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The Axe Files - Ep. 198: Preet Bharara

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Axelrod: [00:00:00] Preet Bharara it's great to have you.

Bharara: [00:00:15] Great to be here. Thank you.

Axelrod: [00:00:16] And I generally as people listen to this podcast know start off one place but tonight today I have to start off on another because we get together on a kind of historic day when General Mike Flynn walked into the federal courthouse in Washington and pled guilty to lying to FBI agents. What did you see as a student of such things? What did you see in that indictment? And what does it portend?

Bharara: [00:00:55] So it's great to be here. I will say that I didn't expect that this is going to be the main topic we're going to be talking about.

Axelrod: [00:01:01] Neither did I, but I'd be a fool not to take advantage of your presence.

Bharara: [00:01:04] ...at LaGuardia just this morning that's when the news was breaking. And so I figured we'd be talking about it so I. I've been trying to catch up on the things that are unfolding literally as we speak because it's only been three or four hours since the news broke. I've read the what's called a criminal information.

Axelrod: [00:01:20] Yes.

Bharara: [00:01:20] To which Michael Flynn has pled guilty. And what struck me first about it is it's very barebones barebones. It's a page and a half long. There's only one count. It's a count that involves what the statute is known as 18 USC 1001 lying to the FBI. The people don't appreciate didn't appreciate it before. It's a terrible idea to lie to the FBI. They appreciate it now. I think a lot of people are a little bit surprised given how much swirling investigatory reporting was going on with respect to other things that Michael Flynn seemed to have been involved with including you know potentially taking money from the government of Turkey to engage in certain acts.

Axelrod: [00:01:59] But doesn't that suggest that that there's a pretty elaborate deal at play here?

Bharara: [00:02:04] So that's a great question. And I will tell you frankly I'm on a podcast you're allowed to admit you don't know.

Axelrod: [00:02:10] Yes.

Bharara: [00:02:11] Maybe on cable you can't. But on the podcast you can. I don't know because I'll tell you the way. Normally these things operated in my office. If you had a witness if you had a target who was guilty of various things and you were prepared to charge them with various things and then you flip them so that they would cooperate against someone else higher in the food chain you demand that they plead guilty not just to something small but to everything that they have done. Because that makes the person a better witness and more repentant

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witness if they have to testify later also if they plead guilty to these other things that might be conspiracies that involved yet other people. You want your guy your witness to have pled guilty to them also. So in the ordinary course I would say this may signal that those other things didn't come to pass and they didn't have enough evidence to prove that Michael Flynn was guilty of other stuff. But this is kind of an extraordinary situation and it's extraordinary times and it may be but I don't know. This is all, sort of, hopefully, intelligent speculation that you know maybe he had information that was so considerable and so weighty and otherwise impossible to get that they decided not to have him plead guilty to other crimes that they could have proven that's not the ordinary way it's done. But this is not an ordinary case. It's not ordinary subjects and targets that we're talking about and some of this evidence is very hard to get. So I don't know. But time will tell.

Axelrod: [00:03:37] There was a lot of speculation that his son was also in the crosshairs for some of the activities that he was involved in with his father. That would be another point of pressure. He wasn't mentioned in this complaint in this in this document.

Bharara: [00:03:52] Right. Look you know federal prosecutors are not easy going people. And for a reason. It's very hard to get evidence about people's states of mind and it's hard to turn people against their criminal coconspirators if there are any and sometimes incidentally there are family members involved. And for the purpose of trying to save other people's skin within your family people will decide to flip. I would not be surprised if that psychological motive was one of the reasons why we have this deal here. But it's still it still is interesting that it is you know. So narrow. But by the way I will say that it does show a couple of things combined with the George Papadopoulos plea that the Mueller team, whatever else you think about them, cares very deeply about issues of lying and issues of obstruction and to the extent that the Special Counsel is looking at obstruction on the part of other people up to and including the President of the United States. This is not a team that takes that lightly.

Axelrod: [00:04:54] In this bare bones document that was filed this criminal information. They also talked about what he lied about. And there was a lot of attention paid to the the issue of whether he'd discuss sanctions.

Bharara: [00:05:10] Right.

Axelrod: [00:05:11] And that's been publicly brooded about whether he discussed sanctions with the Russian ambassador. That was part of it. There also was mention of a U.N. resolution.

Bharara: [00:05:22] Right, relative to Israel.

Axelrod: [00:05:22] Relative to Israel. Just recently it was reported that the the the special counsel had called in Jared Kushner who had that portfolio and has that portfolio with the with the president. Is it your presumption that that was what the discussion was about?

Bharara: [00:05:43] Yeah I mean I don't I don't presume. But I think that's intelligent speculation. I think there was there's some mention in the proceeding today that Michael Flynn has acknowledged that he was directed by at least some member a high up official the transition to make contact with the Russians. I think the smart money is on that being Jared Kushner but we don't know that yet.

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Axelrod: [00:06:06] I mean what is it just and I know you're not on this case now but what what would actually be the violation there if there was a violation. I mean there is the Logan Act. No one's ever actually.

Bharara: [00:06:21] No one's ever been prosecuted under the Logan Act.

Axelrod: [00:06:23] Right.

Bharara: [00:06:23] So you know so it's unclear what the violation would be. I think you have to wait for all the facts to come out. I think it's not. You know what I've always thought was significant here based on the charges brought against Papadopoulos and now the charges brought against Flynn is is the suggestion that there has been obstruction. And I also understand that Bob Mueller's mandate is in part even if no criminal violation will be alleged. But to figure out if there was some kind of improper collusion or coordination with the Russian government to help them interfere with the American election. And. You know it's not clear to me even if ultimately there's no crime to be charged there. If that's not something that the Mueller team decides to refer to the House of Representatives for potential impeachment proceedings it's a big deal whether or not you can allege a particular statute and maybe there's a way you can. But it is a big deal to. Have evidence and we don't know if we have it yet that the Russian government interfered with the election and that some members of the Trump campaign may have coordinated with them on it. I'm not saying that that happened but now you have the possibility you have this you actually have a general who is close to the top close to the president himself in the campaign and was close in the White House itself for a period of time. You have him admitting that he reached out before the election before the swearing in of the president. Two officials high up officials including Ambassador Kislyak to talk about things right now we know that some of those things that he talked about was the sanctions and this U.N. resolution relating to Israel. We don't know yet if there were also things that he didn't mention to the FBI and they're not part of his charge but that were relevant to the campaign. No I guess it's possible that he has told people that the president and Michael Flynn said among other things to the Russians you know could you help us with the campaign. Could you do this hacking. Could you make available and public documents and materials that are embarrassing to Hillary Clinton. That by itself I think is extremely serious. But if it is also true that in exchange for doing those kinds of things there was a suggestion or a promise that the American government would do favors in some way either be soft on sanctions or repeal the Magnitsky Act or any one of a number of things in favor of Russia. Then I think it's even more serious.

Axelrod: [00:08:58] This also points to that meeting in June in New York with the Russian lawyer and others in which the Magnitsky Act was discussed those sanctions that apply to some Russian actors related to human rights violations. Sanctions are very much were very much on the minds of the Russians and we know that the meeting was arranged after a proffer of information about Hillary Clinton. And so I mean there are. There are pieces here of a puzzle that seems to be coming more into focus.

Bharara: [00:09:42] Yeah look we don't know. We just don't know what Michael Flynn is prepared to say credibly about not only Jared Kushner and Steve Bannon and others but also Donald Trump himself. And you know we know we know for a fact if you've been paying attention in the world for the last few months that Donald Trump you know doesn't make modest

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requests and Donald Trump doesn't exercise a lot of caution when he talks about things whether that's in person or on Twitter. You know he had that meeting that was reported where he referred to Jim Comey as a nut job and revealed apparently to the dismay of the Israelis some classified information to the Russians so you know.

Axelrod: [00:10:22] And getting rid of Comey relieved great pressure.

Bharara: [00:10:25] Exactly. And that was after he became president and presumably had some constraints and some sort of understanding of what the office was. But in the freewheeling days of the campaign when it was far from certain that he would be ascending to the presidency. I think it's fair to say you know God knows what kinds of discussions arrangements promises representations were made to the Russians. And again I'm not saying that any of those things happened but given other things that are fairly surprising. It wouldn't be shocking to me.

Axelrod: [00:10:56] You and I understand that there are certain prohibitions on what you can and can't discuss but there are people who work for you who are now working for Mueller and some of the people around Mueller and obviously the Manafort indictment speaks to it are quite expert in money laundering and other financial crimes. Do you feel that the investigation could flow into the President flow into Jared Kushner flow into their business dealings?

Bharara: [00:11:34] Yeah I mean I think it's I think it's possible. I think what's on everyone's minds and tongues today is what does Michael Flynn know and what he's prepared to say. But I think we also have evidence from the indictment that is not yet proven against Paul Manafort that they're also looking at transactions financial transactions. It wouldn't surprise me if they're looking at all of those kinds of things too even though some people don't like that they are. But but for today I think the issue is what was the understanding on the part of Michael Flynn when he was reaching out to the Russians of what Donald Trump wanted. And if Donald Trump was suggesting that anything would be coming back to the Russians in exchange for not retaliating in the way they normally would. I mean look what's extraordinary about all of this separate apart from a legal matter as you know is in every other instance going back as far as memory serves when the United States takes some action against the Russians. They fully expect and the Russian people fully expect their government to retaliate in kind. And you had somebody who is not yet in office the national security adviser basically admitting through this guilty plea about lying that he he got the Russians to back down. Now maybe the Russians decide to back down because you know Michael Flynn they wanted to curry some sort of general goodwill and favor with the new administration. But it's not crazy to ask. Well you know Vladimir Putin had to look weak in deciding not to retaliate in the way that you usually do. And his foreign minister had to look weak not doing something like that which is what the Russians always do. So what are you getting in return for that? And I think that's a vital question to ask.

Axelrod: [00:13:19] You know if you're listening to this and you're not a lawyer and you're not you know steeped in all of this. You're the average American out there. And the answer or some sort of assurance that these sanctions would come off or some sort of sanctions relief. I mean there is the Logan Act and there is not just a law but a tradition of one president at a time one president makes foreign policy. But you could see supporters of the president arguing you know if he got the Russians to stand down. Isn't that a good thing.

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Bharara: [00:13:58] You know there's there's some legal debate on whether or not the Logan Act which basically says I'm way over simplifying that private citizens are not supposed to be negotiating foreign policy on behalf of the American government. And there's a good reason for that. I don't think it's ever been successfully prosecuted and there's probably good reason for that also because it doesn't come up that often it's complicated and you know it just you know people are probably a little bit you know reticent to bring a charge like that. But it doesn't mean it's not serious stuff.

Axelrod: [00:14:32] Last question on this if you were the White House how would you... I saw the Ty Cobb's statement the president's lawyer which basically was this is an indictment of Mr. Flynn for things that Mr. Flynn did. But plainly it had it was much more meaningful and the announcement that he was cooperating. What do you suppose the president's lawyers are telling him today.

Bharara: [00:15:02] Well you know they're probably telling him the same kinds of things that they've been telling him all along but they tend to fall on deaf ears. They're probably telling him you should keep your head down. Focus on the problems of the country. Leave the lawyering to us. They're probably telling him don't tweet certainly don't tweet in anger don't give prosecutors grist for showing what was in your mind. I tweeted earlier today you know this is one of those moments and those days when it's useful to pay close attention to what Donald Trump says does and tweets in the coming hours and days because it's the clearest indication of what his state of mind is. You know one of the most important potential pieces of evidence against Donald Trump is not something that's secret or that was you know received pursuant to a subpoena but was the interview he gave to Lester Holt a few days after firing Jim Comey when he explicitly said on national television one of the things that was on my mind when I fired Jim Comey was a Russian investigation which you know bears directly on whether or not he was trying to obstruct that investigation. And it stands to reason that the president is probably very angry right now. He's been angry for many many months at any whisper or hint of acceleration of the Russian investigation. And now you have a guy who was high up in the campaign who was his national security adviser who he clearly likes who he decided to hire over the objection of you know and advice of his predecessor and others in career government and then didn't want to fire him. And then after he got fired after Flynn got fired Trump literally said to Jim Comey can you back off on this guy and has according to reports regretted having let him go and suggested all sorts of things about his loyalty to Michael Flynn. You know he's going to say some stuff potentially and that will shed some light on his state of mind I think.

Axelrod: [00:16:47] Yeah that's one of the big open questions is why would the President go to the extraordinary length of asking Jim Comey as Jim Comey asserted he did to go easy on Flynn and why would the President clear the room to make such a request. But I guess those answers.

Bharara: [00:17:06] Can I just make one more point. All of those things are important. You know that go to what is in the mind of the person who is saying certain things. And so I think some people are going to for political reasons or otherwise will be dismissive of this these criminal charges to which Michael Flynn has pled guilty. But the question is why was he lying in the first place. And you know federal prosecutors know and they know that juries understand this. If you're lying about something there's usually some reason for it and often it is the case that you can prove the reason you're lying about something is because you understood the

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underlying conduct even if not ultimately charged with it. You're trying to hide something. You're trying to protect someone. So you know people might view this as a narrow charge but given the nature of what the lie was about given the fact by the way this was on the fourth day of the presidency of Donald Trump he had been the National Security Adviser for four days on January 24th. And... he's a member of the government and he had been a general and the FBI comes into his office and asks him direct questions and he lies about things that had happened just in recent days. That's an extraordinary thing and may tell us more about what's going on.

Axelrod: [00:18:15] Maybe they gave the briefing on how to talk to an FBI agent on the fifth day.

Bharara: [00:18:19] On the fifth day.

Axelrod: [00:18:21] So let me ask you a question. Pardons - this notion that the president could pardon these people obviously it would be it would be politically fraught to do so.

Bharara: [00:18:34] Fraught, yes.

Axelrod: [00:18:34] But he has but he has the power to do it.

Bharara: [00:18:37] He does under the Constitution. And look look on the one hand we know and I've said this a couple of times now that the Mueller team takes seriously lying and obstruction and they will not... and not everyone does. And they will not shrink from bringing such charges no matter how high up they go and this is pretty high up on the other hand we also know that the president himself does not shrink from exercising his full constitutional authority either as we saw in the case of his pardon of Joe Arpaio that was done as I understand it with respect to someone whose proceedings hadn't concluded no time had passed from the conviction because it was still in process. And it was done completely out of the normal process of the Justice Department when I was the U.S. attorney. We actually were asked to opine on and give our advice on and recommendations with respect to pardon applications all the time. There's actually an office of the pardon attorney at the Department of Justice. It's not required by... the Constitution doesn't require that process. But the president bypassed all of it. And so I think it is a reasonable concern that people have that both the president understands his constitutional power to pardon as he did in Joe Arpaio which was a fraught decision too. So maybe he'll do it with respect to other people if he feels under the gun. And second he will exercise his constitutional authority to fire people. And so the second thing I think people should be really concerned about it's not a joke because he's done it in the case of Jim Comey. We know that Bob Mueller is different and stands in somewhat different shoes but I would worry in a real way that Donald Trump may preemptively pardon some people and I still worry in a real way that Donald Trump may decide to cause the firing of Robert Mueller. I think those are real concerns.

Axelrod: [00:20:16] We're going to take a short break and we'll be right back with Preet Bharara. You know let's talk a little bit about your own very interesting history. Talk about your folks and their history and how you came here in the first place.

Bharara: [00:20:51] Sure. So mom and dad will love this. They like it when I talk about them. So my mother and father were born in India my mother and father were both born in what is known

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as Rawalpindi which actually was in. What is now Pakistan. So before people appreciate that you know there used to be one country called India. And then after British rule relented in 1947 it was divided up into two countries one predominately Muslim to the north Pakistan and to the south predominantly Hindu but also Sikh as well. My father Sikh my mother's Hindu. And they had to actually migrate in 1947. My father did my mother was very young maybe not yet born to the Indian side. And my my mum and dad had an arranged marriage which was and still is the custom in large parts of India. My dad was a great student. He went to college, the first person in his family to go to college and he had 12 brothers and sisters. He was the oldest of 13. He went to medical school did very well and at some point decided he wanted to leave India for a better life for himself his wife and me. I was just born I was born in India.

Axelrod: [00:22:04] Yeah.

Bharara: [00:22:06] And we went to the United Kingdom and came to the United States the first place we lived in America was Buffalo. It was the first time my mother ever saw... she went from the heat of outside of Delhi to the snow of Buffalo in 1970.

Axelrod: [00:22:19] A lot of snow.

Bharara: [00:22:20] That's when we had snow that was before all this warming stuff was happening. And so you know we then ended up you know, new Indian family in the great state of New Jersey the Garden State. And. We had another they had another kid my younger brother who made it big in business at some point later in life and we had an ordinary life growing up in Jersey as an immigrant family where the thing that my parents cared about more than anything else was how we did in school. My dad was you know I sometimes referred to him as the tiger dad. He was the strict one. My mom was the less strict one. And if we don't know if we got a 98 on a test. My dad wants know, why not 100? He wanted us to be very competitive. I know that's not a popular way of thinking about parenting these days.

Axelrod: [00:23:11] Competitive with each other.

Bharara: [00:23:12] With each other. You know I've tried every once in a while to ask my my kids especially my daughter you know how'd someone else do and I get I get an eye roll and a dismissive. I have no idea. And why are you asking me that? You know when I when I grow up my parents wanted to know how I did relative to everyone else. And they they wanted my brother and me to be you know first in our class. And you know that's how we were brought up. And so I think.

Axelrod: [00:23:40] It's not an unusual story honestly. I mean.

Bharara: [00:23:43] It's it's not. Yeah there was I think there was a good amount of there was a lot of attention to school. There was a lot of discussion about what was going on in school. You know my dad was very busy you know as a as a pediatrician in Asbury Park New Jersey which is a great place to be.

Axelrod: [00:24:00] Yes. You're a Springsteen guy.

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Bharara: [00:24:01] I'm a huge Springsteen guy in part because of that and it's impossible not to be and also just as a matter of.

Axelrod: [00:24:08] It's the right thing to do, let's just assume that.

Bharara: [00:24:09] I think it's a matter of sort of auditory physics it's impossible not to be a great Springsteen fan.

Axelrod: [00:24:13] I agree.

Bharara: [00:24:15] Anyway, so that was our life so they wanted us both to become doctors. As a lot of stereotypically Indian-American immigrants want... my dad was a doctor. He thought it was a noble thing to be a doctor. He cared for kids his whole life.

Axelrod: [00:24:28] But you went wrong.

Bharara: [00:24:30] I went totally wrong and I don't think it was until I got sworn in in a job for which I had to be nominated by the President and confirmed by the Senate with subpoena power that my dad was like, all right I guess I guess he did alright.

Axelrod: [00:24:42] Under fear of indictment he came around.

Bharara: [00:24:44] I would recuse myself. Not like a Jeff Sessions recusal, I would do a real recusal if my father were under investigation.

Axelrod: [00:24:52] Let me let me ask you a couple of things about your your growing up that I read that interested me about the fact that you complained to your parents that you were in a class and you never got to be the flag bearer for the Pledge of Allegiance.

Bharara: [00:25:14] Yeah you know actually I talked about that on my podcast which is called Stay Tuned with Preet.

Axelrod: [00:25:18] Yes. Plug it at the top.

Bharara: [00:25:21] I was waiting for the I just wanted to make sure they got the plug in. You know I had I'd forgotten about that for a long time and it's true. I was five I don't remember anything from kindergarten. We went to two different schools in kindergarten we moved in the middle of that year. And the one thing I remember which means it must have been a big deal because you don't remember things unless they were big deal at the time and the class every morning was asked to lead. You know one student was asked to lead the class in the Pledge of Allegiance. And I never got asked that and they went around all the kids and then they started to go to the second round with kids. I didn't understand why that was. And I went home and I told my my dad and I thought maybe they messed up or something. And you know I don't know if he's right. I was five years old. But based on his interactions with the teacher and the nature of things and a meeting he had he believed very strongly that this teacher thought that someone who looked like me who came from where I came shouldn't be permitted to sort of hold the flag and lead the class in the Pledge of Allegiance.

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Axelrod: [00:26:20] So he pulled you out of the school.

Bharara: [00:26:22] Well I think that was part of the reason and we were thinking about moving anyway but we moved in the middle of the year. Yeah. She also was obviously upset... my academically inclined father... I got like an unsatisfactory on some of the things that we were supposed to do.

Axelrod: [00:26:37] After the complaint.

Bharara: [00:26:37] It was around this time can't remember if it was before or after, including whether or not I knew my home address and my home phone number. Of course I knew my home address and home phone number and he thought that was some evidence of some evidence of eyes of bias too.

Axelrod: [00:26:52] Yeah yeah. The other thing is I see that you won an award in your sophomore year of high school for for reciting Darrow's summation in The People Versus Henry Sweet.

Bharara: [00:27:08] I won a lot of awards reciting that speech. I don't mean to brag about my 15-year-old.

Axelrod: [00:27:12] Yeah, we're only an hour long show here so we gotta make some choices.

Bharara: [00:27:12] I know. We can spend this episode on age 15... we can do age 16 on next time.

Axelrod: [00:27:21] But how did you how did you... we should point out that the People versus Henry Sweet was a very very famous case in the early 20th century. African-American man in the Detroit area who defended himself against the assault of a mob.

Bharara: [00:27:37] So you know it was a time when people didn't think African-Americans should be in white neighborhoods shouldn't have African-Americans living there and there was a middle class family led by Dr. Ashin Sweet and Henry Smith who was his brother and a mob formed outside the home and they were threatening violence against these people who had every right to live there. But it was you know early in the 20th century as you say and they had guns to protect themselves and at some point I think there was some kind of assault on the home. And Henry Sweet fired into the crowd and he killed a man. And. You know that's a tough uphill battle of a case.

Axelrod: [00:28:15] Yeah.

Bharara: [00:28:15] And Clarence Darrow came to represent him the most famous lawyer in the land probably more famous than any lawyer we have today.

Axelrod: [00:28:21] Yes.

Bharara: [00:28:21] If you go back in time even more famous than Ty Cobb and you know.

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Axelrod: [00:28:27] Except not more famous necessarily than Ty Cobb the baseball player. But his descendant lawyer.

Bharara: [00:28:32] Somebody suggested it wasn't clear that Donald Trump knew that there were two Ty Cobbs and you know.

Axelrod: [00:28:37] He said, give me Babe Ruth.

Bharara: [00:28:37] He's the Ty Cobb of lawyers. His name is actually Ty Cobb? I'm very confused. I'm so confused... He gave a very impassioned speech in the summation where he said things that have stuck with me and helped me think about how I did my job as an attorney and one of the themes of his summation and also of his life is that you can pass whatever perfect laws you want but it doesn't assure justice and it doesn't assure fairness and that you know he would say about the plight of African-Americans in America dating back to slavery. You know the real question he would say is not what has the law done but what has man done. And I find time and time again when we talk about how the Mueller team is conducting itself for how our Justice Department is conducting itself. You can have good laws and good rules but if you don't have good people who exercise their judgment and wisdom in a fair and unbiased way you know to protect the under you know the under protected and to fight for the right things then everything can go south. And Darrow was a person who understood and believed that.

Axelrod: [00:29:44] Now that this was you your sophomore in high school by that time did you see yourself as Clarence Darrow did you see yourself as becoming a lawyer?

Bharara: [00:29:52] No. I was a super super nerd who on the weekends did these speech competitions and I would recite that speech in my sophomore year. I did Bobby Kennedy's speech my junior year. But I think at that point I I wanted to be a lawyer and everything that happened to me in school academically and otherwise after that convinced me more and more that I wanted to be a lawyer. And you know I never look I became a prosecutor. I didn't become a criminal defense lawyer so in that regard very different from Clarence Darrow. And you know he probably was one of the best advocates to have ever lived in modern times. And you know I'm not I'm not that certainly as you can tell from my performance on this podcast but I did think that if you're going to go into the law that it would be you would be interesting and great and and satisfying to practice criminal law because the stakes are high and to care about justice. Whether from the defense perspective or from the prosecution perspective and also on top of all that do it in a courtroom. You know there are fewer trials today than there were five years ago and ten years ago and they dwindle because of the police system that we have. And I don't I'm actually one of the people who thinks that's not a great thing. I think that you know truth comes out during trial. It's very difficult given the resources. But you know I advise everybody everybody who wants to become a lawyer and a litigation type of lawyer you've got to get in the courtroom. I think it teaches you a lot of skills. And that's one of the reasons that people would apply to my old office because they wanted to argue to a jury and to a judge and have real life experience pleading some cause or case. I don't think it's anything more exhilarating... I mean other than other than a podcast.

Axelrod: [00:31:35] The podcast is the best.

Bharara: [00:31:36] Nothing as exhilarating. Well, there's no judge to shut you down.

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Axelrod: [00:31:36] I didn't spend three years in podcasting school for nothing, you know. So you talk about being a prosecutor. You also spent some time in government.

Bharara: [00:31:52] Well, prosecution was government, but yes.

Axelrod: [00:31:54] Yeah I understand but outside of the prosecutorial system.

Bharara: [00:31:58] That's correct.

Axelrod: [00:31:59] You know, at the United States Senate. So you came out of law school you did some time as a prosecutor...

Bharara: [00:32:06] I was in private practice and I did some criminal defense work for six years then I became an assistant U.S. attorney line prosecutor in the Southern District of New York and then I got this and then in between that job and becoming the United States attorney himself in between for four and a half years I served as chief counsel on the Senate Judiciary Committee for a particular subcommittee that was run by Senator Charles Schumer who is now who is now the leader of the minority in the Senate.

Axelrod: [00:32:35] One of the things that you did there was worked on the case of how U.S. attorneys were fired.

Bharara: [00:32:42] Ironic how ironic it is that?

Axelrod: [00:32:43] U.S. attorneys being fired by the Bush administration charges of political interference. It does raise the question about how judges and prosecutors are being appointed now. We've seen the case of three or four judges appointed to the federal bench who were rated unqualified by the American Bar Association kind of unprecedented. One of them was just approved by the Senate Judiciary Committee. Do you based on your experience have what's your level of concern about about that?

Bharara: [00:33:22] So you know I did spend four and a half years at the subcommittee that I was either the minority staff or the majority staffer depending on the year was the Subcommittee on Administrative Oversight and the courts. And one of the jobs that I had was you know to help advise my boss and the committee on judicial nominations. And I sat for two Supreme Court confirmation hearings including for Sam Alito and John Roberts who are both now on the court. The court is incredibly important to the extent people complain from their political perspective about the qualifications temperament or expertise of members of the cabinet. Some of them the president himself doesn't seem to like you know those men and women will be gone in either three or seven years and probably sooner. But the judges are going to be there forever for life not forever but for life. And the younger they are appointed the longer they are going to be there. And so if you're not appointing people who are who are qualified and have the right temperament at this point putting aside whether they are right wing or left wing then I think that's something to be concerned about. Democratic presidents over the years have appointed a lot of people who are on whatever the Left means. And Republican presidents have appointed people who are on whatever the Right means whatever you however you want to define those terms. What I think is different and of concern not just in the cabinet when you have somebody who's

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running the energy department who wanted to abolish the Energy Department. But you have I think multiple cases of judicial nominees who have been voted unanimously unqualified by a non-partisan Association American Bar Association. To my knowledge in modern times nobody who has been voted unanimously unqualified not you know a minority not a majority but unanimously unqualified has ever been confirmed. And the reason you want to have that is that is I think a judgment a professional judgment based on interviews based on looking at credentials based on talking to all these folks' colleagues that it's not clear that they're going to be able to do justice when wearing a robe and sitting on the bench. And I don't think that's a partisan determination and it's not good for anyone it's not good for people on the left. People on the right for people in the middle. And if they start acting in a way that doesn't bring I think honor to their job as judges it's not only bad for the particular litigants who will be treated unfairly in that case that comes before the judge but also undermines faith and confidence in the judiciary generally I think that judges should be the smartest best most you know have the best temperaments of any lawyers around and that's why they should be on the bench.

Axelrod: [00:36:00] Well the one of the appointees that we're speaking of had three years has three years of experience in the law. And no courtroom experience. It's got to be a concern.

Bharara: [00:36:14] Yeah you know. Yes. You want experienced people I think more importantly you want people with great judgment and good temperament who can exercise judgment with wisdom and discretion. And yeah it's better if you have...

Axelrod: [00:36:33] How do you demonstrate that if you if you scarcely have practiced the law or have experienced a courtroom?

Bharara: [00:36:43] I'm with you. And if you're going to if you're going to trust someone with being on the bench for a lifetime, then I think you should be assured I think in some ways it's more important to be assured of the temperament and judgment of somebody about whom you have less information because they have not been around so long. Look there are there are there have been great judges who've been appointed and there are you know their late 30s some from my own office. And I think it's right to ask about a particularly young judge who has a little bit less experience more probing questions hold them to a higher standard to make sure that they really are the kind of superstar who deserves to be vested with so much power over you know huge controversies in the public. And you should ask more questions about people like that. And if you come up short then they shouldn't be appointed.

Axelrod: [00:37:33] You know I skipped over something that I wanted to ask you about. One of the one of the prosecutors you worked for is Jim Comey.

Bharara: [00:37:43] I did indeed.

Axelrod: [00:37:44] And I want to ask you about him because.

Bharara: [00:37:47] I thought you were going to skip that.

Axelrod: [00:37:48] I was but then I thought better of it because he's obviously someone of great interest now and.

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Bharara: [00:37:58] That's one that's one word for it.

Axelrod: [00:37:59] Well tell me about him and the person that you know and then I want to ask you a little bit about how he's handled some of these situations.

Bharara: [00:38:08] So you know I understand Jim and I call him Jim he's a friend of mine of course he was the U.S. attorney when I was a line prosecutor junior person for a couple of years. I dealt with him when he was a deputy attorney general and I worked in the Senate and obviously I dealt with him when he was the FBI director and I was the United States attorney and so put aside the things that have caused him to be either a hero or a villain alternately from the left and the right and some of the I saw some months ago about Jim Comey expressed I think a view that some people have. You know I love him or hate him I love them I hate him I love him I hate him. So from a personal perspective you know he was my boss and he was universally considered to be when I was a line assistant in the U.S. attorney's office a great boss and a great leader and somebody who not only believed in the mission of public service but also believed in caring about the people in the office caring about their development nourishing their talents walking around the hallways a lot of the things that I adopted just as a leader in the office. I learned from him including you know having people don't think he has a sense of humor. You know maybe eventually you'll have him on your podcast after he's written his book.

Axelrod: [00:39:21] I look forward to that, yeah.

Bharara: [00:39:21] Yeah he's a he's a funny guy. People look at me like I have three heads when I say that.

Axelrod: [00:39:24] He's demonstrated that somewhat.

Bharara: [00:39:26] Somewhat, but he's funnier than you'd...

Axelrod: [00:39:26] These aren't exactly hilarious times.

Bharara: [00:39:26] They're not hilarious times. But he's a fundamentally good and I think decent honest person. And so you know I have I have a relationship with with him and I think he has a lot of loyal followers and some of the things that have been difficult to hear and I completely understand the criticism and I may even share in some of it with the way he dealt with some matters from last year. But the thing that I that I really believe in my heart and my mind to be true about Jim Comey and many of your listeners may not like to hear this. I don't think he ever did anything in any government job with an intention to help one political side or another. You may think he shouldn't have issued a letter or he shouldn't have done a particular press conference. But I believe he (a) always wanted to do what he thought was right even if you disagree with it and you think it was absurd for anyone to think it's right. And (b) I don't think the man lies. And so when he has said things about what Donald Trump told him and he testifies about it I believe it.

Axelrod: [00:40:38] The question I guess I know I had some some observation of him in my own roles and so on.

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Bharara: [00:40:47] What did you think?

Axelrod: [00:40:47] Well I mean I have a high regard for him. I do some... watching just watching all of this happen I think what I also think which is not inconsistent with what you said is that he he does what he thinks is right. And and and maybe sometimes derogates to himself more responsibility than he should in pursuing what he thinks is right. I mean is that a fair critique?

Bharara: [00:41:13] Look I think I think he I think he has a very strong view. About being above board and not allowing anyone ever to be able to accuse him of misleading anyone. And I think I think that in part is and again I'm not agreeing with what he did but if you want to understand what I think was going through someone's mind again he and I have not talked about this. This is you know distant speculation on my part but knowing him and knowing how you know things tend to work. It's very very important to him which I think is not a terrible quality in normal times. And if you have sort of you know a less fraught job to want everyone to understand to be meticulous about the truth and meticulous about your reputation for the truth. Now you know in different hypothetical situations to pick a frivolous one. You know some might say if someone asks you know do I look fat today.

Axelrod: [00:42:13] I never ask that question... Don't ask a question you don't want the answer to.

Bharara: [00:42:18] But but if asked if someone asked if someone asked the question you know a lot of people would say you know it might be ok to lie in that circumstance. I'm using a frivolous example but one could make the argument that sometimes it's better to keep silence and have people and let people have a misimpression about the truth than otherwise. And so you know so I get the impulse that sometimes people have to want to explain what's going on and be you know expansive in what was going on in the Hillary investigation which I think was one of the things that brought him a lot of criticism. Again there are other consequences that flow from deciding to talk about something. But the Jim Comey I know has a penchant for wanting people to understand and wanting to explain the the reasons why he has he and his offices have engaged in certain actions that can cause a lot of trouble like it did last year.

Axelrod: [00:43:13] It has, yeah.

Bharara: [00:43:13] But I think the impulse is.

Axelrod: [00:43:16] Transparency.

Bharara: [00:43:18] Well let's also this is also a mode of defense. I mean remember you know it is a difficult thing and I'm sure this is true for you and I'm sure when you were advising the former president you know in the campaign and otherwise when people attack you and people say you're a liar or you know this this is an impulse not to compare them to Donald Trump has also when people say bad things about you that you think are not true. The natural impulse is to respond to them.

Axelrod: [00:43:44] Yes.

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Bharara: [00:43:45] Now some people should regardless of that should maybe keep their mouth shut. But when there's swirling around a lot of allegations and accusations that the FBI is bought and sold bought and paid for by the Clinton campaign or some such thing like that. All I'm saying is minimally that you can understand perhaps the impulse of someone to defend against that charge but the way in which you defend against that charge may cause more trouble than it's worth.

Axelrod: [00:44:13] Yes sometimes impulse control is important. We'll take a short break and we'll be right back. You had quite a run as the U.S. attorney from the Southern District which is a storied institution in American history located where it is in this power center in Manhattan. And I wanted to ask you a few things about how you approach the job and a few things about the the power of the government itself but one thing that interested me is you became U.S. attorney at a time of revolutionary change in the way business is done in the way we communicate in the way sometimes crime is committed and you put a real emphasis on cyber crime and digital crimes that use digital tools and so on. Tell me a little about that in your thinking there.

Bharara: [00:45:25] Yeah. Thank you for that question because people don't talk about that as much as they should. When I became the U.S. attorney in August of 2009 the level of concern at the top most echelons of our government was not what it should have been with respect to the cyber threat and in our office itself that the FBI and the Secret Service the two main agencies who deal with the cyber threat. I think the amount of focus wasn't where it should have been given the developing and gathering threat. When I first took office we had I'd like to say we had one expert who was incredibly well versed on cyber and the technicalities of it and how computers work and how the Internet worked and how intrusions could be thwarted and prosecuted by the time we were five or six years in we had ten times as many people. The FBI had multiplied the number of squads that it had devoted to cyber at the same time that the squads devoted to the five organized crime families dwindled because the threats changed. And I think it's a you know it's a microcosm of a lesson that every government agency should learn to adapt to the threat. And now some years after 2009 you have you know the president's you know you had the former president talking about the cyber threat the defense secretary the treasury secretary the head of the FBI talking about the fact that in some ways whether you're talking the nation state you know state actors trying to prey on cyber vulnerabilities that we have or people are just trying to rip you off by taking from a remote location in eastern Europe millions of dollars out of your bank accounts or you're talking about people who just have an ideological point of view you know like the Losec folks. It's a huge threat and it's very very difficult to guard against. And I think it behooved everyone to figure out a way to catch up to the bad guys and that involved among other things increasing the number of personnel that you put on it, educating yourself. You know I whenever I talk to sort of cyber folks I say you know you might wonder what my name means - Preet - and I say it's actually ancient Sanskrit for cyber fighter. The problem is Bharara is also ancient Sanskrit for, 'Could you help me turn on my computer?'

Axelrod: [00:47:44] Yes that's.

Bharara: [00:47:45] So you know I was kind of a Luddite too. But then you realize in the same way that we say that CEOs of companies who are in charge of so much of such a wealth of information about you me and everyone else in the country and in the world if you don't have a

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tech background or a computer background will you better get one a little bit and you better figure out who are the people who have it so they can advise you better. It's not to say.

Axelrod: [00:48:08] Do you we're at the level we should be in terms of these threats?

Bharara: [00:48:10] No, but I think in the last few years I think we've come a long way. I think we've come a long way in having the people at the top most levels of government coordinating with other people throughout the world. We did a cyber case of great significance where there were bad guys all over all over the world who engaged in sort of hijacking thousands and thousands of computers all over the world and forming these bots and doing very bad things to lots of people's computers and disabling them etc.. And when we announced the case what I wanted for the visual was a map of the world and on the map of the world we highlighted and we shaded in red every country in which some law enforcement action had taken place, either search warrant or arrest or something else or a document produced. And it was 19 countries. And the idea that ten years ago there could have been a 19 country coordinated effort against a cyber threat I think would have been unheard of. So I have great optimism that we're getting better and that people are hiring from the private sector very very smart people. It's part of the people who have already been in government to combat it. But are we doing enough. I don't think so.

Axelrod: [00:49:17] One of the questions I get when I travel all the time is why didn't the administration come down harder on those people who were responsible for the financial crisis in 2008 and particularly on Wall Street. Wall Street was part of your domain there and I know you've been asked that question quite a bit too.

Bharara: [00:49:40] Only five six thousand times.

Axelrod: [00:49:41] Well then you should have a very polished answer.

Bharara: [00:49:44] You know, I don't. It's a frustrating thing when bad things happen to a business and worse when they happen to an economy in a country. And I always say to people I understand that frustration and we share that frustration because if bad people did bad things you want to hold them accountable. But the prosecutors in my office and at the various regulatory agencies and there are lots and lots and lots of offices and lots and lots and lots of career people not just in my office but around the country in Washington and New York and in Los Angeles and Chicago looking at these issues to see if they were high up folks able to be prosecuted, that before we were all prosecutors we're Americans too. And we suffer in the financial crisis too so we had every incentive and motive motivation to hold people accountable if you could. But you can only do what the law allows and what the facts allow. And if in the hundreds and hundreds of cases where people looked at things there was not sufficient evidence to prove beyond a reasonable doubt that the folks you're talking about at the upper echelons you could prove what's in their mind and prove that they asked for others to engage in illegal acts. You can't bring the case as frustrating as it is and there are lots and lots of bad things that happen.

Axelrod: [00:50:58] How hard did you look?

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Bharara: [00:51:00] Everyone that I know of looked incredibly hard and we had a subset of things that we looked at. But the way it worked was the Justice Department divided up a lot of different things. Before I got there... you know we got there in 2009. And you know the bad things started happening in '07 and '08. And so a lot of that the the the parcelling out of investigations and cases most of it happened before you know the Obama United States attorneys came into being. But we looked at a bunch of things and we we were not afraid of charging anyone you know. And I understand people's frustration. But to the extent people suggest that there was any kind of lack of will or expertise with respect to holding people accountable for that. I think that's that's nonsensical. We charged you know people who kill witnesses we charged heads of al Qaeda we charged and investigated the most powerful political figures in the state of New York and the most powerful Wall Street traders. So you know it wasn't a question of not having the will.

Axelrod: [00:52:06] What about the law... were the laws adequate? I mean did you have the tools to do it?

Bharara: [00:52:11] You can always look when you ask a prosecutor can you give me a new tool. I think the standard answer is yes. But I also caution people it's not popular answer either. The way to hold people accountable if you don't have the facts to prove something you can't prove what's in their mind and you don't have a (unintelligible) president ordering somebody to destroy documents or to ignore the law in some way is to basically hold them strictly liable and say if you engaged in reckless behavior we can send you to jail and there's a lot of reckless behavior and negligent behavior. I'll also note by the way that not only did none of those folks at the highest levels go to prison, all the regulatory agencies in the country of which there are many who have a lower standard of proof you know just preponderance of the evidence because jail is not involved didn't bring a single regulatory action. So you know it was a pretty universal inability to hold people accountable for the kinds of things that people might-

Axelrod: [00:53:10] Yeah, which was a source of great frustration to many many people.

Bharara: [00:53:12] It is, absolutely. But you can choose to lower the standard of what's in someone's head to bring a case and you can decide well if you engage in a reckless or negligent conduct that caused damage to the economy or caused a business to fail then they can be subject to prison. You can do that. And you know if I was a prosecutor still I would prosecute those cases because that's the law. I just caution people to think if you do that in those kinds of cases and you lower the standard in that way you're going to open up criminal liability to a lot of other people too including people who are negligent on their taxes. And you just hope there's a balance between figuring out the best way to hold people accountable but also doing it in a way that were true to what you know the criminal justice system should be about. But I of course I get the frustration.

Axelrod: [00:54:04] You you mentioned that you went after also some very powerful people in government in New York State a number of those convictions were thrown out Shelly Silver the speaker.

Bharara: [00:54:15] Well yeah they were. The court held in the second circuit that because of an intervening Supreme Court... by the time that our cases were brought. Not only was the law very clear on our side. But even the appeals court found that there was more than sufficient

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evidence to prove both of those men guilty beyond a reasonable doubt based on what we did as a technical legal matter the Supreme Court narrowed the definition of what an official action is. So you get a Rolex watch or you get a lot of money and then you do something in response to that in exchange for that. Most of what we alleged and what we proved at trial in the Silver case and in the (unintelligible) case was overwhelmingly within the definition that even that Supreme Court case the McDonald case said was still applicable. Voting on legislation giving grants to particular institutions which are fully and completely official action as any reasonable person would understand it in the country. There were a couple of instances minor instances in both those trials where prosecutors argued because it was the law at the time before the Supreme Court changed it that those politicians in exchange for gifts in exchange for money had arranged certain meetings for constituents. And what the Supreme Court basically did in a decision that a lot of people think is naive but it's the law of the land said that the mere arrangement of arranging of meetings is not sufficient to send someone to prison if that's the official action. And so what the court said basically that talking about frustration it's kind of frustrating to a lot of people not just the prosecutors but people who believe in clean and good government because none of those politicians have anything they should be proud of said in light of the fact that it's not 100 percent certain that a juror didn't convict one of those guys based on this narrower definition of official action, they should be retried. So they're going to be retried by my former office and I would hope and expect that they get convicted again.

Axelrod: [00:56:13] You you are a you're a media presence in New York someone-

Bharara: [00:56:20] And now in Chicago.

Axelrod: [00:56:21] You've studied... Now in Chicago, yes. You studied at the feet of the master in some ways because Chuck Schumer is very has a great facility with sound bites, in fact somebody in a profile said about you he would draft questions for Schumer with sound bites in mind. He learned to think that way and write that way do you bridle at this characterization of you as kind of a soundbite guy?

Bharara: [00:56:48] I don't know what that means. You know I have a podcast now like you. Stay Tuned with Preet.

Axelrod: [00:56:54] Yes.

Bharara: [00:56:54] And I don't spend my time in my-

Axelrod: [00:56:57] There you go again. Forty-five. That's very good.

Bharara: [00:56:58] That's not a soundbite, that's just that's just blatant self promotion of my podcast. And I don't think about you know what's a sound bite from it. I think that it's important if you're deciding to speak about something you want people to remember what you're saying and you want to have an impact on folks. So I I think a lot about how I speak when I give long talks that are 30, 40, 45 minutes long. But I think when you're trying to get your point across whether you are speaking to the public or by the way you're speaking to a jury you want to speak in plain language in plain language if done in a way that gets to the heart of the matter in the fewest words possible. I guess you call that a soundbite but I call that effective communication. And I

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think it's a part of all walks of life not just again in the public but that's an effective way that lawyers communicate with jurors to prove their point.

Axelrod: [00:57:51] I guess the question is did you. The criticism would be that not only did you talk in sound bites but that you brought cases that would bring attention onto yourself and so on.

Bharara: [00:58:01] No. First of all I didn't bring any cases. The cases that were brought were brought by the unbelievably dedicated hard working career men and women of the U.S. attorney's office. I got credit for a lot of it and blame when it didn't go well which is less often than the other way.

Axelrod: [00:58:16] Welcome to the world of podcasting.

Bharara: [00:58:19] Because I was the United States attorney. And so you know cases were brought based on what folks thought the threat was and what the evidence was. And some of those cases we generated because we keep our eyes open and our ears open. Some of those cases were generated because the FBI brought them to us or the D.A. brought them to us. Or you flip a guy and he tells you about some other bad conduct. And so you bring all the cases on the merits now once the cases are brought I think for a lot of reasons including for deterrent effect. And to to show the public that the office is doing the work it's supposed to be doing and is adhering to its mission. I wanted them to know that the office and I was very proud of my office and I absolutely wanted people to know that we were on the job and whether we captured a terrorist or you know we got money you know seven point two billion dollars back for the people who were victimized by Bernie Madoff and is the most massive Ponzi scheme of all time. Yeah I wanted people to know that we were doing that. I wanted people to know.

Axelrod: [00:59:16] You were pretty outspoken when you indicted the politicians about the state of politics in Albany and you conducted a long investigation into the Moreland Commission that was disbanded by the governor. So those kinds of things are the things that that come up.

Bharara: [00:59:31] Yeah, because I think that if you were the chief law enforcement officer whether you're a district attorney or United States attorney if the only job you think that you're supposed to be doing is to hold people accountable but not also in a way that has to always be fair with respect to particular individuals so they have a fair trial. But my view is you should also care about public safety generally. You should also care about public awareness generally. You should also care about deterrence generally. So for example no one bats an eye when I did the same number of press conferences appearances we did town halls. I did a public service announcement on one of the most important pressing issues of our time the opioid crisis. Yes. Now you have you know I don't know the president has a commission doesn't have a commission. There's a lot of talk there but talk is actually important in that regard. We brought cases against pharmacies and against doctors. But I also talked about it a lot and we would have forums where we would you know talk about our aggressive law enforcement efforts were appropriate were doctors or pharmacies were abusing their power and causing people to get addicted in a particular way and then send them to their deaths sometimes. But also we would have you know medical professionals there. We did. I did multiple forums with the mother and father of someone who died of an overdose. So yeah we did a lot of talking about that.

Axelrod: [01:00:53] To your credit, on that.

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Bharara: [01:00:54] But my point - I don't think it's that different, I don't think it's that different when you're talking about corruption on Wall Street or corruption in Albany any sort of huge I think public interest problem for which prosecutors can do something you want to encourage the other people whether it's the local population or law enforcement or politicians or the media to focus on the problem too because no major public safety social problem can be solved by prosecution alone.

Axelrod: [01:01:24] So I have to I do have to ask you to stop talking now. OK. But I enjoyed I enjoyed chatting with you and my only complaint is that you didn't consult me on the title of your podcast because I would have suggested how How Preet It Is, would be, would have been great!

Bharara: [01:01:45] Maybe season 2.

Axelrod: [01:01:46] OK. All right. Beyond the podcast do you see yourself running for office. Do you see yourself practicing law. What do you see yourself doing in the future?

Bharara: [01:01:55] I don't see myself running for office. Look, I still have a toe or half a foot in the law. I'm a distinguished scholar in residence a very fancy title at NYU Law School. I'm going to be doing some other things in the law that not practice in the courtroom but I care about the law and legal principles I'm teaching a class seminar next spring at NYU on justice. I'm writing a book which is very very difficult. Harder than I thought to write that many words that make sense.

Axelrod: [01:02:23] I know, I've done that.

Bharara: [01:02:23] Maybe you can give me some advice on that. Maybe I'll call that How Preet It Is.

Axelrod: [01:02:28] Ok yeah that's great. Keep it in your pocket, it'll work for you.

Bharara: [01:02:30] All right. Thank you.

Axelrod: [01:02:33] Preet Bharara.

Bharara: [01:02:34] Very well done. Yes, thanks David.

Axelrod: [01:02:36] It's good to be with you.

Bharara: [01:02:38] Thanks so much. OK.