonna go to, so, in the Southern District, you spend your first year typically in general crimes. And then you spend your second year, typically, in the narcotics unit, and then you graduate to a senior unit.

00:06:18 And at the time, uh, you know, I think it was always a destination place to go, the ninth floor of that, of that building, One St. Andrews Plaza, right next to police headquarters, which is where they had the terrorism and organized crime prosecutors. And I think I wanted to go there, anyway, you know, probably in part because I wanted to do LCN—La Cosa Nostra—cases and organized crime cases.

00:06:41 But then, after 9/11 happened, then, you know, everybody wanted to be a terrorism prosecutor. Everybody wanted to serve in the way that you felt maybe had the most impact and could avert the worst harm protecting the homeland. So it's a devastating thing for a lot of folks who were around here, so that also gave me, I think, the motivation to stay for as long as I could possibly do so and stayed until... (clears throat) Everyone's very polite about, um, you know, my having left office. I was fired by the president.

(laughter)

Preet Bharara: And I'm totally fine with that.

(laughter)

00:07:26 Preet Bharara: I get to visit more with fine folks like you. So I, you know, that's one of the things I think told me, "This is where I want to stay for as long as I can, because there's so much good to be done." You know, I think it had an enormous impact on New Yorkers.

But I guess my, my particular angle on how it affected things was to be realized some years later. And, I assume we'll get to it, but I, I'll just preview it now. When I became the United States attorney-- for the dream beyond my wildest dreams-- in 2009, there was still this raging debate about what to do with, you know, the folks who were in Guantánamo Bay, Cuba, Khalid Sheikh Mohammed and others, and so then ensued, you know, eight full years after the actual tragic event, how do you deal with this? How do you bring people to justice? And, you know, we'll get to that, I guess, in a little bit.

00:08:00

Clifford Chanin: We'll get to that. But within the office, I mean, you had expertise. Was there a sense of something having been terribly missed, or was that not widely known enough?

Preet Bharara: That was a-- at the time, I didn't think I... I don't think I had a full understanding. It was a bit above my pay grade-- Mary Jo White, who was the U.S. attorney who hired me, and who was the U.S. attorney on that day, um, you know, launched into immediate action and pressed all the people on the ninth floor and then some additional folks into pursuing the investigation.

00:08:26

You know, the command center was set up, and everyone was just helping other folks around the clock to support the effort. You know, something that people may not appreciate, when I gave career talks-- when I was a young assistant U.S. attorney, and try to explain to people what the Southern District does, one of the things I would kind of brag about on behalf of my colleagues was, you always wanna be ahead of the curve, and on 9/11, the awful name of Osama bin Laden became a household name everywhere in the world, and he wasn't before that.

00:08:54

And some people like to say, nobody ever heard of him before. Well, we had. And I show the first page of the indictment from 1998, where the Southern District indicted bin Laden and a number of other folks in connection with the bombing of the, the embassies in Kenya and

Tanzania. That was Al-Qaeda. Al-Qaeda was very, very well known to our office, to the FBI that we worked with, the JTTF, and others.

00:09:16 And so I think... And also, we had prosecuted the first World Trade Center bombing-- Dave Kelley, who later became the acting U.S. attorney, was the principal prosecutor on that case. So we had a lot of expertise in terrorism cases, and in going forward and making the argument to get, uh, you know, the opportunity to bring to account Khalid Sheikh Mohammed and others, we relied on the expertise from before and made the arguments to Eric Holder and others that we were in the spot where, not only we understood how to prosecute terrorism cases, but also, our judges were a little bit more knowledgeable and expert on those kinds of cases.

00:09:51 And remember one other thing, in the aftermath of 9/11, new laws were passed and new tools were given. Before that, it was, it was kind of an act of, I think, legitimate creativity. You don't like to use the words "creativity" when you're talking about criminal prosecution, but sometimes the laws have not caught up with the crimes that are being committed and the awful acts of violence that are taking place.

00:10:12 So those cases in 1998 had to take place with a, with, you know, a little bit less flexible laws and regulations and tools than, than we got later. But all of that, I think... You know, the office felt a... You know, great personal loss, because, you know, so many of our law enforcement partners who are honored on the... what I think are hallowed ground here, were lost in that, and these were people we worked with, first responders and others.

00:10:42 And much of the FBI then became mobilized in, in the war on terror, and some other things were left behind a little bit. I think we started to do less, uh, you know, Italian organized crime cases, because that wasn't as big a deal, and focus a lot more on prevention.

So it, it changed a lot of things, it changed the priorities of the office, it changed how you thought about bigger prosecutions, it changed the

orientation to prevention, not just figuring out who, who killed the people before...

00:11:11 Clifford Chanin: After the fact, yeah.

Preet Bharara: After the fact. And, you know, people don't think of assistant U.S. attorneys in that regard, but they're really important there, also, and I would often say, you know, just to further answer the question of how you train people in the office to deal with this kind of threat... I mean, it's different from cyber, it's different from corruption, it's different from fraud, um, and Wall Street, you know, bad action.

00:11:33 You have to really anticipate in the way that... Folks think that just the agents are doing that, just the people at the Joint Terrorism Task Force, the FBI, and others, but, uh, a lot of the work that was done on the ninth floor you never heard about. You never saw a newspaper headline because a threat comes in or a lead comes in over a weekend, and for 24 hours, or 48 hours, or 72 hours, I've got folks working with the FBI principally, and NYPD, who are chasing it down.

00:11:59 And you don't know if it's a real threat or not, and maybe you thwart it, or maybe something happens somewhere else, or it happens in another country, and the threat goes away not by legal action, but by some other mechanism. And that's still heroic work that they do that, that nobody knows about. I mean, people know about it when you get a guy like Faisal Shahzad, who plants a bomb in the middle of Times Square and then he's caught.

00:12:21 But a lot of that work had to be done not just by... And, by the way, chief respect and admiration and gratitude go to the law enforcement agents, the cops, and the FBI agents and others. Um, but the prosecutors are also there, because a cop can't go and get a wiretap by himself or herself, can't get bank records or phone records. You know, you need the prosecutors to get judicial process to get a lot of those things.

Clifford Chanin: Plus, it, it seems to me-- and we've spoken to any number of people who were involved from those early stages on-- it seems to me that this was a war footing, which is, of course, entirely different from pre-9/11. You moved through the government and I'm looking for the different perspectives you had on different aspects of the system.

00:12:59

So, you were working in the Senate for Senator Schumer on the Judiciary Committee, and then coming back as U.S. attorney. But, I'm interested in your perspective on the different ways that being in a war footing manifested itself in the different perspectives you had on what was going on inside the government.

Preet Bharara: Well, a complicated question. You know, we were talking about this last week, when we were having a small discussion in anticipation of the program. You know, everyone has a different view about how you solve problems, right? And you have to be careful of that, just as a very general matter, right?

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If you're, if you're a prosecutor, your tendency is going to be-- and you have to appreciate this bias, and maybe it's a good bias and maybe you're right-- but your tendency is gonna be, well, the way we solve the problem and the way we deal with this is, you prosecute, right?

If you're a civil litigator, you think, well, no, you sue, and you do it through, you know, monetary means. And if in the military, you think of things like this more in terms of acts of war. And if you're familiar with the military justice system, you think maybe that's what works best. And if you're in Congress, you think we should pass a law, right? Or we should pass an appropriation. And that's all fine, that's all good.

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You know, there's a reason why people have those expertise, but you have to be careful. You know, there's that famous phrase, right? Um, if you're a hammer, everything looks like a nail. But sometimes, to build a house, you need other tools, right? Maybe to screw, and you can't really

use a hammer on a screw in the same effective way to build your house, or whatever tortured metaphor I'm spending too much time on.

(laughter)

00:14:29 Preet Bharara: So, so when I was in... When I was a prosecutor, and then again when I returned to it-- although then I had multiple perspectives-- you think, well, obviously we know best. This is the best way to do it. But the reason for that sometimes is, that's all you know. Then I went to the Senate from '05 to '09, on the Judiciary Committee. And then you start to see from the perspective of members of the Senate-- and also people you work with in the House-- how they look at it. And they're a lot more policy-driven.

00:14:58 Uh, and then you also see what the political overlay on some of this stuff is. And then you see, well-- and we'll get into some of this, I guess, as well-- there are different perspectives on the right way to prosecute an act of terror/act of war like this. We are not dealing with a nation-state. It's complicated and confusing. Um, they're different perspectives.

I mean, I have a particular one, but there are different perspectives on the right way to interrogate someone and what the limitations are. And sometimes what you think about that depends on what your background is, and what state you're from, and what the politics of that issue are.

00:15:35 You know, whether it's enhanced interrogation/torture or not. There are different views and perspectives. And I got this from multiple vantage points, as you point out-- as a line assistant... I guess first as a law student, where you learn about Miranda, for example, and whether that's a good thing or a bad thing, and you just understand it to be, as a law student, well, that's the law. And you see it in the movies all the time, and it seems to, seems to work okay.

(laughter)

00:16:00

Preet Bharara: Then, as an assistant U.S. attorney, you know that a violation of a Miranda right-- you know, failure to give a Miranda warning in custodial interrogation-- your case can get thrown out, the... confession could get thrown out. So you care about that a lot when you're talking about your typical robbery case or Mafia case or whatever.

Then you go to work in the Senate and you start to hear from people who think, well, there's a certain kind of case... You know, that's all well and good in your garden-variety fraud case, whatever. But that doesn't work, and it shouldn't work-- and Lindsey Graham is a principal proponent of this-- um, in a terrorism case. It's a different kind of thing.

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As you said, you know, it's not crazy for people to think of it as being on a war footing, but what, what line do you draw? Where do you say that those things don't operate in the same way, you know, if it's this kind of case or that kind of a case? And then you see, you know, even with respect to where someone should be tried, members of the Congress, obviously, at some point made it really, really hard to bring people from Guantánamo Bay, Cuba.

One case that wasn't mentioned, um, is one of the bombers who was responsible for, um... I'm forgetting his name all of a sudden, uh, in the embassy bombings was actually brought... I'm forgetting his name-- Ghailani.

Clifford Chanin: Ghailani.

00:17:12

Preet Bharara: Ahmed Ghailani, after he was brought to United States and tried Downtown, in the Southern District Federal Courthouse, you know, nobody else was able to come. So... The point of that is to say, lots of different people in a democratic country who have different views, who are from different stripes on the political spectrum, have different views, and many-- most, but not all-- of them are held in good faith.

Clifford Chanin: Let me ask you about that exactly, because, you know, it seems... Perhaps it's the rosy glow of retrospection, but, um, it seems that at that point, the system was working towards generating response. You can agree or disagree with aspects of the response...

Preet Bharara: At which point?

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Clifford Chanin: At the point in the immediate aftermath of 9/11, and so there was some sense of working together across the aisle, which seems like a very long time ago, but you know...

Preet Bharara: They sang, they sang.

Clifford Chanin: Sang on the steps.

Preet Bharara: Members of Congress sang -- imagine that today.

(laughter)

Clifford Chanin: They wouldn't be singing the same song, it's just... But did you have this sense then that, you know, at least the system was working towards coming up with solutions, even if particular parts of those solutions weren't what you might have chosen?

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Preet Bharara: Well, you know, you had... You had, among other things, people who were in positions of power who were not... I mean, everyone has a different view on this, because some people don't like the Patriot Act, but... But in retrospect, looking at what the level of dialogue is now, both about crime and about terrorism and about where people come from who commit those kinds of acts, and the way people talk about a

particular religion, there was a lot of restraint, you know, back in... It's almost, it's almost quaint, right? George W. Bush said a lot of right stuff.

00:18:54 Clifford Chanin: Yeah.

Preet Bharara: Um, you know, we...

Clifford Chanin: He, he went to a mosque shortly after 9/11.

Preet Bharara: Yeah, you know? And I am very frightened, as I always am, first and foremost about another attack on the country. But then second, you know, if there is another attack on the country, of the same sort or something less, I wonder how people are gonna talk about it.

00:19:15 You know, an overlooked story... I mean, I'm principally a prosecutor. I've been, I've worked in the federal government for 17 years. But I'm also an immigrant. I have a funny name. Uh, I'm from India. And what was missed a lot in the immediate aftermath of 9/11-- worst thing that's happened in this country in generations-- was, there was a lot of wanton hate crimes.

00:19:37 The last chapter in my book is devoted to some of these stories where there were, you know, Americans who thought they were patriotic, and went out and killed people who look like me. Which is an odd thing to think about as a, being the United States attorney for the Southern District of New York, principal prosecutors of that kind of terrorism, also. So yeah, I worry about that.

00:20:00 Clifford Chanin: Yeah, yeah. Um, did you find, as you came back to New York as the U.S. attorney, that-- because, you know, in the immediate aftermath of 9/11, there was this sense that more was going to come, and it could even be worse...

Preet Bharara: Every day, yeah.

Clifford Chanin: And so this... Yeah, please.

Preet Bharara: Look, I find it remarkable, in a very, very good way... I mean, how many of you were in New York City on 9/11? Yeah, so you know exactly what I'm talking about. I lived on 22nd Street with our four-month-old baby. And, and, you know, people, people forget this who didn't live through it, you know, here, I think. Obviously, it was a great tragedy, and... Lots of harm, psychic harm, to lots of people all over the country, because it was, it was an attack on the country.

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But, man, you remember, so the towers fall within a short period of time that Tuesday morning. I was saying to someone the other day that the three-- and maybe everyone won't agree with this-- the three sights that I appreciated the most that afternoon when I was watching it unfold, and periodically I would go from my apartment on 22nd Street, stand on Fifth Avenue, and look and see from about a mile away-- 'cause it's about a mile away-- and see what was happening, because I couldn't believe what was on the TV screen, and people were just in the streets. Went back because I had a baby.

00:21:11

And the three things that I, I remember really welcoming was the scene on television when they showed, "This is, these are all the airplanes that are in flight over the United States of America at this moment." And there was no planes. And I was, like, "Good." The second was when, um, I think it was an F-15, flew overhead, over Manhattan. And I, like, "I like that, too."

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And then third, when I went around, and, you know, obviously, you don't want this to be the case all the time, but, you know, there's a lot of fright and a lot of terror, frankly. And when I finally got to the office, I saw how militarized the area had, had become, around the courthouse, around One St. Andrew's Plaza, around, you know... City Hall was right, is right there, also, the Brooklyn Bridge, and I saw a lot of people, um, armed to

the teeth, and I, like, "That's good, too, because I don't know what's coming next."

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And I remember-- and maybe this is similar to some of your experiences-- if you heard a loud noise, for days, weeks, you thought, "Is that a bomb?" If something happened... You guys remember, I think it was... It wasn't immediately after, this was, like, a couple of years later, there was that big blackout. And you think, "That must be a terror attack."

And I remember thinking... You know, I began to then, obviously, do terrorism cases. And then when I supervised terrorism cases, I learned a lot more about the psyche of people who want to do that kind of evil act to the United States. And one thing that is kind of-- this is gonna sound perverse, but I'll explain what I mean. Um... small acts of terror, right? That are not, um, huge, like 9/11 was, can cause extreme amounts of anxiety and terror in American populations.

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And they didn't do those things. It's really hard-- it should've been harder-- but it's really hard to accomplish 9/11. It's not hard to pull a one-off, and some people are doing this now, and you have these domestic terrorists who are kind of doing this. And my fear was, and I've heard, I've heard Rudy Giuliani back when he seemed to make more sense...

(laughter)

Preet Bharara: Talk about...

(applause)

00:23:14

Preet Bharara: Talk about this, too, in a very, in a very intelligent way. My fear was that, okay, they did this huge attack and it harmed the psyche of the country. We're resilient, but it was, boy, it was not good, not good times for anyone in America, and almost 3,000 dead. That the next thing,

if they had chosen to do, these evil people, was not try to do that, replicate that, but to do small things.

Clifford Chanin: Yeah.

00:23:39 Preet Bharara: Like a little bomb on the N train. I mean, I remember-- do you remember those, the snipers in the DC area?

Clifford Chanin: Yeah.

Preet Bharara: That's two Americans shooting a few people, and my wife wouldn't-- and I, too, we didn't want-- we didn't want the kids to go outside, in New York. And that was happening, I think, in Maryland and in DC. And just, and that whole region was in the grips of horrifying terror from-- I don't mean to minimize, because a number of people were killed-- but not compared to what happened on 9/11.

00:24:12 And something about the psyche of, of really ambitious terrorist organizations like ISIS, or Al-Qaeda, or Al-Shabaab is, I think, helpful to us that they're not satisfied doing that. They want to do the big thing. And the big things are-- I think we've gotten better at-- are easier to thwart, easier to intercept, and harder to pull off.

00:24:36 Look, Faisal Shahzad could've killed hundreds of people. He wasn't so competent, and one of the reasons he wasn't able to kill hundreds and hundreds of people was, he knew there're all these ways in which he could get caught. So he had to use substitute materials. He had to go buy the things from different places. He had to be very careful about how he learned about how to make the bomb, and all those things made him a less good bomb maker. Um...

Clifford Chanin: Let's come to Faisal Shahzad, because by now, you are the U.S. attorney. While there have been arrests and prosecutions in

smaller-scale cases, this is the one, post-9/11, that could have been perhaps the most dramatic of all.

Preet Bharara: He was the first... We say, operational terrorist in New York City since 9/11.

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Clifford Chanin: And so in this context, the bomb he has in the car for Times Square does not go off, but he manages to get away, and there is a two-day or so hunt for him. And the controversy at the time, which was reflective of what had been done a couple of months before with the underwear bomber on the plane to Detroit, was about, when he's taken into custody, he's not given immediately-- there is an exception-- the Miranda warning about his rights, and that was a particularly charged moment for this case and also in relation to the prior case.

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Preet Bharara: So, um, and I write about this a little bit in the book, as well, in the chapter on interrogation. Um, I like to learn from other people's mistakes, or other people's controversies. And so I took office in August of '09. And, you know, obviously paying attention to all that, that is on the docket and then trying to anticipate things that might happen. And we increased resources on cybercrime because that was becoming a big threat and we were recognizing it.

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I think most people recognize it today. But the other was what, you know, what happens if we have an operational terrorist in New York City? You don't want to be going on a new playbook then. Who calls who? What's the protocol? Et cetera, et cetera. And we sort of had generally talked about it.

And then the case you refer to, Abdulmutallab, who was the so-called underwear bomber, was flying into Detroit, and luckily, he failed, as well. That sparked-- on Christmas Day 2009-- and that sparked a huge controversy, because it was believed that he was Mirandized too quickly, and, and they weren't able to get, you know, good, actionable intelligence from him.

00:26:51 And so, look, there's a legitimate debate, and, um, and clash of two principles, both of which-- if people hold them in good faith-- I appreciate the debate. And on the one hand is, you want to preserve someone's rights. But not just that. You wanna be able to preserve your conviction, because depending on how much evidence you have, sometimes it's the confession itself, if properly Mirandized, that allows you to hold that person accountable, take them off the street, so they can't kill anyone else again.

00:27:17 So that's actually not just, you know, some, some sort of moral or symbolic value. That's a pragmatic value. You want to put the guy away, and you don't want to jeopardize that by violating that principle. And I think those views are held in good faith.

On the other hand, that's not the only thing you're concerned with. If a guy's got, you know, three accomplices who are waiting in a safe house somewhere who, upon that person's arrest, are gonna blow, you know, up a town, well, then, it doesn't... You know, a nicety like a Miranda warning shouldn't stop you from gaining that information.

00:27:46 So, huge controversy in the Congress and everything else, and I think when we get to this-- if we get to it-- I think that case that was in the middle of the pendency of our being able to try in a civilian court Khalid Sheikh Mohammed and his four co-defendants. I think that is what sort of turned the tide on whether or not it should be civilian justice or military-style justice in the, in the tribunal at Gitmo.

00:28:09 And so, without passing any judgment on what happened with Abdulmutallab, we had a conversation, we had multiple meetings in the office about, what, what would we do? And, you know, we came up with an understanding that if we caught someone like Abdulmutallab or someone else, um, that we would be aggressive in not Mirandizing.

- 00:28:29 Which was completely legitimate under a particular exception to the Miranda rule, under a Supreme Court case called Quarles, which we had everyone in the terrorism unit read and understand, and train people on, that for... In exigent circumstances like that, for a... You know, you can't go too extreme about it.
- 00:28:50 For a period of time, you can question someone even in custody to find out if other people are gonna get killed. And we would be aggressive in that use. Lo and behold, May 1 of that year, some months after we started having these conversations, we have Faisal Shahzad in custody. 53 hours after he set the bomb to go-- you know, this is, you know, a mildly embarrassing story-- he was caught on a plane, getting ready to fly to the Mideast.
- 00:29:14 They had to pull the plane back. He almost, he almost got away with it. And he's in custody, and I called the attorney general that night, when he was in custody, and said, you know, "Here's our understanding of the law. Here's how aggressive we're going to be." You also have to do an analysis of how strong you think the case is: Do you need the confession? And based on a lot of things, we had thought we had a lot, we had a lot connecting him to the, to the car, so we weren't that concerned about, you know, needing the confession to hold him accountable and put him away.
- 00:29:43 And then we were gonna be aggressive about it. And then I get a call, as I describe in the book, I get a call at some point, sooner than I thought I was gonna get the call, was that the agent on the scene, when he was taken into custody, Mirandized him more quickly than anyone had anticipated. And he had been directed, and then he was continuing to talk.
- 00:30:05 And then Faisal Shahzad began to cooperate and talk, I think, for, like, nine days. Hour after hour after hour, giving up information. So what lesson do you learn from that? Um, because it's complicated. And the lesson I think you learn is, if done right, and if you trust the instincts of the cop or the agent-- in this case, it was, I think it was a detective, NYPD, working on the task force-- if you trust their understanding of how you

interrogate someone and you understand the principles of interrogation that are unlike what people think they know from watching television and the movies, that you don't punch people, you don't shoot off a pinky...

(laughter)

00:30:46 Preet Bharara: You don't, you don't threaten to steal their children. You actually use rapport, and, and offer them food and generosity, and, in example after example after example, both in my book and throughout history-- notwithstanding the movies-- that's how you get people to talk. And something about the way I have described it is a little bit politically incorrect-- it's like... If you've done it 1,000 times, you know there's a moment where giving a Miranda warning is like offering someone a cup of water, or offering them a sandwich, that it's showing a certain amount of respect, and, and trying to get you-- trying to get them to trust you.

00:31:25 And they understand, well, actually this person cares about what my opportunities are-- and I gotta tell you, in all these cases, and it doesn't happen in every case, in the overwhelming number of cases, skilled agents and cops who know how to do it correctly, find that moment of, of, sort of, this is not a word to use, right? With someone who's just tried to kill hundreds of Americans. You find that moment of bond with this person who you're trying to get information from.

00:31:52 The Miranda warning actually gives you information. And so it's not a popular point of view, um, because, even though it's empirically correct, it clashes with some people's intuition, right? That's why the movies are the way the movies are. Because you think, well, if you yell at someone, you scream at someone, you threaten them, you know, you shoot off their pinkie toe, they will then tell you stuff that's correct and accurate.

00:32:17 That's not how it works in real life. I mean, I had a cop tell it to me this way once. He said, you know, "People think that the reason someone will confess to me is because of my gun and my badge." That nothing could be further from the truth. "When I have somebody I'm trying to get

information from, I try to get them to forget my gun and forget my badge and think I'm just another guy who actually cares about them, and is gonna be honest with them, and is gonna treat them with respect, even if they've killed people. Because that's my job."

00:32:42

I'll give you another, just another quick story. I had a, uh, there was an investigator in our office who worked-- and these are anecdotal, but they're also borne out by lots of other studies and evidence-- who said, I asked him the question once, "What do you think about this move towards videotaping interrogations?"

And he worked on a lot of terrorism cases, and he was kind of, he was, like, "I don't know, I'm mixed about it. I'm not sure that that's a great idea." And you'd think that the reason he said that was because, "Well, I don't want to see jurors showing me, like, roughing up the guy." And it's the opposite. He's, like, "I don't know how it's gonna look if jurors see how nice and solicitous and friendly I am to a guy who just tried to blow up a building. Because that's how I get information." And it's true.

00:33:27

Clifford Chanin: So the obvious contrast is, of course, with the C.I.A. program.

Preet Bharara: Yeah.

Clifford Chanin: For some of the so-called high-value detainees. And, um, you know, their claims about important information having been gathered through that means. But of course, everything that happened since will come to Gitmo, as well, because, what can be done with them now that they've been subjected to those techniques?

00:33:49

But, um, you know, your, your book has an extensive chapter on this whole idea, that it's just not going to work anyway. Forget about whether it's right or wrong, it just doesn't work.

Preet Bharara: Yeah. We spend a lot of time, and we should, about the morality of torture, and the morality of waterboarding, and the morality of all these things, and I... That's a much more interesting question if it was true that that stuff worked.

Then you would have a really huge dilemma, moral and philosophical dilemma, that's a lot more complicated, in which you say, "Well, what do we stand for and what are we allowed to do?" versus what we are not allowed to do. But the fact of the matter is, it doesn't have to be as, as morally complex, because I've seen no evidence that it works.

00:34:30

I mean, there are some people who still stand by that view-- Dick Cheney does, and some other people who I respect more than Dick Cheney.

(laughter)

Preet Bharara: But there are, there are, and they stand by their... They're people who, I know, whose names you may like. Um, and, but... You know, there's this movie that just came out that I did a special podcast episode on the themes of it, "The Report," right?

Clifford Chanin: "The Report," yep.

00:34:52

Preet Bharara: It's about... You know, the Senate committee... Intel Committee headed by Dianne Feinstein, and her staffer tried to make public all these findings about the use of enhanced interrogation techniques and whether it worked, and whether it didn't work.

And all the rational analysis that I've seen shows that they don't work, and then that causes you... As you briefly alluded to, that causes a secondary problem of, now you're gonna try to hold them accountable in some, you know, regular court of law.

00:35:17 Whether it's a military commission or it's an Article III court, you have this taint of the waterboarding, which is kind of awkward. And you know, the law provides, and people have disputes about this, this is some, the basis of some of the disputes and legal arguments and fights in Gitmo. "Okay, well, I know we waterboarded the guy 183 times, and he gave us, no, not much. But then we had, we had a period of time, an interval, and then we had FBI agents go in "who were nice to him and offered him cupcakes. And then we asked a lot of questions, and he said some of the same stuff. We should be able to use that second set of statements."

00:35:52 But, you know, there are arguments against being able to do that. We've always argued aggressively that we can. So, A, it doesn't work. B, I think it, it defines us poorly as a country if we engage in a certain kind of conduct, and C, it causes undue legal problems, as well.

Clifford Chanin: The other side of that coin, and you mentioned the Ghailani trial earlier, is that, um, he was brought to court with 285 charges against him...

Preet Bharara: And convicted on one.

Clifford Chanin: He was... So he was acquitted on 284 charges.

00:36:19 Preet Bharara: Yeah, I don't—I don't like to talk about that.

(laughter)

Preet Bharara: Thanks for bringing that up.

Clifford Chanin: All right. (laughter) Let's see what you can say about that, though, because it does, it does put the other, the other shoe on the table here.

Preet Bharara: Look, so I think, going back to that sort of, what's been the overlay of this conversation, which is, ultimately, we haven't been able to hold Khalid Sheikh Mohammed and others accountable.

Clifford Chanin: Mm-hmm.

00:36:43

Preet Bharara: And once upon a time, I thought they were gonna come to the Southern District, and I think a couple of things happened along the way. One was, the Abdulmutallab case happened, and people thought, well, I don't think we can have these terrorists tried in civilian courts for a variety of reasons, and the other was Ahmed Ghailani, who, you know, is pretty guilty.

Clifford Chanin: It was one of the embassy bombings.

Preet Bharara: One of the embassy bombings, right.

Clifford Chanin: 1998 embassy bombings.

00:37:05

Preet Bharara: The first and last person to come over from Guantánamo Bay to be tried as a terrorist in civilian court. And we had a great team on it, and it's inexplicable. I have a chapter on verdicts and the nature, the uncertain nature of verdicts. And I mention this there. I was sitting, I was sitting in the courtroom. I count one not guilty count.

Two not guilty counts, three not guilty counts. And by the time we got to count four not guilty, I was starting to be in a full-fledged panic. Uh, and was gripping the arm of the chief of the Criminal Division, um, and probably muttering words that I wouldn't mutter because I think my parents are watching the live stream.

(laughter)

00:37:39 Preet Bharara: Count five guilty. "Okay, well, now, now we're back on track," and then count six through 285, not guilty. I talked to one of the defense lawyers afterwards. You can never know what happens in the black box of a jury. Um, but I think reasonably, you can speculate that there were one or more people who did not want to convict, who were gonna hold out. And it was a compromised verdict on this one count. And it was a particular odd count, the destruction of buildings, um, which carried the same maximum penalty of life.

00:38:10 Clifford Chanin: He, he was given a life sentence for...

Preet Bharara: He was given a life sentence for the one count. So all was well and good at the end of the day. But you know, a couple of things. It caused people, politicians in particular, to think, "Oh, my God, what if he had been acquitted?" What if Khalid Sheikh Mohammed is acquitted? Because he can't be. How can you allow that to happen?

00:38:31 Because if he is, that's terrible for a lot of reasons-- you know, public safety and everything else. But boy, is that a blow to our justice system, because he's guilty. Problem is, and, you know, not to unnecessarily lurch to impeachment, but...

(laughter)

Preet Bharara: But as I...

Clifford Chanin: All roads lead...

Preet Bharara: That's, that's Putin, actually.

(laughter)

00:38:57 Preet Bharara: That's Nancy Pelosi talking. No, but the analogy is this, and maybe it's a little tortured, um, you know, we have this, we have this phrase we use in law school, you know? Hard cases make bad law. But certain kinds of cases that are very extreme and test all of our premises, test all of our premises and our first principles and what we believe in, um, they get tested by these really extreme cases like, "Well, what do you do if it's the president of the United States?" Or, "What do you do if it's Khalid Sheikh Mohammed?", right? I'm not comparing them.

(laughter)

00:39:29 Preet Bharara: Because, because the virtue of a trial, right? It's not the Soviet Union. The virtue of a trial is that the outcome is uncertain. You have more or less, you know, predictability because you think you have a lot of evidence. But I have tried cases that are not on the, not in the newspapers, where I thought they were a little bit close, and I thought maybe the jury wasn't buying it. And we had some witnesses who didn't perform as well, and we had lost witnesses.

00:39:54 So it was a little closer, and the jury convicted. And I've had other cases where I thought it was overwhelming, and I was shocked to hear the jury acquitted. But that's the system. The virtue of the system, what makes it fair, is the unpredictability of the verdict. Everyone has a right to a trial.

And if you're gonna send someone to civilian court-- not just if it's the guy down the street, you know, who robbed your neighbor's home, but also Khalid Sheikh Mohammed-- so if you're gonna take the chance on an Article III court, it can't be a fait accompli, it can't be a kangaroo court, you can't have the results preordained.

00:40:26 On the other hand, you can't have him not, not... Not found guilty. So it's a dilemma, particularly for politicians who are thinking about, do they

authorize this, do they not authorize it, and how much blowback is there gonna be. And I don't know what the resolution to that is. I mean, the virtue of that is, I mean, it's sort of like democracy, right?

00:40:43

Like, you don't really know what's gonna happen in an election. And the fact that you don't really know-- and look what happened in 2016, nobody, nobody predicted that. Neither-- neither of the presidential candidates predicted the results themselves. But the fact that you don't know what's gonna happen gives you some sense that the process is not rigged. And you can't have a rigged election if you believe in democracy, and you can't have a rigged courtroom trial system if you believe in civilian justice.

Clifford Chanin: So, but your office was going to be the one here in New York to prosecute Khalid Sheikh Mohammed.

Preet Bharara: That's correct, yup.

00:41:18

Clifford Chanin: How far into the preparation for that trial had you gotten? And how were you anticipating dealing, not just with the uncertainty of a jury process, but with this whole notion of the tainted, tainted handling of him, and how that would corrupt anything that came from his own acknowledgments?

Preet Bharara: So, we had been working... We had been working on the legal research, and the arguments we made, we thought we had pretty strong arguments. And that was part of, actually, the, uh, you know, the debate with the attorney general. So, so I got confirmed and then sworn in on August 13th of 2009.

00:41:53

And my predecessor, Lev Dassin, was already in the process of, of making the argument to the attorney general that the case should be done in an Article III court and in particular here, in the Southern District of New York. And then other people on behalf of the military were arguing that it

should be a military commission, and then there were yet other people arguing, "Yeah, it should be a civilian court, but it should be in Virginia, Eastern District of Virginia."

Clifford Chanin: Because of the Pentagon.

00:42:16 Preet Bharara: Because of the Pentagon, the two principal places where it should be. So there were two arguments going: which forum? Meaning, military or civilian? And then which place? Which venue? Virginia or New York? And so, you know, a lot of my first few weeks was reading up on the evidence, reading up on the legal cases, reading up on the arguments we were making, 'cause we're basically flying to DC and making presentations to Eric Holder, and then my counterpart in Virginia, Neil MacBride, was doing the same thing.

00:42:43 I think it was November 13, November 13 or 14, so, you know, barely ten or 11, 12 weeks into my time as U.S. attorney, having made our arguments, uh, Attorney General Holder called me on the phone and told me that he had made made the decision that Khalid Sheikh Mohammed and the four co-defendants would be tried in the Southern District of New York, because that's where the mass of pain was felt.

00:43:07 He thought there was symbolic value and virtue in having that happen here, you know, in the shadow of the, you know, all the damage that they caused. But we wouldn't do it alone. We would do it in partnership with prosecutors from the Eastern District of Virginia. It would happen in New York, but we would be a team to show that also, you know, the fact that the Eastern District of Virginia, the Pentagon, lost so many American men and women, as well.

00:43:30 We put the teams together. Um, we spent the next few weeks trying to put together the most powerful, understandable, streamlined indictment of those men that we could. I remember working, you know, reading a lot of things over Thanksgiving, the short Thanksgiving break we had that year. And then it sort of sat on hold for a while.

00:43:54

So then November turned into December. As we mentioned, we had the underwear bomber incident happen, and that just threw up a lot of attention to, "What are we doing? Why are we trying terrorists in civilian courts? They get too many rights," et cetera, et cetera. "They will have a platform from which to say terrible things about America." So that movement, I think, started to get a little bit more attention.

We also had, you guys may remember, there was, you know, a tremendous discussion-- I think some of it in good faith, I don't think, not all of it, not all of it in good faith-- about what the security costs would be. And you had Mayor Bloomberg, who is about to become president, I think...

(laughter)

00:44:30

Preet Bharara: Say that in coordination with Ray Kelly, with whom I had a good relationship, and I talked to all the time, "We're gonna need to fortify everything, we're going need to have a lot of, you know, law enforcement personnel, we're gonna have to, have, you know, rings of steel around the courthouse and everything else." Um, and the price tag that was mentioned was, was a really, really high number, and I think that was largely in good faith, but I think people just started to get some cold feet, because I think, it wasn't the price tag. It goes a little bit to this idea of, "What would happen if there was an acquittal?", right? "You have the trial, NYPD and JTTF are the best, probably nothing will happen, but, oh, my God, what if something does?"

Clifford Chanin: Right.

00:45:14

Preet Bharara: In this hugest trial ever. And, and it just sort of delayed, because nobody wanted to pull the trigger. Because you actually couldn't... So, in the interim, between, you know, all these debates about what terrorists you could try in a civilian court, and what you do with the people at Gitmo, the Congress passed a law that basically said you're not

allowed to bring someone from Guantánamo Bay to be tried in the United States without providing all sorts of notifications to the Congress, which starts a clock running. They could presumably block it.

00:45:44 So there are all these procedural obstacles put in place, and then it sort of languished for a long time. We, uh, we not only made legal preparations, we actually made, um, you know, jail, jail accommodations ready. I mean, Eric Holder came up, and with the chief judge, Loretta Preska, and I, and a bunch of other folks, and the U.S. marshal at the time, we actually saw the cell that was designated to be Khalid Sheikh Mohammed's cell at the much more infamous MCC, where Jeffrey Epstein was recently. And he never occupied that cell because he never came.

00:46:18 Clifford Chanin: So fast-forward to today. So it's nine years-plus since then.

Preet Bharara: Nothing's happened.

Clifford Chanin: Nothing's happened. The announcement is January 2021. What is your view of the likelihood of him being tried? Is this coming to an actual trial?

00:46:34 Preet Bharara: I haven't, since I left office, I haven't followed super-closely the particular legal challenges that are, that are happening now, and what other things might delay it further. I don't have, I don't have a lot of confidence, I mean, that's... If we had tried KSM and company with... And it would've been challenging, it would've been challenging for a lot of reasons, and it would've been difficult. And a lot of people would have, I think, complained about it.

00:46:55 But that would, sitting right now, this conversation we're having, that would have been eight years in the rear-view mirror, whatever happened there. And I think it would have gone properly. And at the time... You

know, I wasn't very critical of the decision. Obviously, um, you know, I'm a hammer that actually thinks he has a nail, and we thought, "Federal prosecutors, this is what... This is what we do."

Clifford Chanin: Mm-hmm.

00:47:17

Preet Bharara: And... You know, I think it was proper for me to sort of raise a ruckus, you know, the decision was, the decision was, above my pay grade, and I thought the best argument we could make in favor of people understanding that that was not the best decision for that to have to be rolled back, was to quietly go on and do our terrorism cases, and case after case after case, successfully and appropriately, uh, bring people who were guilty of material support of terrorism and all these you know, designated terrorist organizations, bring them to justice year after year after year, and we did a lot of them-- none of them on the scale of KSM, of course. But that just proves...

00:47:55

Clifford Chanin: But bin Laden's son-in-law is an example of that.

Preet Bharara: Yeah, yeah, I mean, big, big cases. And other districts have been doing them, too, because they have been subject to threat and attack. And then now, looking back, literally ten years later, the better course would have been to go the way the original decision said.

Clifford Chanin: Well, the system seems to be processing, I'm... Just from today's "New York Times," "Dallas Man Gets 30 Years Recruiting for ISIS Through App." More recently, "Bronx Man Sentenced for Providing Material Support for ISIS." "Hezbollah Operative Sentenced to 40 Years." In Virginia, "Man Indicted for Attempting to Provide Material Support to ISIS." So these cases are happening, perhaps not within the media's attention, but they are happening across the country.

00:48:37

Preet Bharara: Just going back to the same point again. I really do think, it's not a satisfactory analysis, really, but you have a system—it works. It's

rigorous, it makes sense. We believe in it, right? And then you have the extreme case, right? I sometimes ask people the question, I would test people when we had our discussions, um, to see how far they're willing to go, right? I mean, there's nothing different about trying KSM in civilian court than trying any of these other people, except that KSM is a rank above, right?

00:49:09 And it's 9/11-- it's not a failed attack in Times Square. That has no legal significance. It has no evidentiary significance. It has a significance kind of here to people and that matters. I'm a lawyer, and I believe in following the law and interpreting the law. But this stuff matters, too, right? Because the purpose of the law is to vindicate, as Judge Rakoff from my court used to say, the people's cosmic sense of justice. And that sounds like an outlandish thing, but it's a real thing, right? Punishment has to fit the crime. It has to feel like it fits the crime.

00:49:42 And so the test I would sometimes offer when people would say, "Well, it's just, it's BS." Like, "We should just try him here like we try everything else," I said, "Would you have the same view, or would you have any additional pause if we're not talking about KSM? Now we're talking about... Now we're talking about Osama bin Laden himself," right?

00:49:57 And, you know, there are a few figures in history, they're not a garden-variety criminal defendant. And even if you believe in civilian court, and I do, over military commission, but you have to concede that these are different- order things, you know? Hitler, bin Laden-- different. And I am willing to accept and, and respect the arguments of people, even though I don't agree at the end of the day, I'm willing to accept and respect the arguments of people who say bin Laden is different. KSM is different, and you can't afford a loss of a particular kind when you're talking about people like that.

00:50:38 I mean, how are Americans gonna feel? Um, so it's, it's complicated. I mean, the point is, of all this is to, is to say, you know, all this stuff is not so clear. It becomes, it becomes complex and it becomes thorny. And then you have, you know, there's lots and lots of folks whose opinions you want to respect. The families of victims of 9/11, and you know,

there's... there's law that requires you to consult with folks-- and maybe there are some here today-- and some had the view, really strongly, that this trial should happen in, in New York City.

00:51:12 So they can come and see, and it's, and they had pride in the American justice system. And what a great thing to show the world. And some, in complete good faith, equally strongly felt they shouldn't be accorded that, and it should happen in, in Guantánamo Bay, in a military commission. It's hard to reconcile these.

00:51:28 Clifford Chanin: Yeah. Let me jump to a couple of current issues. You know, we had-- and I start with this one because the work of the U.S. attorney's office and the FBI is joined at the hip-- and so, you know, the issues currently involving the FBI, I would think, are something that you are paying particular attention to, so that the FBI Inspector General Report, which has just come out-- and there was testimony in Congress yesterday, uh, the explanation of this-- which essentially, uh, supports the broader claims of the bureau that there was a legitimate reason to open this investigation of the Trump campaign.

00:52:03 But that also is highly critical of some of the procedures of individual FBI agents and some of their supervisors, in term-- and lawyers-- in terms of the handling of, particularly, the FISA applications for Carter Page. So, you know, it gives ammunition, if you will, to both sides, and we all know how polarized things are right now, but, you know, where do you see the FBI as an institution at this point in time, and the pressure it has come under from the man who was supposed to be the leader or the, the ultimate authority in relation to the FBI?

00:52:35 Preet Bharara: Are you talking about Chris Wray or Donald Trump?

Clifford Chanin: Well, Donald Trump is who I was speaking of.

Preet Bharara: Oh. Look, I think it's tough times for law enforcement. That report, highly anticipated-- by the way, the inspector general, point of personal pride, is Michael Horowitz, also an alum of the Southern District of New York. Uh, we're everywhere.

(laughter)

00:52:55 Preet Bharara: And yeah, look, the bottom line is the bottom line, as you said, right? But there's this, there's this terrible discussion of 17 significant errors-- and maybe that's a euphemism for something worse-- that shouldn't happen. Now, there's some people who say, uh, you know, "We should eliminate FISA." I think that doesn't make a lot of sense, because it's gonna take us back to a well-before-9/11 footing. It's a good tool, it helps keep Americans safe, but it has to be respected—the rules have to be respected, and you can't make mistakes like this.

00:53:28 So, that's terrible and awful. What makes it worse, though, is, you have people with huge megaphones, including the big guy who you mentioned, who, not in good faith-- and I use the word "good faith" a lot because I think it's a meaningful concept-- who doesn't say in good faith, "Well, there's bad things happening at the FBI." It's all, it seems to be all out of personal disdain and retaliation, because he has felt victimized in a particular way.

00:53:55 Now, he was not victimized. I mean the top line, you know, summary of the report is that he wasn't spied on, and there was no bias in the opening of the investigation. And if you ask me-- and I wasn't involved in that-- the information they got at the outset was, I think it would've been malpractice not to open up an investigation.

And the proof that no one was trying to derail the election, the most obvious point that people make, but maybe it doesn't get made enough. It's not to excuse anything-- any of these mistakes and errors and worse that happened. And the changing of an email by a junior lawyer, all terrible, and he was held, to be held accountable in the strongest way, whatever's appropriate based on a disciplinary system.

00:54:38 But... You know, they kept that secret. That investigation was kept secret, and clearly knowing that it wasn't gonna be resolved before the election, and the investigation that wasn't kept secret was the other one. And the disclosure that was made, that maybe put Donald Trump in the White House, was the disclosure made about the other investigation.

00:54:59 So I, I don't fully get... You know, again, this is another example of, is your theme here. You can have issues and quarrels about FISA, and, you know, secret courts are a complicated thing in America. And when you have an ex parte provision, which means the government lawyers go, when there's no opposing lawyer, you have to be really careful. You have to have good safeguards. And that's all good, fine, legitimate, American patriotic discussion and debate, and it should happen. Like all these other issues we're talking about.

00:55:28 The problem is, when it becomes politicized, and there's a person that you like, if you're one of 60 million, or a person that you don't like, or you don't like him, if you're one of the other 60 or 70 million people, then it, you've made your decision about whether it's good or bad based on who you're rooting for, rather than on whether it's good policy or good law.

00:55:48 I mean, I've often commented on this "Lock, lock him up, lock her up." All these people yelling, "Lock her up!", who mostly, who're saying "Lock her up," I think, had no understanding what the law was, didn't hear what, didn't, couldn't name the statute, hadn't seen the evidence, saying, "Lock her up!" Because people feel very strongly in this country about who should lead it, and that's-- nothing wrong with that.

And then there's all sorts of people yelling, you know, long ago, before we saw one page of the Mueller report, about Trump, "Lock him up!" Hadn't looked at the law, hadn't seen the fax, hadn't weighed... And because they feel strongly about him in the other direction. And I think that's unfortunate.

00:56:23 Clifford Chanin: So, reflect, if you would, a little bit on sort of the response of institutions to this kind of strain both within the society across the board-- because the society itself is polarized-- but also under the pressure of the ostensible leaders of the institutions and the system itself. You're familiar with these places. What do you know or what do you feel about the way they are responding to this pressure? Are they cracking?

Preet Bharara: So, it depends on which institution you're talking about, so, I think the press, uh, the, you know, the pillar of American democracy outside of the government, right? The fourth estate-- I think it's doing pretty well. I think you're seeing some of the best reporting, I think, um, because members of the press know-- and they're not, no one's perfect, right?

00:57:06 But, maybe many of you, but most people are not perfect. Um, they know that a mistake that is adverse to the president will be weaponized against them, right? Adam Schiff knows that when he misspeaks somewhere. You know, you got to be on your game, because the person about whom you're writing is going to kill you with the slightest mistake. Even if you apologize for it, even if you give an explanation for it, even if you fire the person who did it-- which is, by the way, something the president of the United States never does, right?

00:57:34 People make mistakes, and the key is, do you own up to it or not? So I think people are trying to do well. Are there problems with the press? Um, yes, I mean, the press is a mixed bag in a lot of different places, but I think overall, it is what, it is what keeps democracy alive, and it's, and it's good. And they're, I think, doing a decent job in the face, by the way, of a lot of antagonism and attack.

00:57:57 Uh, then you have the courts. The federal courts, I think, are doing pretty well. Put aside what you think about, you know, who the president's nominating. That's a different issue. But on the integrity and independence of the courts, I feel pretty good about it, generally. And that is because the founders were very smart and they made federal

judges immune from political pressure, in a way, by giving them life tenure. So there's a difference, right?

If you're a judge, and you piss off the president, you still have your job and you, because you have life tenure. If you're a U.S. attorney and you piss off the president, you get a podcast, so it's a totally different...

(laughter)

00:58:30

Preet Bharara: It's a very different kind of arc.

Clifford Chanin: Which amendment is that in the Constitution?

Preet Bharara: It's like a requirement now. If you're a former government official, you must have a podcast. Congress is a mixed bag. I think Congress has fallen down on its job, but it's, it's the most political branch, and so people will vote their conscience or not, if there's a Senate trial, based, I think, a little bit on whether they think they're gonna be retaliated against by the president or by the supporters of the president.

00:58:58

Clifford Chanin: What about the Justice Department?

Preet Bharara: So, the Justice Department is the one I'm most concerned about. Because the Justice Department-- and all these things that I find to be terrible and worrisome-- are not laws, they're not mandated by law, right? It's actually, you know, this whole business with Ukraine. I sometimes try to make the analogy a simpler one. Uh, and people can debate, is it impeachable, is it extortion, is it bribery?

I just want more people to admit that it was bad. It was bad! And the example I give is, whether it's a violation of law or not-- and people may know that, you know, the president of the United States tried calling me

when he was the president and I didn't take the call, and I got fired the next day. And even though it's the best job I've ever had, I've never been prouder of not returning a call in my life.

00:59:37

If the president of the United States-- whether or not Jeff Bezos has committed a crime, whether or not, you know, some politician has done something, whether or not Nancy Pelosi has committed a crime, and you call the person who serves at your will and you say, "Hey, I want you to investigate Nancy Pelosi," right? And then you call up, you know, the New York U.S. attorney and say, "I want you to investigate Chuck Schumer," and then you call up, you know, in another part of California, "I want you to investigate Adam Schiff," and you started doing that as the president of the United States, even though you're technically the head of law enforcement-- you're the president of the United States-- that is bad.

01:00:13

That is bad. It's unethical, it's immoral, it's an abuse of power. You keep law... That's what you do in the Soviet Union, right? Where you have the power to order people to investigate your enemies. And when, when I give that example, I've never heard anyone come back at me. Supporter of the president or otherwise... I mean, I did one time, actually. And then I stopped talking to that guy.

(laughter)

Preet Bharara: "No, the president can do that." I'm, like, "Yeah, the president can do a lot. The president can also nuke Canada. But I think, but I think people would have some issue with it, right?"

(laughter)

01:00:44

Preet Bharara: So, the president of the United States, in a lot of ways, has violated these norms that no one has thought to violate before-- people have come close. And it's not to say that presidents before haven't been, have been perfect, or attorneys general have been perfect, but it worries

me. What gives me some faith and confidence, I think Chris Wray is not taking the bait. I don't feel like he feels the need he should launder talking points for the president, like some other people do.

01:01:09

Has had the right, contrite kind of reaction to this I.G. report. "Look, there are a lot of problems, I'm rolling out 40 reforms, I take it very seriously, but I'm proud of the men and women of the FBI. We're still, you know, the best"-- I'm paraphrasing-- you know, "fine law enforcement agency. We need to do a better job." And agreed with and respected the basic findings of the I.G. report, as opposed to some people who cherry-picked, like, "Oh, I like this, I don't like that."

Clifford Chanin: Reference to the attorney general?

Preet Bharara: Perhaps.

Clifford Chanin: Perhaps.

(laughter)

01:01:39

Clifford Chanin: Let's see if anybody in the audience can ask a question that gets more than a "perhaps." Um, gentleman over there, please wait for the microphone.

Audience Member: The 20th hijacker, my understanding is that the Minneap—Minnesota flight school, uh, he, they were training him, and he didn't have any interest in learning how to land a plane, so they contact the FBI and said, "Hey, this guy, we think there's something weird." And then the FBI agent came in and said, "Yeah, this, this hijacker, or this person, seems a little suspicious," but the FBI in Washington wouldn't let them actually look at the computer, and had they looked at the computer, they would have known that 9/11 was happening. Is that true? And how would that not happen today?

01:02:19 Preet Bharara: Yeah, you know, I am not as fresh on the facts of that, of that incident, so, yeah. So I should beg off.

Clifford Chanin: We'll wait for a mic please, yep.

01:02:37 Audience Member: Good evening, and thank you for this lively discussion. My question to you is, um, Bharara, um, is, you've always said you see yourself as a prosecutor, you're the hammer and it's the nail. Could you see yourself transitioning from that to, say, a judgeship, if one was ever offered to you? And do you have any political aspirations going forward, regardless of who's in the, in the White House next year? Thank you.

01:03:02 Preet Bharara: So, um, thank you for the question. So I, um, so I don't want to be a judge. And I, I say in the book-- it may be surprising, because I, the hardest thing a judge has to do is to figure out how many days, weeks, months, or years you separate a human being from their liberty. And even though as a prosecutor, obviously, you make sentencing recommendations, I don't know how I'd go in to work every day and decide, "How much liberty am I gonna take away from you?" It needs to be done, we need people to do that. Um, not my cup of tea, to do that. I also think I'd be a little bored sitting in robes every day.

(laughter)

01:03:39 Preet Bharara: I have, like, I like to come to work with an agenda, and that's what I did when I was a U.S. attorney. I had an agenda of, "How are we gonna drop crime? How're we gonna keep the city safe, and the country safe? How're we gonna get people their money back if they've been victims?" And, um, active, and leading in a particular way.

01:03:56 You know, being a judge requires passivity. I'm not such a passive person. So, if you become a judge, you... I think the appropriate way to be a judge

is, you, you then suppress any agenda you have. Or what some judges do is, they don't suppress, and then they become bad judges. They become a certain kind of activist judge. And I don't want to be that kind of judge. And then also, there's the sentencing thing.

On politics, I've often said I have... I have no plans to join politics in the same way I have no plans to join the circus, and I mean no offense to the circus.

(laughter)

01:04:28 Preet Bharara: I have a lot of peeves, so, I don't wanna, I don't wanna have to call all of you up every day and ask you for money. That's not, that doesn't seem fun to me. Look, I served a, uh, a great politician, the senior senator from New York, Charles Schumer, for four-and-a-half years. Um, I vote, I follow politics very closely. I talk about it on the podcast. We need really good people to serve in office.

01:04:53 And if they're willing to endure hoards of crap and invective, and character assassination, and privacy invasion, and, you know, the humiliation of begging for dollars, then God bless you, and I love you, and we need people like that. I'm not at this moment, you know, inclined to do those things. Uh, you know, things may change.

01:05:15 Look, I thought, I thought briefly-- I mean, I've talked about this publicly-- when, when there was a departure in the attorney general position in New York, I had only been a few, a few months back in the private world. I thought for a week or two about running for that, because it seemed most similar to what I was doing before. You know, there's some purity to the job. It's not a pure political job, it shouldn't be a pure political job-- it's a law enforcement job, it's a justice job. Um, but I just wasn't ready to do that campaign thing. You know, maybe sometime in the future, but not at the moment.

01:05:45 Clifford Chanin: Another question? Gentleman all the way in the back there.

Audience Member: Thank you, good evening, and thank you for your service. You spoke earlier about the psychological trauma of 9/11, those first days afterwards, seeing police and that being a sign of comfort. Um, and yet when the trial of, you know, Khalid Sheikh Mohammed and his associates came forward, that that was actually an obstacle, potentially-- those security costs, you know-- to the trial.

01:06:18 Hours after the Chelsea bombing, people are going to restaurants, you know, in Chelsea. Hours after the vehicle ramming attack in New York, people are going to the Halloween parade. After the attempted suicide bombing in Times Square, people go through the subway corridors. How can you speak about the topics of resilience in America regarding terrorism the last 19 years, and how we'd collectively be able to respond to that psychological trauma? Thanks.

01:06:40 Preet Bharara: I mean, that's a, that's a question that I don't think I'm qualified to opine on, but you're, you know, you're exactly right. Look, I remember on 9/11—on 9/11-- buildings burning, walking onto Fifth Avenue and seeing, you know, the overwhelming reaction was just shock, disbelief. People were crying in the streets, um, checking in on their loved ones, uh, you know... I think during the time that the towers were still burning, which seemed to go on for hours and hours... It's kind of, it was kind of weird to understand later that it wasn't that long, right?

01:07:13 Um, and then, in the afternoon, and then I remember going out to pick up some food-- we had no food in the house, or not enough food for the house, and walking a few blocks north on a, in the 20s, and again, you saw people who were upset.

But then there there were people who were walking around and they were picking up food and they were cracking jokes and they're living their lives, on, on the day, right? I mean, at the time, we didn't know it was 3,000. You know, as Giuliani said, you know, it's too many, too many to

bear. So I don't, I don't know what it is about human beings generally, and their ability to be resilient and to compartmentalize and to live their lives when they have loss-- because people experience loss all the time, right?

01:07:55

You experience the loss of a child. I mean, I've... My good friends who've experienced tremendous loss, and you have to figure out ways to live. We talk about the resiliency of, of communities after 9/11 because that was a, that was a communally experienced loss. It's not just one person in your family, but, you know, all sorts of people in your community-- and everybody knew somebody.

And I think there's something special about New Yorkers, maybe, and maybe, and maybe you just get used to things over time. I don't know-- I think it's a good... I think it's a good quality, the resilience. But it's a harder question than I can, I can really address.

01:08:34

Clifford Chanin: Well, I think it's clear that, uh, we could go on for a lot longer, but we're not going to. Um, I do want to make my general reminder. Many of you are members of the museum, but some of you are not. And I would ask you to think about it on your way out, maybe stop at the table and join, because it supports programs like this. And this is the end of our season, and, as I thought, we were ending with a bang. And so we did. So please join me in thanking Preet Bharara.

Preet Bharara: Thank you.

(applause)