Arpaio Attorney.pdf

From: Gillespie, Kira (OPATTY)
To: Kupers, Lawrence B. (OPATTY)
Subject: Arpaio Attorney
Date: Monday, August 28, 2017 11:21:00 AM

Larry,

Trying to draft up the blue receipt, and I forgot to ask, which attorney for Arpaio did you speak to. He has like eight, so I just want to the correct one ☺ thanks!

Kira

Kira J. Gillespie, Senior Attorney Advisor
Office of the Pardon Attorney
Department of Justice
2 CON/ 145 N Street NE, Fifth Floor - East
Washington, DC 22303
(b) (6)
[redacted]

[redacted]

Arpaio post pardon litigation.pdf

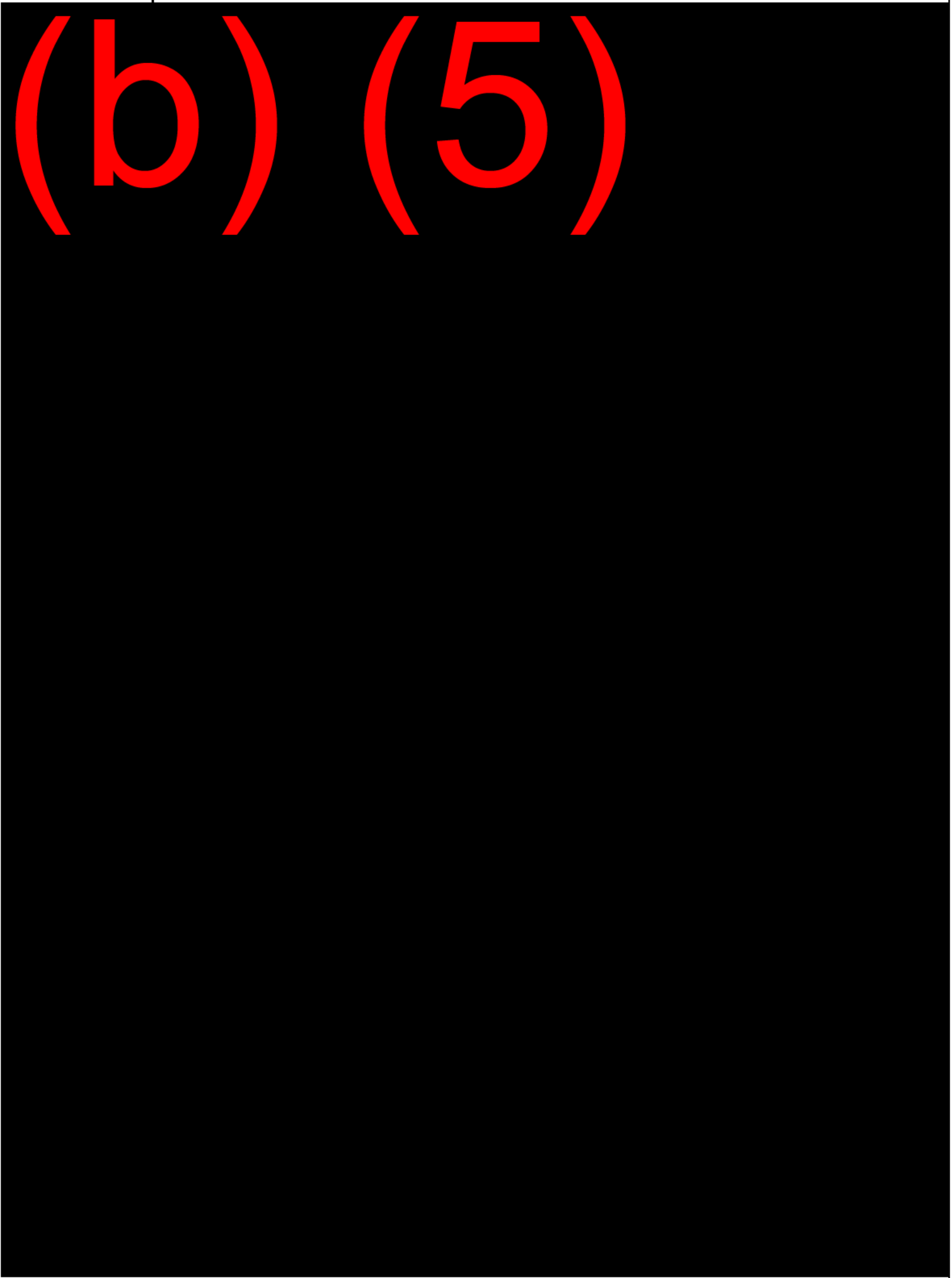
From:	Kupers, Lawrence B. (OPATTY)
To:	Gillespie, Kira (OPATTY); Holloway, Tammy (OPATTY); Opanga, Eric (OPATTY); Paolucci, Jaclyn A. (OPATTY); Potter, Casey J. (OPATTY); Rifkin, Sarah E.B (OPATTY); Sargent-Burns, Rosalind A (OPATTY); Smith, Christina (OPATTY); Smith, Meredith C. (OPATTY); Stutsman, Thomas (OPATTY); Trujillo, Jennifer K. (OPATTY); Williams, Emilie F. (OPATTY)
Subject:	Arpaio post pardon litigation
Date:	Wednesday, September 6, 2017 10:32:59 AM
Attachments:	Arpaio Pardon Motion Response pdf 9.3.2017.pdf

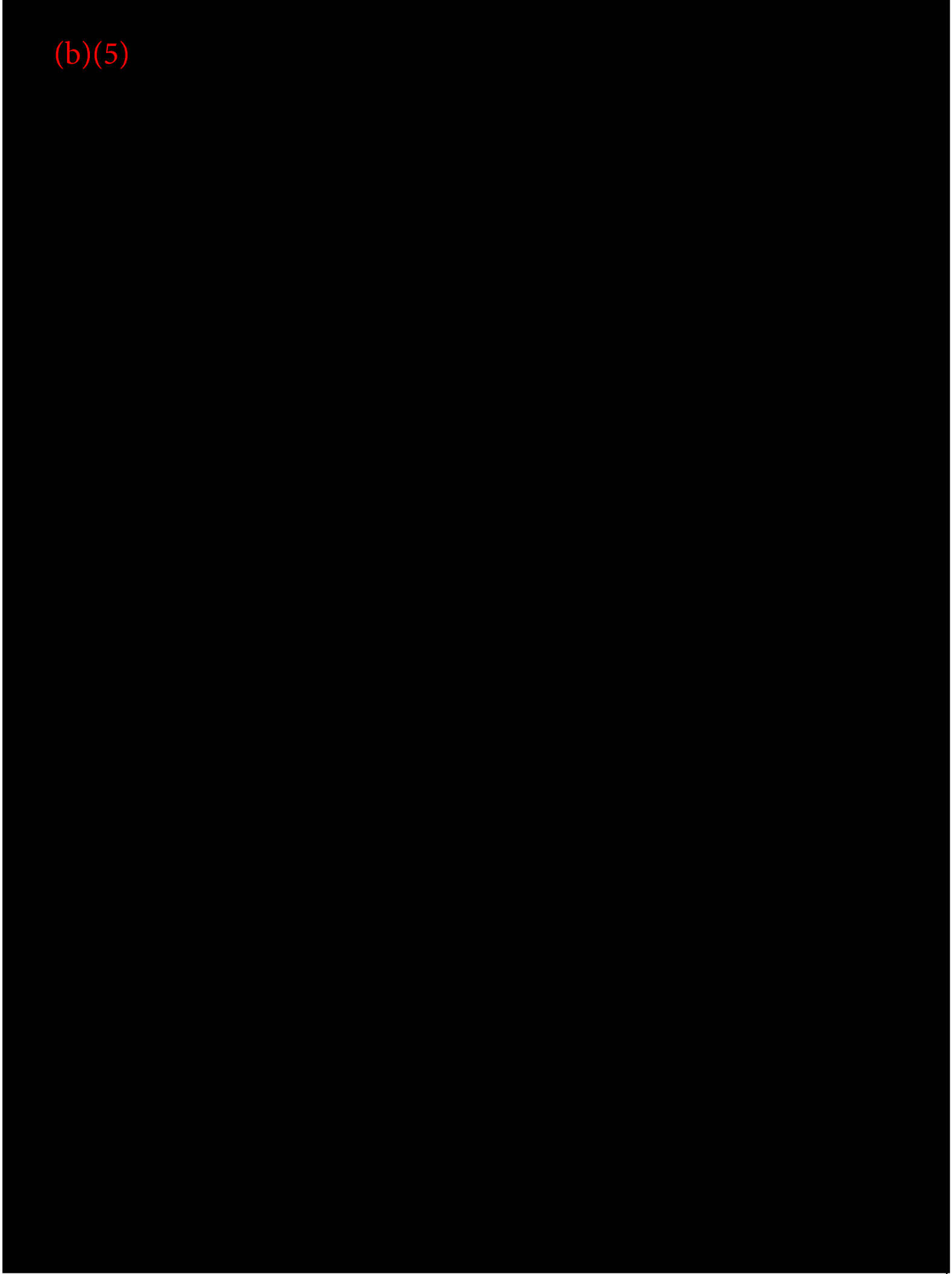
Esteemed:

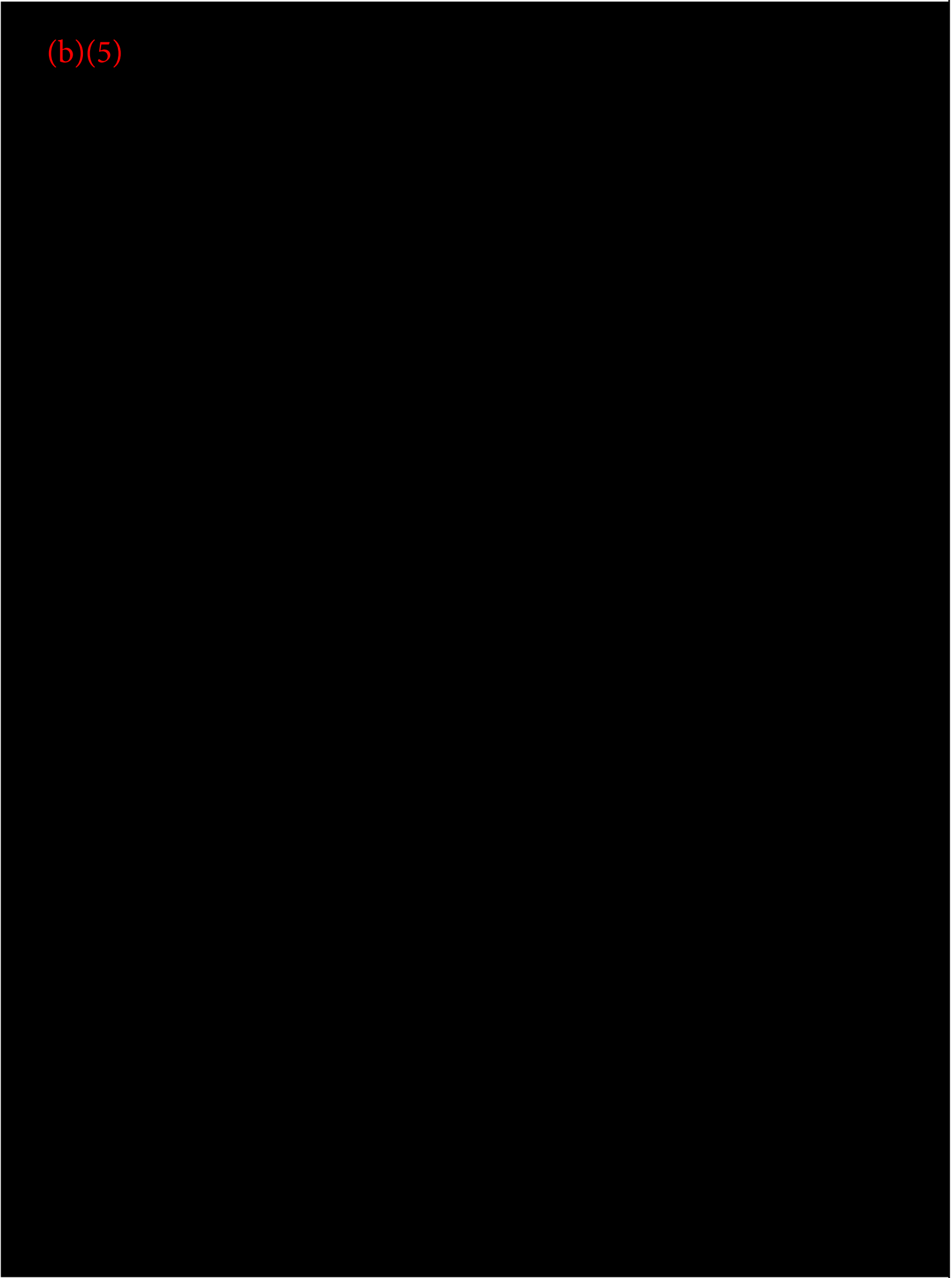
I'm attaching the draft of the government response to Mr. Arpaio's motion for vacatur. Apparently there's too much authority on the side of vacatur.

Larry

Arpaio Pardon Motion Response pdf 9.3.2017.pdf


(b) (5)


(b)(5)


(b)(5)

(b)(5)

(b)(5)

Attachments (Service 272804) (Intranet Quorum I....pdf

From: Jennifer Mills
To: Taylor, Will (OPATTY)
Subject: Attachments (Service 272804) (Intranet Quorum IMA00772320)
Date: Monday, August 28, 2017 8:02:24 AM

Will & Jordan - I've detached the two warrants without the DOJ seal. I thought Will already had the authority to delete attachments, but I am working on Will's IQ settings now.

Contact: Mr. Joseph M. Arpaio
https://iqapp.justapps.doj.gov/opa/workflowhome.aspx?showfolder=workflow&showcontent=ID272804&fa=y&iAccount=OPA

Big Law Takes On the Trans Military Ban.pdf

From: NLJ Legal Times Afternoon Update
To: Kupers, Lawrence B. (OPATTY)
Subject: Big Law Takes On the Trans Military Ban
Date: Monday, August 28, 2017 4:26:06 PM

FROM THE NATIONAL LAW JOURNAL

LegalTimes AFTERNOON UPDATE

TODAY'S TOP STORIES

• Big Law Takes On the Trans Military Ban

• The 2017 D.C.'s Rising Stars

• 'Horrific' Storm Shutters Houston-Area Law Schools

• Joe Arpaio Pardon Unleashes Surge of Censure From Lawyers

• A Law Firm 'Cleverly' Used Ellipses to Fight a CFPB Investigation. But It Still Lost.

• NY's New Cybersecurity Regs for Banks, Insurers Take Effect

• Legal Scholars, Backing Whistleblower, Question Interior Dept.'s Senior Reorganization

MORE STORIES FROM ALM

• Private Investigators Say They Warned Lawyers Waffle House Sex Tape Was Illegal

• 2017 Midlevel Associate Survey

• Jewish Bar's 'Adopt a Nazi' Fundraiser Goes Viral

Your digital membership gives you complimentary access to five articles per month from other award-winning ALM publications.

Big Law Takes On the Trans Military Ban

READ MORE »

The 2017 D.C.'s Rising Stars

READ MORE »

'Horrific' Storm Shutters Houston-Area Law Schools

Leonard Baynes was en route to India as a Fulbright Scholar on Thursday, but...

READ MORE »

Joe Arpaio Pardon Unleashes Surge of Censure

From Lawyers

President Donald Trump's pardon on Friday evening of ex-Maricopa County Sheriff... **READ MORE »**

A Law Firm 'Cleverly' Used Ellipses to Fight a CFPB Investigation. But It Still Lost.

The Consumer Financial Protection Bureau has prevailed in its latest standoff... **READ MORE »**

NY's New Cybersecurity Regs for Banks, Insurers Take Effect

Banks, insurance companies and other financials services providers will have... **READ MORE »**

Legal Scholars, Backing Whistleblower, Question Interior Dept.'s Senior Reorganization

Thirteen legal scholars, in a letter to the U.S. Office of Special Counsel,... **READ MORE »**

Private Investigators Say They Warned Lawyers Waffle House Sex Tape Was Illegal

When two lawyers asked how to secure video evidence of an alleged workplace... **READ MORE »**

2017 Midlevel Associate Survey

Midlevel associates at the nation's largest law firms are pleased as punch,... **READ MORE »**

Jewish Bar's 'Adopt a Nazi' Fundraiser Goes Viral

To counter rallies scheduled for San Francisco and Berkeley next weekend, the... **READ MORE »**

Please do not reply to the address you received this email from. Manage your email communications below.

Why you received this email message:

You are subscribed to the NLJ Legal Times Afternoon Update as (b) (6). You may be subscribed to multiple publications as part of your relationship with us.

To stop receiving the NLJ Legal Times Afternoon Update (unsubscribe) or to update your email marketing preferences, please click here. On this page, please update your subscription choices to this publication, and any others you may receive. You may also change your opt-in of email marketing promotions from ALM. It may take up to 10 days for your changes to take effect.

How to contact us should you have questions:

The National Law Journal®
120 Broadway, 5th Floor,
New York, NY 10271-1101
Customer Service Phone: 1-877-256-2472

About ALM | Customer Support | Privacy Policy | Terms & Conditions

© 2017 ALM Media Properties, LLC.

All rights reserved.

Check this out_ Joe Arpaio gets help overturnin....pdf

From: Sara Horton
To: ICE; Kupers, Lawrence B. (OPATTY)
Subject: Check this out: Joe Arpaio gets help overturning conviction from Department of Justice
Date: Monday, September 11, 2017 10:17:22 PM

---

https://www.aol.com/article/news/2017/09/11/joe-arpaio-gets-help-overturning-conviction-from-department-of-justice/23205142/

Congressional oversight request re Joseph Arpai...(1).pdf

From: Taylor, Will (OPATTY)
To: Mills, Jennifer K. (OPATTY)
Subject: Congressional oversight request re Joseph Arpaio pardon.pdf
Date: Thursday, August 31, 2017 2:05:00 PM
Attachments: Congressional oversight request re Joseph Arpaio pardon.pdf

---

Jen,

We should add this to our subject matter files project for posterity.

Thanks,

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6) [redacted]
[redacted]
http://www.justice.gov/pardon/

Congressional oversight request re Joseph Arpa.pdf

BOB GOODLATTE, Virginia
CHAIRMAN

JOHN CONYERS, JR., Michigan
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515–6216
One Hundred Fifteenth Congress

August 30, 2017

Chairman Bob Goodlatte
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Chairman Goodlatte:

Late on Friday, August 25, 2017—as the nation turned its attention to a devastating hurricane about to make landfall in Texas—President Trump issued a pardon of former Arizona sheriff Joe Arpaio for criminal contempt of court.[1] On Monday, President Trump noted that the issuance of the pardon was timed so that "the ratings would be far higher" as it was made public in the midst of the Hurricane Harvey coverage. We ask that you convene an oversight hearing on this controversial pardon and surrounding events as soon as possible.

We ask for several reasons. The pardon sends an unequivocal signal that institutionalized racial profiling as practiced by Sheriff Arpaio is acceptable; the pardon is disrespectful to the rule of law in general and to the federal courts in particular; and the President issued the pardon in the complete absence of any advisory role by the Department of Justice and after the President had already asked Attorney General Sessions to drop the case completely. As you are well aware, although the President has wide constitutional authority to issue pardons, there is also ample precedent for our Committee to review pardons as controversial as this one.[2]

At least four aspects of the Arpaio pardon require our immediate attention.

First, this pardon represents a gross injustice. In case after case, Sheriff Arpaio and his subordinates were shown to have been intentionally violent and abusive.[3] He built a "tent city"

---

[1] Devlin Barrett and Abby Phillip, *Trump pardons former Arizona sheriff Joe Arpaio*, WASH. POST, Aug. 25, 2017.

[2] *See Presidential Pardon Power*, before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 107th Cong., Feb. 28, 2001 [hereinafter *Presidential Pardon Power*].

[3] James Fallows, *Why the Arpaio Pardon Matters*, THE ATLANTIC, Aug. 27, 2017. *See also* Phoenix New Times (@phoenixnewtimes), Twitter, Aug. 25, 2017 10:01 ("We've been covering Joe Arpaio for more than 20 years. Here's a couple of things you should know about him…").

to house inmates—a facility where temperatures can reach 145 degrees in the summer, and which Arpaio himself once called a "concentration camp."[4] In 2008, one federal judge found these practices to be flatly unconstitutional.[5] In 2011, another federal court ordered Arpaio to stop arresting individuals based solely on suspicion of their immigration status.[6] It was for his failure to obey this order, and for "lying to the judge's face" in subsequent court appearances, that Arpaio was referred by the federal court to the Department of Justice—and ultimately convicted—for criminal contempt.[7]

We recognize that the Constitution grants the President the sweeping "power to grant reprieves and pardons for offenses against the United States."[8] Still, that power can be abused. Based on a clear record of cruelty and open racism, Sheriff Arpaio is not worthy of reprieve. At a time when the nation is deeply divided on questions of race and justice—and the President has entangled his Administration in comments about neo-Nazis and Confederate statues—the decision to grant this particular pardon is both inappropriate and deeply disturbing.

Second, it is highly problematic for the President to simply dismiss a pending criminal matter that was referred to the Department of Justice by a federal court. Sheriff Arpaio was convicted for criminal contempt of court because he ignored orders from a federal judge to stop engaging in racial profiling. The pardon not only disregards the rule of law, it directly flouts the courts themselves by signaling that it is acceptable for parties to ignore court orders. President Trump regularly and needlessly criticizes both the judiciary in general and specific judges on a personal basis.[9] This pardon adds insult to injury.

Third, President Trump chose to issue this pardon directly—and not through the Office of the Pardon Attorney at the Department of Justice.[10] For 125 years, presidents have worked through the Pardon Attorney to ensure that the power of clemency is fairly applied. President Trump chose to work around this mechanism and ignore DOJ policy calling for a waiting period of five years or more before considering a pardon application and the expression of regret or remorse by the applicant. As you have argued, the Pardon Attorney is designed to "dissuade"

---

[4] James Ridgeway and Jean Casella, *America's 10 Worst Prisons: Tent City*, MOTHER JONES, May 3, 2013.

[5] *Graves v. Arpaio*, No. CV-77-00479-PHX-NVW (D. Ariz. Oct. 28, 2008).

[6] *Melendres v. Arpaio*, No. PHX-CV-07-02513-GMS (D. Ariz. Dec. 23, 2011).

[7] Fernanda Santos, *Judge Refers Arizona Sheriff Joe Arpaio for Criminal Prosecution*, N.Y. TIMES, Aug. 19, 2016; Matt Zapotosky, *Former Sheriff Joe Arpaio convicted of criminal contempt*, WASH. POST, July 31, 2017.

[8] U.S. Const., Art. II, Sec. 2.

[9] *See, e.g.*, Brent Kendall, *Trump Says Judge's Mexican Heritage Presents 'Absolute Conflict,'* WALL ST. JOURNAL, June 3, 2016; President Donald J. Trump (@realDonaldTrump), Twitter, Feb. 4, 2017, 9:12 AM ("The opinion of this so-called judge, which essentially takes law-enforcement away from our country, is ridiculous and will be overturned!").

[10] Gregory Korte, *Trump's bold Joe Arpaio pardon breaks with presidential tradition*, USA TODAY, Aug. 25, 2017.

presidents from simply making pardons at will.[11] President Trump may soon be tempted to issue pardons that stem from matters under investigation by Special Counsel Bob Mueller. We should be certain that the right structures are in place to temper those decisions well before they reach the President's desk.

Fourth, before resorting to a full pardon, President Trump asked Attorney General Jeff Sessions to simply drop the criminal case against Sheriff Arpaio.[12] Although Department leadership is to be commended for advising the President that his request was inappropriate, the conversation fits into a larger pattern of improper contact between the Trump White House and the Department of Justice.[13] Our Committee has long defended the view that presidents should avoid involvement in specific criminal cases in order to avoid even the perception of politicizing the administration of justice. President Trump regularly ignores that standard. If our Committee is unwilling to even debate the matter, what is to stop this president—or any other president—from doing so again?

We are not alone in raising these concerns. Speaker Paul Ryan (R-WI) disagrees with the decision, noting that "law enforcement officials have a special responsibility to respect the rights of everyone in the United States."[14] Senator John McCain (R-AZ) argues that the pardon "undermines [the President's] claim for the respect of rule of law, as Mr. Arpaio has shown no remorse for his actions."[15] Senator Jeff Flake would have "preferred that the President honor the judicial process and let it take its course."[16]

You were similarly critical of a pardon our Committee examined in 2001: "Many executives have this power for the purpose of accomplishing justice or mercy as a last resort, where fairness simply has not taken hold in other aspects of our judicial process."[17] You argued that President Clinton had "abused this power" and "not used it" for the purposes you described.[18] These statements are directly on point with respect to President Trump's decision

---

[11] *Presidential Pardon Power*, *supra* note 2 (statement of Rep. Bob Goodlatte).

[12] Philip Rucker and Ellen Nakashima, *Trump asked Sessions about closing case against Arpaio, an ally since 'birtherism,'* WASH. POST, Aug. 26, 2017.

[13] *See, e.g.*, Jim Sciutto, et al., *FBI refused White House request to knock down recent Trump-Russia stories*, CNN, Feb. 24, 2017; Adam Entous and Ellen Nakashima, *Trump asked intelligence chiefs to push back against FBI collusion probe after Comey revealed its existence*, WASH. POST, May 22, 2017; Maggie Haberman, et al., *Trump Returns to Crisis Over Kushner as White House Tries to Contain It*, N.Y. TIMES, May 27, 2017.

[14] Peter Nicholas, *House Speaker Paul Ryan Criticizes Donald Trump's Pardon for Joe Arpaio*, WALL ST. JOURNAL, Aug. 26, 2017.

[15] *Id.*

[16] *Id.*

[17] *Presidential Pardon Power* (statement of Rep. Bob Goodlatte).

[18] *Id.*

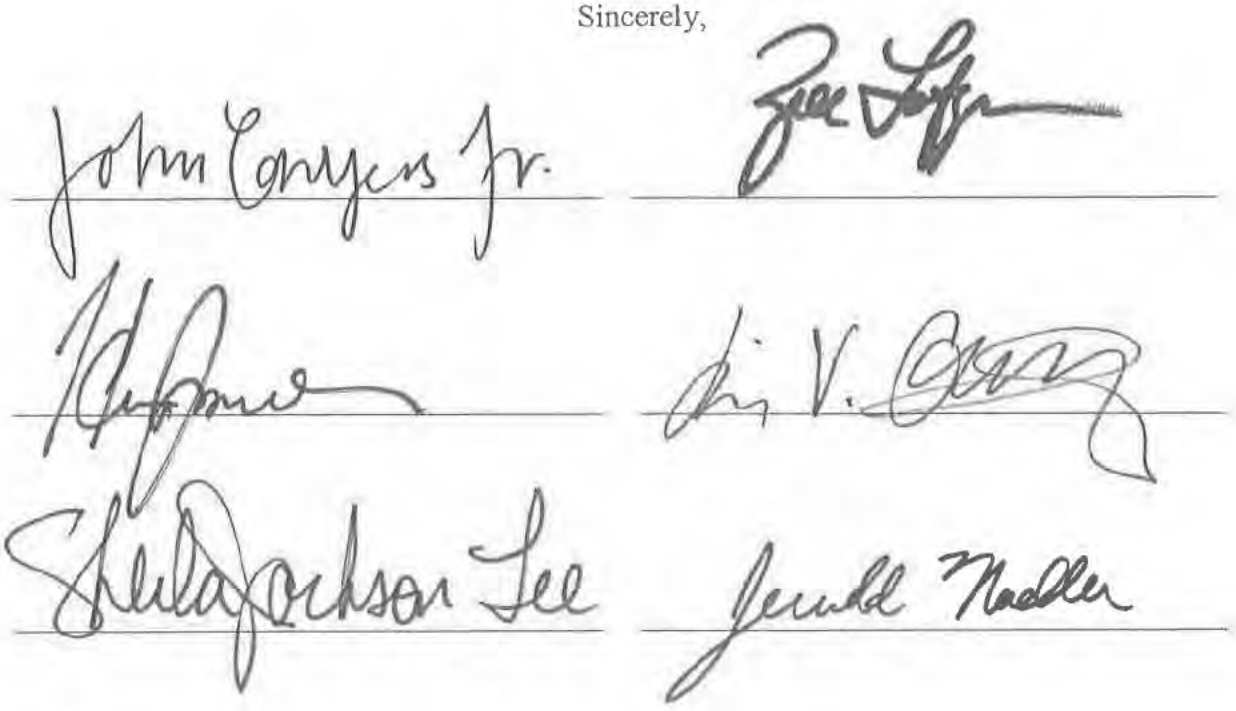
and demonstrate why the Arpaio pardon is worthy, at the very least, of further discussion by our Committee.

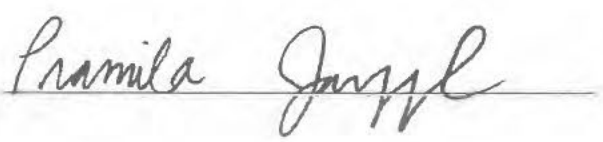
We note that this letter represents the fifth time we have written to ask you to conduct oversight of the Trump Administration. Eight months after President Trump's inauguration, our Committee has yet to hold a single oversight hearing involving the Attorney General, the Deputy Attorney General, the Secretary or Acting Secretary of Homeland Security, the Director or Acting Director of the FBI, or the Director of the Secret Service. Given that our Committee created an entire task force to examine "executive overreach" last Congress during President Obama's term, it is somewhat disturbing that we have not engaged in any comparable oversight of the Trump Administration.

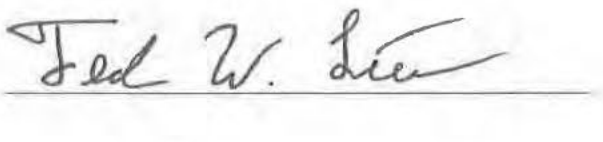
It is also our Committee's unique and pressing responsibility to conduct oversight of the President's use of executive power—particularly when that power is expressed as a pardon that only serves to endorse the transgressions committed by the offender. If we do not examine this use of pardon power, we fear that the Committee will be seen by our constituents—and by future generations—as also having endorsed the Sheriff's conduct.

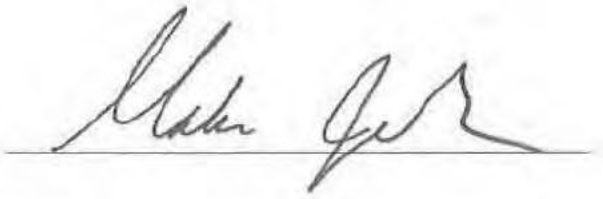
We urge you to schedule oversight hearings on the Arpaio pardon and other pressing matters as soon as possible.

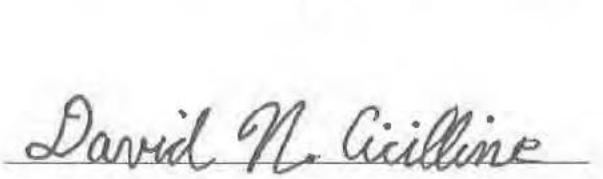
Sincerely,

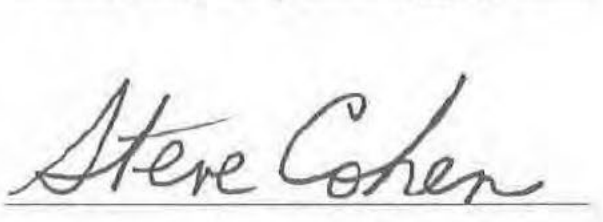


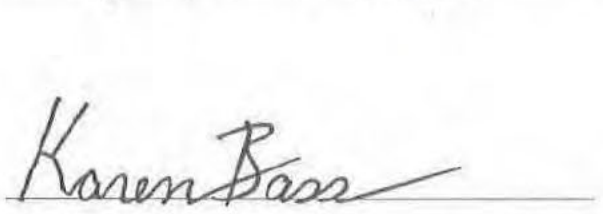


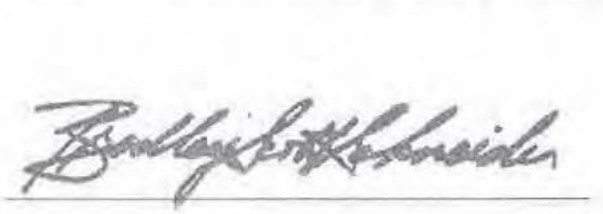


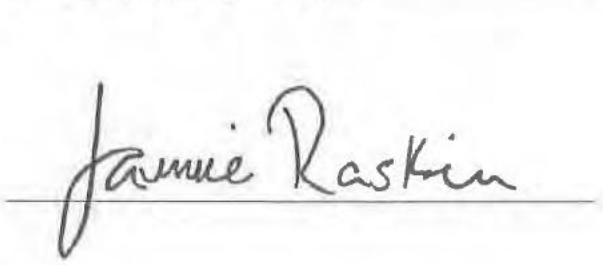












Congressional oversight request re Joseph Arpai....pdf

From:	Taylor, Will (OPATTY)
To:	Kupers, Lawrence B. (OPATTY); Gillespie, Kira (OPATTY); Mills, Jennifer K. (OPATTY); Sargent-Burns, Rosalind A (OPATTY); Smith, Christina (OPATTY)
Subject:	Congressional oversight request re Joseph Arpaio pardon.pdf
Date:	Thursday, August 31, 2017 2:06:00 PM
Attachments:	Congressional oversight request re Joseph Arpaio pardon.pdf

---

FYI only

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6) [redacted]
[redacted]
http://www.justice.gov/pardon/

Congressional oversight request re Joseph Arpa_1.pdf

BOB GOODLATTE, Virginia
CHAIRMAN

JOHN CONYERS, JR., Michigan
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515–6216
One Hundred Fifteenth Congress

August 30, 2017

Chairman Bob Goodlatte
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Chairman Goodlatte:

Late on Friday, August 25, 2017—as the nation turned its attention to a devastating hurricane about to make landfall in Texas—President Trump issued a pardon of former Arizona sheriff Joe Arpaio for criminal contempt of court.[1] On Monday, President Trump noted that the issuance of the pardon was timed so that "the ratings would be far higher" as it was made public in the midst of the Hurricane Harvey coverage. We ask that you convene an oversight hearing on this controversial pardon and surrounding events as soon as possible.

We ask for several reasons. The pardon sends an unequivocal signal that institutionalized racial profiling as practiced by Sheriff Arpaio is acceptable; the pardon is disrespectful to the rule of law in general and to the federal courts in particular; and the President issued the pardon in the complete absence of any advisory role by the Department of Justice and after the President had already asked Attorney General Sessions to drop the case completely. As you are well aware, although the President has wide constitutional authority to issue pardons, there is also ample precedent for our Committee to review pardons as controversial as this one.[2]

At least four aspects of the Arpaio pardon require our immediate attention.

First, this pardon represents a gross injustice. In case after case, Sheriff Arpaio and his subordinates were shown to have been intentionally violent and abusive.[3] He built a "tent city"

---

[1] Devlin Barrett and Abby Phillip, *Trump pardons former Arizona sheriff Joe Arpaio*, WASH. POST, Aug. 25, 2017.

[2] *See Presidential Pardon Power*, before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 107th Cong., Feb. 28, 2001 [hereinafter *Presidential Pardon Power*].

[3] James Fallows, *Why the Arpaio Pardon Matters*, THE ATLANTIC, Aug. 27, 2017. *See also* Phoenix New Times (@phoenixnewtimes), Twitter, Aug. 25, 2017 10:01 ("We've been covering Joe Arpaio for more than 20 years. Here's a couple of things you should know about him…").

to house inmates—a facility where temperatures can reach 145 degrees in the summer, and which Arpaio himself once called a "concentration camp."[4] In 2008, one federal judge found these practices to be flatly unconstitutional.[5] In 2011, another federal court ordered Arpaio to stop arresting individuals based solely on suspicion of their immigration status.[6] It was for his failure to obey this order, and for "lying to the judge's face" in subsequent court appearances, that Arpaio was referred by the federal court to the Department of Justice—and ultimately convicted—for criminal contempt.[7]

We recognize that the Constitution grants the President the sweeping "power to grant reprieves and pardons for offenses against the United States."[8] Still, that power can be abused. Based on a clear record of cruelty and open racism, Sheriff Arpaio is not worthy of reprieve. At a time when the nation is deeply divided on questions of race and justice—and the President has entangled his Administration in comments about neo-Nazis and Confederate statues—the decision to grant this particular pardon is both inappropriate and deeply disturbing.

Second, it is highly problematic for the President to simply dismiss a pending criminal matter that was referred to the Department of Justice by a federal court. Sheriff Arpaio was convicted for criminal contempt of court because he ignored orders from a federal judge to stop engaging in racial profiling. The pardon not only disregards the rule of law, it directly flouts the courts themselves by signaling that it is acceptable for parties to ignore court orders. President Trump regularly and needlessly criticizes both the judiciary in general and specific judges on a personal basis.[9] This pardon adds insult to injury.

Third, President Trump chose to issue this pardon directly—and not through the Office of the Pardon Attorney at the Department of Justice.[10] For 125 years, presidents have worked through the Pardon Attorney to ensure that the power of clemency is fairly applied. President Trump chose to work around this mechanism and ignore DOJ policy calling for a waiting period of five years or more before considering a pardon application and the expression of regret or remorse by the applicant. As you have argued, the Pardon Attorney is designed to "dissuade"

---

[4] James Ridgeway and Jean Casella, *America's 10 Worst Prisons: Tent City*, MOTHER JONES, May 3, 2013.

[5] *Graves v. Arpaio*, No. CV-77-00479-PHX-NVW (D. Ariz. Oct. 28, 2008).

[6] *Melendres v. Arpaio*, No. PHX-CV-07-02513-GMS (D. Ariz. Dec. 23, 2011).

[7] Fernanda Santos, *Judge Refers Arizona Sheriff Joe Arpaio for Criminal Prosecution*, N.Y. TIMES, Aug. 19, 2016; Matt Zapotosky, *Former Sheriff Joe Arpaio convicted of criminal contempt*, WASH. POST, July 31, 2017.

[8] U.S. Const., Art. II, Sec. 2.

[9] *See, e.g.*, Brent Kendall, *Trump Says Judge's Mexican Heritage Presents 'Absolute Conflict,'* WALL ST. JOURNAL, June 3, 2016; President Donald J. Trump (@realDonaldTrump), Twitter, Feb. 4, 2017, 9:12 AM ("The opinion of this so-called judge, which essentially takes law-enforcement away from our country, is ridiculous and will be overturned!").

[10] Gregory Korte, *Trump's bold Joe Arpaio pardon breaks with presidential tradition*, USA TODAY, Aug. 25, 2017.

presidents from simply making pardons at will.[11] President Trump may soon be tempted to issue pardons that stem from matters under investigation by Special Counsel Bob Mueller. We should be certain that the right structures are in place to temper those decisions well before they reach the President's desk.

Fourth, before resorting to a full pardon, President Trump asked Attorney General Jeff Sessions to simply drop the criminal case against Sheriff Arpaio.[12] Although Department leadership is to be commended for advising the President that his request was inappropriate, the conversation fits into a larger pattern of improper contact between the Trump White House and the Department of Justice.[13] Our Committee has long defended the view that presidents should avoid involvement in specific criminal cases in order to avoid even the perception of politicizing the administration of justice. President Trump regularly ignores that standard. If our Committee is unwilling to even debate the matter, what is to stop this president—or any other president—from doing so again?

We are not alone in raising these concerns. Speaker Paul Ryan (R-WI) disagrees with the decision, noting that "law enforcement officials have a special responsibility to respect the rights of everyone in the United States."[14] Senator John McCain (R-AZ) argues that the pardon "undermines [the President's] claim for the respect of rule of law, as Mr. Arpaio has shown no remorse for his actions."[15] Senator Jeff Flake would have "preferred that the President honor the judicial process and let it take its course."[16]

You were similarly critical of a pardon our Committee examined in 2001: "Many executives have this power for the purpose of accomplishing justice or mercy as a last resort, where fairness simply has not taken hold in other aspects of our judicial process."[17] You argued that President Clinton had "abused this power" and "not used it" for the purposes you described.[18] These statements are directly on point with respect to President Trump's decision

---

[11] *Presidential Pardon Power*, *supra* note 2 (statement of Rep. Bob Goodlatte).

[12] Philip Rucker and Ellen Nakashima, *Trump asked Sessions about closing case against Arpaio, an ally since 'birtherism,'* WASH. POST, Aug. 26, 2017.

[13] *See, e.g.*, Jim Sciutto, et al., *FBI refused White House request to knock down recent Trump-Russia stories*, CNN, Feb. 24, 2017; Adam Entous and Ellen Nakashima, *Trump asked intelligence chiefs to push back against FBI collusion probe after Comey revealed its existence*, WASH. POST, May 22, 2017; Maggie Haberman, et al., *Trump Returns to Crisis Over Kushner as White House Tries to Contain It*, N.Y. TIMES, May 27, 2017.

[14] Peter Nicholas, *House Speaker Paul Ryan Criticizes Donald Trump's Pardon for Joe Arpaio*, WALL ST. JOURNAL, Aug. 26, 2017.

[15] *Id.*

[16] *Id.*

[17] *Presidential Pardon Power* (statement of Rep. Bob Goodlatte).

[18] *Id.*

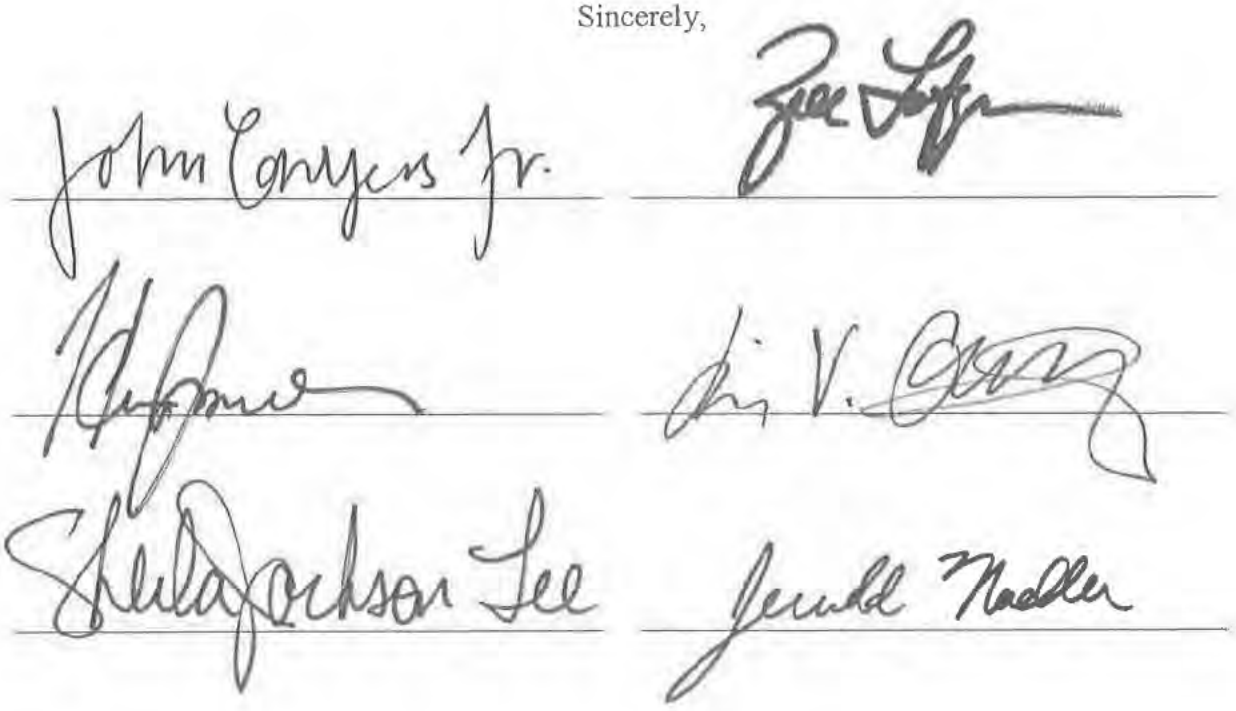
and demonstrate why the Arpaio pardon is worthy, at the very least, of further discussion by our Committee.

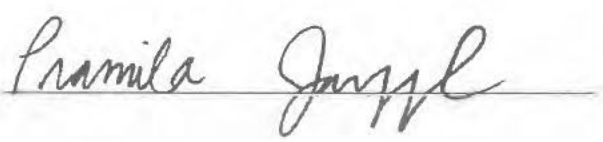
We note that this letter represents the fifth time we have written to ask you to conduct oversight of the Trump Administration. Eight months after President Trump's inauguration, our Committee has yet to hold a single oversight hearing involving the Attorney General, the Deputy Attorney General, the Secretary or Acting Secretary of Homeland Security, the Director or Acting Director of the FBI, or the Director of the Secret Service. Given that our Committee created an entire task force to examine "executive overreach" last Congress during President Obama's term, it is somewhat disturbing that we have not engaged in any comparable oversight of the Trump Administration.

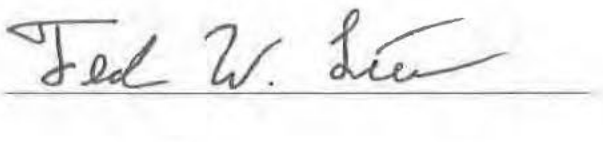
It is also our Committee's unique and pressing responsibility to conduct oversight of the President's use of executive power—particularly when that power is expressed as a pardon that only serves to endorse the transgressions committed by the offender. If we do not examine this use of pardon power, we fear that the Committee will be seen by our constituents—and by future generations—as also having endorsed the Sheriff's conduct.

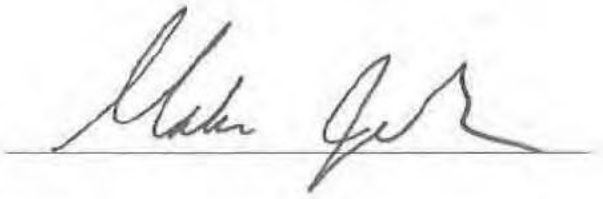
We urge you to schedule oversight hearings on the Arpaio pardon and other pressing matters as soon as possible.

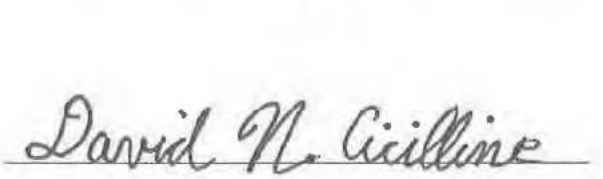
Sincerely,

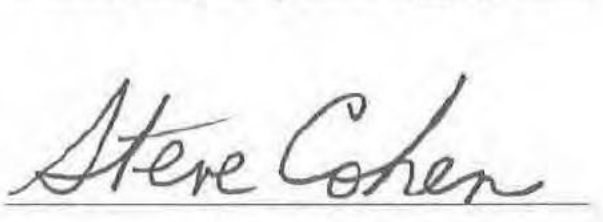


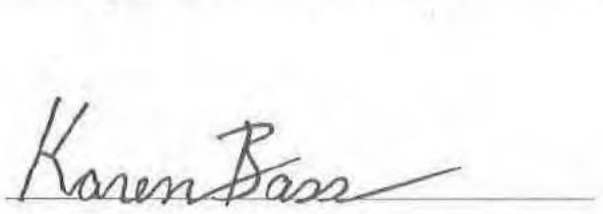


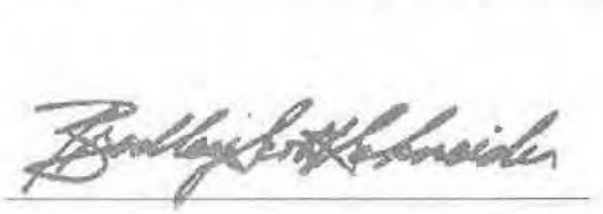


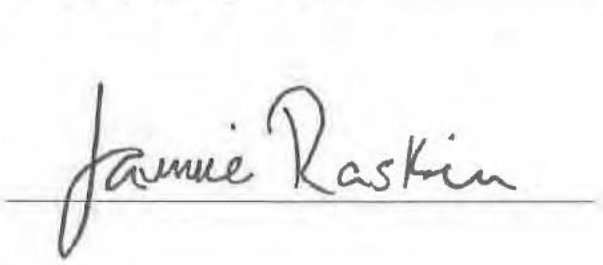












EEOC Warns of ’Chaos’ If Workplace Wellness Rul....pdf

From: NLJ Legal Times Afternoon Update
To: Kupers, Lawrence B. (OPATTY)
Subject: EEOC Warns of "Chaos" If Workplace Wellness Rules Are Vacated
Date: Tuesday, September 12, 2017 4:14:40 PM

FROM THE NATIONAL LAW JOURNAL

LegalTimes AFTERNOON UPDATE

TODAY'S TOP STORIES

• EEOC Warns of 'Chaos' If Workplace Wellness Rules Are Vacated

• In the Wake of Equifax's Breach, A Look at Who's Leading the Legal Department

• Davis Polk Partner Picked for State Dept. Legal Adviser Discloses $1.5M Partner Share

• Lawyer Who Tweeted He'd Be 'OK' if Betsy DeVos Was Sexually Assaulted Resigns From Law Firm

• Trump's Arpaio Contempt Pardon 'Ends This Prosecution,' DOJ Tells Judge

• Equifax, Before Breach, Lobbied to Limit Class-Action Damages

• In Win for Patent Owners, PTAB Clamps Down on Repeat Attacks

MORE STORIES FROM ALM

• Lawyer Drafted Changes to Wills of McIver and His Wife Before She Died

• SI Administrative Judges Resign Amid News of Secret Recordings

• Lawyer Caught Up in Willkie Partner's Arrest Promises Tell-All Memoir

Your digital membership gives you complimentary access to five articles per month from other award-winning ALM publications.

EEOC Warns of 'Chaos' If Workplace Wellness Rules Are Vacated

The U.S. Equal Employment Opportunity Commission, warning of "significant disruptive...

READ MORE »

In the Wake of Equifax's Breach, A Look at Who's Leading the Legal Department

John Kelley, Equifax's CLO, also heads up security and compliance. **READ MORE »**

Davis Polk Partner Picked for State Dept. Legal Adviser Discloses $1.5M Partner Share

Davis Polk & Wardwell partner Jennifer Newstead, a veteran of the George W.... **READ MORE »**

Lawyer Who Tweeted He'd Be 'OK' if Betsy DeVos Was Sexually Assaulted Resigns From Law Firm

A Central Texas personal injury lawyer has resigned from his law firm after... **READ MORE »**

Trump's Arpaio Contempt Pardon 'Ends This Prosecution,' DOJ Tells Judge

The U.S. Justice Department on Monday urged an Arizona federal judge to end... **READ MORE »**

Equifax, Before Breach, Lobbied to Limit Class-Action Damages

In the months before revealing a data breach that potentially exposed the personal... **READ MORE »**

In Win for Patent Owners, PTAB Clamps Down on Repeat Attacks

The Patent Trial and Appeal Board will no longer tolerate multiple, serial petitions... **READ MORE »**

Lawyer Drafted Changes to Wills of McIver and His Wife Before She Died

An estate planning attorney hired by Atlanta lawyer Claud 'Tex' McIver and... **READ MORE »**

SI Administrative Judges Resign Amid News of Secret Recordings

The Staten Island judicial system was thrown into upheaval Thursday following... **READ MORE »**

Lawyer Caught Up in Willkie Partner's Arrest Promises Tell-All Memoir

A plaintiffs lawyer whose career was upended over his communications with a... **READ MORE »**

Email Management Area

Please do not reply to the address you received this email from. Manage your email communications below.

Why you received this email message:

You are subscribed to the NLJ Legal Times Afternoon Update as lawrence.b.kupers@usdoj.gov. You may be subscribed to multiple publications as part of your relationship with us.

To stop receiving the NLJ Legal Times Afternoon Update (unsubscribe) or to update your email marketing preferences, please click here. On this page, please update your subscription choices to this publication, and any others you may receive. You may also change your opt-in of email marketing promotions from ALM. It may take up to 10 days for your changes to take effect.

How to contact us should you have questions:

The National Law Journal®
120 Broadway, 5th Floor,
New York, NY 10271-1101
Customer Service Phone: 1-877-256-2472

About ALM | Customer Support | Privacy Policy | Terms & Conditions

© 2017 ALM Media Properties, LLC.

All rights reserved.

Evening Edition_ At least one dead, buildings f....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: Evening Edition: At least one dead, buildings flattened as Harvey hits Texas coast
Date: Saturday, August 26, 2017 5:02:34 PM

The Washington Post

Democracy Dies in Darkness

Evening Edition

The day's most important stories

Powered by LiveIntent AdChoices

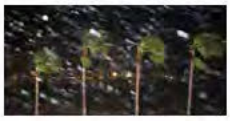
Top Stories

At least one dead, buildings flattened as Harvey hits Texas coast

The storm caused destruction in the small city of Rockport, where the mayor confirmed one fatality, and it dumped what could be catastrophic amounts of rain on the battered central Texas coast. Officials say they expect to find further victims as search and rescue operations proceed. More than 200,000 people across the state were without power, and some wastewater and drinking water treatment plants were offline.

By Tim Craig, Kevin Sullivan and Sandhya Somashekhar • Read more »

Harvey's rainfall will cause Texas rivers to flood at new records, forecasts say



Already, rainfall totals up to nearly 15 inches have been reported, and most locations in Harvey's forecast cone can expect an additional 1 to 3 feet through the middle of next week.

By Jason Samenow, Angela Fritz and Matthew Cappucci • Read more »

The Take • Analysis

President's pardon of Arpaio fits a pattern: A divider, not a uniter

Trump has again linked himself to the most extreme elements of the immigration debate, inflaming an already highly volatile situation.

By Dan Balz • The Take • Read more »

@PKCapitol • Analysis

Trump looks to 2020, but a more

immediate peril looms

The president is distancing himself from Hill Republicans to inoculate himself from blame for midterm losses. He may be helping Democrats take the House.

By Paul Kane • @PKCapitol • Read more »

ADVERTISEMENT

Top U.S. military commander in Afghanistan finally gets his wish

With a nod from the president, Gen. John Nicholson hopes to turn around a grueling war on hard but familiar terrain.

By Pamela Constable • Read more »

Sarah Huckabee Sanders says she'll get back to you on that. Chances are she won't.

Reporters tend to regard the get-back-

to-you line by the White House press secretary — or her predecessors — the way a creditor reacts to being told the check is in the mail: They'll believe it when they see it.
By Paul Farhi • Read more »

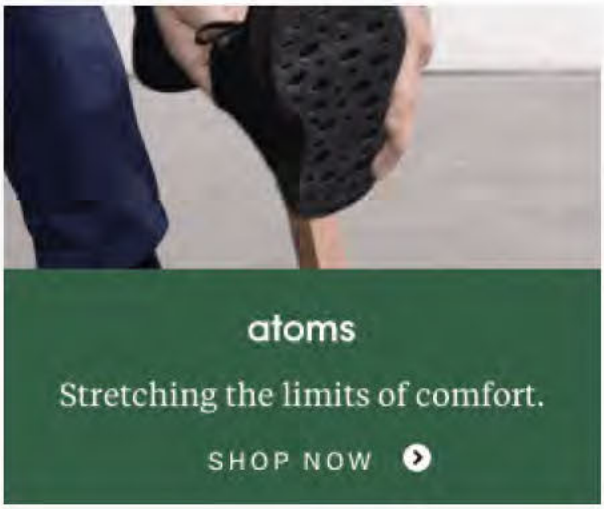
Democrats hit the road to win back Washington

Lawmakers, increasingly concerned that their party might fall short again in elections next year, are traveling far from their districts to buck up beleaguered party activists and recruit candidates.
By Ed O'Keefe • Read more »

As Britain cracks down on weapons, criminals turn to acid attacks

There were more than 700 acid attacks last year — double the number in 2015 — fueling fears of a frightening new crime fad involving teenage motorbike thieves using corrosive substances, in part because they are relatively easy to obtain.
By Karla Adam and William Booth • Read more »

ADVERTISEMENT



A pro-Trump group canceled its rally, but San Francisco prepared for violence anyway

Organizers of the so-called "Freedom Rally" blamed the cancellation on public officials, who they said falsely portrayed them as white supremacists.
By Kristine Phillips • Read more »

It rains solid diamonds on Uranus and Neptune

Scientists had long speculated on the theory, but it wasn't until recently, using fancy plastic and high-powered lasers, that they were able to reproduce the phenomenon.
By Sarah Kaplan • Read more »

Mayweather-McGregor weigh-in keeps up the spectacle as main event draws closer

The two fighters made sure the buzz they've created surrounding tonight's

bout will be kept at a high pitch.
By Rick Maese • Read more »

Share Evening Edition: Twitter Facebook

Trouble reading? Click here to view in your browser.

You received this email because you signed up for Evening Edition or because it is included in your subscription. For additional free newsletters or to manage your newsletters, click here.

We respect your privacy. If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, click here. Contact us for help.

©2017 The Washington Post, 1301 K St NW, Washington DC 20071

Evening Edition_ Scaramucci out as White House ....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: Evening Edition: Scaramucci out as White House communications director
Date: Monday, July 31, 2017 5:03:50 PM

Democracy Dies in Darkness

Evening Edition

The day's most important stories

atoms

Stretching the limits of comfort.

Slip in elastic lacing

SHOP NOW

Powered by Liveintent

AdChoices

Scaramucci out as White House communications director

Anthony Scaramucci has been removed at the request of newly installed Chief of Staff John Kelly just days after he was named to the job, according to two people with knowledge of the decision. Scaramucci's brief tenure was marked by turmoil as he feuded publicly with Kelly's predecessor, Reince Priebus.

By Abby Phillip and Damian Paletta • Read more »

Venezuelan president is sanctioned after election that critics called 'illegitimate'

The move came after President Trump — and other world leaders — warned Nicolás Maduro of "swift" consequences if he went through with a controversial vote to replace his current legislature with a new body more loyal to himself.

By Heather Long • Read more »

Pence takes tough tone on Russia after Putin retaliates against sanctions

The vice president, on his first full day in Eastern Europe, twice offered a direct message warning the Kremlin that the United States will not tolerate Russian force or intimidation toward its neighbors. His remarks came on the heels of Vladimir Putin calling for the U.S. to cut 755 workers at its diplomatic mission in Russia.

By Ashley Parker • Read more »

Sam Shepard | 1943–2017

Cowboy-style poet was among the 20th century's great American playwrights

In theatrical works both poetic and mythical, he explored the intersections of an unruly American West and the deep complexities of the fracturing American family. He won the 1979 Pulitzer Prize for drama for his play "Buried Child" and an Oscar nomination for his portrayal of aviator Chuck Yeager in 1983's "The Right Stuff."

By Nelson Pressley • Read more »

ADVERTISEMENT

Perspective

A transgender candidate takes on Virginia's 'Minister of Private Parts'

Danica Roem is running against her polar opposite in the 13th District: 25-year GOP incumbent Robert Marshall. And she believes she can win exactly because she has little interest in talking about sex, body parts or gender identity — the meat and potatoes of Marshall's public life.

By Petula Dvorak • Read more »

Former Ariz. sheriff Joe Arpaio, who took extreme stance on immigration, is convicted of criminal contempt

The self-styled "America's toughest sheriff" could face six months in prison for "flagrant disregard" of a judge's order to stop detaining people under the suspicion of being undocumented residents.

By Matt Zapotosky • Read more »

The Fix | Analysis

John Kelly's greatest challenge now is 'without question' Trump himself, expert says

Author Chris Whipple spent five years interviewing 17 former White House chiefs of staff and researching the history of the position.

By Amy B Wang • Read more »

A soldier survived 48 hours of terror in Vietnam. Today, he received the Medal of Honor.

James McCloughan is credited with risking his life to save 10 fellow soldiers during a 1969 battle near Tam Kỳ, a city along Vietnam's central coast.

By Andrew deGrandpre • Read more »

ADVERTISEMENT

DOWNLOAD HUNDREDS OF EBOOKS WITHOUT SPENDING A DIME

Start Reading - It's Free!

The Fix | Analysis

4 ways the GOP could restart its efforts to repeal Obamacare

Senate Republicans waved the white flag last week, but here are some ways Congress could keep trying to tackle the issue important to President Trump. Each tactic could backfire politically.

By Amber Phillips • Read more »

Former staffer with U.S. contractor pleads guilty in State Department scam

Jose Rivera of Potomac, Md., admitted that while

working in Iraq, he helped cheat the State Department out of millions of dollars.

By Rachel Weiner • Read more »

Hackers may have stolen 'Game of Thrones' episodes in attack on HBO

The network said that "proprietary information" had been stolen from its computers. News reports said the stolen goods include new episodes of some series and material related to its most popular show.

By Craig Timberg • Read more »

Citing 'basic physics,' a judge berated the FAA over shrinking airline seats

In a fiery ruling, an appeals court judge upbraided the FAA for "vacuous" and "vaporous" evidence that the agency had used to argue that shrinking leg room was not a problem.

By Avi Selk • Read more »

Share Evening Edition: Twitter Facebook

Trouble reading? Click here to view in your browser.

You received this email because you signed up for Headlines. For additional free newsletters or to manage your newsletters, click here.
We respect your privacy. If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, click here.
Contact us for help.

©2017 The Washington Post, 1301 K St NW, Washington DC 20071

Evening Edition_ Trump denounces KKK, neo-Nazis....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: Evening Edition: Trump denounces KKK, neo-Nazis two days after Charlottesville unrest
Date: Monday, August 14, 2017 6:07:28 PM

The Washington Post

Democracy Dies in Darkness

Evening Edition

The day's most important stories

instant results

LIQUID LASH EXTENSIONS MASCARA™
SHOP NOW
thrive causemetics

Powered by LiveIntent

AdChoices

Top Stories

Trump denounces KKK, neo-Nazis two days after Charlottesville unrest

The president spoke from the White House in an effort to tamp down criticism from Democrats and some Republicans that he had not been forceful enough in his comments Saturday. He also announced a Justice Department civil rights probe into the killing of a counterprotester.

By David Nakamura • Read more »

‘Scared he is going to become violent’: Mother of Va. suspect twice called 911 on teenaged son

James Alex Fields allegedly threatened or assaulted his wheelchair-bound mother so violently as a young teenager that she called police on him in 2010 and 2011, records show.

By Jack Gillum and James Higdon • Read more »

Trump fires back after Merck CEO resigns from council

Kenneth Frazier, one of the few African American executives in the Fortune 500, said he felt “a responsibility to take a stand against intolerance and extremism.” Within an hour of the Merck statement being issued, President Trump mockingly tweeted about Frazier.

By Jena McGregor • Read more »

Why are people still racist?

What science says about America's race problem.

How could this happen in America, in 2017? Amid our modern clashes, researchers in psychology, sociology and neurology have been studying the roots of racism. We draw on that research and asked two scientists to explain why we feel and act this way toward each other.

By William Wan and Sarah Kaplan • Read more »

ADVERTISEMENT

Trump campaign emails show aide's repeated efforts to set up Russia meetings

A new batch of communications turned over to congressional committees reveals concerns within the campaign about establishing contacts.

By Tom Hamburger, Carol D. Leonnig and Rosalind S. Helderman • Read

more »

Trump says he's considering pardon for Joe Arpaio

The former Arizona sheriff has long been a Trump supporter. He was convicted last month of criminal contempt for ignoring a judge's order to stop detaining people because he merely suspected them of being undocumented immigrants.

By Matt Zapotosky • Read more »

Oklahoma man charged in anti-government bomb plot

Jerry Drake Varnell tried to detonate what he thought was a 1,000-pound bomb Friday night outside an Oklahoma City bank, according to the FBI, which had been investigating him for months.

By Devlin Barrett • Read more »

U.S. ready to use 'full range' of military force against North Korea if diplomacy fails, Joint Chiefs chairman says

Gen. Joseph Dunford applied additional pressure on Pyongyang during an Asia tour to calm fears of nuclear conflict.

By Anna Fifield and Dan Lamothe • Read more »

ADVERTISEMENT

70 years later, survivors recall the horrors of the partition of India and Pakistan

Around 14 million people abandoned their homes as colonial British administrators began dismantling their empire in southern Asia. Between 200,000 and 2 million people were killed in the upheaval in the summer and fall of 1947.

By Vidhi Doshi and Nisar Mehdi •

Read more »

Repairs will silence London's Big Ben for four years

The 158-year-old iconic landmark is taking a long timeout for repairs during which the clock itself must be "dismantled piece by piece with each cog examined and restored."

By William Booth and Karla Adam •

Read more »

6 foods that marketers want you to think are healthy

There's a big difference between the nutritional value of carrot sticks and "veggie sticks."

By Cara Rosenbloom • Read more »

Share Evening Edition: Twitter Facebook

Trouble reading? Click here to view in your browser.

You received this email because you signed up for Evening Edition or because it is included in your subscription. For additional free newsletters or to manage your newsletters, click here.

We respect your privacy. If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, click here. Contact us for help.

©2017 The Washington Post, 1301 K St NW, Washington DC 20071

Evening Edition_ Trump plans to visit Texas on ....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: Evening Edition: Trump plans to visit Texas on Tuesday; 3,000 guard troops deployed
Date: Sunday, August 27, 2017 5:16:51 PM

The Washington Post

Democracy Dies in Darkness

Evening Edition

The day's most important stories

The Motley Fool

2020 Top Stocks to Buy

Worried about the market? We're thinking long term and doubling down on these stocks.

LEARN MORE NOW

Powered by LiveIntent AdChoices

Top Stories

Trump plans to visit Texas on Tuesday; 3,000 guard troops deployed

National and state guard troops will assist with search and rescue operations as Houston and the surrounding areas try to cope with relentless rain and dire flash flooding in the aftermath of Hurricane Harvey. At least five people have been reported dead as a result of the storm, according to the National Weather Service.

By Dylan Baddour, Kevin Sullivan, Wesley Lowery and Robert Samuels • Read more »

FEMA director: Harvey is probably the worst disaster in Texas history

"The recovery to this event is going to last many years, to be able to help Texas and the people impacted by this event achieve a new normal," William "Brock" Long told The Post.

By Joel Achenbach • Read more »

Should Houston have been evacuated? If so, why wasn't it?

Texas Gov. Greg Abbott and local officials had given conflicting messages about whether to evacuate Houston ahead of Harvey. The storm is unleashing record levels of rain on the city.

By Amy B Wang and Cleve R. Wootson Jr. • Read more »

Catastrophic flooding in Houston is 'expected to worsen'

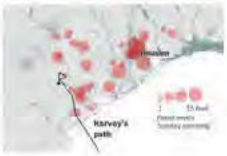
The worst fears of flooding are being realized as Harvey unloads extreme

rainfall on Houston and other parts of Southeast Texas. Rain of one to two feet has already fallen, with some locations nearing 30 inches. And much more rain is still to come.

By Greg Porter and Jason Samenow •

Read more »

Graphic: Tracking the severity and impact of flooding in Harvey's wake



Weather officials downgraded Hurricane Harvey to a tropical storm Saturday afternoon, but the storm continues to pummel Southeast Texas. Here's a look at how bad is it and how bad it will be.

By Darla Cameron, Samuel Granados, Chris Alcantara and Gabriel Florit •

Read more »

ADVERTISEMENT

Post Politics • Analysis

White House aide defends Trump's pardon of Arpaio

Homeland Security adviser Tom Bossert said the decision to pardon controversial former Arizona sheriff Joe Arpaio was a "straightforward" case of clemency for an aging man with a history of military service. Bossert denied that the pardon shows the president doesn't care about the rule of law.

By Abby Phillip • Read more »

Analysis: Here's what experts on authoritarianism think about Trump's decision

"It's a sign of how much the president is working against the system," one scholar says.

By Amanda Erickson • Read more »

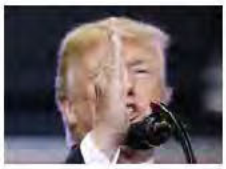
Months before pardon, Trump asked Sessions about closing federal case against Arpaio

As the former Arizona sheriff's federal case headed toward trial this spring, the president asked the attorney general whether the government could drop the criminal case, but was advised that would be inappropriate, according to people with knowledge of the conversation.

By Philip Rucker and Ellen Nakashima • Read more »

The Fix • Analysis

What if Trump ditched the GOP?



It's not entirely far-fetched that the president, disappointed by its leaders and fed up by a lack of legislative progress, might tell the Republican Party, either officially or in spirit, "you're fired."

By Aaron Blake • Read more »

Tillerson says Trump 'speaks for himself'

The secretary of state made his remarks on "Fox News Sunday" amid continuing controversy over President Trump's response to racially tinged violence in Charlottesville.

By Anne Gearan • Read more »

ADVERTISEMENT

While Mayweather heads back to retirement, McGregor weighs

his fighting options

While fans of both boxing and mixed martial arts appeared to appreciate the showdown, Floyd Mayweather Jr. and Conor McGregor seemed eager to move past Saturday's big show.
By Rick Maese • Read more »

Iraqi military reclaims city of Tal Afar after rapid Islamic State collapse

The battle lasted just eight days, highlighting the diminished capabilities of the militant group despite fears that it would put up a ferocious resistance.
By Tamer El-Ghobashy and Mustafa Salim • Read more »

Retropolis • The Past, Rediscovered

The day President Reagan comforted a black family who had a KKK cross burned on its lawn

In 1982, decades before a Catholic priest acknowledged his responsibility in the cross burning, the Reagans visited the Butlers in Maryland to tell them "this isn't something that should happen in America."
By DeNeen L. Brown • Read more »

Major drug study opens up vast

new opportunities in combating heart disease

The findings provided validation of an idea that has been tantalizing cardiologists for years: reducing inflammation could be a way to reduce the risks of heart attack and stroke.

By Carolyn Y. Johnson • Read more »

Diana and the media: She used them, and they used her. Until the day she died.

Twenty years ago, she needed the press. Today, she'd probably be a star on Twitter.

By Roxanne Roberts • Perspective • Read more »

Share Evening Edition: Twitter Facebook

Trouble reading? Click here to view in your browser.

You received this email because you signed up for Evening Edition or because it is included in your subscription. For additional free newsletters or to manage your newsletters, click here.

We respect your privacy. If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, click here. Contact us for help.

©2017 The Washington Post, 1301 K St NW, Washington DC 20071

FBI notice.pdf

From: Pendergrass, Matthew J. (OPATTY)
To: Kupers, Lawrence B. (OPATTY)
Subject: FBI notice
Date: Monday, August 28, 2017 11:43:05 AM
Attachments: DRAFT FBI notice.pdf

Larry,

Do you approve of the attached notice? If so, I will send via email today.

Ros assisted with the prep.

Thanks,

Jordan

DRAFT FBI notice.pdf

U.S. Department of Justice

Office of the Pardon Attorney

Washington, D.C. 20530

August 28, 2017

MEMORANDUM

TO: Director, FBI
Attn: (b) (7)(F) [redacted]
Special Inquiry and General
Background Investigation Unit

FROM: Lawrence Kupers
Deputy Pardon Attorney

SUBJECT: Executive Clemency Grant issued by President Trump on August 25, 2017

On August 25, 2017, President Donald Trump granted a full and unconditional pardon to the individual identified below. Please make the appropriate notation in your records, and thank you for your assistance in this matter.

Joseph Michael Arpaio,
aka Joe Arpaio

Offense:

His conviction on July 31, 2017 of criminal contempt,18 U.S.C. § 401(3) in the United States District Court for the District of Arizona (sentence not yet imposed).

As this pardon was not processed through the Office of the Pardon Attorney, the FBI Number, Date of Birth, and Social Security Number of the recipient are unknown.

FOIA Request DOJ-17-0342.pdf

From: American Oversight FOIA
To: OPA FOIA
Subject: FOIA Request DOJ-17-0342
Date: Tuesday, August 29, 2017 5:54:04 PM
Attachments: DOJ-17-0342.pdf

Dear FOIA Officer:

Please find attached a request for records under the Freedom of Information Act.

Sincerely,

Beth France
Counsel
American Oversight
(b) (6)

DOJ-17-0342

DOJ-17-0342.pdf

AMERICAN OVERSIGHT

August 29, 2017

VIA ONLINE PORTAL AND ELECTRONIC MAIL

Laurie Day
Chief, Initial Request Staff
Office of Information Policy
U.S. Department of Justice
1425 New York Avenue NW, Suite 11050
Washington, DC 20530-0001
Online Request via FOIAonline

Melissa Golden
Lead Paralegal and FOIA Specialist
U.S. Department of Justice
Room 5511, 950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
usdoj-officeoflegalcounsel@usdoj.gov

Jennifer K. Mills
Paralegal Specialist
Office of the Pardon Attorney
U.S. Department of Justice
145 N Street NE
#5E. 508
Washington, DC 20530
PardonAttorneyFOIA@usdoj.gov

Re: Freedom of Information Act Request

Dear FOIA Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the implementing regulations of the Department of Justice (DOJ), 28 C.F.R. Part 16, American Oversight makes the following request for records.

On August 25, 2017, President Trump pardoned former Maricopa County, Arizona sheriff Joe Arpaio, who had been convicted of criminal contempt for defying a federal court order restraining him from detaining people not suspected of committing crimes.[1] Media reports indicate that the president planned for many weeks to issue the pardon to his political ally and "campaign-trail companion," yet he did not follow ordinary procedures—such as waiting for Arpaio to be sentenced or engaging in typical consultations with the DOJ—before doing so, perhaps because the pardon would not satisfy DOJ's guidelines.[2] Before Arpaio was convicted, the president also

[1] Amita Kelly, *President Trump Pardons Former Sheriff Joe Arpaio*, NPR (Aug. 25, 2017, 8:14 PM), http://www.npr.org/2017/08/25/545282459/president-trump-pardons-former-sheriff-joe-arpaio.

[2] Philip Rucker & Ellen Nakashima, *Trump Asked Sessions About Closing Case Against Arpaio, an Ally Since "Birtherism,"* WASH. POST, Aug 26, 2017,

reportedly contacted Attorney General Jeff Sessions to encourage the government to drop its case against Arpaio.[3]

Taken together, these reports suggest that the president—motivated by his own personal and political allegiances—first compromised DOJ's independence by meddling in an ongoing prosecution and then deviated from typical pardon procedures to fast track the pardon without adequate DOJ advice. These actions continue the Trump White House's disturbing habit of disregarding safeguards on DOJ's independence in an effort to prioritize political agendas and alliances over accountability and the rule of law.[4] The American people are entitled to know what steps President Trump took to try to secure special treatment for Joe Arpaio, what political pressures or considerations influenced the pardon, and what shortcuts the president took to ensure Arpaio faces no punishment for his federal crime. American Oversight seeks records that will shed light on DOJ's role, if any, in issuing the pardon, including the scope of communications between the White House and DOJ regarding Arpaio's prosecution, conviction, and pardon.

Requested Records

American Oversight requests that DOJ produce the following within twenty business days:

> All records reflecting communications regarding Joe Arpaio—including emails, meetings, phone calls, or text messages—between President Trump or any other employee of the Executive Office of the President and any of the following:
>
> - the Attorney General

---

https://www.washingtonpost.com/politics/trump-asked-sessions-about-closing-case-against-arpaio-an-ally-since-birtherism/2017/08/26/15e5d7b2-8a7f-11e7-a94f-3139abce39f5_story.html?utm_term=.72e0a4ca819e; Liz Goodwin, *A Trump Pardon of Joe Arpaio Would Break Justice Department Guidelines*, YAHOO NEWS, Aug. 18, 2017, https://www.yahoo.com/news/trump-pardon-joe-arpaio-break-justice-department-guidelines-195641654.html; Olivia Waxman, *How President Trump's Pardon of Joe Arpaio Breaks with White House History*, TIME, Aug. 26, 2017, http://time.com/4876374/donald-trump-joe-arpaio-pardons-history/.

[3] Rucker & Nakashima, *supra* note 2.

[4] *See, e.g.*, Matt Apuzzo & Michael S. Schmidt, *Comey Says Trump Pressured Him to "Lift the Cloud" of Inquiry*, N.Y. TIMES, June 7, 2017, https://www.nytimes.com/2017/06/07/us/politics/james-comey-statement-testimony.html?mcubz=1&_r=0 ("From his first days in office, President Trump repeatedly put pressure on his F.B.I. director, James B. Comey. He demanded loyalty. He asked that an investigation into an adviser be dropped. And he implored Mr. Comey to publicly clear his name."); Ryan Lizza, *Anthony Scaramucci Called Me to Unload About White House Leakers, Reince Priebus, and Steve Bannon*, THE NEW YORKER, July 27, 2017, http://www.newyorker.com/news/ryan-lizza/anthony-scaramucci-called-me-to-unload-about-white-house-leakers-reince-priebus-and-steve-bannon (describing inappropriate calls then-White House employee Anthony Scaramucci claimed to have made to DOJ and the FBI).

- the Deputy Attorney General
- the Assistant Attorney General in charge of the Office of Legal Counsel
- the Deputy Pardon Attorney
- any other political appointee, career SES employee, or person holding an administratively determined position in the Office of the Attorney General, the Office of the Deputy Attorney General, the Office of the Pardon Attorney, or the Office of Legal Counsel.

For calendar entries created in Outlook or similar programs, the documents should be produced in "memo" form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars—we request the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.

Please provide all responsive records from January 20, 2017, to the date the search is conducted. This request includes all individuals who are serving or have served in any of the roles listed above, including in an acting capacity, during that time period.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If DOJ uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.[5] **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to**

[5] *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); *cf. Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

official systems or if officials have, through negligence or willfulness, failed to meet their obligations.[6]

In addition, please note that in conducting a "reasonable search" as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered DOJ's prior FOIA practices unreasonable. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.[7] Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians' files. For example, a custodian may have deleted a responsive email from his or her email program, but DOJ's archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that DOJ use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information "only if . . . disclosure would harm an interest protected by an exemption" or "disclosure is prohibited by law."[8] If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is

---

[6] *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) ("The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official's] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official's] work email account." (citations omitted)).

[7] Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, "Managing Government Records Directive," M-12-18 (Aug. 24, 2012), https://www.archives.gov/files/records-mgmt/m-12-18.pdf.

[8] FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

actually exempt under FOIA."[9] Moreover, the *Vaughn* index "must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information."[10] Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'"[11]

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.[12] Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, DOJ is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and DOJ can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k), American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a

---

[9] *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).
[10] *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).
[11] *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).
[12] *Mead Data Central*, 566 F.2d at 261.

significant way.[13] Moreover, the request is primarily and fundamentally for non-commercial purposes.[14]

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding" of government operations and activities.[15] Both federal prosecutions and pardons are government activities, in which the public has a strong interest in impartiality and integrity. Reports of efforts by the White House to interfere with ongoing prosecutions—especially when the interference is intended to benefit the president or his close associates personally—undermine the justice system and public confidence in it. And although the president is not required to engage with DOJ before issuing a pardon, adhering to standard processes and subjecting potential pardons to rigorous analysis helps protect the federal justice system from favoritism and political bias. The public has a right to information clarifying the extent to which Arpaio's pardon entailed unusual or inappropriate conduct on the part of the president, his advisors, members of Congress, or officials at DOJ. DOJ has confirmed that the Office of the Pardon Attorney did not receive a pardon application from Arpaio or conduct a formal review of Arpaio's pardon, but the events leading to Arpaio's pardon (including reported efforts by President Trump to prevent his conviction in the first place) remain unclear.[16] Therefore, the requested disclosure will be "meaningfully informative" about key government operations and activities surrounding this pardon.[17] Moreover, reported "bipartisan backlash" after the pardon underscores the public's interest and investment in this subject,[18] and (as described further below) American Oversight will convey information obtained through this request to the general public via its website and social media accounts.[19]

This request is primarily and fundamentally for non-commercial purposes.[20] As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on our public website

---

[13] 28 C.F.R. § 16.10(k)(1).
[14] *Id.*
[15] 28 C.F.R. § 16.10(k)(1), (2)(i)-(ii).
[16] Zoe Tillman, *Joe Arpaio's Pardon Did Not Go Through the Justice Department. It Didn't Have To*, BUZZFEED (Aug. 25, 2017, 11:56 PM), https://www.buzzfeed.com/zoetillman/joe-arpaios-pardon-did-not-go-through-the-justice?utm_term=.qx025rQj0v#.jeB53WKp46.
[17] 28 C.F.R. § 16.10(k)(2)(ii)(A).
[18] Kathryn Watson, *Trump Faces Bipartisan Backlash for Pardoning Ex-Sheriff Joe Arpaio*, CBS NEWS (Aug. 26, 2017, 5:55 PM), https://www.cbsnews.com/news/trump-faces-bipartisan-backlash-for-pardoning-sheriff-during-hurricane-harvey/.
[19] 28 C.F.R. § 16.10(k)(2)(ii)(B).
[20] 28 C.F.R. § 16.10(k)(1), (2)(iii).

and promote their availability on social media platforms, such as Facebook and Twitter.[21] American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney, American Oversight promptly posted the records to its website[22] and published an analysis of what the records reflected about DOJ's process for ethics waivers.[23] Additionally, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.[24]

Accordingly, American Oversight qualifies for a fee waiver.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with DOJ on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Beth France at foia@americanoversight.org or 202.869.5246. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

Austin R. Evers
Executive Director
American Oversight

[21] American Oversight currently has approximately 11,200 page likes on Facebook, and 33,700 followers on Twitter. American Oversight, FACEBOOK, https://www.facebook.com/weareoversight/ (last visited August 29, 2017); American Oversight (@weareoversight), TWITTER, https://twitter.com/weareoversight (last visited August 29, 2017).

[22] *Vetting the Nominees: Solicitor General Nominee Noel Francisco*, AMERICAN OVERSIGHT, https://www.americanoversight.org/our-actions/vetting-nominees-solicitor-general-nominee-noel-francisco.

[23] *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, https://www.americanoversight.org/news/francisco-travel-ban-learned-doj-documents.

[24] *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.

FW_ .pdf

From: Pendergrass, Matthew J. (OPATTY)
To: Williams, Emilie F. (OPATTY)
Subject: FW:
Date: Monday, May 8, 2017 9:53:43 AM
Attachments: SSRN-id2961462.pdf

Last one for today. After this, I'm not sure what is left to report on by the IG!

SSRN-id2961462.pdf

DESIGNED TO FAIL:
THE PRESIDENT'S DEFERENCE TO THE DEPARTMENT OF JUSTICE IN ADVANCING CRIMINAL JUSTICE REFORM

Rachel E. Barkow[*] *and Mark Osler*[*]

[*] Segal Family Professor of Regulatory Law and Policy and Faculty Director, Center on the Administration of Criminal Law, New York University School of Law.

[*] Robert & Marion Short Distinguished Chair, University of St. Thomas School of Law (MN).

We are grateful for the excellent research assistance of Beth Caldwell, Cassandra Deskus, and Hillary Smith. For helpful comments on earlier drafts, we thank Michelle Alexander, Kevin Arlyck, Susan Bandes, Rochelle Dreyfuss, Barry Friedman, Paul Larkin, Deborah Leff, Daryl Levinson, Anne Milgram, Trevor Morrison, Erin Murphy, Rick Pildes, Christopher Robertson, Steve Schulhofer, and Tali Farhadian Weinstein. The views expressed here, however, are solely attributable to the authors.

Electronic copy available at: https://ssrn.com/abstract=2961462

DESIGNED TO FAIL: THE PRESIDENT'S DEFERENCE TO THE DEPARTMENT OF JUSTICE IN ADVANCING CRIMINAL JUSTICE REFORM

One puzzle of President Obama's presidency is why his stated commitment to criminal justice reform was not matched by actual progress. We argue that the Obama Administration's failure to accomplish more substantial reform, even in those areas that did not require congressional action, was largely rooted in an unfortunate deference to the Department of Justice. In this Article, we document numerous examples (in sentencing, clemency, compassionate release, and forensic science) of the Department resisting commonsense criminal justice reforms that would save taxpayer dollars, help reduce mass incarceration, and maintain public safety. These examples and basic institutional design theory both point in the same direction: real criminal justice reform requires putting the right institutions in charge of criminal justice policymaking. This Article offers institutional changes that would help future presidents make the system less punitive and reduce prison populations to achieve the broad transformation that Obama desired but did not attain. A critical move is to place criminal justice policymaking in the hands of individuals who can advise the president independent of the institutional interests of prosecutors.

CONTENTS

INTRODUCTION 3
I. THE DEPARTMENT OF JUSTICE AGENDA 7
A. The Prosecutorial Mindset *10*
B. Structural Factors Creating Bias Against Reform *12*
II. DOJ RESPONSE TO REFORM PROPOSALS DURING THE OBAMA ADMINISTRATION 15
A. DOJ Resistance to Criminal Justice Reforms *16*
1. Sentencing Reform 17
2. DOJ's Roadblocks to Clemency 33
3. Compassionate Release 48
4. Forensic Science 55
B. DOJ's More Aggressive Pursuit of State Reforms *59*
III. REDESIGNING THE EXECUTIVE BRANCH AND USING THE APPOINTMENT POWER FOR INSTITUTIONAL REFORM 61
A. Presidential Criminal Justice Advisory Commission *63*
B. A Presidential Clemency Board *65*
C. Applying OIRA Review to Criminal Justice *68*
D. Appointments *70*
1. DOJ Appointments 71
2. The Judicial Branch 74
CONCLUSION 76

Electronic copy available at: https://ssrn.com/abstract=2961462

INTRODUCTION

If you follow criminal justice policy in the United States, two themes dominate the discourse of the past several years. First, large portions of society have awakened to America's record-breaking levels of mass incarceration and criminalization. One out of every three adults possesses a criminal record[1] and our levels of incarceration have no equal anywhere else in the world.[2] Second, and relatedly, there has been a bipartisan call to reform this state of affairs because it is not necessary for, and often undermines, public safety and because its costs outweigh its benefits.[3] News articles continually tout criminal justice reform as one of the few areas to bring together many Republicans and Democrats,[4] even in Congress where common ground is hard to find.[5]

---

[1] THE SENTENCING PROJECT, AMERICANS WITH CRIMINAL RECORDS (2015), http://www.sentencingproject.org/doc/publications/cc_HiT_CriminalRecords_profile_1.pdf.

[2] Barack Obama, Commentary, *The President's Role in Advancing Criminal Justice Reform*, 130 HARV. L. REV. 811, 816 (2017) (noting that the United States has 2.2 million incarcerated people, "more than any other country on Earth").

[3] Charles Colson Task Force on Federal Corrections, Transforming Prisons, Restoring Lives ix, January 2016 ("There is broad, bipartisan agreement that the costs of incarceration have far outweighed their benefits, that our country has largely failed to meet the goals of a well-functioning justice system: to enhance public safety, to prevent future victimization, and to rehabilitate those who have engaged in criminal acts."); Obama, supra note 2, at 817 ("There is a growing consensus across the U.S. political spectrum that the extent of incarceration in the United States is not just unnecessary but also unsustainable. And it is not making our communities safer.").

[4] Hon. Lynn Adelman, *Criminal Justice Reform: The Present Moment*, 2015 WISC. L. REV. 181, 188-191 (2015).

[5] *See*, *e.g.*, Mark Holden, *Criminal Justice Reform is Ripe for Bipartisan Achievement*, THE HILL (Jan. 3, 2017), http://thehill.com/blogs/congress-blog/judicial/312492-criminal-justice-reform-is-ripe-for-bipartisan-achievement ("Criminal justice reform has been one of the few policy areas where Republicans and Democrats have forged bipartisan consensus."); Bill Keller, *Will 2017 Be the Year of Criminal Justice Reform?,* N.Y. TIMES (Dec. 16, 2016), http://www.nytimes.com/2016/12/16/opinion/will-2017-be-the-year-of-criminal-justice-reform.html?_r=0 (noting that criminal justice is "[o]n the short list of things Congress could do to reassure voters that government is back in business" that has bipartisan support).

Electronic copy available at: https://ssrn.com/abstract=2961462

If you move beyond the rhetoric and focus on the reality, however, not much has changed, even during the Obama Administration when the president had a stated commitment to getting smart on crime and rolling back harsh punishments. Indeed, President Obama's support of reform was so strong that in the waning days of his time in office, he published a law review article entitled "The President's Role in Advancing Criminal Law Reform," which highlighted his accomplishments and what he saw as the "tools Presidents can use to effect meaningful change throughout the system,"[6] Yet his achievements in this area were modest at best.

Because criminal justice is "administered at all levels of government and shaped by a range of actors,"[7] the federal government can only do so much to tackle the broad tragedy of mass incarceration. But the federal system is one of the largest jurisdictions in terms of total imprisonment,[8] and it is also often sets an example for states in its policies. Many commentators are quick to place most of the blame with Congress for stalled progress,[9] but significant criminal law reforms can occur with the use of executive power alone. Gains were modest under President Obama not because he lacked the power to do more, but because he followed an institutional model that was designed to fail. Obama's failure to accomplish more substantial reform was largely rooted in the fact that his efforts were less about the *president*'s role in advancing criminal law reform and more about the Department of Justice's. If future presidents who share President Obama's hope for reducing the sweep of criminal law and punishment follow the same model of deferring to the Department to lead the way on

---

[6] Obama, *supra* note XX, at 815.

[7] *Id.* at 814.

[8] DANIELLE KAEBLE, ET AL., U.S. BUREAU OF JUSTICE STATISTICS, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2014, 6, fig. 3 (2016), https://www.bjs.gov/content/pub/pdf/cpus14.pdf.

[9] *See, e.g.*, Obama, *supra* note xx, at 829 ("Although the reform bills appeared to have majority support in the Congress, including among many conservatives, Republican leaders have not yet allowed them to come to the floor for a vote."); Seung Min Kim, *Senators Plan to Revive Sentencing Reform Push*, POLITICO (Jan. 4, 2017), http://www.politico.com/story/2017/01/senate-criminal-justice-sentencing-reform-233071 ("[D]espite support from President Barack Obama, powerful congressional Republicans, and a sprawling network of groups from the right and the left, the legislation never made it to the floor . . . . [because of] the determined effort of law-and-order conservatives to steamroll it."); Office of the Press Sec'y, Press Briefing by Press Sec'y Josh Earnest (Dec. 8, 2016), https://obamawhitehouse.archives.gov/the-press-office/2016/12/08/press-briefing-press-secretary-josh-earnest-12816 ("[T]he President would have preferred a more sweeping solution to [criminal justice reform] that only legislation could bring about, but that is not something that Congress was able to succeed in passing, despite [bipartisan support]. . . . [Reform] is another victim of Republican dysfunction in Congress.").

progressive reforms, they will achieve, at best, the same minimal successes because of its hard-wired institutional resistance to reforms that make things more difficult for prosecutors.[10]

It makes sense for the president to turn to the Department for input on criminal justice issues given its collective expertise and experience in the area, but we believe the Obama Administration is a case study that shows why the Department is precisely the wrong entity to put in charge of reform efforts. The Department is the agency charged with prosecuting federal criminal laws, and its views on reform are inevitably colored by its prosecutorial functions and a bureaucratic preference for maintaining a status quo that favors the interests of prosecutors. In many areas, reform would require the Department to second-guess its own prior actions. It is a classic case of conflict of interest, and it defies everything we know about human nature as well as government incentives to expect prosecutors in the Department to perform that task objectively and without prioritizing prosecutorial interests above other valid interests.[11] This is not to fault them or cast aspersions. They dutifully carry out the mission of the Department. But that is precisely why they are the wrong actors to lead the way on criminal justice reform.

In this Article, we will document numerous examples of how this conflict drove Department efforts (largely successful) to weaken, rather than further, the President's criminal justice reform goals. Notably, the areas in which the Department acted most boldly were in contexts where its prosecutorial interests dovetailed with reform efforts or where the Department would itself be unaffected by reform proposals. Thus, the Administration was most active in its efforts to foster state and local reforms that do not affect federal prosecution. But in other areas involving the federal criminal justice system – areas where reform would have made the Department's job harder – the Department resisted more significant change. The Department was particularly resistant when a reform effort would require it to revisit decisions it already made. Whether the decision involved retroactive adjustments to sentences already handed down, commutations or compassionate release for those currently serving out

[10] A president who wants to move the Department in the opposite direction – to support tougher criminal laws and more powers for prosecutors – will likely find the Department to be a much more willing and cooperative partner.

[11] Rachel E. Barkow, *Prosecutorial Administration: Prosecutor Bias and the Department of Justice*, 99 VA. L. REV. 271, 307–319 (2013) (explaining why, "given everything we know about agency design," the Department will prioritize its prosecutorial functions at the expense of other goals).

prison sentences, or a rethinking of forensic science that had already been used to obtain convictions, the Department resisted second looks of its prior judgments. Yet that kind of retrospective reassessment is critical to reducing the existing prison population. In all of these areas, the Department placed its own interests ahead of the broader goals stated by the President for criminal justice reform.

We provide this retrospective as an important cautionary tale for any future president who wishes to change criminal justice policies in the United States to make them less severe. Whether a president is working with Congress or changing executive policies on his or her own, the president should get assistance from individuals focused on presidential priorities, not just prosecutorial ones. And that means the Department is the wrong leader for most of these efforts. Asking them to do so is asking them to be judges in their own cause – the very definition of conflict and bias. Even when people act with the best of intentions, and we have no reason to doubt anyone acted otherwise, it is asking too much of anyone to judge situations that involve their own interests as if they would be unaffected. While law enforcement views must be seriously considered as part of any reform, the analysis of criminal justice reforms must be made by people that represent all the relevant interests and the final decision must be made by policymakers who take a broader view and consider all the relevant interests, not just those of prosecutors.

Our analysis proceeds in three parts. Part I begins by explaining why, as a matter of design, the Department is institutionally ill-suited to lead the way on criminal justice reforms because of the structure of the Department and its prosecutorial mindset.

Part II then shows how the Department's focus on its institutional self interest played out in practice. Section A documents numerous examples (sentencing, clemency, compassionate release, and forensic science) of the Department resisting commonsense criminal justice reforms that would save taxpayer dollars, help reduce mass incarceration, and not undermine public safety. In other words, these are areas where an objective decisionmaker with an open mind to reform would embrace changes (and indeed, often did, in opposition to the Department), but where the Department opposed changes out of its institutional self-interest. Section B provides further support for the argument that self-interest largely underlies the Department's resistance to criminal justice reforms with numerous examples of the Department's eagerness to embrace bolder actions when its

own interests were not at stake or when reforms would make its prosecutorial mission easier to achieve.

These examples and basic institutional design theory both point in the same direction: real criminal justice reform requires putting the right institutions in charge of criminal justice policymaking. Part III thus offers institutional changes that would help future presidents achieve the broader goal of reducing mass incarceration while maintaining public safety. The critical move is to place criminal justice policymaking in the hands of individuals who balance prosecutorial interests against other costs and benefits and do not simply decide based on the institutional interests of prosecutors. We believe the president is best served by creating a commission within the Executive Office of the President to advise him or her on criminal justice policy matters. An advisory body in the executive office of the President could also perform an oversight function over the Department by requiring it to explain why its policies stand up to cost-benefit analysis, promote public safety, and find support in scientific knowledge and data. Part II also explains the importance of putting people with diverse experiences in criminal justice administration in key positions that affect criminal justice reform. This includes not only leadership positions within the Department and agencies working on criminal justice issues, but also making sure the judicial branch represents diverse perspectives and not just those of prosecutors.

By favoring the view of prosecutors over others involved in criminal justice, the executive branch unavoidably favors punishment and a law enforcement model over rehabilitation, retribution and a focus on harm over culpability and redemption, and the status quo over innovation. While the voices of prosecutors must be part of any reform discussion, other voices must also be heard or the resulting policies will suffer from an imbalance.

I. THE DEPARTMENT OF JUSTICE AGENDA

Imagine a president who announced that he or she would take advice on criminal law matters only from the Federal Defenders' office. His or her primary advisor would be the D.C. Federal Defender, and experts within the Defenders' offices would speak for the Administration before Congress and the Sentencing Commission. All pending legislation or proposed Sentencing Guideline amendments would be supported by the Administration only if the Defenders bought into the proposal. In addition, suppose this president intended to put the Defenders in charge of federal prisons, forensics, and the clemency process. The president's reasoning would be straightforward: The

Defenders understand criminal law at the ground level, offer a national breadth of understanding, and include experienced experts.[12] Defenders have experience equal to or better than anyone else within this specialized world, and are the group of practicing attorneys most responsible for protecting the crucial protections for criminal defendants embedded in the United States Constitution.

That President would face a firestorm of dissent, despite the truth of the claims. Defenders, critics would cry, only represent one part of the justice system, and are biased given that all of their work is on behalf of defendants.

Yet, the mirror opposite[13]—a president whose principal advisor on criminal law is his or her chief prosecutor,[14] who sends prosecutors to speak for the Administration before Congress and the Sentencing Commission,[15] who vets proposals through the Department before determining a position, and who allows the Department to run the prisons, set our forensics policies, and control the clemency process[16]—is our current reality.

---

[12] The Federal Defenders National Sentencing Resource Council advises defenders, prepares appellate briefs, and offers expert testimony (among other functions). *About the Sentencing Resource Counsel Proect of the Fedeeral Public & Community Defenders,* SENTENCING RESOURCE COUNSEL PROJECT, http://www.src-project.org/about/.

[13] To be sure, the comparison is not entirely the same because defenders have a primary duty to their client while prosecutors should have a primary duty to justice. That said, for the reasons discussed, prosecutors often do operate in a culture that rewards convictions and long sentences.

[14] The primary contact between the Department and the President, of course, is the Attorney General.

[15] *See, e.g.*, Justice News, U.S. Dep't of Justice, Attorney General Eric Holder Testifies Before the U.S. Senate Committee on the Judiciary (Mar. 6, 2013), https://www.justice.gov/opa/speech/attorney-general-eric-holder-testifies-us-senate-committee-judiciary-0 ("I'm pleased to join the President, the Vice President, and countless Americans in calling on Congress to enact legislation addressing gun violence."); Justice News, U.S. Dep't of Justice, Attorney General Loretta E. Lynch Testifies at the House Committee on the Judiciary Hearing (Nov. 17, 2015) https://www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-testifies-house-committee-judiciary-hearing ("[T]he Justice Department is eager to see meaningful sentencing reform enacted during this Congress").

[16] Rachel E. Barkow, *Prosecutorial Administration: Prosecutor Bias and the Department of Justice*, 99 VA. L. REV. 271, 278–91 (2013).

It matters, a lot, that the primary advisors to the President[17] on criminal justice issues have professional interests to protect, regardless of administration – interests that include maintaining the Department's size and budget, protecting and enlarging the power and discretion of its prosecutors, and expanding the menu of options those prosecutors have by constantly growing the size of the federal penal code and maintaining mandatory punishments. It should not surprise us that the size and power of the Department and the penal code have all exploded in recent years.[18] These things are not always good for the United States, but they are always good for the Department of Justice.

The Department is also especially likely to bristle at any reform that questions its prior actions, whether it be a retroactive adjustment to sentences or the early release of a federal prisoner or a new look at forensic science that the Department commonly relies upon. In areas such as these, reform may appear to the Department as the nullification of its work. Everything we know about the endowment effect tells us that the Department will be particularly resistant to efforts to take back or undo what it has achieved.

The role of the Department, and the bias it brings with it to discussions of policy, has been a hidden brake on reform efforts across a striking array of issues within the field of criminal law.[19] While prosecutors necessarily represent the Executive Branch in the federal courts in criminal matters, it is not necessary that they be the only significant input to the President on policy issues. A close examination reveals the damage done by giving this dual role of advisor and interested party to a federal agency that has used that unique power to expand its own power even when under the leadership of self-proclaimed reformers like President Obama and Attorneys General Eric Holder and Loretta Lynch.

In this Section, we will first set out the nature of the Department's inherent bias on policy issues, and then specifically describe the way that this bias undermined the best intentions of President Obama to reform the criminal justice system.

---

[17] The Department, also has great influence with Congress. William Stuntz sets out this powerful dynamic well, explaining that Congress gives great weight to prosecutors' views, even when those views advance the goals of the prosecutors rather than the public. William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 544–46 (2001).

[18] Barkow, *supra* note XX, at 276–278.

[19] Infra, §2.

A. The Prosecutorial Mindset

Prosecutors' chief self-conception is as defenders of the rule of law. They do not see their role as second-guessing legislative judgments about criminal law; [20] on the contrary, their job – their duty – is to enforce that law. [21] Prosecutors do, however, believe that it is their responsibility to exercise discretion in cases to be the razor of morality in our society, to discern between the acceptable and unacceptable and to decide what charges to bring. It should not surprise us that the people in that job often share a sense of moral certainty in what they do.[22] That certainty of purpose allows one to do the job (in fact, that trait is essential to doing the job well), but also makes it difficult to admit mistakes or to critique the power structure one resides within.[23]

Prosecutors are unique among lawyers in that they have no specific client and instead represent the people overall. Freed of the need to advocate for another person's interests, prosecutors instead are directed in the use of their great power by their own conscience and those of their supervisors. The comments to the ethical rules tell them that they are "[m]inisters of justice," but that is left for the prosecutor to define. That does not mean they do not have a side in the fight that ensues—the fact that they do is made clear by the oppositional construction of every case caption and courtroom—but rather that within that oppositional setting they will tend have a deep personal engagement with their work and their side that comes from the possession of such tremendous agency, a merging of work and identity. It may be hard to morally separate oneself from a case pursuing a particular defendant when one has affirmatively chosen *that* case against *that* defendant.[24] When your job is taking away freedom, fortunes, and lives, the cost of second-guessing the laws that require it or of being wrong in a given case is very high—perhaps too high to contemplate.[25]

---

[20] Rachel E. Barkow, *Clemency and Presidential Administration*, 90 N.Y.U. L. REV. 802, 859 (2015).
[21] U.S. CONST. art II, § 3.
[22] Mark Osler served as an Assistant United States Attorney in the Criminal Division in Detroit from 1995 through 2000.
[23] Bruce Green & Ellen Yaroshefsky, *Prosecutorial Accountability 2.0*, 92 NOTRE DAME L. REV. 51, 59 (2016).
[24] Jeanne Bishop & Mark Osler, *Prosecutors and Victims: Why Wrongful Convictions Matter*, 105 J. CRIM. L. & CRIMINOLOGY 1031, 1034-35 (2016).
[25] To be clear, we are not here discussing issues of prosecutorial misconduct, but rather prosecutorial conduct in the normal course of business.

The resulting tenacity of prosecutors and the tunnel-vision it can create has been well-documented.[26] Susan Bandes has described the "refusal of prosecutors to concede that the wrong person was convicted,"[27] even where DNA evidence has proven them innocent.[28] That certainty, even after it is disproven, has striking results: Bandes points out that in about half the cases where DNA exonerated an imprisoned individual, investigators did not even bother to submit the new evidence (showing the real offender) to the national DNA database, with a common reason being that they could not believe the wrong person was convicted.[29]

In a recent "Message from the Executive Director," Scott Burns of the National District Attorney's Association concluded by saying:

> The prosecutors I know are ethical, fair and solid members of their respective communities; the prosecutors I know don't keep score, notch their belt, or talk about conviction rates. . . . . It is a noble calling and we should always be proud to say "I'm a prosecutor."[30]

This statement is consistent with the work of most prosecutors as they see it, and it is this celebration of prosecutors that lays bare the prosecutorial mindset more clearly than any critic's barbs. Prosecutors, with some justification, see their calling as noble, and go forward with pride. Given that mindset, we should not be surprised to observe their resistance to those reforms which at least imply a failure of their project or past decisions or ones that suggest they should have less discretion to exercise their best judgment. If you see your calling as a noble one, you should be trusted to

---

[26] KEITH A. FINDLEY, CONVICTION OF THE INNOCENT: LESSONS FROM PSYCHOLOGICAL RESEARCH 316–17 (Brian L. Cutler ed., 2012); DAN SIMON, IN DOUBT: THE PSYCHOLOGY OF THE CRIMINAL JUSTICE PROCESS 22–25 (2012); Bruce A. Green & Ellen Yaroshefsky, *Prosecutorial Discretion and Post-Conviction Evidence of Innocence*, 6 OHIO ST. J. CRIM. L. 467, 488 (2009); Rachel E. Barkow, *Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law*, 61 STAN. L. REV. 869, 883 (2009); Alafair S. Burke, *Improving Prosecutorial Decision Making: Some Lessons of Cognitive Science*, 47 WM. & MARY L. REV. 1587, 1611 (2006).

[27] Susan Bandes, *Loyalty to One's Convictions: The Prosecutor and Tunnel Vision*, 49 HOW. L.J. 475 (2006).

[28] *Id.* at 476-478.

[29] *Id.* at 476.

[30] Scott Burns, *Proud to Support America's Prosecutors*, 46 PROSECUTOR 10 (2012).

do the right thing in any given case because you are, after all, pursuing the public interest.

This explains why prosecutors resist efforts to make their jobs harder to do. As they see it, these efforts do nothing but impede noble pursuits. For example, mandatory minimums are valuable to prosecutors because they give prosecutors leverage to extract pleas and obtain cooperation. That is why federal prosecutors have consistently pressed Congress to enact or preserve mandatory minimums because of the leverage those laws give them.[31] Eliminating mandatory minimums would transfer power currently held by prosecutors to judges, and prosecutors do not trust judges more than themselves to reach the right outcomes. Indeed, prosecutors do not want any of their current powers vested in any other actor for the same reason. The result of this worldview is that any reform effort to eliminate tools that prosecutors find helpful or strip them of their authority is going to be met with resistance precisely because prosecutors see those tools and the exercise of their authority as furthering a noble cause. It is hard for them to see that they might not be the best actors to make these decisions.

B. Structural Factors Creating Bias Against Reform

Beyond the mindset of individual prosecutors, there are structural features of the Department that inexorably push it towards expanding its own power, resisting reforms that would limit its power, and fighting to maintain the status quo when it already possesses authority in an area. One, perhaps the most important, is the fact that the DOJ is a large bureaucracy. A second is that the Department is heavily influenced by career prosecutors.

---

[31] *See*, *e.g.,* Letter from Robert Gay Guthrie, President, Nat'l Ass'n of Assistant U.S. Att'ys, to Senator Patrick Leahy, Chairman, and Senator Charles Grassley, Ranking Member, Senate Judiciary Comm. (Jan. 31, 2014), http://www.naausa.org/2013/images/docs/MandMinSentencingLegOppose013114.pdf (organization of Assistant United States Attorneys submitted a letter opposing the reductions in mandatory minimum sentences because they are an "indispensable tool" to "secure offender cooperation"); *Child Abduction Prevention Act and the Child Obscenity and Pornography Protection Act of 2003: Hearings Before the Subcomm. on Crime, Terrorism and Homeland Security of the House Comm. on the Judiciary*, 108th Cong. 15–17 (2003) (statement of Daniel P. Collins, Associate Deputy Att'y Gen., U.S. Dep't of Justice) (requesting legislation that would limit downward departures); *Federal Cocaine Sentencing Policy: Hearing Before the Subcomm. on Crime and Drugs of the Senate Comm. on the Judiciary*, 107th Cong. 16–33 (2002) (statement of Roscoe C. Howard, U.S. Attorney for the District of Columbia) (arguing against a reduction in the penalties for crack cocaine, in part because it would reduce incentives for defendants to cooperate with prosecutors).

A third is the coastal bias one finds in the Department, which may lead the Department's managers to believe that what happens in Washington D.C. or the Southern District of New York is the norm, rather than what goes on in Waco or Memphis.

With 41 components[32] and more than 100,000 employees,[33] the Department is, above all, an enormous bureaucracy. The nature of bureaucracies is to perpetuate themselves, and the Department is no different. It will naturally act to protect its power and stature by continuously seeking to expand its role. Max Weber, who shaped much of the way we see bureaucracy, worried about the "power position" of large bureaucracies and the danger that their organizational sophistication and control over the dispensation of resources could give them power greater than that of the sovereign.[34] The Department's preference to expand the penal code is a perfect example.[35] With each new federal crime, the role of the DOJ – in investigation, prosecution, and incarceration – grew further into what had traditionally been the realm of the states.[36]

A second powerful institutional force within the Department is a large cadre of career prosecutors, both at Main Justice and spread out among the offices of United States Attorneys. These career prosecutors fill the rank and file positions as well as leadership posts. Attorney General Holder spent most of his career with the Department,[37] as did his successor,

---

[32] U.S. DEP'T OF JUSTICE, FY 2016 AGENCY FINANCIAL REPORT, I-3 (2016), https://www.justice.gov/doj/page/file/910486/download#page015; *Organization, Mission and Functions Manual Organizational Chart*, U.S. DEP'T JUST., https://www.justice.gov/sites/default/files/doj/pages/attachments/2015/04/27/doj_june_2015_2.pdf (last updated June 5, 2015).

[33] *Id.* at 38.

[34] Max Weber, *Bureaucracy*, *in* ECONOMY AND SOCIETY 991 (Guenther Roth & Claus Wittich trans., 1978); JAMES Q. WILSON, BUREAUCRACY: WHAT AGENCIES DO AND WHY THEY DO IT (1991).

[35] *See, e.g.*, Paul J. Larkin, Jr., *Public Choice Theory and Overcriminalization*, 36 HARV. J.L. & PUB. POL'Y 715, 761–62 (2013) (noting the Department " has a strong institutional interest in having as much charging discretion and as many charging options as Congress can provide"); William J. Stuntz*, The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 510 (2001) ("[T]he story of American criminal law is a story of tacit cooperation between prosecutors and legislators, each of whom benefits from more and broader crimes.").

[36] Stuntz, *supra* note XX, at 509.

[37] *Eric H. Holder, Jr.,* COVINGTON, https://www.cov.com/en/professionals/h/eric-holder (last accessed Jan. 23, 2017); *Attorneys General of the United States, Eric. H. Holder, Jr.*, U.S. DEP'T JUST., https://www.justice.gov/ag/bio/attorney-general-eric-h-holder-jr (last accessed Jan. 23, 2017) (indicating that Holder also clerked for the Criminal Division of the DOJ during law school).

Loretta Lynch, who started her career with the Department in 1990 and spent 18 of the next 26 years there.[38] The Deputy Attorney General under Lynch was Sally Yates, a career DOJ employee who served for 27 years, primarily as an Assistant United States Attorney.[39] Yates' Associate Deputy Attorney General, David Margolis, was a fixture at Main Justice for 50 years, primarily advising the upper echelons of the leadership.[40] It would defy everything we know about human cognition to expect individuals with that kind of institutional loyalty to be objective when assessing reforms. While there is value to placing people with experience in such posts, we should also expect that long-term employees are more likely to protect what is known and familiar rather than reverse course. It should not surprise us that bureaucracies in fields prizing innovation feature frequent mobility between employers – for example, the average tenure of employees at Google and Amazon is only about one year.[41]

The line prosecutors in the Department share those same tendencies – something that was especially noticeable in the open opposition to reform found among Assistant United States Attorneys in the field offices. The National Association of Assistant United States Attorneys resisted sentencing reform at every turn,[42] and when President Obama began using clemency more actively, they even held a rally in Washington, D.C., and protested that the federal system needed more imprisonment, not less.[43]

Finally, the leadership of the Department tends to come from just a few coastal districts, largely ignoring the middle of the nation. Of the last 12 Attorneys General, only two (Alberto Gonzales of Texas and John Ashcroft of Missouri) came from somewhere other than a coastal state.[44] The fact

---

[38] *Meet the Attorney General*, U.S. DEP'T JUST., https://www.justice.gov/ag/meet-attorney-general

[39] *Meet the Deputy Attorney General*, U.S. DEP'T JUST., https://www.justice.gov/dag/meet-deputy-attorney-general.

[40] Eric Lichtblau, *David Margolis, a Justice Department Institution, Dies at 76*, N.Y. TIMES (July 15, 2016), https://www.nytimes.com/2016/07/16/us/david-margolis-a-justice-department-institution-dies-at-76.html?_r=0.

[41] *Full List of Most and Least Loyal Employees*, PAYSCALE, http://www.payscale.com/data-packages/employee-loyalty/full-list.

[42] *Supra*, §II(A).

[43] Steven Nelson, *Prosecutors Rally Against Sentencing Reform, Say Build More Prisons*, U.S. NEWS & WORLD REPORT (July 17, 2015), http://www.usnews.com/news/articles/2015/07/17/prosecutors-rally-against-sentencing-reform-say-build-more-prisons.

[44] *See Attorneys General of the United States*, U.S. DEP'T JUST., https://www.justice.gov/ag/historical-bios (last accessed Jan. 23, 2017) (indicating that Loretta Lynch was born in North Carolina and "consider[s] Brooklyn her adopted home;"

that Main Justice is located in Washington, D.C.—meaning that officials will live amidst the political elite – creates a strong nexus between the coasts and the management of the Department. This creates the potential for blindness to the practices in smaller offices across the middle of the country, where federal cases can be different than the norm in a large coastal city and where prosecutors often pursue severe sentences for things that would be treated as minor on the coasts.[45]

Like a boulder being pushed on an even surface, the Department is a behemoth whose very mass creates momentum only in the same direction it was already moving, which means the Department rolls with reforms that increase its powers (more criminal laws or mandatory minimums that give it leverage to obtain pleas and cooperation) and is resistant to those reforms that will take some of its existing powers away or that question its prior decisions.[46]

II. DOJ RESPONSE TO REFORM PROPOSALS DURING THE OBAMA ADMINISTRATION

So far we have discussed why as a matter of theory, culture, and institutional design, one should expect the Department to favor law enforcement interests.[47] But we are told – often by individuals within the Department itself – that the Department represents justice itself and does not favor any particular view. The law enforcement interest, in other words,

---

Eric Holder was born New York City and practiced in D.C.; Michael Mukasey was born in and practiced in New York City; Alberto Gonzales was born in and practiced in Texas; John Ashcroft was born in Chicago and practiced in Missouri; Janet Reno was born in and practiced in Florida; William Barr was born in New York City and practiced in D.C.; Richard Thornburgh was born in and practiced in Pittsburgh and became the Governor of Pennsylvania; Edwin Meese was born in and practiced in California; William Smith was born in New Hampshire and practiced in California; Benjamin Civiletti was born in New York and practiced in Maryland; Griffin Bell was born in and practiced in Georgia).

[45] This regional variation has been widely documented. Barkow, *Clemency and Presidential Adminstration*, *supra* note XX, at 854-855 & nn. 287–93 (citing sources documenting "large disparities among the ninety-four different U.S. Attorneys' Offices in terms of what cases are prosecuted, what kinds of plea agreements are offered, and whether prosecutors move for departures under the Sentencing Guidelines").

[46] This is true across federal bureaucracies, of course, and in many instances, the stability of bureaucracies can be beneficial. One's assessment of whether it is good or bad will depend largely on what one thinks of the proposed change. If one's goal is to push for criminal justice reforms that lessen the size of the punitive state, however, this bureaucratic inertia and resistance will act as an impediment to achieving that goal.

[47] It has also been true historically. *See* Barkow, *Prosecutorial Administration*, *supra* note XX, at 307.

is also the public's interest, so there is no conflict.[48] We have no reason to doubt that the people working in the Department are doing their best to achieve justice and what they view as the right result, not only in individual cases, but as a matter of policy. But the fact remains that their perspective is necessarily influenced by the culture within which they work and the outlook it brings. This part shows how this manifests itself in practice, with section A exploring those areas where the Department resisted reforms that would undermine its own authority and section B analyzing the spaces where the Department was more willing to encourage change because the reforms either expanded the Department's authority or did not interfere with it.

[48] Deputy Attorney General Sally Yates, for example, reportedly told aides to remember that the "locking people up is not the sole mission of the Department" because it is not the "Department of Prosecution" but the Department of Justice. Eric Lichtblau, *Obama Legacy of Freeing Prisoners May Come Under Trump Siege*, N.Y. TIMES (Jan. 15, 2017), https://www.nytimes.com/2017/01/15/us/politics/obama-prisoners.html.

A. DOJ Resistance to Criminal Justice Reforms

There have been many instances – indeed, in the very areas President Obama highlighted as his primary achievements[49] – where the Department resisted reform efforts not because they failed the Obama Administration's stated goals of pursuing "evidence-based solutions" and bringing the "system more in line with the values that define us" such as fairness, equality, and justice.[50] Rather, the resistance was because the reforms would make the Department's work more difficult, second guess its prior decisions, or run counter to its judgment based on experience (as opposed to data). To be sure, some critical reforms came directly from within the Department, such as Attorney General Holder's amendments to charging practices.[51] We do not discuss charging reforms here, however, because we are focused on those areas of reform that are properly directed by the President and need not rest within the Department's judgment. We believe questions about how to enforce criminal laws in particular cases fall within the Department's appropriate sphere.[52] This section thus addresses those areas of policy that need not rest with the Department but did so under President Obama. We catalog the most important of those – sentencing reform, clemency, compassionate release, and forensics.

1. Sentencing Reform

The Obama Administration witnessed the greatest progress we have seen in rolling back the harshest policies of the 1980s and 1990s, so it may seem nothing short of ungrateful to even ask if his Administration could have done more to support sentencing reform. In fact, however, the Department during President Obama's Administration often stood either as a prominent obstacle to getting more done or sided with maintaining the status quo. This section recounts the Department's resistance across a range of issues and seeks to explain why it might have reached different conclusions than other reformers inside and outside of government.

---

[49] President Obama's list of federal criminal law achievements includes sentencing, clemency, prison policies, and forensics. Obama, *supra* note XX, at 824–38, 860–62.

[50] *Id.* at 822, 824, 866.

[51] Memorandum from Eric Holder, Jr., Att'y Gen., U.S. Dep't of Justice, to the United States Attorneys & Assistant Attorney General for the Criminal Division (Aug. 12, 2013), *supra* note XX.

[52] *See infra* note XXX. For areas that are squarely within the Department's authority, such as charging discretion, the key to reform will be through appointments. See infra TAN XX-XX.

Begin with the first major push for sentencing reform during President Obama's tenure – the effort to eliminate the disparity in sentencing between crack and powder cocaine. President Obama led the charge on this front even before he became president, vocally urging reform of crack cocaine sentences when he was a presidential candidate.[53] Previously, five grams of crack triggered a five-year mandatory minimum sentence, and 50 grams of crack triggered the ten-year mandatory minimum. (One would need 500 and 5000 grams of powder cocaine, respectively, to hit those same triggers, which is what became known the 100-to-1 ratio between the two drugs.) Congress rushed to create the initial 100-to-1 framework in a state of panic when crack came on the scene. As one representative candidly admitted at the time: "We didn't really have an evidentiary basis for it."[54] Worse still, that differential treatment produced perniciously disparate outcomes based on race, with the harsher punishments for crack falling disproportionately on African Americans.[55]

President Obama kept his campaign promise and pushed hard for the passage of the Fair Sentencing Act (FSA)[56] which raised the quantity triggers for the 5-year and 10-year mandatory minimums to 28 and 280 grams of crack, respectively. While the ratio is still lopsided at 18-to-1– the result of a compromise in Congress that was necessary to get the Act to pass – it is a significant improvement from the prior regime that likely would not have been passed but for President Obama's leadership and support, including the Department's advocacy in favor of the law.[57]

---

[53] In 2007, then-Senator Obama told a Howard University audience that we should "not make the punishment for crack cocaine that much more severe than the punishment for powder cocaine, when the real difference between the two is the skin color of the people using them." Senator Barack Obama, Remarks at 140th Howard University Opening Convocation (Oct. 1, 2007), *available at* http://www.howard.edu/newsroom/news/2007/071001RemarksofSenatorBarackObama.htm.

[54] NAOMI MURAKAWA, THE FIRST CIVIL RIGHT: HOW LIBERALS BUILT PRISON AMERICA 125 (2014).

[55] In 2013, 83% of those charged with crack trafficking offenses were black and 5.8% were white. By contrast, blacks made up only 31.5% of power cocaine trafficking offenders, while Hispanics made up 58% and whites made up 9.4%. U.S. SENTENCING COMM'N, QUICK FACTS: CRACK COCAINE TRAFFICKING 1 (2014), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Crack_Cocaine.pdf.

[56] Fair Sentencing Act of 2010, Pub. L. 111–220, 124 Stat. 2372 (codified as amendments in scattered sections of 21 and 28 U.S.C.).

[57] In 2009, the Department advocated for eliminating the disparity between crack and powder. Lanny A. Breuer, Assistant Att'y Gen., Criminal Division, U.S. Dep't of Justice, Before the United States House of Representative Committee on the Judiciary, Subcommittee on Crime, Terrorism and Homeland Security (May 21, 2009),

Yet the Department has often failed to support efforts that would minimize the racially pernicious effects of the old regime. After the FSA was passed, a question arose about how to handle pipeline cases – cases involving people who committed their crack offenses before the FSA was passed, but who had yet to be sentenced for their crimes. The Department's initial position was that those individuals should be sentenced under the old regime. It was only after significant pushback from some judges, the defense bar, and organizations like Families Against Mandatory Minimums that the Department switched course.[58] The shift on pipeline cases did not, however, signify a greater willingness of the Department to apply the FSA expansively.

Consider the Department's position before the Sentencing Commission on how to amend the Sentencing Guidelines in light of the passage of the FSA. In setting the initial Sentencing Guidelines for drug offenses, the Commission made the decision to use statutory quantities as benchmarks for the guidelines. Thus, because Congress used five grams of crack as the trigger for a five-year sentence in the Anti-Drug Abuse Act of 1986,[59] the Commission's initial guidelines opted to make five grams of crack trigger a guideline offense level of 26, which yielded a sentencing range of 63 to 78 months (thus slightly above the five-year mandatory minimum). Similarly, 50 grams would trigger an offense level of 32, or a range of 121 to 151 months. The Commission then extrapolated upward and downward for other drug quantities above and below these statutory minimums using these levels as the anchors. Because the Commission's research showed that the 100-to-1 ratio was without basis and produced glaring racial disparities,[60] the Commission decided to take its own steps to limit the differential treatment between crack and powder in the guidelines

---

https://www.justice.gov/sites/default/files/testimonies/witnesses/attachments/2009/05/21/2009-05-21-crm-breuer-crack-100-to-1.pdf.

[58] FAMILIES AGAINST MANDATORY MINIMUMS, *Frequently Asked Questions: The Fair Sentencing Act of 2010, S. 1789 Federal Crack Reform Bill* 3–4, http://famm.org/wp-content/uploads/2013/08/FAQ-Fair-Sentencing-Act-4.13.pdf. The Supreme Court ultimately agreed with the latter position in *Dorsey v. United States*, 132 S. Ct. 2321 (2012).

[59] Pub. L. 99–570, 21 U.S.C. § 841(b)(1).

[60] U.S. SENTENCING COMM'N 2007 REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY (2007); U.S. SENTENCING COMM'N, 2002 REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY (2002); U.S. SENTENCING COMM'N, 1997 SPECIAL REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY (AS DIRECTED BY SECTION 2 OF PUB. L. NO. 104-38) (1997); U.S. SENTENCING COMM'N, 1995 SPECIAL REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY (AS DIRECTED BY SECTION 280006 OF PUB. L. NO. 103-322) (1995).

even before the FSA. In 2007 it reduced the guideline offense level for five grams to 24 (yielding a sentence of 51-63 months) and 50 grams to 30 (97 to 121 months), thus still keeping the ranges in accord with the statutory thresholds[61] but reducing somewhat the severity of crack offenses.

After the FSA passed, the Commission had to decide whether to continue to use the lower offense levels or whether it should go back to the original, higher offense levels on the theory that Congress had made its own determination of how to address the disparity.[62] At the Department's urging,[63] the Commission decided to revert to the higher, pre-2007 offense levels.[64] The Department argued that the FSA's language was fairly read to mean that all drug types should be treated comparably.[65] It further argued that "a two-level reduction [for all drugs] is not warranted until further information is presented and can be considered."[66]

---

[61] The Commission decided that "the problems associated with the 100-to-1 drug quantity ratio are so urgent and compelling" that it needed to do what it could to limit the impact within the Guidelines. U.S. SENTENCING COMM'N, AMENDMENTS TO THE SENTENCING GUIDELINES 46 (May 11, 2007), http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20070501_RF_Amendments.pdf.

[62] Section 8 of the Act vested the Commission with emergency amendment authority to promulgate guideline changes consistent with the directives of the statute within 90 days of its passage.

[63] Statement of Laura E. Duffy, Unites States Attorney, Southern District of California, Before the U.S. Sentencing Comm'n, Hearing on Proposed Amendments to the Federal Sentencing Guidelines, 19 (Mar. 17, 2011) (stating the Department's position that the Commission should make permanent its temporary amendment to the Drug Quantity Table, which increased the offense levels back to 26 and 32, respectively).

[64] The Commission changed its guideline triggering quantities from five to 28 and 50 to 280, respectively, and those levels in turn triggered corresponding offense levels of 26 and 32. U.S. SENTENCING COMM'N, AMENDMENT TO THE SENTENCING GUIDELINES (Oct. 21, 2010) (explaining this change as "ensuring that the relationship between the statutory penalties for crack cocaine offenses and the statutory penalties for offenses involving other drugs is consistently and proportionally reflected throughout the Drug Quantity Table"). Judge Castillo dissented because he did not believe Congress intended the Commission to change the offense levels when it passed the FSA. U.S. SENTENCING COMM'N, *Public Meeting Minutes* 4 (Oct. 15, 2010), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20101015/20101015_Minutes.pdf.

[65] Letter from Jonathan J. Wroblewski, Director, Office of Policy and Legislation, to The Honorable William K. Sessions III, Chair, U.S. Sentencing Comm'n, 2 (Oct. 8, 2010) http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20101013/DOJ_Comment_100810.pdf (arguing that the Act aimed to do a better job of differentiating among drug traffickers and that the language of the Act "strongly suggests" its approach should be apply in all drug trafficking cases, across all drug types").

[66] *Id.* at 18-19.

The Department's reading was neither dictated by the statute's language nor by its legislative history. In fact, the Commission received comments from the lead sponsors of the law that they intended the Commission to retain the lower offense levels. Senator Durbin wrote the Commission to emphasize that Congress approved of the Commission's 2007 changes to the offense levels for crack and that "[i]n debating and passing the Fair Sentencing Act, Congress did not intend for the base offense levels for crack cocaine to change," adding that "nothing in the text or legislative history [of the FSA] suggests otherwise."[67] Senator Durbin reiterated this point in a subsequent letter he wrote with Senator Leahy, noting that his initial letter "was not contradicted by a single member of Congress" and was in fact buttressed by additional comments filed with the Commission by the then-Chairmen of the House Committee on the Judiciary and the then-Chairman of the House Subcommittee on Crime.[68] Although the Commission received a letter from a group of legislators in the House opposed to the FSA that urged the Commission not to maintain the 2007 offense levels,[69] Senator Durbin observed that "under traditional canons of statutory construction," it is the views of sponsors, not opponents, that are entitled to greater weight.

The Department may have disagreed because it feared that going too far in President Obama's first term would impede the prospects of future legislation.[70] It is worth asking whether the Department is the right entity to make the calculation of whether a reform at the moment is worth the risk of losing further gains later. The Commission sided with the Department's

---

[67] Letter from Senator Richard Durbin, U.S. Senate, to The Honorable William K. Sessions III, Chair, U.S. Sentencing Comm'n (Oct. 8, 2010), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20101013/SenDurbin_comment_100810.pdf.

[68] *Id.* at 1 (referring to Letter from Representative John Conyers, Jr. and Representative Robert C. "Bobby" Scott, U.S. House of Representatives, to The Honorable William K. Sessions III, Chair, U.S. Sentencing Comm'n (Oct. 8, 2010), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20101013/House_CrimeSubcomte_100810.pdf.

[69] Letter from Representative Lamar Smith et al., U.S. House of Representatives, to The Honorable Patti B. Saris, Chair, U.S. Sentencing Comm'n (Mar.15, 2011), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20110321/HR_JudiciarySubcomte_Comment.pdf.

[70] This theory is supported by a Department letter to the Commission urging it to "reinforce and support the bipartisanship that led to the passage of the Act and its important reforms by ensuring that the will of the nearly-unanimous Congress that passed the Act is achieved in its implementation," Wroblewski letter, *supra* note XX, at 1, and by the fact that the Department supported a reduction of offense levels for all drugs in President Obama's second term. *See infra* TAN XX-XX.

more limited view in 2010, so we will never know whether greater reform efforts then would have stymied future sentencing reform or bipartisan efforts.[71] But there are persuasive reasons for thinking that the Department's assessment of the costs and benefits of pushing additional reforms at any given time might be skewed by its institutional biases and interests. All else being equal, the Department might prefer to err on the side of caution and keeping offense levels high, reasoning that its prosecutors can agree to lower sentences in cases where they believe such reductions are merited. Thus the Department may hold the view that it can police injustices instead of giving judges more room to do so and not much is lost by doing so. In addition, the Department might not be as likely to see the problems with the prior regime because it prosecuted those cases under the old statutory triggers.[72] The Department may also be more inclined as an institution to focus on its law enforcement mission and less sensitive to the personal interests at stake on the other side of the balance. Whereas the Department highlighted in its comments to the Commission that it has "consistently advocated for federal sentencing laws" that "ensure public safety by being tough on drug crime,"[73] Senators Leahy and Durbin paid more attention to the fact that roughly 2,000 additional people would benefit from sentencing reductions if the Commission kept the lower base offense levels and made its changes retroactive.[74]

The Department's resistance to crack sentencing reform did not stop there. When the Commission considered whether to make its amendments retroactive (such that any individual sentenced before 2010 who would receive a lower guideline range under the new FSA guidelines amendments than the range that applied to them could seek retroactive adjustment of his or her sentence),[75] the Department again took a narrow view. The Department argued that some people should be "categorically prohibit[ed]" from having a judge even consider whether a retroactive adjustment would

---

[71] Though the fact that the Commission lowered the offense levels for all drugs in 2014 without pushback from Congress does suggest that, if a concern with future reform was what motivated DOJ in its resistance, that concern was likely misplaced.

[72] DOJ leadership was often careful to point out that its endorsement of changes to the crack laws should not be seen as indictment of the Department's prosecutions under the old laws. *See*, *e.g.*, Breuer Testimony, *supra* note XX, at 2 ("In committing ourselves to pursuing federal cocaine sentencing policy reform, we do not suggest in any way that our prosecutors or law enforcement agents have acted improperly or imprudently during the last 15 years.").

[73] Wroblewski letter, *supra*, at 1.

[74] Leahy & Durbin letter, supra note XX, at 2.

[75] Only the guideline changes could be made retroactive, not the statute. So anyone sentenced pursuant to a mandatory minimum under the old crack laws would not receive retroactive relief that gave them a sentence below the statutory minimum.

be consistent with public safety.[76] Specifically, it argued that anyone who received a sentencing enhancement for using or possessing a weapon should be barred from having a judge reconsider their crack sentence under the old 100-to-1 ratio.[77] The Department also wanted to categorically bar those with more significant criminal histories from gaining the opportunity to appear before a judge.[78]

Importantly, no one automatically receives a sentence reduction even if the Commission makes its guidelines fully retroactive. Judges are required to "consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant's term of imprisonment"[79] before making a retroactive adjustment. In each case, then, a judge must first determine that a retroactive reduction will not harm public safety before a defendant receives a lesser sentence. The Department's position that some people should be categorically banned from even going before a judge was presumably based on a distrust of judges making these determinations on a case-by-case basis and a willingness to accept that, as a result of its categorical bar, many deserving individuals would not receive relief. Most individuals convicted of drug offenses with higher criminal history categories pose no threat of violence.[80] Nor does receiving a weapons enhancement necessarily signify dangerousness. Defendants can receive the weapon enhancement even if they personally did not have a weapon as long as someone with them did – and that is true even if the defendant had no knowledge the other person had

---

[76] Statement of Eric H. Holder, Jr., Attorney General of the United States, Before the U.S. Sentencing Comm'n, Hearing on Retroactive Application of the Proposed Amendment to the Federal Sentencing Guidelines Implementing the Fair Sentencing Act of 2010, 2–3 (June 1, 2011), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20110601/Testimony_AG_Eric_Holder.pdf.

[77] Statement of Stephanie M. Rose, United States Attorney, Northern District of Iowa, Before the U.S. Sentencing Comm'n, Hearing on Retroactive Application of the Proposed Amendment to the Federal Sentencing Guidelines Implementing the Fair Sentencing Act of 2010, 8–9 (June 1, 2011), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20110601/Testimony_Stephanie_Rose.pdf.

[78] The Department would have barred anyone higher than criminal history category III from asking a judge to reconsider his or her crack sentence. *Id.*

[79] U.S. SENTENCING GUIDELINES MANUAL § 1B1.10, Application Note 1(B) (U.S. SENTENCING COMM'N 2015); 18 U.S.C. § 3582 (c)(2).

[80] U.S. SENTENCING COMM'N, REPORT TO THE CONGRESS: CAREER OFFENDER SENTENCING ENHANCEMENTS 42 (2016), http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/criminal-history/201607_RtC-Career-Offenders.pdf (noting that, for repeat offenders whose criminal history includes only drug trafficking, the most common subsequent offense was drug trafficking).

a weapon.[81] The Department was willing to sacrifice individuals in situations like these from receiving less disparate crack sentences in order to prevent judges from making public safety determinations on an individualized basis. It is hard to imagine anyone but a prosecutor deciding that trade-off makes sense, especially when it means individuals must continue to serve crack sentences universally recognized to be unjust and discriminatory.

Indeed, contrast the Department's preferred approach with the comments filed by a group of Democratic Senators who argued that all eligible defendants should be able to petition a judge to determine if retroactive adjustments were appropriate.[82] The Senators had confidence that "all judges will consider public safety as a paramount concern when determining whether a sentence reduction is appropriate."[83] They argued that, "[g]iven decades of inequity in crack sentencing, the ability of judges to discern on an individualized case-by-case basis who should benefit from a sentence reduction, and the requirement that public safety must be considered, we strongly believe no particular category of defendant should be excluded from retroactive application."[84]

Here again, then, we see the Department advocating for an approach that is at odds with broader criminal justice reform goals and with Democratic members of Congress who have been leaders for sentencing reform. Why the difference, especially when President Obama and Attorney General Holder spoke urgently about the need to reform the crack laws?[85] One can imagine that, unlike Holder, the members of Congress did

---

[81] United States v. Woods, 604 F.3d 286, 290 (6th Cir. 2010) (defendant need not be aware a firearm is present but instead "the possession of a firearm by a coconspirator must (1) be connected to the conspiracy and (2) be reasonably foreseeable.").

[82] Letter from Senator Patrick Leahy et al., U.S. Senate, to The Honorable Patti B. Saris, Chair, U.S. Sentencing Comm'n (June 1, 2011), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20110602/Durbin_Leahy_Franken_Coons_Comment.pdf.

[83] Leahy et al., *supra* note XX, at 3.

[84] *Id.*

[85] *E.g.*, Eric H. Holder, Jr., Att'y Gen., Remarks at the Annual Meeting of the American Bar Association (Aug. 12, 2013), https://www.justice.gov/opa/speech/attorney-general-eric-holder-delivers-remarks-annual-meeting-american-bar-association (commenting on the successful reduction of the "*unjust* 100-to-1 sentencing disparity between crack and powder cocaine") (emphasis added); Eric. H. Holder, Jr. *We Can Have Shorter Sentences and Less Crime*, N.Y. TIMES (Aug. 11, 2016), https://www.nytimes.com/2016/08/14/opinion/sunday/eric-h-holder-mandatory-minimum-sentences-full-of-errors.html?_r=0 (noting that "there is still a disparity in sentencing for offenses relating to crack and powder cocaine" and that "this disparity must go.").

not have to deal with career staff who disagreed completely with the broader push for reform, so their resistance to retroactivity naturally followed suit. It is likely that Holder faced substantial pushback within the Department. The Bush Administration's Department of Justice opposed *any* retroactive application of the 2007 offense level reductions, and many of those same line prosecutors were still at the Department when it was considering what position to take before the Commission in 2011. Indeed, the professional organization that represents AUSAs filed its own comments opposing any retroactive application of the crack sentencing guideline amendments.[86] One gets a sense of the kinds of arguments the Attorney General must have been facing within the Department from the AUSA association's letter, which noted that early release of any individual currently serving a crack sentence would be "a slap in the face to the law enforcement officers who literally risked their lives in order to bring those criminals to justice."[87] In the view of these line prosecutors, reducing crack sentences would be giving the affected individuals a "windfall," not remedying an injustice.[88] They further emphasized the strain retroactive review would place on the system because roughly 12,000 individuals could seek relief.[89]

The Department's compromise approach thus becomes more understandable (at least as an institutional matter) in light of the internal pressures the Attorney General likely faced. He personally appeared before the Commission at its hearing on retroactivity in 2011 instead of sending a representative from the Department – the more typical approach – and he spent most of his time speaking to the concerns of those who would oppose all retroactive relief. He noted that the retroactive application of the 2007 amendments did not cause an increase in crime.[90] He also emphasized that it would be administratively feasible to process the cases.[91] What he did not do was spend time defending the Department's view that judges should not be trusted to process all of these cases. One gets the sense that he had been on the defensive in arguing for any retroactive relief at the Department, and he thus took the same posture before the Commission, explaining why the

---

[86] Letter from Steven H. Cook, Nat'l Ass'n of Assistant U.S. Att'ys, to The Honorable Patti B. Saris, Chair, U.S. Sentencing Comm'n (June 2, 2011), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20110602/NAAUSA_Comment.pdf.
[87] *Id.* at 1.
[88] *Id.* at 3.
[89] *Id.* at 2.
[90] Holder Testimony, *supra* note XX, at 4.
[91] *Id.* at 4.

middle ground was not too bold instead of recognizing and defending why it was so narrow.

Yet the Department's view was far more limited than the view of the sentencing reformers in Congress and most other commenters before the Commission. As it turns out, it was also too limited for the bipartisan Commission, which unanimously applied its quantity-based reductions to the guidelines retroactively in all cases, without placing a limit based on the presence or use of a weapon or criminal history, just as it had done in 2007 with its offense level reductions. The fact that these more objective decision makers without an institutional history prosecuting these cases or a duty to deal with cases going forward reached a different conclusion than the Department shows that the institution making the decision about reform matters. And it causes one to doubt the Department's ability to lead on sentencing reform.

The Department's subsequent positions on sentencing continued to follow the same basic pattern even in President Obama's second term and even after the evidence mounted that the reductions in crack sentencing were not undermining public safety or the Department's ability to successfully prosecute cases.[92] When the Commission asked for comment in 2013 on whether it should reduce all of its drug sentencing guidelines by two offense levels (what came to be known as drugs minus two), the Department agreed with the reductions as a prospective matter.[93] But even in the relative political safety of a second term, with the President more outspoken about criminal justice reform, and in light of the successful implementation of crack retroactivity, the Department once again balked when it came time to deciding whether the drugs-minus-two amendment should apply retroactively. The Department became even less generous in its view of retroactivity than it was in 2010. Whereas it would have allowed

---

[92] U.S. SENTENCING COMM'N, RECIDIVISM AMONG OFFENDERS RECEIVING RETROACTIVE SENTENCE REDUCTIONS: THE 2007 CRACK COCAINE AMENDMENT (2007), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527_Recidivism_2007_Crack_Cocaine_Amendment.pdf (finding no statistically significant difference in recidivism rates of those released earlier); U.S. SENTENCING COMM'N, AMENDMENTS TO THE SENTENCING GUIDELINES 22–23, (Apr. 30, 2014), http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20140430_RF_Amendments.pdf (reduction in base offense levels for crack offenses had no deleterious effects on plea rates or cooperation)

[93] Letter from Jonathan J. Wroblewski, Director, Office of Policy and Legislation, U.S. Dep't of Justice, to The Honorable Patti B. Saris, Chair, U.S. Sentencing Comm'n, 16 (Mar. 6, 2014), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20140326/public-comment-DOJ.pdf.

individuals in criminal history category III to seek retroactive reductions in the FSA amendments, now it would only allow those in categories I and II.[94] And this time around, it also sought to ban anyone with an aggravating role adjustment or someone who received an enhancement for obstruction of justice – something that can happen when a defendant testifies at trial but the judge decides the defendant is not being truthful.

The Department stated that its limited approach to retroactivity was driven by "public safety concerns that arise from the release of dangerous drug offenders and from the diversion of resources necessary to process over 50,000 inmates."[95] The Department's resource concerns had merit, of course, because such a large number of cases would be time-consuming to process. But the assumption that full retroactivity would result in the "release of dangerous drug offenders" without the Department's proposed categorical bars lacked support, especially in light of the Commission's experience applying its previous crack guideline amendments retroactively without any categorical bars.

In the end, the bipartisan Commission once again unanimously rejected the Department's categorical bars on retroactivity and made its amendments fully retroactive. It delayed implementation for one year to allow judges time to process the cases and to allow probation officers and the Bureau of Prisons to prepare people for reentry.[96] The resource issue was thus directly addressed with a delay, not ill-fitting substantive limits on eligibility. Courts processed more than 43,000 motions, with 29,391 people receiving retroactive sentencing reductions that lowered their sentences by 17% on average or roughly 2 years.[97] If the Department had its way, more than half of the people who received relief would have been ineligible.[98]

---

[94] Statement of Sally Quillian Yates, U.S. Att'y, Northern District of Georgia, Before the U.S. Sentencing Comm'n, Hearing on Retroactive Application of the Pending Drug Guideline Amendment to the Federal Sentencing Guidelines, 7–8 (June 10, 2014), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20140610/Testimony_DOJ.pdf.

[95] *Id.* at 4.

[96] U.S. SENTENCING COMM'N, AMENDMENT TO THE SENTENCING GUIDELINES 1–2 (July 18, 2014) http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20140718_RF_Amendment782.pdf.

[97] U.S. SENTENCING COMM'N, 2014 DRUG GUIDELINES AMENDMENT, RETROACTIVITY REPORT, tbl. 1 & tbl. 7 (2016), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20161025-Drug-Retro-Analysis.pdf. Most motions that were rejected were simply ineligible for relief (*e.g.*, a mandatory minimum applied or the sentence would expire before the effective date of the

One is again left to wonder why a bipartisan Commission unanimously agreed that the Department was being too conservative on the topic of sentencing reform. And the answer again lies in the Department's institutional biases in favor of the status quo and avoiding any risk that someone released early might commit a dangerous offense. While those traits have their merits, they are ill-suited to the task of sentencing reform. A preference for the status quo means the persistence of mass incarceration, and a one-dimensional focus on the risk that people released earlier might commit violent offenses can obscure attention to other risks, including those associated with *not* reducing sentences. The longer people serve in prison, the more difficult reentry becomes (thus increasing the risk of recidivism), and the use of limited law enforcement resources to house individuals who do not pose a risk means fewer resources to pursue other cases, help witnesses, and provide rehabilitation. The Commission compiled a substantial record after the retroactive reduction of crack sentences showing the feasibility of that approach without undermining public safety. And of course there are palpable human costs to disproportionate sentences. The Department's resistance thus owed less to its focus on the evidence and more to its institutional culture.

There are many other examples where the Department pushed for longer sentences even when the evidence did not support its claims.[99] One

---

Commission's amendment), but judges denied more than 3,000 on the merits, thus showing that public safety evaluations were taking place. *Id.* tbl. 8.

[98] Only 49.7 percent of the individuals fell within criminal history categories I and II, the Department's first cut-off for relief. *Id.* Additional people would be separately ineligible because of an enhancement for weapons possession, violence, aggravating role, or obstruction but those numbers are unavailable.

[99] For instance, when the Commission evaluated which offenses should be treated as enumerated crimes of violence in its guidelines in the wake of the Supreme Court's decision in *Johnson v. United States*,135 S.Ct. 2551 (2015), the Department wanted burglary included in the list. Letter from Jonathan J. Wroblewski, Director, Office of Policy and Legislation, U.S. Dep't of Justice, to The Honorable Patti B. Saris, Chair, U.S. Sentencing Comm'n, 2, (Oct. 30, 2015), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20151105/DOJ.pdf. But the empirical evidence showed that the overwhelming majority of burglaries, even those involving dwellings, involve no violence. U.S. SENTENCING COMM'N, AMENDMENT TO THE SENTENCING GUIDELINES, JANUARY 21, 2016, 3, http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20160121_RF.pdf (citing studies). The Commission thus rejected the Department's argument and left burglary off its list, noting that judges could instead give an upward departure in those relatively few cases of burglary where violence was involved. *Id.* at 4.

More recently, the Department pushed for an across-the-board increase in sentences for all alien smuggling cases based on its view that smuggling had become

final one especially drives home this theme that the Department's interests are not well aligned with the goals of criminal justice reform. President Obama did not stop his efforts at legislative reform with the FSA. He continued to push for broader sentencing reform through legislation, specifically encouraging additional reforms to mandatory minimum drug sentencing laws.[100] The bill with the best chance of passage ultimately turned out to be the Sentencing Reform Act and Corrections Act of 2015.[101] That bill was the outgrowth of an earlier bipartisan proposal introduced by Senators Durbin and Mike Lee known as the Smarter Sentencing Act,[102] which would have reduced mandatory minimums for specified and defined nonviolent individuals from 20 years to 10 years, ten years to five years, and five years to two years, along with eliminating entirely the mandatory

---

increasingly dangerous and tied to criminal organizations. Letter from Michelle Morales, Acting Director, Office of Policy and Legislation, U.S. Dep't of Justice, to The Honorable Patti B. Saris, Chair, U.S. Sentencing Comm'n, 3–14 (Mar. 14, 2016), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20160316/20160316_DOJ.pdf. Again, the data did not back up the Department's request. The Department itself seeks a sentence below the guidelines in 37.2% of smuggling cases as part of its fast-track disposition program, which undercuts the view that all the cases are as serious as the Department claims. Commission data also showed that that the majority of the defendants convicted of this offense serve low-level functions in the smuggling operation. The Commission thus denied the Department's request for a blanket increase because the guidelines already accounted for the increased risk in certain cases by providing for enhancements when there is a risk of physical injury and other dangers. U.S. SENTENCING COMM'N, *Public Meeting Minutes*, 11–12, (Apr. 15, 2016), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20160415/meeting_minutes.pdf.

Then there was the Department's opposition to "any inflationary adjustment to the guidelines' monetary tables." Letter from Jonathan J. Wroblewksi, Director, Office of Policy and Legislation, U.S. Dep't of Justice, to The Honorable Patti B. Saris, Chair, U.S. Sentencing Comm'n, 12 (Mar. 9, 2015). The Department saw this as "an unwarranted reduction" in fraud sentences because, in the "Department's experience and judgment, the harm from economic crimes is generally not being overstated." *Id.* at 14. But as the Commission noted, none of the monetary amounts in the Guidelines had been adjusted for inflation since adoption in 1987, and "[a]s a result, monetary losses in current offenses reflect, to some degree, a lower degree of harm and culpability than did equivalent amounts when the monetary tables were established or last substantively amended." U.S. SENTENCING COMM'N, PROPOSED AMENDMENTS, APRIL 30, 2015, at 49, http://www.ussc.gov/sites/default/files/20150430_FR_Final_Amendments.pdf.

There are other examples like these, where the Department asked for sentencing guideline increases without a basis in empirical facts and contrary to the Obama Administration's overriding goal of being smart on crime and reducing incarceration. In the interest of space, we are not providing an exhaustive list, but these examples give the general flavor.

[100] Obama, *supra* note XX, at 827.

[101] *Id.* at 828.

[102] *Id.* at 827.

sentence of life imprisonment in drug cases.[103] The bill additionally would have made the FSA retroactive and modestly expanded the safety valve to allow judges to sentence defendants outside of mandatory minimums in some cases.[104]

The Obama Administration backed those provisions of the Smarter Sentencing Act, but the Department's support was not enough to get it through the Senate, so the bill was ultimately modified in various ways to make it less ambitious, including eliminating the reduction of the five-year mandatory minimum to two years.[105] "[E]ven though the bill was imperfect," President Obama supported it[106] and lamented that Republican leaders in Congress did not let the bill come up for a vote.[107]

While it is true that the legislation stalled because leaders in the Senate refused to bring it forward for a vote, one should not be left with the impression that the Senate bears sole responsibility for the fact that the bill turned out as watered down as it did or that it failed to get a vote. Here again it is important to observe the Department's role in advancing (or as the case may be, not advancing) sentencing reform legislation.

The President is correct that the Department supported the Smarter Sentencing Act, but he neglects to mention that it was not the only bipartisan bill being considered by the Senate. Senators Leahy and Paul proposed a more ambitious piece of proposed legislation to address the problems with mandatory minimum sentences. The Justice Safety Valve Act of 2013 would have allowed judges to depart from mandatory minimums in individual cases based on the nature and circumstances of the offense, the history and characteristics of the defendant, and the purposes of punishment.[108] The Justice Safety Valve Act would thus have effectively eliminated mandatory minimums as a constraint on judges. There was some reason to believe President Obama would share Senators Leahy and Paul's interest in this legislation based on his statement in a speech at an NAACP Conference that "[f]or nonviolent drug crimes, we need to lower

---

[103] *Id.*
[104] *Id.*
[105] *Id.* at 828.
[106] I*d.*
[107] *Id.* at 829.
[108] S. 619, § 2, 113th Cong. (2014), https://www.congress.gov/bill/113th-congress/senate-bill/619/text.

long mandatory minimum sentences – *or get rid of them entirely*" and we should "[g]ive judges some discretion."[109]

But the Justice Safety Valve Act was a non-starter with the Department. The Department has repeatedly endorsed the need for mandatory minimums because of the leverage they give the Department to extract pleas and cooperation.[110] Indeed, one reason the reduction in the five-year mandatory minimum to two years disappeared is that unnamed federal prosecutors in New York told Senator Schumer that reducing that mandatory minimum would make it too difficult for prosecutors to obtain guilty pleas and cooperation in these cases.[111] To be sure, it was likely that the Justice Safety Valve Act lacked sufficient Senate support, so we are not claiming that it failed to advance just because the Department did not endorse it. But the position of the Administration matters not only because it can help secure legislative victories, but also because it sends a message about what kind of system the President thinks we should have. By supporting the Justice Safety Valve Act, the President could have sent the same message that Senators Leahy and Paul wanted to send, which is that judicial discretion is critical to a well-functioning criminal justice system. Perhaps President Obama does not share that view. But if his only input about what position to take came from the Department, that option would have been off the table from the start.

The Department's resistance to reform legislation did not stop there. Even though the Department was willing to get behind the modest reductions in the mandatory minimums because those provisions did not undermine its ability to prosecute cases – it viewed things differently when a key tradeoff that emerged for getting the legislation passed involved accepting so-called mens rea reform. Specifically, some key legislators refused to support mandatory minimum reform unless it was part of

---

[109] President Barack Obama, Remarks by the President at the NAACP Conference (July 14, 2015), https://www.whitehouse.gov/the-press-office/2015/07/14/remarks-president-naacp-conference (emphasis added).

[110] Letter from Robert Gay Guthrie, President, Nat'l Ass'n of Assistant U.S. Att'ys, to Senator Patrick Leahy, Chairman, and Senator Charles Grassley, Ranking Member, Senate Judiciary Comm. (Jan. 31, 2014), http://www.naausa.org/site/index.php/resources/letters/40-jan-2014-letter-opposing-mandatory-minimums-legislation/file

[111] *Hearing Before the S. Comm. on the Judiciary*, 113th Cong. (Jan. 30, 2014) (Statement of Sen. Chuck Schumer), https://www.judiciary.senate.gov/meetings/executive-business-meeting-2014-01-30 (stating that "prosecutors across New York . . . told [him] low-level [criminals] choose to cooperate rather than face the mandatory minimum and so if we reduce that lower-level minimum from five to two, many prosecutors are worried that they can no longer use this tool effectively.").

legislation that also included a provision stating that, if a federal statute did not require the government to prove that the defendant acted with a particular state of mind, the default state of mind the government should prove is knowing.[112] Notably, the mens rea reform provision had its own bipartisan support in the House,[113] and most criminal law scholars and professional bar associations have lamented for years that strict liability laws have no place in the criminal sphere.[114] The Model Penal Code has its own default mens rea requirement of recklessness precisely because of the consensus view among those who study criminal law that it is inappropriate to punish people if they lack the requisite culpable state of mind. And accepting mens rea reform would likely have led to passage of the mandatory minimum reforms as well.[115]

But whatever the views of Democrats in Congress or criminal law scholars, mens rea was a dealbreaker for the Department because it believed such a requirement would make it too difficult for it to prove its cases, particularly those involving environmental and regulatory offenses.[116] From the Department's perspective, its resistance made sense. It gained little as an institution from the mandatory minimum reductions, but it would lose a great deal in its ability to perform its tasks if mens rea requirements were added to its workload. It is, however, far from clear that a disinterested observer would make the same calculation A tradeoff that would give retroactive relief to the almost 5,000 individuals serving crack sentences

---

[112] H.R. 4002, 114th Cong. (2015), https://www.congress.gov/bill/114th-congress/house-bill/4002/text; Matt Apuzzo & Eric Lipton, *Rare White House Accord with Koch Brothers on Sentencing Frays*, N.Y. TIMES (Nov. 24, 2015), http://www.nytimes.com/2015/11/25/us/politics/rare-alliance-of-libertarians-and-white-house-on-sentencing-begins-to-fray.html. *See also* Jim Copland & Rafael A. Mangual, *Let's End Criminalization without Representation*, NAT'L REV. (Jan. 14, 2017), http://www.nationalreview.com/article/443856/criminal-justice-reform-over-criminalization-federal-agencies-congress-lawmaking (noting "[t]he lack of legislative progress" is due in part to the Administration's unwillingness to address mens rea reform).

[113] *Id.*

[114] *See, e.g.*, Richard A. Wasserstrom, *Strict Liability in the Criminal Law*, 12 STAN. L. REV. 731, 732 (1960) ("The proliferation of so-called strict liability offenses in the criminal law has occasioned the vociferous, continued, and almost unanimous criticism of analysts and philosophers of the law."); Laurie L. Levenson, *Good Faith Defenses: Reshaping Strict Liability Crimes*, 78 CORNELL L. REV. 401, 402 (1993) ("[Strict liability] is a doctrine that contradicts the most basic principles of modern criminal law.").

[115] Paul J. Larkin, Jr., "A Day Late and a Dollar Short": President Obama's Clemency Project 2014 at 11 (draft on file with authors).

[116] Apuzzo and Lipton, *supra* note XX. (listing examples provided by the Department). President Obama seemed to agree with the Department's views, noting that mens rea reform "could undermine public safety and harm progressive goals." Obama, *supra* note XX, at 829 n.89.

under the old 100-to-1 ratio and limit the damage caused by mandatory minimums in exchange for the adoption of a criminal law principle that has been a bedrock element of culpability, does not seem so bad. Indeed, for many it is a win-win.

Not everyone agrees, of course, with how to balance the various interests at stake in a piece of criminal justice legislation, and reasonable people can disagree on the tradeoff between mens rea requirements and a reduction in mandatory minimum sentences. But in making an informed decision, it is critical for the President to be guided by a diverse group of perspectives and not simply the Department because its position will always favor law enforcement interests above all else.

It is particularly important for the President to be advised on legislative proposals from sources other than just the Department because the President cannot control the exercise of prosecutorial discretion directly. It is not the President's place to interfere in individual cases or tell the Department how to select which targets to pursue and which ones to leave alone.[117] But it is the President's duty to consider what criminal law legislation should be pursued, and that inquiry should take into account, among other things, how the legislation will interact with prosecutorial discretion. If you ask prosecutors about that, they will rarely, if ever, see a problem with laws that expand their powers (either by imposing mandatory sentencing or reducing the elements that must be proven beyond a reasonable doubt) because they will always trust themselves to exercise discretion and will prefer to make those decisions without hindrance. But if you are balancing and considering other interests – the protection of individual liberty, the risk of overcharging, the danger that sentencing enhancements will be used as leverage to extract pleas even when cases are weak or to punish those who exercise the right to trial, the threat of disproportionate sentences in particular cases – then the value of a judicial check becomes obvious. Then you want the jury to make the assessment about mens rea and not just the prosecutor. Then you want judges to play a role in determining the sentence in cases and not just the prosecutor. But you will not get a careful analysis of these values if you ask only prosecutors because any discretion given to another actor takes away theirs.

2. DOJ's Roadblocks to Clemency

[117] The Department's decisions about charging policies are thus one area that we believe appropriately fall within the Department's purview. The Department changed several of its charging policies as part of the Smart on Crime push. Obama, *supra* note XX, at 824–826.

Perhaps none of President Obama's criminal law projects received as much attention as his clemency initiative, which resulted in 1,715 commutations of sentence.[118] President Obama properly took credit for "invigorating clemency,"[119] and encouraging inmates to apply for commutations,[120] while remembering his gracious meeting with five clemency recipients.[121] Other claims he has made—that his efforts were "unprecedented," and resulted in more grants "than the previous eleven presidents combined"[122]— selectively count previous presidential clemency efforts[123] and should be viewed in a broader context. While President Obama's grants were laudable, it is also important to note that he denied nearly twice as many petitions as at least the past five presidents combined—a statistic that would likely be even more lopsided if data on denials alone were available before the Carter Administration.[124] More fundamentally than these historical comparisons, President Obama's efforts largely failed if the goal was to (as he put it) "address particularly unjust sentences in individual cases" because so many deserving people were

---

[118] *Clemency Statistics*, U.S. DEP'T JUST., https://www.justice.gov/pardon/clemency-statistics (last updated Jan. 19, 2017).
[119] Obama, *supra* note XX, at 835.
[120] *Id.* at 836.
[121] *Id.* at 837.
[122] *Id.* at 837. Those claims grew larger as the number of grants increased. Neil Eggleston, *The Reinvigoration of the Clemency Authority*, WHITE HOUSE: BLOG (Jan. 19, 2017), https://obamawhitehouse.archives.gov/blog/2017/01/19/reinvigoration-clemency-authority ("[T]he President has granted more commutations than any president in this nation's history and has surpassed the number of commutations granted by the past 13 presidents combined.").
[123] Specifically, President Obama ignores the efforts of President Ford, who granted more than 13,000 clemencies to draft evaders and army deserters. Casey Tolan, *The Bold Step President Obama Could Take to Let Thousands of Federal Inmates Go Free*, FUSION, (May 4, 2016), http://fusion.net/story/298158/obama-clemency-board-gerald-ford/.
[124] *Clemency Statistics*, U.S. DEP'T JUST., https://www.justice.gov/pardon/clemency-statistics (last updated Jan. 19, 2017); *Current Fiscal Year Clemency Statistics*, U.S. DEP'T JUST., https://www.justice.gov/pardon/current-fiscal-year-clemency-statistics (last updated Jan. 19, 2017) (providing full statistics for the Obama Administration). According to these statistics, President Obama denied 18,749 clemency petitions. Presidents Carter through George W. Bush denied 11,305 combined. The Department of Justice keeps records differently before President Carter's Administration. For the earlier period, the Department consolidates denials with petitions that were closed without presidential action, so it is not possible to know what percentage of those were denials. President Obama's denial *rate* is also comparable to previous presidents. President Obama received 33,149 clemency petitions and denied 57% of them, whereas Presidents Carter through George W. Bush received a combined total of 17,150 petitions and denied 66% of them.

denied or never received an answer.[125] A primary cause of this failure was again the central involvement of the Department.[126]

Obama failed to heed the advice of his first White House Counsel, Gregory Craig, who devised a plan to move clemency out of the Department and into the hands of an independent commission.[127] Consistent with his general deference to the Department, Obama chose to leave clemency primarily in its hands, despite the obvious conflict of interest inherent in allowing prosecutors to control the review of their own work.[128] Predictably, the Pardon Power languished, with only one sentence commuted in Obama's first term.[129] Indeed, President Obama "granted fewer clemency applications than any full-term President since George Washington" in his first term.[130]

Eventually, people began to notice that President Obama's clemency record did not match his rhetoric on criminal law. Beginning in 2011, ProPublica reporters Dafna Linzer and Cora Currier had embarked on a series of articles outlining some of the failings of the administration in using the Pardon Power.[131] The headline "Obama Has Granted Clemency More

---

[125] Barack Obama, Commentary, *The President's Role in Advancing Criminal Justice Reform*, 130 HARV. L. REV. 811, 836 (2017).

[126] We follow in the footsteps of other experts who have urged moving clemency out of the Department. Charles Shanor & Marc Miller, *Pardon Us: Systemic Presidential Pardons*, 13 FED. SENT REP. 139 (2001); Evan P. Schultz, *Does the Fox Control Pardons in the Henhouse?*, 13 FED. SENT REP. (Vera) 177, 178 (2001), Daniel T. Kobil, *How to Grant Clemency in Unforgiving Times*, 31 CAP. U .L. REV. 219, 231 (2003); Jonathan T. Menitove, *The Problematic Presidential Pardon: A Proposal for Reforming Federal Clemency*, 3 HARV. L. & POL'Y REV. 447, 457-8 (2009); Albert W. Alschuler, *Bill Clinton's Parting Pardon Party*, 100 J. CRIM. L. & CRIMINOLOGY 1131, 1167–68 (2010); Margaret Colgate Love, *Justice Department Administration of the President's Pardon Power: A Case Study in Institutional Conflict of Interest*, 47 UNIV. OF TOL. L. REV. 89, 103 (2015).

[127] Bill Keller, *The Bureaucracy of Mercy*, THE MARSHALL PROJECT (Dec. 14, 2015), https://www.themarshallproject.org/2015/12/13/the-bureaucracy-of-mercy#.OWbVOK106.

[128] Margaret Colgate Love, *Justice Department Administration of the President's Pardon Power: A Case Study in Institutional Conflict of Interest*, 47 UNIV. OF TOL. L. REV. 89, 103 (2015).

[129] *Clemency Statistics*, U.S. DEP'T JUST., https://www.justice.gov/pardon/clemency-statistics (last updated Jan. 19, 2017).

[130] Paul J. Larkin, Jr., *Revitalizing the Clemency Process*, 39 HARV. J. L. PUB. POL'Y 833, 855 (2016).

[131] The complete series is available at the ProPublica web site: *Presidential Pardons*, PROPUBLICA, https://www.propublica.org/series/presidential-pardons. Many of the pieces in the series were featured in *The Washington Post*.

Rarely Than Any Modern President"[132] is typical of their coverage. By late 2013, other writers had begun to follow Propublica's lead. Perhaps stung by headlines like "Judging From His Clemency Record, Obama Likes Turkeys 10 Times as Much as People,"[133] and "Obama Neglects His Power to Pardon,"[134] there was finally some movement from the Administration on clemency in January 2014 – inexcusably, too late to make clemency a real mechanism of reform.

Unfortunately, the first tentative step came from the Department and signaled a fundamental misunderstanding of what had gone wrong with the clemency process. On January 30, Deputy Attorney General James Cole gave a speech at the New York State Bar Association Annual Meeting.[135] There he correctly noted that the federal prison population had grown by nearly 800% in thirty years, before moving onto issues of fairness and then pivoted to clemency.[136] After describing the eight prisoners who had received commutations the previous month from President Obama, Cole made a request of the bar association members, telling them ". . . .This is where you can help. We are looking to the New York State Bar Association and other bar associations to assist potential candidates for executive clemency."[137]

Though the idea was at that point far from fleshed out, Cole's speech made three things clear: That an expansion of clemency was worthwhile, that the problems with clemency could be addressed in part through the representation of inmates by pro bono attorneys, and that the

---

[132] Dafna Linzer, *Obama Has Granted Clemency More Rarely Than Any Modern President*, PROPUBLICA (last updated Mar. 4, 2013), https://www.propublica.org/article/obama-has-granted-clemency-more-rarely-than-any-modern-president.

[133] Jacob Sullum, *Judging From His Clemency Record, Obama Likes Turkeys 10 Times as Much as People*, FORBES (Nov. 27, 2013), http://www.forbes.com/sites/jacobsullum/2013/11/27/judging-from-his-clemency-record-obama-likes-turkeys-10-times-as-much-as-people/#25333c1a1be8 (noting that Obama had pardoned ten turkeys but commuted the sentence of only one drug offender).

[134] Editorial, *Obama Neglects His Power to Pardon*, WASH. POST (Dec. 1, 2013), https://www.washingtonpost.com/opinions/obama-neglects-his-power-to-pardon/2013/12/01/283600c8-579c-11e3-8304-caf30787c0a9_story.html.

[135] Kevin Johnson, *States Asked to Identify Prison Candidates for Clemency,* USA TODAY (Jan. 31, 2014), http://www.usatoday.com/story/news/nation/2014/01/30/state-bar-offenders-clemency/5052847/.

[136] Justice News, U.S. Dep't of Justice, *Remarks as Prepared for Delivery by Deputy Attorney General James Cole at the New York State Bar Association Annual Meeting*, (Jan. 30, 2014), https://www.justice.gov/opa/speech/remarks-prepared-delivery-deputy-attorney-general-james-cole-new-york-state-bar.

[137] *Id.*

clemency process itself would remain embedded in the Department. The first was true, the second was not, and the third was the mistake that would be the ultimate stumbling block for the project.

In April 2014, the rest of the plan became clearer. Disgraced Pardon Attorney Ronald Rogers was finally dispatched, a new pardon attorney came on board, and a broad project to solicit petitions and find representation for prisoners was announced.[138] However, even at this turning point – a point that could only have been reached with the approval of the President – it was settled that the Department was firmly in control. The initiative was not announced by the President himself, or even the Attorney General; that again was left to Cole.[139] The visual image was striking: An initiative to undo harsh sentencing came from literally the very building from which that harsh sentencing had sprung, a stone edifice full of prosecutors who had put some of those same people in prison.[140]

The plan Cole announced focused on two things: encouraging inmates to apply for clemency and establishing a system to find them attorneys in the private sector.[141] At the same time, it concisely described the criteria for the project, which was intended to focus on long-term non-violent prisoners.[142] To match people in prison up with lawyers and vet the

---

[138] Justice News, U.S. Dep't of Justice, *Announcing New Clemency Initiative, Deputy Attorney General James M. Cole Details Broad New Criteria for Applicants* (Apr. 23, 2014), https://www.justice.gov/opa/pr/announcing-new-clemency-initiative-deputy-attorney-general-james-m-cole-details-broad-new, Sari Horwitz, *Justice Department Announces Criteria for Clemency to Nonviolent Prison Inmates*, WASH. POST (Apr. 23, 2014), https://www.washingtonpost.com/world/national-security/justice-department-outlines-criteria-for-clemency-to-nonviolent-prison-inmates/2014/04/23/1c5e9932-cad7-11e3-95f7-7ecdde72d2ea_story.html?utm_term=.d05bfaa5af06.

[139] Cole's in-person announcement was accompanied by a video statement by Attorney General Eric Holder. *Id.*

[140] Photos used with the announcement show Cole in the DOJ briefing room. Dafna Linzer, *Justice Finally Comes to the Pardons Office, and Perhaps to Many Inmates*, MSNBC.COM (Apr. 23, 2014), http://www.msnbc.com/msnbc/justice-finally-comes-the-pardons-office.

[141] *Id.*

[142] Cole's written press release announced that "Under the new initiative, the department will prioritize clemency applications from inmates who meet all of the following factors: They are currently serving a federal sentence in prison and, by operation of law, likely would have received a substantially lower sentence if convicted of the same offense(s) today; They are non-violent, low-level offenders without significant ties to large scale criminal organizations, gangs or cartels; They have served at least 10 years of their prison sentence; They do not have a significant criminal history; They have demonstrated good conduct in prison; and they have no history of violence prior to or during their current term of imprisonment." Justice News, U.S. Dep't of Justice, *Announcing New Clemency Initiative, Deputy Attorney General James M. Cole Details Broad New Criteria for*

petitions, Cole had assembled a group of prominent outside organizations—the American Civil Liberties Union, National Association of Criminal Defense Lawyers, the American Bar Association, Families Against Mandatory Minimums, and the Federal Defenders—which collectively became known as "Clemency Project 2014" or CP14 for short.[143] By making some of the institutional critics of the Department its partners in the initiative, the Administration was able to ensure a relative absence of dissent within Washington criminal reform circles.[144]

The criteria Cole announced[145] defined the project in confounding ways. Though the primary focus was clearly narcotics crimes,[146] no criteria mentioned that, with the result that the BOP solicited petitions from every federal prisoner,[147] including child porn offenders, white collar criminals, and others who would ultimately have little to no chance of getting clemency. At the same time, the criteria tracked exactly some of the more miserly practices of the Department in other policies. For example, just as it

---

Applicants (Apr. 23, 2014), https://www.justice.gov/opa/pr/announcing-new-clemency-initiative-deputy-attorney-general-james-m-cole-details-broad-new.

[143] Lorelei Laird, *Massive Volunteer Effort Will Help with Obama Clemency Proposal*, ABA JOURNAL (May 30, 2014), http://www.abajournal.com/mobile/article/massive_volunteer_effort_will_help_with_obama_clemency_proposal/.

[144] Alone among experts in the field, leaders of the Clemency Project 2014 consortium have heralded that Project as a noble success. Norman L. Reimer, *The Commutation Legacy of President Barack Obama: Reflections on Clemency Project 2014—the Legal Profession's Response to a Call for Help*, THE CHAMPION 16 (Dec. 2016), at https://www.nacdl.org/Champion.aspx?id=44905.

[145] Justice News, U.S. Dep't of Justice, *Announcing New Clemency Initiative, Deputy Attorney General James M. Cole Details Broad New Criteria for Applicants* (Apr. 23, 2014), https://www.justice.gov/opa/pr/announcing-new-clemency-initiative-deputy-attorney-general-james-m-cole-details-broad-new.

[146] In his speech to the New York Bar, James Cole said "We anticipate that the petitioners potentially eligible for consideration would include: non-violent, low-level drug offenders," Justice News, U.S. Dep't of Justice, *Remarks as Prepared for Delivery by Deputy Attorney General James Cole at the New York State Bar Association Annual Meeting*, (Jan. 30, 2014), https://www.justice.gov/opa/speech/remarks-prepared-delivery-deputy-attorney-general-james-cole-new-york-state-bar. Nearly all of the clemency recipients were incarcerated for drug crimes. *Commutations Granted by President Barack Obama (2009–2017)*, U.S. DEP'T JUST., https://www.justice.gov/pardon/obama-commutations (last updated Jan. 19, 2017); *Pardons Granted by President Barack Obama (2009–2017)*, U.S. DEP'T JUST., https://www.justice.gov/pardon/obama-pardons (last updated Jan. 29, 2017).

[147] Justice News, U.S. Dep't of Justice, *Announcing New Clemency Initiative, Deputy Attorney General James M. Cole Details Broad New Criteria for Applicants* (Apr. 23, 2014), https://www.justice.gov/opa/pr/announcing-new-clemency-initiative-deputy-attorney-general-james-m-cole-details-broad-new

had done in its charging policies,[148] the Department broadly concerned itself with not allowing breaks for "gang members," despite the difficulty of understanding and defining that term and the ease with which any group of people, especially younger people and people of color, might find themselves labeled a "gang."[149]

Another criterion, perhaps the most important one, plainly reflected the defensive crouch of the Department as it managed clemency: The requirement that the petitioner "likely would have received a substantially lower sentence if convicted of the same offense(s) today."[150] With this limitation, the Department effectively insulated itself from second-guessing the choices made by line assistants, since the project would now principally be targeted at changes in the law rather than the over-zealousness of prosecutors.

While it created a scramble to determine what the new criteria meant, the clemency initiative did nothing to change the existing structure for evaluating clemency petitions. It was, and remains, a long vertical bureaucracy that winds through four federal buildings[151] and no fewer than seven levels of review. It begins with the petition landing on the desk of a staffer at the Office of the Pardon Attorney, the first of four Department employees who will perform an investigation, evaluate the case, and draft a memorandum which includes a recommended outcome.[152] This is reviewed

---

[148] In his August, 2013 memoranda on charging, Attorney General Holder stipulated that mandatory minimums would continue to be enforced where a defendant has "significant ties" to a gang. Memorandum from Eric Holder, Jr., Att'y Gen., U.S. Dep't of Justice, to the United States Attorneys & Assistant Attorney General for the Criminal Division (Aug. 12, 2013), https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/ag-memo-department-policypon-charging-mandatory-minimum-sentences-recidivist-enhancements-in-certain-drugcases.pdf.

[149] Even experts acknowledge that "we still know little about the psychology of gang membership--street or prison" and "little about the links between street and prison gangs." Jane L. Wood, Emma Alleyne, Katarina Mozova & Mark James, *Predicting Involvement in Prison Gang Activity: Street Gang Membership, Social and Psychological Factors*, 38 LAW & HUM. BEHAV. 203, 205 (2014).

[150] Justice News, U.S. Dep't of Justice, *Announcing New Clemency Initiative, Deputy Attorney General James M. Cole Details Broad New Criteria for Applicants* (Apr. 23, 2014), https://www.justice.gov/opa/pr/announcing-new-clemency-initiative-deputy-attorney-general-james-m-cole-details-broad-new.

[151] The Pardon Attorney is housed at a satellite DOJ building in Washington, the Deputy Attorney General works at the "Main Justice" building at 950 Pennsylvania Ave., the White House Counsel staff is located at the Eisenhower Executive Office Building, and the President, of course, is at the White House.

[152] Samuel T. Morison, *The Politics of Grace: On the Moral Justification of Executive Clemency*, 9 BUFF. CRIM. L. REV. 1, 36–38 (2005).

by the Pardon Attorney, who is responsible for the recommendation that will then go up the chain.[153] The file then goes over to Main Justice, where staff assigned to the Deputy Attorney General review the case.[154] They make their recommendation to the Deputy Attorney General,[155] who again goes over the file.[156] At that point, the case is shuttled across town to the staff of the White House Counsel,[157] who review clemency cases amongst many other tasks.[158] Next up is the White House Counsel,[159] who gives the case its penultimate review before (finally) sending it to the President. The process often takes years.[160]

Clemency Project 2014 did nothing to change the stunningly inefficient Department bureaucracy described above. Instead, it just added more layers. On top of the unwieldy process described above, CP14 created its own, with redundant reviews and part-time experts. More than 33,000 prisoners were sent to CP14 for an initial screen for basic disqualifiers. From there, four more points of review were established (for a total of five, including the initial screen): a pro bono attorney assessed the case, then a "screening committee" reviewed a summary prepared by the attorney, followed by a similar, redundant review by a "steering committee." At this point, a petition would be drafted and reviewed by CP14,[161] before being

---

[153] *Id.* at 39. Those at the levels above the Pardon Attorney—the Deputy Attorney General and White House Counsel and their staffs, as well as the president—normally only see this recommendation, not the complete file. Id. at 40.

[154] Mark Osler, *Clementia, Obama, and Deborah Leff*, 28 FED. SENT. REP'R 309, n.4 (2016).

[155] 28 C.F.R. § 0.36.

[156] The Deputy Attorney General is the direct supervisor of the U.S. Attorneys and their Assistants. *Office of the Deputy Attorney General, About the Office,* U.S. DEP'T JUST., https://www.justice.gov/dag/about-office. The Department of Justice's organizational chart illustrates the remarkable breadth of the job. D*Organization, Mission and Functions Manual Organizational Chart*, U.S. DEP'T JUST., https://www.justice.gov/sites/default/files/doj/pages/attachments/2015/04/27/doj_june_2015_2.pdf (last updated June 5, 2015).

[157] Sari Horwitz, *Struggling to Fix a 'Broken' System*, WASH. POST (Dec. 5, 2015), http://www.washingtonpost.com/sf/national/2015/12/05/holderobama/.

[158] *Presidential Department Descriptions*, WHITE HOUSE, https://obamawhitehouse.archives.gov/participate/internships/departments.

[159] Sarah Wheaton, *White House Promises to Speed Up Clemency Program*, POLITICO (Apr. 1, 2016), http://www.politico.com/blogs/under-the-radar/2016/04/white-house-clemency-speeding-up-221467.

[160] Kimberly Lawson, *How Significant Are Obama's 1,385 Commutations?*, BROADLY (Jan. 18, 2017), https://broadly.vice.com/en_us/article/how-significant-are-obamas-1385-commutations.

[161] Bill Keller, *The Bureaucracy of Mercy*, MARSHALL PROJECT (Dec. 14, 2015), https://www.themarshallproject.org/2015/12/13/the-bureaucracy-of-mercy#.MAfzbjB1t;

submitted to the Pardon Attorney to then run the entire gauntlet within the administration. In all, a clemency case traversing CP14 and then the Administration would face no less than a dozen sequential chokepoints with a varied array of personnel and filters, with no safeguards for consistency.

This model was not the only option. Indeed, in choosing this model, President Obama rejected the clearest precedent for a successful large-scale clemency project: Gerald Ford's 1974-1975 bi-partisan Presidential Clemency Board, which resulted in more than 13,000 pardons for draft evaders and deserters from the armed services during the Vietnam era.[162] President Ford managed to give each case individual consideration while maintaining a scale Obama could not, all while avoiding controversy. As writer Abby Rapoport noted, "Ford's boards made it easier to give draft-dodgers more just sentences; they considered each application individually, but the sheer number of cases meant that the media and public didn't—*couldn't*—scrutinize each pardon individually."[163] Critically, Ford did this by circumventing the normal process by taking it out of the Department.[164]

If the Clemency Project was unsuccessful in altering the Department-centered process that had served prior presidents poorly,[165] it was a resounding success at something else: creating new hope among inmates of federal prisons. Attorney General Holder publicly predicted that 10,000 inmates might be freed[166] and the Bureau of Prisons sent a notice to

---

Mark Osler, *Clementia, Obama, and Deborah Leff*, 28 FED. SENT. REP. 309, 309–10 (2016).

[162] Casey Tolan, *The Bold Step President Obama Could Take to Let Thousands of Federal Inmates Go Free*, FUSION (May 4, 2016), http://fusion.net/story/298158/obama-clemency-board-gerald-ford/.

[163] Abby Rapoport, *Why Obama Should Take a Cue From Gerald Ford on Crack Pardons*, AM. PROSPECT (Feb. 6, 2014), http://prospect.org/article/why-obama-should-take-cue-gerald-ford-crack-pardons.

[164] The Ford model was not a mystery to the Obama administration; advocates presented the Ford Commission's Report to several officials in the White House and the Department of Justice.

[165] Margaret Colgate Love, *The Twilight of the Pardon Power*, 100 J. CRIM. L. & CRIMINOLOGY 1169, 1195–1203 (2010). Within the Bush Administration, two White House Counsels (Harriett Meiers and Fred Fielding) had complained that good cases were not reaching their desk. Dafna Linzer and Jennifer LaFleur, *Propublica Review of Pardons in Past Decade Shows Process Heavily Favored Whites*, WASH. POST (Dec. 3, 2011), available at https://www.washingtonpost.com/investigations/propublica-review-of-pardons-in-past-decade-shows-process-heavily-favored-whites/2011/11/23/gIQAElnVQO_story.html.

[166] Dara Lind, *President Obama Was Supposed to Shorten 10,000 Prison Sentences. What Happened?*, VOX.COM (Mar. 29, 2016), http://www.vox.com/2016/3/29/11325502/obama-pardon-clemency-leff.

every federal prisoner about the project along with the criteria for eligibility.[167]

Over the next two years, it became clear that those hopes would not be realized, and that neither CP14 nor the Department were up to the task. The Marshall Project reported the grim statistics about 20 months after the announcement of CP14: More than 33,000 inmate applications had resulted in just 224 petitions submitted to the Pardon Attorney and only four cases had been granted commutations after going through the CP14 gauntlet.[168] Clearly, the tactic of adding bureaucracy and keeping the Department at the center of the action was not working.

Outside observers were not alone in reporting these struggles. Deborah Leff who became the Pardon Attorney in April of 2014,[169] resigned less than two years after being appointed.[170] A few months later, her resignation letter to Deputy Attorney General Sally Yates became public.[171] One sentence in that letter laid bare the problem with clemency's circuitous route through the Department of Justice: "In addition, as you know, I have been deeply troubled by the decision to deny the Pardon Attorney all access to the Office of the White House Counsel, even to share the reasons for our determinations in the increasing number of cases where you have reversed our recommendations."[172] The sequential chain of decision had become so long and strained that one end could no longer communicate with the other, and the President never found out when the

---

[167] The text of that letter is available at *Notice to Inmates: Initiative on Executive Clemency*, FED. BUREAU OF PRISONS, U.S. DEP'T JUST., https://www.bop.gov/resources/news/pdfs/Notice_to_Inmates_Initiative_on_Executive_Clemency.pdf.

[168] Bill Keller, *The Bureaucracy of Mercy*, THE MARSHALL PROJECT (Dec. 14, 2015), https://www.themarshallproject.org/2015/12/13/the-bureaucracy-of-mercy#.OWbVOK106.

[169] Dafna Linzer, *Justice Finally Comes to the Pardons Office, and Perhaps to Many Inmates*, MSNBC.COM (Apr. 23, 2014), http://www.msnbc.com/msnbc/justice-finally-comes-the-pardons-office.

[170] Leff was not a career prosecutor, unlike her predecessor and successor. Editorial Board, *Reviving Clemency, Serving Justice*, N.Y. TIMES (Apr. 23, 2014), https://www.nytimes.com/2014/04/24/opinion/reviving-clemency-serving-justice.html

[171] Gregory Korte, *Former Administration Pardon Attorney Suggests Broken System in Resignation Letter*, USA TODAY (Mar. 28, 2016), http://www.usatoday.com/story/news/politics/2016/03/28/former-administration-pardon-attorney-suggests-broken-system-resignation-letter-obama/82168254/.

[172] The full text of the letter is available online at Letter from Deborah Leff, Pardon Attorney, U.S. Dep't of Justice, to The Hon. Sally Quilian Yates, Deputy Att'y Gen., U.S. Dep't of Justice (Jan. 2016), http://fsr.ucpress.edu/content/ucpfsr/28/5/312.full.pdf.

Pardon Attorney recommended a grant but was overruled by the Deputy AG.[173]

Part of the problem was a lack of resources. In announcing the initiative, James Cole promised that Department lawyers would be detailed to the Office of the Pardon Attorney to help deal with the predictable influx of cases.[174] As Leff's resignation letter made clear, that help never came, despite a dramatic increase in the office's caseload.[175]

As President Obama's second term came to an end and it was clear that his clemency project was unlikely to reach all the eligible candidates under his initiative, a group of experts and advocates wrote an open letter to the President, urging him to "determine that nonviolent offenders in certain extremely low-risk categories either deserve expedited review or should be granted clemency absent an individualized review."[176] The letter urged particular attention to those who were sentenced under the old 100-to-1 crack sentencing structure.[177] Despite the fact that, by the last few months of the Obama presidency it was clear that statutory reform was not going to happen and that no other avenues existed for thousands of easily-identified inmates who would be free if sentenced under the current crack law, Attorney General Loretta Lynch told reporters that that a categorical

---

[173] When Leff's letter became public, the Department changed that policy. Sari Horwitz, *Lack of Resources, Bureaucratic Tangles Have Bogged Down Obama's Clemency Efforts,* WASH. POST (May 6, 2016), https://www.washingtonpost.com/politics/courts_law/lack-of-resources-bureaucratic-tangles-have-bogged-down-obamas-clemency-efforts/2016/05/06/9271a73a-1202-11e6-93ae-50921721165d_story.html?postshare=751462570330418&tid=ss_tw&utm_term=.fe3dd830bcaf (noting that the Department decided to allow Leff's replacement to have contact with the White House),

[174] UJustice News, U.S. Dep't of Justice, *Announcing New Clemency Initiative, Deputy Attorney General James M. Cole Details Broad New Criteria for Applicants* (Apr. 23, 2014), https://www.justice.gov/opa/pr/announcing-new-clemency-initiative-deputy-attorney-general-james-m-cole-details-broad-new.

[175] Resignation Letter of Deborah Leff, *supra* note xx, http://fsr.ucpress.edu/content/ucpfsr/28/5/312.full.pdf

[176] The text of that letter is available at Letter to The Hon. Barack Obama, http://www.law.nyu.edu/sites/default/files/upload_documents/Expanded%20Clemency%20Letter%20to%20POTUS.pdf.

[177] *Id.* President Obama could have given all the individuals serving sentences under the old crack laws the opportuntity to petition a judge for resentencing, thus allowing them to make an argument for being sentenced under the Fair Sentencing Act of 2010 terms while also allowing judges to check to be sure there was not a public safety risk. Paul Larkin lays out how this process could have been constructed. Larkin, supra note XX, at 11.

approach "would be hard to craft."[178] That statement is hard to understand, because it was always an option for the Attorney General to ask the Sentencing Commission to provide it with lists of people who met the different criteria deemed important to the Department.[179] And of course the Department's rejection of categories of people who merited sentencing relief stands in sharp contrast to its endorsement of using categorical bars to limit who could get retroactive adjustments under the Sentencing Guidelines. In the latter context, the Department had no trouble crafting categories in barring people from right-sized sentences.

Certainly, many in the Obama Administration worked hard on clemency,[180] but in part that was because of the inefficiency of the process – you have to pedal hard to get a rusty bicycle to move. The Administration got off to a late start even thinking about clemency and then struggled to keep up with the number of petitions filed. A full 89% of the clemency grants took place in President Obama's last 10 months in office, a stark contrast with most previous presidents who granted clemency continuously from the beginning of their terms.[181] And 31% came in the final month. Deputy Attorney General Sally Yates told the Washington Post that she reviewed "hundreds of petitions" over the 2016 holidays while working "24-7 over the Christmas break."[182] We applaud Yates' commitment, but a process where a key official is reviewing hundreds of petitions with lives at stake over a holiday is simply not a process that is well designed. It also might explain the large number of people who never got an answer from the

---

[178] Laura Jarrett, *AG Loretta Lynch Says Don't Expect Blanket Pardons From Obama*, CNN.COM (Dec. 15, 2016), http://www.cnn.com/2016/12/15/politics/lynch-no-blanket-pardons/.

[179] 28 U.S.C. 994(w)(4).

[180] White House Counsel Neil Eggleston alluded to this when he hyperbolically claimed that he told his staff "No more eating, sleeping or drinking until we get all these commutations done." Sarah Wheaton, *White House Promises to Speed Up Clemency Program*, POLITICO (April 1, 2016), http://www.politico.com/blogs/under-the-radar/2016/04/white-house-clemency-speeding-up-221467.

[181] Jacob Sullum, *Obama Issued More Commutations Than Any Previous President but Neglected Pardons*, REASON (Jan. 20, 2017), http://reason.com/blog/2017/01/20/obama-issued-more-commutations-than-any.

[182] *Current Fiscal Year Clemency Statistics*, U.S. DEP'T JUST., https://www.justice.gov/pardon/current-fiscal-year-clemency-statistics (last updated Jan. 19, 2017) (indicating that President Obama granted 539 commutations between December 19, 2016, and January 19, 2017); Sari Horwitz, *Obama to Commute Hundreds of Federal Drug Sentences in Final Grants of Clemency*, WASH. POST (Jan. 16, 2017), https://www.washingtonpost.com/world/national-security/obama-to-commute-hundreds-of-federal-drug-sentences-in-final-grants-of-clemency/2017/01/16/c99b4ba6-da5e-11e6-b8b2-cb5164beba6b_story.html?hpid=hp_hp-banner-low_criminal-justice-240pm%3Ahomepage%2Fstory&utm_term=.75d5a3672387.

Obama Administration on their clemency application, even though they filed their petitions by the Administration's stated deadline.[183]

Obama's process failed to reach all the people who met the Administration's stated criteria, much less all the people who deserved clemency. The clearest measure of success is not the total number of clemencies granted (as the Administration touted throughout his presidency), but the rate of grants against the total number of meritorious petitions submitted. The grants offer only the numerator; to understand what happened to the hope that Obama and Holder generated we must consider the denominator as well, especially given the super-sized prison population. As Deputy AG Cole acknowledged in his speech to the New York Bar, federal prison populations had gone up nearly 800% in the thirty years leading up to that moment.[184] Those serving crack sentences under the 100-to-1 laws alone amounted to more than 5,000 people.[185] If one compares President Obama's grant rate with other presidents and not simply his total number of grants, the modesty of his clemency efforts becomes clear. His final grant rate was 5%.[186] By contrast, President Kennedy granted 36% of the pardon and commutation petitions filed, Johnson 31%, Nixon 36%, Ford 27%,[187] Carter 21%, Reagan 12%, George H.W. Bush 5%, Clinton 6%, and

---

[183] *See Current Fiscal Year Clemency Statistics*, U.S. DEP'T JUST., https://www.justice.gov/pardon/current-fiscal-year-clemency-statistics (last updated Jan. 19, 2017) (indicating that at the end of the Obama Administration, 4,250 clemency petitions were closed without presidential action, while 8,880 were pending—neither acted upon nor administratively closed); Sean Nuttall, *Inside the Clemency Lottery*, THE MARSHALL PROJECT (Jan. 26, 2017), https://www.themarshallproject.org/2017/01/26/inside-the-clemency-lottery?utm_medium=email&utm_campaign=newsletter&utm_source=opening-statement&utm_term=newsletter-20170127-681#.G7SOYsLCd (noting that approximately 10% of the 200 petitions filed by the Clemency Resource Center remained pending without an answer despite being filed by the stated Department deadlines).

[184] Justice News, U.S. Dep't of Justice, *Remarks as Prepared for Delivery by Deputy Attorney General James Cole at the New York State Bar Association Annual Meeting*, (Jan. 30, 2014), https://www.justice.gov/opa/speech/remarks-prepared-delivery-deputy-attorney-general-james-cole-new-york-state-bar.

[185] *See Attorney General Confirmation Hearing Before the S. Comm. on the Judiciary, Day 1, Part 1*, CSPAN (Jan. 10, 2017), http://cs.pn/2iaTFPr (link at the 2:09:14 mark, Senator Durbin refers to the "almost 5,000 still serving under this unfair 100-1 standard").

[186] *Current Fiscal Year Clemency Statistics*, U.S. DEP'T JUST., https://www.justice.gov/pardon/current-fiscal-year-clemency-statistics (last updated Jan. 19, 2017) (indicating that at the end of the Obama Administration, he had granted 212 pardons and 1,715 commutations out of 36,544 total petitions received).

[187] This figure does not include the over 13,000 pardons Ford issued outside of the regular clemency process to draft evaders and Army deserters. *Supra*. Presumably, the Pardon Attorney's statistics only include cases that went through that office, and the Ford grants came through an alternative process.

George W. Bush 2%.[188] Obama's overall clemency grant rate was 7.6%, barely better than Clinton and far behind Reagan, Carter, Ford, Nixon and Johnson.[189] The numbers are even worse if one looks solely at pardons, where President Obama's grant rate of 6% places him among the most frugal pardon granters in history.[190] Moreover, at the time of Donald Trump's inauguration, a pile of 11,313 clemency petitions were still pending; the Department and the White House never got to them.[191] Obama cranked the DOJ machine as hard as he could, but it was not capable of delivering on the promise of hope that he had made.

Beyond the failure reflected in the grant rates, there is deep tragedy at a personal level. Some of those denied clemency were unworthy of it, of course. But others were prime candidates under the stated criteria and still did not receive relief. Sean Nuttall[192] writes about his client, Tom, who at 21-years-old became addicted to heroin. Tom's girlfriend was also a drug user, and when she asked for heroin from Tom, he gave it to her, not realizing she had also taken a large quantiy of cocaine. Although the girlfriend took only about 1/20th the quantity needed for a lethal overdose of heroin, she died of an overdose because of the cocaine in her system. Tom was charged with her death and with drug distribution. The jury acquitted him of causing her death but found him guilty of drug distribution. The judge then sentenced Tom to 80 years in prison because he concluded – at odds with the jury – that Tom had contributed to her death. The judge wrote in support of Tom's clemency petition before President Obama, explaining that the decision has haunted him ever since he made it. Yet Nuttall writes that he had to give Tom "the same answer I had to give so many of our clients; That as deeply unsatisfactory as it must sound, the Obama administration's clemency initiative was often a crapshoot."[193] Indeed many of those denied seem indistinguishable from others who received their freedom. USA Today reporter Gregory Korte highlighted the puzzling case of Harold and DeWayne Damper, two brothers from Mississippi who "were

---

[188] Rachel E. Barkow, *Clemency and Presidential Administration of Criminal Law*, 90 N.Y.U. L. REV. 802, 816-817 (2015).

[189] *Clemency Statistics*, supra note XX.

[190] *Clemency Statistics*, supra note XX (indicating that at the end of the Obama Administration, he had granted 212 pardons out of 3,395 petitions received).

[191] Obama inherited 1,943 commutation and pardon petitions, received another 36,544, and resolved only 27,174. *Clemency Statistics*, supra note XX

[192] Nuttall worked for the Clemency Resource Center, the organization we created to help get more clemency applicants legal help with their petitions.

[193] Nuttall, supra note XX.

indicted together, tried together, given the same sentence and, until recently, served their sentences at the same minimum-security prison."[194] DeWayne had the more serious criminal record (two prior felony convictions as opposed to Harold's one), yet it was DeWayne who got clemency and Harold who was denied.[195]

Deference to prosecutors had an additional dimension within the clemency initiative, as well. Not only do prosecutors in Washington control the review process; prosecutors in the office of conviction are consulted regarding each petition viewed as promising.[196] Deference to those prosecutors—the local ones who put the defendant in prison for a long term in the first place—are written into the Pardon Attorney's internal standards in language taken directly from the United States Attorney's Manual, dictating that "the views of the United States Attorney are given considerable weight in determining what recommendations the Department should make to the President."[197] Allowing local offices to have "considerable weight" in the re-consideration of sentences they sought is inevitably going to put a thumb on the scale for denying requests. The mindset in favor of the status quo can be seen in a letter to the Pardon Attorney from a United States Attorney, recommending denial of clemency to a petitioner with a particularly sterling prison record:

> [The] clemency application details what appears to be a remarkable turn-around during his time in custody. I cannot offer any insight into the representations about his progress. Nor can I be of much assistance in evaluating whether the changes, if true, warrant clemency. "Jailhouse conversions" are not uncommon, and I have no tools or experience with which to evaluate which ones are genuine or may endure the beyond the confines of imprisonment.[198]

---

[194] Gregory Korte, *Two Brothers, Two Petitions for Clemency, Two Different Outcomes*, USA TODAY (Jan. 9, 2017), http://www.usatoday.com/story/news/politics/2017/01/09/two-brothers-two-petitions-clemency-two-different-outcomes/96297020/.
[195] *Id.*
[196] Samuel T. Morison, *The Politics of Grace: On the Moral Justification of Executive Clemency*, 9 BUFF. CRIM. L. REV. 1, 36–38 (2005).
[197] *Standards for Consideration of Clemency Petitioners*, U.S DEP'T JUST., §1-2111, available at https://www.justice.gov/pardon/about-office-0.
[198] Letter on file with the authors.

The petition was denied. In that one paragraph and its remarkable skew against freedom rests the problem with deference to prosecutors, particularly within the context of the Constitution's specific grant of the clemency power to the president.

In failing to listen to his first White Counsel or the advice of history to take clemency out of the hands of the Department, the President neglected to reach thousands of worthwhile petitioners for clemency. That failure cannot be blamed on Congress. President Obama had the clear authority to do more. But his decision to delegate this task to the Department sealed its fate, whether intended or not. While his clemency efforts resulted in more than a thousand grants, it left many thousands more behind, including those still serving 100-to-1 crack sentences. Those denied relief have suffered two grave injustices. First they received a disproportionately long drug sentence, and then they had their hopes legitimately raised to believe they would get relief if they met the Department's criteria, only to find that their case was denied for some unexplained reason. In both cases, the decisions rested with prosecutors, but the second one did not have to rest in their hands – and it should not have been placed within an institution that is structurally biased against second-guessing its own decisions. For the thousands who remain in prison, this choice reflected a brutal timidity.

3. Compassionate Release

Clemency is not the only avenue for releasing people earlier than the date their federal prison sentence is set to expire. When it abolished parole in the federal system, Congress passed a law that gives the Director of the Bureau of Prisons, which sits within the Department, the authority to seek reductions in sentence for "extraordinary and compelling reasons,"[199] or what has more commonly been referred to as compassionate release. Congress then vested authority in the Sentencing Commission to "describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific

[199] The law specifies two grounds for filing a motion: either "(i) extraordinary and compelling reasons warrant such a reduction" or (ii) the defendant is serving a life sentence because he or she has a previous violent felony and is now "at least 70 years of age, has served at least 30 years in prison. . . and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community."18 U.S.C. § 3582(c)(1)(A). In both cases, the statute requires that the reduction be "consistent with applicable policy statements issued by the Sentencing Commission." Id.

examples."[200] The Commission's initial list included defendants with terminal illnesses and significant health problems.[201] These factors are unfortunately common occurrences for an increasingly aging federal prison population,[202] yet the Bureau of Prisons during President Obama's time in office rarely granted compassionate release. With a prison population averaging around 200,000 people, the BOP granted compassionate release to an average of only 24 people each year during his first term in office.[203] Even after critical reports of the BOP's practices from the Department's independent Inspector General prompted the Department to change some of its compassionate release policies, the number of grants in the President's second term remained relatively slight compared to the overall population of elderly and sick individuals.[204]

This makes no sense if one were interested, as President Obama said he was, in "evidence-based solutions" to address "massive levels of

---

[200] 28 U.S.C. §994(t).

[201] Until its recent amendments in 2016, the Commission's list included defendants suffering from a "terminal illness," those "suffering from a permanent physical or medical condition, or is experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and for which conventional treatment promises no substantial improvement," and situations involving "[t]he death or incapacitation of the defendant's only family member capable of caring for the defendant's minor child or minor children." U.S. SENTENCING GUIDELINES MANUAL § 1B1.13 (U.S. SENTENCING COMM'N 2015). The Commission also provided that the Bureau of Prisons could release individuals for other extraordinary and compelling reasons, making clear its list was not exhaustive. *Id.*

[202] People aged 50 and over are the fastest growing segment of the federal prison population, increasing by 25% from 2009 to 2014. *Public Hearing on Compassionate Release and Conditions of Supervision Before the U.S. Sentencing Comm'n* 65 (2016), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20160217/Transcript.pdf [hereinafter U.S.S.C. Hearing] (statement of Michael E. Horowitz, Inspector Gen., U.S. Dep't of Justice). Between 2009 to 2013, the number of incarcerated individuals age 65-69 increased by 41% and the number of individuals age 80 and older increased by 76%. U.S. DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GEN., THE IMPACT OF AN AGING INMATE POPULATION ON THE FEDERAL BUREAU OF PRISONS 2 (2015, revised 2016), https://oig.justice.gov/reports/2015/e1505.pdf [hereinafter OIG 2015 Report].

[203] OIG 2013 Report, supra note XX, at 1.

[204] Between 2013 and 2015, 261 people received compassionate release. Letter from Michelle Morales, Acting Director, Office of Policy and Legislation, U.S. Dep't of Justice, to The Honorable Patti B. Saris, Chair, U.S. Sentencing Comm'n 17 (Feb. 12, 2016), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20160217/DOJ.pdf. The Bureau received more than 3,100 requests for compassionate release during this time. *Id.* at 18.

incarceration that have not made us safer."[205] Elderly individuals and those with serious illnesses and health problems pose almost no public safety risk if they are released.[206] Moreover, releasing these individuals saves money that can be used for other public safety initiatives. Elderly individuals and those with serious health ailments are the most expensive group of people to incarcerate because of their increased medical needs.[207] Costs for medical care have exploded at the federal level, with medical care expenses reaching 1.1 billion dollars in fiscal year 2014, a 30 percent increase from the costs five years earlier.[208] In fiscal year 2013, a full 19 percent of the BOP budget was spent on incarcerating aging individuals,[209] and medical expenses ate up 17 percent of the BOP's budget.[210]

These empirical facts are why the Inspector General concluded that "an efficiently-run compassionate release program combined with modifications to the program's eligibility criteria could expand the pool of eligible candidates, reduce overcrowding in the federal prison system, and result in cost savings for the BOP" without compromising public safety.[211] The IG issued two comprehensive reports on the Department's use of compassionate release and found it wanting in both reviews. The first report, released in 2013, found that BOP's management and implementation of compassionate release "likely result[ed] in eligible inmates not being

---

[205] *Id.* at 819, 822.

[206] People released pursuant to the BOP compassionate release program during the five-year period from 2006 to 2011 had a recidivism rate of 3.5%. OIG 2013 Report, *supra* note XX, 49-50. Indeed, if one looks at *all* prisoners released over the age of 60, without even requiring an assessment of their physical health, the recidivism rate is only 16%. U.S. SENTENCING COMM'N, RECIDIVISM AMONG FEDERAL OFFENDERS: A COMPREHENSIVE OVERVIEW 23, fig. 11 (2016), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf.

[207] TINA CHIU, VERA INST. OF JUSTICE, IT'S ABOUT TIME: AGING PRISONERS, INCREASING COSTS, AND GERIATRIC RELEASE 5 (2010), http://archive.vera.org/sites/default/files/resources/downloads/Its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf.

[208] *Public Hearing on Compassionate Release and Conditions of Supervision Before the U.S. Sentencing Comm'n* 65 (2016), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20160217/Transcript.pdf [hereinafter *USSC Hearing*] (statement of Michael E. Horowitz, Inspector Gen., U.S. Dep't of Justice).

[209] OIG REPORT 2015, *supra* note XX, at i.

[210] *Id.* at 10.

[211] OIG Report 2013, *supra* note XX, at 3.

considered for release and in terminally ill inmates dying before their requests were decided."[212]

In the wake of the IG's 2013 Report and as part of the Smart on Crime Initiative, the Department formed a working group to address ways compassionate release could be improved.[213] The group ultimately concluded that "aging inmates do not pose a significant safety risk"[214] and it could release individuals over the age of 65 "suffering from chronic or serious medical conditions related to the aging process" who are also "experiencing deteriorating mental or physical health that substantially diminishes their ability to function in a correctional facility," and "for whom conventional treatment promises no substantial improvement to their mental or physical condition" if they had served half their initial sentence.[215]

The IG studied these new criteria for compassionate release in 2015 in its second major report on the subject, but still found the Department falling short. The IG concluded that the Department could lower the eligibility age from 65 to 50 for those suffering from chronic or severe health problems to save more money and without compromising public safety.[216] The IG also found fault with another category of elderly people recognized for eligibility for compassionate release by the Department: people 65 and older who "have served the greater of 10 years or 75 percent of their sentences." The Bureau interpreted this latter provision to mean that individuals had to serve both a minimum of 75% of their sentence and

---

[212] U.S. DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GEN., I-2013-006, THE FEDERAL BUREAU OF PRISONS' COMPASSIONATE RELEASE PROGRAM i (2013), https://oig.justice.gov/reports/2013/e1306.pdf [hereinafter OIG REPORT 2013].

[213] OIG 2015 Report, *supra* note XX, at 42. The BOP's complete list of criteria are laid out in Program Statement 5050.49. Its factors largely mirror the original criteria set out in § 1B1.13 of the Guidelines, though in addition to recognizing the death of a caregiver of a minor child to be an extraordinary circumstance, the BOP guidelines also "include the incapacitation of an inmate's spouse or registered partner when the inmate would be the only available caregiver for the spouse or registered partner." FED. BUREAU OF PRISONS, U.S. DEP'T OF JUSTICE, COMPASSIOATE RELEASE/REDUCTION IN SENTENCE: PROCEDURES FOR IMPLEMENTATION OF 18 U.S.C. §§ 3582(C)(1)(A) AND 4205(G) (2015), https://www.bop.gov/policy/progstat/5050_049_CN-1.pdf (implementing Program Statement 5050.49).

[214] OIG 2015 Report, *supra* note XX, at 47.

[215] *Id.* at 43.

[216] *Id.* at 48. The IG noted that its recommendation was consistent with the National Institute of Corrections (NIC), which also recommends that inmates be considered "aging" beginning at age 50. Horowitz Testimony, *supra* note XX, at 5, http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20160217/IG.pdf.

at least 10 years, thus rendering anyone with a sentence of less than 10 years ineligible for consideration.[217] The IG argued that this interpretation seemed contrary to the Department's concern with both overcrowding and public safety because it makes ineligible almost half the elderly population and cuts off those "likely to be the best candidates for early release" because "ineligible inmates who received a shorter sentence [of less than 10 years] are more likely to have committed a less serious offense, and present less danger to the public."[218] The IG further noted the limited effect the Department's 2013 changes were having in grant rates. Of the 203 elderly inmates with medical conditions who applied – 33 of whom had their requests approved by the institution that housed them – none were ultimately approved for compassionate release by the BOP Director.[219] And only two of the 93 individuals who applied as elderly inmates without medical conditions received compassionate release.

It is telling to compare the IG's assessment of compassionate release with the way the Department sees it. Whereas the IG emphasized, based on empirical research, that a focus on elderly and sick prisoners who no longer pose a threat to society could ease prison overcrowding and save some of the BOP's taxed resources, the Department refused to accept the premise that the release of elderly and seriously ill people should be seen as part of the effort "to reduce prison overcrowding or the prison population generally."[220] In the Department's view "[t]hese objectives are addressed by the Department's support for lowered guideline penalties for drug trafficking offenses, the Department's Smart on Crime charging policy, by the Clemency Initiative, and by the Department's support for legislation currently pending before the United States Congress."[221] It is hard to understand why those other initiatives – which we have already explained were pursued with less than a full effort by the Department – would somehow obviate the need to have an additional program that deals with a growing segment of the prison population that poses the unique combination of high costs and a low risk to public safety. Moreover, none of the other initiatives highlighted by the Department address this population, so it is odd to see them as somehow replacing a more robust use

[217] OIG 2015 Report, *supra* note XX, at 46.
[218] *Id.* at 49.
[219] *Id.* at 45 tbl. 9.
[220] Letter from Michelle Morales, Acting Director, Office of Policy and Legislation, U.S. Dep't of Justice, to The Honorable Patti B. Saris, Chair, United States Sentencing Comm'n 15 (Feb.12, 2016), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20160217/DOJ.pdf.
[221] *Id.*

of a mechanism that Congress specifically put in place to address changed circumstances of particular individuals.

The Department's narrow view is all the more difficult to understand in light of the fact that legislative history highlighted terminal illness as one of the examples of a changed circumstance that would be extraordinary and compelling,[222] and that the text of the statute itself provides as one eligible category elderly inmates serving life sentences because of a violent criminal record who no longer pose a threat – thus indicating that Congress expected age to be a key factor and provided for it as a grounds for early release even in cases where defendants had violence in their past.[223] If the statute and its history are not clear on this issue, they are at a minimum open to an interpretation that sees this provision more broadly than the Department does. And with a prison population busting at the seams and a budget straining under high medical costs, one would think that broader interpretation would make ample sense to a Department working for a President committed to "highlight[ing] compelling economic and policy arguments for justice reform as well as the human toll of a failing system."[224] Keeping people with failing health makes no sense as a matter of economics or public safety, and the human toll of not releasing them is considerable.

The Department did not just disagree with the IG's assessment; it also found itself at odds with the Sentencing Commission. Whereas the Department required individuals to show a prognosis of death within 18 months or less to show a terminal illness, the Commission agreed with the medical community's assessment that because such predictions were not made by doctors, using that time line impeded individuals' ability to get compassionate release. Instead, the Commission defined a terminal illness consistent with the medical testimony that it should be "a serious and advanced illness with an end of life trajectory" and that "a specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required."[225] Additionally, while both the Department and the Commission agreed that individuals with serious health problems presented extraordinary and compelling circumstances, there were key differences. First, the Commission would allow anyone suffering from serious health problems to seek compassionate release, whereas the Department made only those over 65 eligible. Second, the Commission did

[222] S. Rep. No. 225, 98th Cong., 1st Sess. 121 (1983).
[223] 18 U.S.C. § 3582(c)(1)(A).
[224] Obama, *supra* note XX, at 821–822.
[225] U.S.S.G. § 1B1.13.

not require individuals to serve a minimum prison term of any length.[226] In contrast, the Department's program statement concluded that people "should serve a minimum of 50 percent of the sentence to justify the resources that the Department spent to prosecute the inmate."[227] Finally, the Commission included those with "serious functional or cognitive impairment" among those who are eligible for medical reasons.

There were also differences in how the two agencies treated the elderly. The Sentencing Commission agreed with the IG that those 65 and older[228] should be eligible for release if they serve either 10 years or 75 percent of their sentence, whichever is less, thus making those with sentences of less than 10 years eligible.[229] Finally, the Commission sought to "encourage[] the Director of the Bureau of Prisons to file such a motion if the defendant meets any of the circumstances" and reminded the Bureau that "[t]he court is in a unique position to determine whether the circumstances warrant a reduction."

Why is the Department so much more reluctant than the IG or the Commission when it comes to reductions in sentence for extraordinary and compelling circumstances, especially when its position is seemingly at odds with President Obama's stated goals? The Department's comments before the Sentencing Commission hold the answer. It told the Commission that it believed Congress intended to create "a system whose fundamental premise is that offenders should serve most of the sentences imposed by the courts."[230] That view explains both the limited clemency initiative and the cramped view of compassionate release – even though both clemency and compassionate release are also part of the "system."

The Department further noted that the Bureau should be "cautious" in granting compassionate release because individuals over 50 commit a

---

[226] *Id.*
[227] *Id.* at 43.
[228] One of the commissioners would have lowered this requirement to age 60 based on the testimony of medical experts and the Commission's recidivism data. U.S. SENTENCING COMM'N, MINUTES 5 (Apr. 15, 2016), http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20160415/meeting_minutes.pdf (Statement of Commissioner Rachel E. Barkow).
[229] The Commission did not allow age alone to make someone eligible; they additionally had to show they were experiencing a serious deterioration in their health because of their age.
[230] U.S. Sentencing Comm'n, Public Hearing on Compassionate Release and Conditions of Supervision, 30 (Feb. 17, 2016) (Statement of Jonathan Wroblewski, Principal Deputy Assistant Att'y Gen., U.S. Dep't of Justice),, http://www.ussc.gov/sites/default/files/Transcript_6.pdf.

range of offenses (listing among the notable offenses drug trafficking and fraud) and adding that 36.3% of them have a criminal history category of IV or higher.[231] It further added that "BOP data also suggests that older inmates convicted of drug offenses cannot always be described as low-level participants."[232] The Department, in other words, does not care much about what extraordinary and compelling circumstances have developed in an individual's life – whether it is a terminal illness or incurable and serious health problem. It cares about the initial offense. If that offense is serious enough – with seriousness assessed by the Department – it does not see a reason to revisit the sentence. This view flies in the face of the empirical evidence amassed by the IG about recidivism rates for the sick and the elderly and the broader goals of conserving limited prison resources. But it is entirely consistent with how the Department approached just about every criminal justice reform issue involving federal offenders. It allowed for a limited category of relief for what it viewed as the lowest level offenders with the most minimal criminal history, but reaffirmed the status quo for everyone else – no matter how disproportionate their sentence or extraordinary their life circumstances today or even how much views on sentencing or drug policies have themselves changed over the years.[233]

4. Forensic Science

Throughout his time in office, President Obama embraced the importance of science,[234] including "a wide range of research and policy initiatives to strengthen the forensic sciences."[235] Yet when Obama reviewed this issue at the end of his time in office,[236] he neglected to

---

[231] Morales Letter, *supra* note xx, at 18.
[232] *Id.*
[233] Compassionate release was not the only area where BOP seemed to ignore empirical evidence. The American Bar Association has complained that the BOP lags behind state systems in developing innovative programs, is haphazard in preparing prisoners for release, and offers unduly limited drug treatment options for prisoners. Letter from Bruce Green, Chair, ABA Criminal Justice Section, to Hon. Eric Holder, Att'y Gen. (May 6, 2011) (on file with the authors). The Obama Administration did not address these issues until November 2016, when it announced a plan to enhance educational opportunities in prisons and to improve the standards for halfway houses under contract to the BOP. Obama, *supra* note XX, at 830-833. Because these initiatives were announced so late – after President Trump's election – the Obama Administration never implemented them, and it remains to be seen whether they will survive.
[234] Gardiner Harris, *Obama to Leave the White House a Nerdier Place than he Found It*, N.Y TIMES (July 31, 2016), https://www.nytimes.com/2016/08/01/us/politics/obama-to-leave-the-white-house-a-nerdier-place-than-he-found-it.html?_r=0.
[235] Obama, *supra* note XX, at 860.
[236] *Id.* at 862.

mention that the Department rejected the findings and recommendations of a report he commissioned from his scientific advisors, and he did not demand that they take a different action based on the report.

The President had asked the President's Council of Advisors on Science and Technology (PCAST) in 2015 "to consider whether there are additional steps that could usefully be taken on the scientific side to strengthen the forensic-science disciplines and ensure the validity of forensic evidence used in the Nation's legal system."[237] This request came on the heels of a 2009 report by the National Academy of Sciences (NAS)[238] that found deficiencies in numerous forensic methods.[239] The NAS report concluded that aside from DNA analysis, "no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source."[240] The NAS then called for the creation of independent federal agency that would oversee scientific research to establish the validity of various forensic methods, national testing standards, and the certification of forensic labs.[241] The NAS pushed for an independent agency because it believed any agency responsible for forensics needed a "culture that is strongly rooted in science" and not "principally beholden to law enforcement."[242] The NAS expressly cautioned that the FBI and National Institute of Justice were ill-suited to lead the way on reform because they were housed within the Department and thus "part of a prosecutorial department of the government," making them susceptible "to subtle contextual biases that should not be allowed to undercut the power of forensic science."[243] In the NAS's view, the Department could not be in control of forensic science because its "principal mission is to enforce the law" and [t]he potential for conflicts of interest between the needs of law enforcement and the broader needs of forensic science are too great."[244]

---

[237] PRESIDENT'S COUNCIL OF ADVISORS ON SCI. & TECH., EXEC. OFFICE OF THE PRESIDENT, FORENSIC SCIENCE IN THE CRIMINAL COURTS: ENSURING SCIENTIFIC VALIDITY OF FEATURE-COMPARISON METHODS 1 (2016), https://www.whitehouse.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf.

[238] NAT'L ACAD. OF SCIENCES, STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD (2009).

[239] *Id.* at 4–7.

[240] *Id*. at 7.

[241] Barkow, *supra* note XX, at 301.

[242] NAS, *supra* note XX, at 14–19.

[243] *Id.* at 16.

[244] *Id.* at 17.

The Department resisted the NAS findings and its calls for reform.[245] Instead of the creation of an independent entity, the Department partnered with a technology division with the Commerce Department to create a National Commission on Forensic Science in 2013. In 2015, the Department took up recommendations by that commission to require its labs to obtain accreditation and mandate that its prosecutors use only accredited labs within the next five years.[246]

The President's request to PCAST came as a follow-up to this effort, and PCAST found that much more still needed to be done. Its analysis was focused on "feature-comparison" methods—that is, methods that attempt to determine whether an evidentiary sample (e.g., from a crime scene) is or is not associated with a potential "source" sample (e.g., from a suspect), based on the presence of similar patterns, impressions, or other features in the sample and the source."[247] This kind of forensic methodology would include commonly used methods analyzing DNA, fingerprints, ballistics, bitemarks, handwriting, shoeprints, tire tracks, and hair samples.[248] PCAST repeated the NAS conclusion that, aside from some DNA testing, "all pattern matching fields of forensics lack any scientific support for their conclusions."[249] PCAST thus urged scientific research to establish the validity of these methods – what it called foundational validity – and once that was established, validity as applied, meaning that an expert testifying about a given method needed to base his or her testimony on empirical research. The PCAST's concern here was with overclaiming, and it emphasized that "*[s]tatements claiming or implying greater certainty than demonstrated by empirical evidence are scientifically invalid*."[250] Radley Balko helpfully compares DNA with these methods to show why the latter are lacking. Someone analyzing a DNA sample can give "precise calculations of the odds of the suspect being the person whose DNA was left at the crime scene.[251] In contrast, with these other feature comparison methods, we don't know the rate at which those characteristics are distributed across the population," so when an expert testifies, it is hard to

---

[245] Barkow, *supra* note XX, at 303.
[246] Obama, *supra* note XX, at 861. As President Obama notes, the FBI also undertook a review of more than 21,000 cases involving the use of microscopic hair analysis. *Id*. at 861–862.
[247] PCAST, *supra* note XX, at 1.
[248] *Id.* at 1.
[249] Radley Balko, *When Obama wouldn't fight for science*, WASH. POST (Jan. 4, 2017), https://www.washingtonpost.com/news/the-watch/wp/2017/01/04/when-obama-wouldnt-fight-for-science/?utm_term=.65894f81a862.
[250] PCAST, *supra* note XX, at 6.
[251] Balko, *supra* note XX.

know how probative it is that there is a match with the defendant and the sample from the crime scene. If thousands of people have the same kind of hair microscopy, the presence of a match might not tell us very much. Anyone with even a passing familiarity with science – indeed, with common sense – would recognize this as a significant limitation to the use of this kind of evidence.

PCAST, thus unsurprisingly, could not have been clearer that the Department's response to the 2009 NAS report was deficient because it failed to fill this gap in empirical knowledge. The PCAST report cautioned that "neither experience, nor judgment, nor good professional practices (such as certification programs and accreditation programs, standardized protocols, proficiency testing, and codes of ethics) can substitute for actual evidence of foundational validity and reliability."[252] It noted that "an expert's expression of *confidence* based on personal professional experience or expressions of *consensus* among practitioners about the accuracy of their field is no substitute for error rates estimated from relevant studies. For forensic feature-comparison methods, establishing foundational validity based on empirical evidence is thus a *sine qua non.* Nothing can substitute for it."

Despite the fact that the PCAST report was authored by 19 preeminent scientists, that its logic and grounding in scientific methods is irrefutable, that it was commissioned by the President, and that its results were touted in a press release by the White House,[253] the Department simply refused to accept it. Attorney General Lynch curtly and quickly responded to its release that, although the Department "appreciate[s] their contribution to the field of scientific inquiry, the department will not be adopting the recommendations related to the admissibility of forensic science evidence."[254] The Department's refusal to accept bedrock scientific analysis is troubling enough as applied to the federal system, but it is all the more disconcerting because forensic science is an area where the federal government often takes on a leadership role that influences the states. So

---

[252] *Id.*

[253] Eric Lander, et al, *PCAST Releases Report on Forensice Science in Criminal Courts*, WHITE HOUSE: BLOG (Sept. 20, 2016, 5:59 AM), https://www.whitehouse.gov/blog/2016/09/20/pcast-releases-report-forensic-science-criminal-courts

[254] Jordan Smith, *FBI and DOJ Vow to Continue Using Junk Science Rejected by White House Report*, THE INTERCEPT (Sept. 23, 2016), https://theintercept.com/2016/09/23/fbi-and-doj-vow-to-continue-using-junk-science-rejected-by-white-house-report/. The National District Attorneys Association and police organizations also dismissed the report, as Balko reports. Balko, *supra* note XX.

the message the Department sent was loud and clear: whatever the science says, we find this evidence valuable to our law enforcement agenda, so we will continue to use it.[255] The Department likely believed that doing so was the right thing to do because of its experience using this evidence in cases where its prosecutors believed defendants to be guilty, thus validating for the Department the value and utility of these methods, whatever the empirical evidence might say.[256]

Balko, who has written several probing articles on forensic science, sums up well the frustration with this outcome. He notes that President Obama "deserves credit" for calling attention to criminal justice reform. But then he laments that "all too often those statements have been followed by policy changes that have been largely symbolic."[257] Balko's target was the response to forensic reform but he could have been describing any of the previous issues discussed in this part. While the Administration gave strong statements about various issues, the reality on the ground looked much different because the President did not back up his rhetoric by making sure things were appropriately implemented and left it up to the Department to decide what should really happen . And all too often, nothing much did.

B. DOJ's More Aggressive Pursuit of State Reforms

Tellingly, there were areas where DOJ advocated for more robust reforms. Their common thread was that they did not interfere with DOJ's law enforcement mission or in fact assisted it.

It is in the Department's interest as a law enforcement agency charged with preventing police violence to do its part to remedy the underlying conditions that create it.[258] It is not surprising, then, that the Department would be vigilant in pursuing cases and reforms that help to

---

[255] Even when the Department endorses best practices, as it recently did with eyewitness testimony, it was careful to add a caveat that if it failed to follow best practices, it should not suffer any consequences. Memorandum from Sally Q. Yates, Deputy Att'y Gen., U.S. Dep't of Justice, to All Heads of Department Law Enforcement Components 2 (Jan. 6, 2017) ("nothing in this memorandum implies that an identification not done in accordance with these procedures is unreliable or inadmissible in court").

[256] Barkow, Prosecutorial Administration, *supra* note XX, at 313 ("Prosecutors may therefore place greater faith in existing forensic science methods than empirical evidence would justify because they have used this information in cases where they believed the defendant to be guilty.").

[257] Balko, *supra* note XX.

[258] *Civil Rights Division, About the Division*, U.S. DEP'T JUST., https://www.justice.gov/crt/about-division.

deter future cases of excessive police violence. In the course of its investigation into the Ferguson Police Department after the death of Michael Brown, for example, the Department found that "revenue generation is stressed heavily within the police department" and that "[p]atrol assignments and schedules are geared toward aggressive enforcement of Ferguson's municipal code, with insufficient thought given to whether enforcement strategies promote public safety or unnecessarily undermine community trust and cooperation."[259] This caused the officers to see the citizens it policed "less as constituents to be protected than as potential offenders and sources of revenue," which undermined police/community relations and in turn creates a culture that breeds excessive force.[260]

The result is that the Department was at the forefront in addressing excessive fines and fees in state and local systems.[261] Doing so furthered the Civil Rights Division's mission and did nothing to threaten federal practice. Arguing against localities seeking to extract fines and fees from impoverished defendants posed no conflict with the Department's mission because unlike these municipalities, the Department has no need to use criminal process to help keep its budget afloat.

The same is true of the Department's efforts to spur states to enact sentencing reforms. The Department can urge states to expand parole eligibility or good time credits because it is not bound by the reforms it is advocating.[262] The Department can resist sentencing reductions and retroactive relief at the federal level while asking states to go bolder because one situation involves its own self interest and the other does not. In the latter context, the reform has no effect on the Department itself, but in the former, it does. Likewise, the President's Data-Driven Justice Initiative and Police Data Initiative could ask state and local jurisdictions to reduce jail stays and adopt other cost-effective solutions because none of those requests applied at the federal level.[263]

The Department can also support reforms that apply to other parts of the federal government as long as those changes do not require it to change

---

[259] U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIVISION, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 2 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.
[260] *Id.* at 2-3.
[261] Obama, *supra* note XX, at 843-844.
[262] *Id.* at 846 (describing these efforts).
[263] *Id.* at 848–851.

its own practices. It took part in an Obama cabinet-level working group on reentry and endorsed reforms that made it easier for people with criminal records to get jobs or housing or education.[264] Notably, while the Department helped other Departments figure out how to change their policies, it did not do much within its own Department on reentry issues. Although some U.S. Attorneys fostered innovative reentry practices within their districts, the Department itself did little to spearhead changes in prosecution practices that would aid reentry other than asking each office to put a reentry coordinator in place and trying out pilot programs for diversion for small numbers of people (typically fewer than a dozen people in a given district) who presented the most sympathetic cases where the initial charge was itself questionable. Even in those cases, it was typically federal judges pushing for the diversion efforts with prosecutors reluctantly agreeing to them.

III. REDESIGNING THE EXECUTIVE BRANCH AND USING THE APPOINTMENT POWER FOR INSTITUTIONAL REFORM

President Obama's results in the realm of criminal law did not match his stated ambitions, even in areas completely under his control that did not require congressional cooperation. While President Obama may have agreed with the Department that a more modest approach was preferable, despite his broader proclamations, if a future president wants to achieve more, he or she needs to create new structures that allow decision-making and oversight to be more independent of the Department. Similar constructs have been created in the area of national security (where the National Security Advisor floats as an independent advisor between the security agencies and the President),[265] foreign policy (where the Secretary of State is just one of many advisors weighing in on crucial questions),[266] and trade (where the U.S. Trade Representative operates independently of the Department of Commerce).[267] Examples exist, too, of presidents creating

---

[264] *Id.* at 833–834, 853.

[265] ALAN G. WHITAKER, ET AL., INDUS. COLL. OF THE ARMED FORCES, NAT'L DEF. UNIV., U.S. DEP'T OF DEF., THE NATIONAL SECURITY PROCESS: THE NATIONAL SECURITY COUNCIL AND INTERAGENCY SYSTEM 7-10 (2011), http://www.virginia.edu/cnsl/pdf/national-security-policy-process-2011.pdf.

[266] *Id.* (describing role of Secretary of State within the National Security Council).

[267] Mission of the USTR, OFFICE OF THE U.S. TRADE REPRESENTATIVE, EXEC. OFFICE OF THE PRESIDENT, https://ustr.gov/about-us/about-ustr. The White House Counsel does not serve this function; most of her tasks are not connected to criminal justice. Nor does the Domestic Policy Council, which is primarily focused on other issues, and thus naturally defers to the specialists at the DOJ. *The White House of President Barack Obama, Domestic Policy Council*, WHITE HOUSE,

important advisory bodies by Executive Order, such as the "czars" for the environment and Ebola.[268] There is even some precedent in criminal law, as noted, because President Ford created a body to advise him on clemency with respect to people who had dodged the draft that was independent of the Department. In all these spaces, the White House recognized that it needed more independent assessments to counterbalance what it was hearing from agencies that might be biased by their primary mission and not see the bigger picture.

While the problem of institutional bias is not unique to the Department, there are additional features of the Department that make it particularly important for the president to hear from a more independent source on criminal justice policy. First, the Department, unique among federal agencies, serves as the president's legal advisor, and the president turns to it to support the legality of his or her actions. The president may thus be particularly reluctant to second-guess its views on criminal justice issues because of a general deference to its legal judgments. Second, the White House might be hesitant to act contrary to the Department's views if the Department's objections to an alternative view are grounded in public safety arguments. Without an independent analysis of the costs and benefits – including a risk assessment – the president may be even more likely to side with the Department than he or she would be to side with other agencies.

There is no one path to correct for this, and it is beyond the scope of this Article to provide all the options or all the details. Rather, our goal is to provide two main paths available to a president interested in getting less biased advice about criminal justice issues. Our focus is on those things the president can do without congressional help, so although it might be advisable to move the BOP and forensic research outside of the Department entirely,[269] that would require statutory changes.[270]

---

https://obamawhitehouse.archives.gov/administration/eop/dpc. Moreover, the White House Counsel and Domestic Policy Council, as generalists, are not well suited to the task of collecting and analyzing data about specific substantive areas.

[268] See, e.g., Jack Healy, et al., *Obama May Name 'Czar' to Oversee Ebola Response*, N.Y. TIMES (Oct. 16, 2014), https://www.nytimes.com/2014/10/17/us/obama-may-name-ebola-czar-after-amber-joy-vinson-flight-causes-concern.html?_r=0.

[269] For such an argument, see Barkow, *Prosecutorial Administration*, *supra* note XX, at 335–41. No state follows the federal model of housing its corrections agency within the prosecutor's office; they all developed independent prison commissions or bureaus by 1929. *Federal Penal and Reformatory Institutions: Hearings Before the Special H. Comm. on Fed. Penal and Reformatory Institutions*, 70th Cong. 80–81 (1929) [hereinafter 1929 Hearings] (statement of James Bennett).

One possible option is for the president to create a single Criminal Justice Advisory Commission (which would include DOJ representation but would be comprised of other viewpoints) within the executive office of the president that could advise the president on criminal justice issues. This is akin to the "czar" model the President has followed in other contexts and would still give the president confidential advice, but with a commission structure so that the president can receive a diversity of viewpoints. This commission could advise the president on all the policy issues discussed, thus providing a viewpoint separate from (but informed by) the Department. Once created, this body could also take over the task of reviewing clemency applications in light of the president's policy preferences, thus replacing the function of the Pardon Attorney.[271]

A second path would be to create separate bodies, one that advises on policy questions and another that focuses on clemency decisions. Under this option, in addition to the Criminal Justice Advisory Commission, there would be something like a Presidential Clemency and Reentry Board that could replace the pardon attorney and the seven-level DOJ-centered review currently employed.[272]

Under either of these models, a president could also create a process whereby the policy decisions endorsed by the Department get reviewed by either the Office of Information and Regulatory Affairs or the Criminal Justice Advisory Commission to make sure the proposed decisions are justified under traditional cost-benefit analysis.

Finally, apart from these structural reforms, the president can also further criminal justice reform with the use of his or her appointment power, something President Obama did in practice but spent little time highlighting in his reflections on his own accomplishments.

A. Presidential Criminal Justice Advisory Commission

---

[270] Barkow, *Prosecutorial Administration*, *supra* note XX, at 280, 295 (describing the statutory framework placing these functions in the Department).

[271] If the body were to perform clemency review, we believe it is in the president's interest to make bipartisan appointments to it so that it provides the president with a degree of political cover for his decisions to reduce sentences and issue pardons. See Barkow & Osler, *supra* note XX, at 22.

[272] *Supra*, §II(B).

The problems inherent in the Department's dual role as a law enforcement agency and as advisor to the President, particularly for a reform-minded president, were made clear in the Obama years. One way to allow the president strong and broad advice on criminal law issues would be to form an advisory commission that would include DOJ representation, while remaining independent from the Department. This body should include individuals from academia who specialize in criminal justice and criminology, policy leaders on criminal justice reform, corrections officials and experts who study reentry and recidivism reduction, those who work in law enforcement, attorneys who work in criminal defense, and formerly incarcerated people who can speak to their experiences while incarcerated and during reentry.[273] Because federal programs often are directed at state and local criminal justice groups, representation from outside the federal system would be particularly helpful.

The Department would need to implement any of the President's policies, so it is important to give it a seat at the table to understand its concerns on any given policy. But whereas now those implementation concerns often drive the Department to reject suggestions outright, this new structure would allow the policies to be evaluated based on all their costs and benefits, and implementation issues would be but one of many issues under consideration. It is also important for any such advisory body to craft policies to facilitate Department compliance because the resistance to reform discussed in Part I would not disappear simply because policies change. Thus any such body should have a preference for clear rules instead of vague standards that can be more easily evaded because prosecutors are likely to dutifully follow clear rules. For example, if the Commission were to offer a framework for BOP to follow on compassionate release, it should set a clear timetable for BOP to make decisions, set out clear eligibility criteria, and audit the BOP's decisionmaking for compliance.

The Criminal Justice Advisory Commission should also be set up to be data-driven in focus, with a mission to promote public safety in the least costly manner based on empirical evidence. This focus on data will allow the president to better assess any Department objections to a proposal based on the Department's views about how those reforms will affect public

[273] For a discussion of the kinds of representation to include, see Rachel E. Barkow & Mark Osler, *Restructuring Clemency: The Cost of Ignoring Clemency and a Plan for Renewal*, 82 U. CHI. L. REV. 1, 21-22 (2015); Rachel E. Barkow, *Administering Crime*, 52 UCLA L. REV. 715, 772, 778, 783 (2005); P.S. Ruckman, Jr., The Obama Administration: Breaking Records in a Broken Clemency System, 29 Fed. Sent. Rep. 87, 90 (2017)

safety. The Commission will thus need a staff to help with this analysis, though some of this could be done in partnership with other agencies. The Sentencing Commission, for example, can provide the Administration with a great deal of information, and research institutions outside of government could also assist with specific tasks, as criminology departments and law schools already investigate many of the issues this body would consider.

One would assume that the problems with reforming forensic science[274] would have been handled much differently if such a commission were in place, acting as a buffer between the self-interested perspective of DOJ and the consensus view of the scientific community that forensic methods require validation and more careful use in the courts. BOP's approach to compassionate release and the Department's position on sentencing policy may have also been different if it had first been analyzed by such a commission – just as the independent Sentencing Commission reached different conclusions than the Department after its analysis of the data and research on recidivism and costs.

It is also possible that the president may have, in the end, sided with the Department on some of these issues even after hearing a wider set of views. But there is no question that, on net, decisionmaking on criminal justice will be improved overall if the president has full information before deciding which policies to endorse.

B. A Presidential Clemency Board

While the Criminal Justice Advisory Board could also be tasked with setting clemency standards and reviewing petitions, another model would be to separate this work because it involves individual case processing and give it to a different body. This entity would handle clemency issues but coordinate with the Criminal Justice Advisory Board on recidivism and reentry policy issues, as those are relevant to clemency, as well as on prosecution practices to help identify outlier sentences and practices in specific districts where clemency could provide a unifying corrective check.[275]

---

[274] *Supra*, §II(D).
[275] See Barkow & Osler, *supra* note XX, at 22-25.

The board model for clemency has already proven effective in the states. It is not by accident that no state has embraced[276] the two key attributes of federal clemency: endless review and a central role for prosecutors.[277] Margaret Colgate Love has identified 14 states that demonstrate well-functioning systems that provided "frequent and regular" pardon grants: Alabama, Arkansas, Connecticut, Delaware, Georgia, Idaho, Illinois, Iowa, Nebraska, Nevada, Oklahoma, Pennsylvania, South Carolina, and South Dakota.[278] This mix of red and blue states show that it is not politics that matters, it is process. And we know what kind of process works, too. Five out of the six states where pardon decisions are made by highly independent boards—Alabama, Georgia, Idaho, Connecticut, and South Carolina—are also among the 14 members of the "frequent and regular" list.[279] Moreover, in each of the other states with high-functioning systems, a board plays a significant role in decision-making.[280] There is a clear lesson from the states: use clemency boards, not redundant panels of prosecutors, if you want regular and rational clemency grants to be a part of your system of criminal law.

There is an example of this dynamic within the federal system, too: the Presidential Clemency Board used by President Ford to identify over 13,000 recipients of clemency in the wake of the Vietnam War.[281] Though the Ford board was temporary (lasting just one year),[282] the structure he created could be replicated as a permanent institution. That board featured a bipartisan and diverse membership, which included representatives from academia, prominent members of the private bar, religious leaders[283] and, importantly, given its subject, representatives of the military.[284] Beyond its diversity, though, the Ford Clemency Board had a related advantage that is equally distinctive relative to the current federal clemency process:

---

[276] The Criminal Justice Policy Foundation maintains an on-line database for state clemency procedures, available at http://www.cjpf.org/state-clemency/, and Margaret Colgate Love has created a similar site for state pardon procedures in conjunction with the National Association of Criminal Defense Lawyers, available at https://www.nacdl.org/rightsrestoration/.

[277] *Supra*, § II(B).

[278] Margaret Colgate Love, *Reinvigorating the Federal Pardon Process: What the President Can Learn From the States*, 9 U. ST. THOMAS L. J. 730, 755–66 (2012).

[279] *Id.* at 767. The sixth such jurisdiction, Utah, misses the cut largely only because the board in that state only gets three to five requests for pardon a year. *Id.*

[280] *Id.* at 756–766.

[281] *Supra*, § II(B).

[282] PRESIDENTIAL CLEMENCY BOARD, REPORT TO THE PRESIDENT 1, 165 & 178 (1975).

[283] *Id.,* Appendix A.

[284] *Id.*

independence from the Department.[285] While a clemency review board should include a representative from the Department, it should be established outside of it and report directly to the president. This board should include individuals with experience as a federal defender, judge, probation officer, and police officer, among others, to get a range of perspectives aired and discussed.[286]

In addition to the thousands of clemencies, the Ford-era Clemency Board left behind a worthwhile legacy: a 400-page report on how it accomplished the task.[287] To be sure, the Ford Commission had a more narrow task given that it had only a subset of all federal cases. But its methodology could apply more broadly. For example, the Board paid NASA to engineer a computer program to ensure uniformity by reviewing case dispositions for consistency with Board precedent (something that even the Pardon Attorney does not seem to have in place, 41 years later).[288] The White House has already created an office that specializes in using technology for better data analysis,[289] so that office could put in place similar mechanisms for the Clemency Board based on key factors for consideration across cases or it could have different templates for different categories of cases.[290]

There is one other opportunity that would come with the formation of a clemency board that is absent in our current system: the ability to accumulate and analyze data relative to clemency grants and denials, tracking things like racial disparities, recidivism rates, and the success of re-entry.[291] That data could then be used to guide subsequent clemency decisions as well as other policy positions.

---

[285] Others have suggested alternative ways to achieve this independence. For example, Paul Larkin urges that the Pardon Attorney be relocated to the White House. Paul J. Larkin, Jr., *Revitalizing the Clemency Process*, 39 HARV. J. L. & PUB. POL'Y 833, 905–6 (2016). While that approach achieves the needed independence, we prefer a board model to give the president a broader range of viewpoints and to provide the president with more political cover – by allowing him or her to make bipartisan appointments – for broader reforms.

[286] Barkow & Osler, *supra* note XX, at 21.

[287] PRESIDENTIAL CLEMENCY BOARD, REPORT TO THE PRESIDENT (1975).

[288] *Id.* at 327.

[289] *See The United States Digital Service*, U.S. DIGITAL SERVICE, EXEC. OFFICE OF THE PRESIDENT, https://www.usds.gov.

[290] It is also possible that the Clemency Board could subsume the staff and budget of the Pardon Attorney if authorized by Congress, which would make the move revenue-neutral, particularly if commutations increase and reduced prison costs are considered. But even if the president cannot get Congress to agree, he or she could potentially use some of the existing budget that is used for the Domestic Policy Council for this effort.

[291] Barkow & Osler, *supra* note XX, at 22–23.

C. Applying OIRA Review to Criminal Justice

Other executive agencies in government face oversight from the President through the Office of Information and Regulatory Affairs, which is charged with making sure that the benefits of agency regulations outweigh the costs and that less expensive alternatives have been considered.[292] Christopher DeMuth and Judge Douglas Ginsburg explained that this review process is necessary because a regulatory agency "will invariably wish to spend 'too much' on its goals. An agency succeeds by accomplishing the goals Congress set for it as thoroughly as possible – not by balancing its goals against other, equally worthy goals."[293] They therefore advocated for "some countervailing constraint" in the form of review "by an office that has no program responsibilities" to generate more balanced regulatory decisions.[294]

These same problems exist for prosecutors, who also will inevitably "wish to spend 'too much'" on their goals of criminal law enforcement. But no countervailing constraint was created for them and their policy decisions because OIRA review is currently set up for regulations, not general policy positions.[295] But with parole gone and clemency within the hands of prosecutors themselves, no other executive actor takes a second look at prosecutorial decision-making in individual cases, much less undertakes an analysis of the way in which the broader policies are operating and interacting.

Presidents do not have to accept this model. The OIRA review process was created by executive order, and another president could decide to institute reviews of Department policies, either by placing such review within OIRA or, if the President were to create a Criminal Justice Advisory Commission as described above, within that body. Specifically, the President could ask the Department to submit for review its policy

---

[292] Exec. Order No. 12,866, Exec. Order No. 13,563.

[293] Christopher C. DeMuth & Douglas H. Ginsburg, *White House Review of Agency Rulemaking*, 99 HARV. L. REV. 1075, 1081–1082 (1986).

[294] Id.

[295] President George W. Bush extended OIRA review for guidance documents, Exec. Order No. 13,422, 72 Fed. Reg. 2,763 (Jan. 18, 2007), but President Obama reversed that policy. Exec. Order No. 13,497, 74 Fed. Reg. 6,113 (Feb. 4, 2009). The Department's policy positions may not meet the definition of a guidance document as Exec. Order No. 13,422 defined it, but a president could define the scope of what should be submitted for review.

determinations,to provide data to support its positions where available, and to explain why it rejected alternatives. While this kind of oversight will not work for case-by-case applications of policies, it will allow for analysis of the policies themselves, which may in turn affect how the Department operates in specific cases. In an area like forensics, for example, the Department would have to explain why it rejected the PCAST findings, and the reviewing agency in the White House (either OIRA or something like it) could assess those determinations. If the White House disagreed, it could tell the Department to shift its policy decision. The same type of review could take place of BOP programming or DOJ positions before agencies like the Sentencing Commission or its testimony before Congress. The idea would be to have the Department explain to another actor within the Executive Branch who brings a generalist perspective, and not strictly a law enforcement one, why its approach makes sense. This poses no problems to the Department's independence, because the White House would not be interfering with any individual determinations about whom to prosecute or investigate. It would simply be overseeing how the Department set its policies overall and asking the Department to provide support. In the process of preparing such reports, the Department might find that some positions should be revised because they really do not have support in data.[296]

The President knows how to order specific policies when he or she wants to, so this would be a mechanism for him or her to find out when it is necessary to intervene. President Obama followed a model along these lines after his Task Force on 21st Century Policing released its report. He "directed my team to adopt the Task Force's federal recommendations."[297] He apparently did not wait to see how the FBI and other federal law enforcement agencies thought they should respond. The issue was important enough to him that he ordered the shift in practices immediately. The President took a similar approach with respect to solitary confinement, issuing a directive to the Department in 2016 to implement certain

---

[296] To be sure, some policies might be more difficult to quantify in terms of cost-benefit analysis for purposes of OIRA oversight. But that oversight need not be limited to purely quantitive review. See Executive Order No. 13563 ("Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.").

[297] Obama, *supra* note XX, at 842.

reforms.[298]

President Obama's more aggressive commands in those contexts – and the contrast with the other areas outlined here – suggest that part of the Department's unwillingness to go further may well have been because it was not receiving sufficiently strong signals from President Obama about how much political bandwidth he would spend on a given issue.[299] As outsiders, we cannot say if President Obama privately urged the Department to do more. But we do know that any president will be ill-equipped to push for things if he does not know they are at issue. And this reviewing mechanism would allow a president and White House staff to stay apprised of key issues should the president want to exercise political capital for change.

Of course, it is possible that the Department resists the White House's requests for change, and the next decision point for the President would be what to do about it. At that point, the President would need to decide if the issue is important enough to ask for the resignation of the relevant political appointee, which in some cases could be the AG. Radley Balko envisioned just this type of scenario with respect to the Department's rejection of the PCAST report. He argued that the President should have discussed the report with Attorney General Lynch, and if she refused to implement the recommendations, asked for her to resignation. He made the same argument with respect to Director Comey of the FBI. This is obviously a politically risky move for any President, but one would expect that few disputes would come to this point. Instead, the OIRA-like review process should itself bring out the most rational path to follow, and one would expect the White House and Department to coalesce around that option, with few disagreements rising to the level of a standoff.

D. Appointments

When President Obama analyzed what presidents can do to achieve criminal justice reform, he focused mainly on substantive policies without

---

[298] *Id.* at 830.

[299] This also helps explain why the Department took more aggressive steps in the second term than the first, when the President may have signaled he, too, was more willing to go out on a political limb for criminal justice. And it may account as well, in part, for the bolder push by the Civil Rights Division, which also received higher-level backing from the White House in contrast to, say, clemency, where those announcements were left to the Deputy Attorney General and White House Counsel until the very end of President Obama's time in office when he started to make claims about clemency on his own.

mentioning the critical role the appointment power plays in furthering reform. To be sure, he footnoted how important it was to have Attorneys General leading his efforts who supported his stated reform agenda.[300] But the Attorney General is not the only position that matters for criminal justice reform; there are several other key appointments presidents make that have a significant impact on the direction criminal justice reform takes. This Part highlights these other critical appointment decisions and how critical it is to get people with the right backgrounds for these posts.

1. DOJ Appointments

In addition to the Attorney General, other senior posts at the Department – especially the Deputy Attorney General and the Director of the BOP – are critical for the success of criminal justice reform. The Assistant Attorney General for the Criminal Division and head of the Office of Legal Policy also occupy crucial posts. If a president is concerned with reform, he or she should make sure that individuals in those posts share his or her reform goals.

There are two other positions that may be less obvious that we want to highlight here. The first is the Assistant Attorney General for the Civil Rights Division. The Civil Rights Division works on a range of critical issues including voting rights and discrimination cases outside of criminal justice, so presidents may choose leaders of that Division based on how they prioritize different aspects of the Division's work. For a president that cares especially about criminal justice issues, it is helpful to choose someone with experience working on reform in that area. President Obama did a particularly good job selecting heads of the Civil Rights Division. The Division worked on police reform from the start of the Obama Administration under the leadership of Tom Perez,[301] who came to the

[300] "[T]he most consequential actions I took [with respect to charging policies] were my decisions to entrust these dedicated public servants [Eric Holder and Loretta Lynch] (and other senior officials in the Department of Justice) with the authority to use their discretion wisely and to provide and set an example for the thousands of federal prosecutors across the United States." Obama, *supra* note XX, at 824 n.53. While we have outlined why even the most resolute leader of the Department pushing the Department will face obstacles in pushing the institution toward reform – and may in fact become captured by the viewpoints from within the Department – it is certainly true that getting someone interested in furthering the reform agenda highlighted by President Obama is a necessary, if not sufficient, step.

[301] *See, e.g.*, Justin Miller, *The Subtle Force of Tom Perez*, AM. PROSPECT (June 22, 2016), http://prospect.org/article/subtle-force-tom-perez (noting Perez's work on police misconduct, including investigations into Seattle, Portland, Los Angeles, and Puero Rico

position with a background in civil rights (including having previously worked as a prosecutor in the Civil Rights Division as well as advising Senator Kennedy on civil rights and criminal justice issues), consumer advocacy, and state politics.[302] The Division was even more active in criminal justice reform in President Obama's second term under the leadership of Vanita Gupta. Gupta's background was not as a Department prosecutor. Instead she came to the Department having previously worked as a civil rights lawyer, including serving as the Deputy Legal Director of the ACLU where she was responsible for the ACLU's national effort to further criminal justice reform.[303] It is no coincidence that the Civil Rights Division under her leadership focused on the pernicious effects of fines and fees and how they corroded the relationship between the police and the community as well as undermined efforts to reduce criminal behavior because of how those financial obligations burdened people already struggling to get by. This is the kind of insight one gets from having a range of experiences working on criminal justice issues, and not just as a prosecutor, and it is a good blue print for further appointees to head Civil Rights if the goal is to advance criminal justice reform.

President Obama's pick for Inspector General of the Department also proved to be critical to his reform efforts. While IGs are typically known for becoming captured by the very agencies they are charged with overseeing,[304] that did not hold true for the Michael Horowitz, who was appointed IG in 2012. Horowitz came to the IG position with extensive Department experience, including 8 years as a prosecutor in the Southern

---

police forces and Arizona Sheriff Joe Arpaio and stating that "[b]y 2011, the division was investigating 17 police and sherrif departments—the most in DOJ's history."); David Corn, *Why Picking Tom Perez for Attorney General Would be a Smart Move for Obama*, MOTHER JONES (Nov. 3, 2014), http://www.motherjones.com/politics/2014/10/tom-perez-attorney-general-obama (stating that Perez "revitalized [the Civil Rights Division] by mounting voting rights cases and legal challenges to discrimination against gays and lesbians. During his tenure, the division opened a record-breaking number of investigations into police abuse and forged wide-ranging agreements to clean up various police forces accused of misconduct.").

[302] *See, e.g.*, *Meet the Assistant Attorney General*, U.S. DEP'T JUST., https://www.justice.gov/crt/meet-aag-banner (discussing Perez's background enforcing consumer rights laws and workplace safety laws); Miller, *The Subtle Force*, *supra* note xx (same and discussing Perez's experience advising Senator Ted Kennedy on civil rights and criminal justice issues).

[303] Gupta also worked for the NAACP Legal Defense and Educational Fund. *Meet the Former Head of the Civil Rights Division*, U.S. DEP'T JUST. ARHCIVES, https://www.justice.gov/archives/crt/staff-profile/meet-former-head-civil-rights-division.

[304] Rachel E. Barkow, *Insulating Agencies: Avoiding Capture Through Institutional Design*, 89 TEX. L. REV. 15, 21-24 (2010).

District of New York and three years at the Department in the Criminal Division as Chief of Staff and Deputy Assistant Attorney General.[305] So he came to the job with the perspective of a prosecutor and the skill set of a first-rate investigator. His work as the Chief of Public Corruption in the SDNY US Attorney's Office likely made him sensitive to the misuse of government resources. He also served for six years as a Commissioner at the United States Sentencing Commission. The Commission, as noted, grounds its decisions in data, and Horowitz took that same perspective as IG, amassing critical data in service of all his recommendations. Perhaps most importantly, IG Horowitz had a broader perspective of the role of the IG than some of his predecessors, not simply looking for fraud and misconduct, but looking for ways to encourage the Department to more effectively and rationally spend and allocate its limited law enforcement resources.[306] He was not afraid to criticize the Department for falling short, and the result was that he influenced on the Department's criminal justice agenda.

Perhaps most critical was Horowitz's calls for the Department to pay close attention to what he labeled the "growing crisis in the federal prison system" of both overcrowding and having BOP costs eat up a greater percentage of the Department's budget, thus crowding out other law enforcement priorities.[307] His reports and testimony on the strain BOP's budget posed for other law enforcement needs provided the springboard for the Department's Smart on Crime Initiative.

The IG's analysis of the compassionate release practices of the BOP also catalyzed the Department to change its policies. Even though the Department did not go as far as the IG suggested, it is doubtful the Department would have done anything at all without the IG's prompting. Similarly, the IG's analysis of private prisons showing that they posed greater security and safety risks led the Department to announce it would

---

[305] *Office of the Inspector General, Meet the Inspector General*, U.S. DEP'T JUST., https://oig.justice.gov/about/meet-ig.htm

[306] Rachel E. Barkow, *Overseeing Agency Enforcement*, 84 GEO. WASH. L. REV. 1129, 1178 (2016).

[307] Statement of Michael E. Horowitz, Inspector General, U.S. Dep't of Justice, Before the H. Comm. on Appropriations, Subcomm. on Commerce, Justice and Related Agencies, 9 (March 14, 2013) ("Horowitz Statement"); Memorandum from Michael E. Horowitz, Inspector Gen., U.S. Dep't of Justice, to the Att'y Gen. and the Deputy Att'y Gen. (Dec. 11, 2013, reissued Dec. 20, 2013), https://oig.justice.gov/challenges/2013.htm.

reduce and ultimately end its use of private for-profit facilities.[308] Additional IG reports highlighted the need for the Bureau to do a better job preparing individuals for reentry,[309] and ultimately, at the end of President Obama's time in office, the Department focused more on BOP's programming.[310] The IG's data-driven emphasis on where the Department was falling short in its law enforcement mission by spending too much money on failed policies thus provided the foundation for change, and the fact these reports were publicly released also helped create some pressure within the Department to make those changes and help break its normal preference for the status quo.

Horowitz thus created a model for the Department's IG that could serve future presidents well in their efforts to prompt change in the Department's practices. One of the key blocks to reform efforts is getting the Department to go along with them – not only in principle but also in implementation. Horowitz policed the Department closely to make sure both its policies and its implementation of those policies furthered the true mission of law enforcement, which is protecting the public while respecting individual rights and using limited resources to achieve those goals most effectively. Future presidents interested in criminal justice reform would thus do well to find IGs who share Horowitz's view that the scope of the IG's work includes evaluating substantive policies and their implementation to make sure they are the most effective use of the Department's limited resources.

2. The Judicial Branch

It is not just the President's executive branch appointments that matter for criminal justice reform. The judicial branch is a key partner in efforts to improve the system. The Sentencing Commission, an independent agency within the judicial branch, issued some of the most significant criminal justice reforms during President Obama's time in office by changing the sentencing guidelines on drug offenses and making those

---

[308] OFFICE OF THE INSPECTOR GEN., U.S. DEP'T OF JUSTICE, REVIEW OF THE FEDERAL BUREAU OF PRISON'S MONITORING OF CONTRACT PRISONS (2016), https://oig.justice.gov/reports/2016/e1606.pdf; Obama, *supra* note XX, at 831.

[309] https://oig.justice.gov/reports/2016/e1607.pdf.

[310] *Prison Reform: Reducing Recidivism by Strengthening the Federal Burea of Prisons*, U.S. DEP'T JUST., https://www.justice.gov/prison-reform (listing recent Federal Bureau of Prison reforms to improve reentry); BOSTON CONSULTING GROUP, REDUCING RECIDIVISM THROUGH PROGRAMMING IN THE FEDERAL PRISON POPULATION: FINAL REPORT ON BOP PROGRAMS ASSESSMENT (2016), https://www.justice.gov/dag/page/file/914031/download.

changes retroactive.[311] Appointments to the commission are thus important for criminal justice reform efforts.[312]

Judges, too, are responsible for sentencing defendants and overseeing the government's law enforcement efforts to ensure that they are consistent with the Constitution and any relevant statutes. In performing those tasks, it is critical to have a bench that represents a diversity of viewpoints on criminal law. The federal bench, however, is dominated by individuals with prosecution experience and has very few individuals with a public defense background. Specifically, a full 43% of active Article III judges have prosecutorial experience, compared with only 10.4% with public defense experience.[313]

---

[311] Supra TAN XX-XX.

[312] The Sentencing Commission is set up to be a bipartisan commission, so no more than four of its seven members can come from the same political party. In addition, at least three of the seven commissioners must be federal judges. United States Sentencing Commission, Organization, http://www.ussc.gov/about/who-we-are/organization. It is notable that President Obama appointed Ketanji Brown Jackson, an individual with a background as an assistant federal public defender, to the Commission in 2009. (He later appointed Jackson to the federal bench.) The Commission had previously been made up largely of individuals with prosecution experience and few of its members have had experience as criminal defense lawyers, much less experience as federal defenders. Barkow, Administering Crime, supra note XX, at 764-765. In 2013, President Obama appointed Rachel Barkow (one of the authors), a law professor whose scholarship is devoted largely to criminal justice reform. Appointments like these help provide the Commission with important perspectives that help balance the prosecutorial perspective it tends to have, both from the fact that the majority of its members at any one time have typically had prosecutorial backgrounds and because the Department sends a person to serve as an ex officio member of the Commission, thus always presenting the Department's views at every meeting, while the Federal Defenders lack any similar institutional presence on the Commission. Id. at 764.

[313] Another 13.7% have private criminal defense experience, but that typically consists of white collar defense. While those experiences help practitioners see some areas common to all criminal defendants, they do not typically expose lawyers to the plight of the poorest criminal defendants who make up the bulk of the federal prison population. These figures were compiled by downloading a database of federal judges. *History of the Federal Judiciary: Biographical Directory of Federal Judges, 1789-Present*, FED. JUDICIAL CTR., http://www.fjc.gov/history/home.nsf/page/judges.html. This database was then limited to active, non-senior District Court and Circuit Court judges and queried for career histories. All judges with private experience were reviewed manually to determine if they did defense work because it was not obvious from job title alone. These numbers were then cross checked with information published in a study by the Alliance for Justice. ALLIANCE FOR JUSTICE, BROADENING THE BENCH, PROFESSIONAL DIVERSITY AND JUDICIAL NOMINATIONS (2016), http://www.afj.org/wp-content/uploads/2014/11/Professional-Diversity-Report.pdf.

President Obama's judicial appointments outside of the Supreme Court, to his credit, were somewhat less tilted toward prosecutors. While 41% of his nominees had prosecution experience, 14% had public defense experience.[314] Notably, of the seven current Circuit Court judges with public defense backgrounds, five were appointed by President Obama.[315] But while President Obama did a better job than previous presidents at appointing individuals with more varied criminal justice experience, including appointing people who had been public defenders, the overall numbers still skewed heavily toward people who had been prosecutors.

People can change their perspectives and outlooks with new roles, so undoubtedly many people who take the bench who previously served as prosecutors may not simply accept government positions. But again, it defies what we know about human nature and experience to think that someone's past experiences have no effect on their outlook. Because real criminal justice reform requires judges to check overreach by prosecutors and other law enforcement officials, it is critical that the bench reflect a range of professional backgrounds and for any future president to put people with diverse backgrounds in positions responsible for criminal justice administration. This includes having individuals with defense or criminal justice reform backgrounds on the Supreme Court.

Lower courts matter as well, however, particularly as federal judges start to explore diversion programs and reentry courts to aid with criminal justice reform. In this regard, it is notable that perhaps the most successful reentry federal program was started by Judge Restrepo, who before becoming a judge was a Philadelphia public defender and then later a Federal Defender.[316] Future presidents should similarly pay attention to this factor if criminal justice reform remains a priority.

CONCLUSION

Barack Obama made strong statements about his commitment to criminal law reform, and yet his actual achievements were modest. The Department's control over criminal justice reform is a big part of the reason why. A president who relies on the Department to roll back mass incarceration and lead the way on large-scale criminal justice reform is

[314] Twenty percent of his nominees had private defense experience.
[315] These judges are G. Steven Agee, Bernice Donald, Jane Kelly, Edward Prado, Luis Restrepo, Robert Wilkins, and James Wynn.
[316] Alliance for Justice study, *supra* note XX, at 8.

choosing an institutional model that is designed to fail because such an effort will focus too much on the Department and not enough on justice.

FW_ Arpaio post pardon legal issues.pdf

From:	Holloway, Tammy (OPATTY)
To:	Tammy Holloway
Subject:	FW: Arpaio post pardon legal issues
Date:	Friday, September 1, 2017 8:35:00 AM
Attachments:	220 - 2017.08.28 Motion to Dismiss Complaint and Proposed Order.pdf defendant motion for acquittal.pdf US v Schaffer DC Circuit.doc Robson v US 1st Circuit.rtf

---

From: Kupers, Lawrence B. (OPATTY)
Sent: Friday, September 1, 2017 8:34 AM
To: Gillespie, Kira (OPATTY) (b) (6) >; Holloway, Tammy (OPATTY) (b) (6) ; Opanga, Eric (OPATTY) (b) (6) ; Paolucci, Jaclyn A. (OPATTY) (b) (6) ; Potter, Casey J. (OPATTY) (b) (6) ; Rifkin, Sarah E.B (OPATTY) (b) (6) ; Sargent-Burns, Rosalind A (OPATTY) (b) (6) ; Smith, Christina (OPATTY) (b) (6) ; Smith, Meredith C. (OPATTY) (b) (6) ; Stutsman, Thomas (OPATTY) (b) (6) ; Trujillo, Jennifer K. (OPATTY) (b) (6) ; Williams, Emilie F. (OPATTY) (b) (6)
Subject: Arpaio post pardon legal issues

As promised, I've attached the motion filed by Mr. Arpaio's lawyers for "vacatur," the two key cases cited in the motion, and the motion for acquittal they filed before the verdict.

220 - 2017.08.28_Motion to Dismiss Complaint a.pdf

WILENCHIK & BARTNESS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
The Wilenchik & Bartness Building
2810 North Third Street Phoenix, Arizona 85004
Telephone: 602-606-2810 Facsimile: 602-606-2811
Dennis I. Wilenchik, #005350
John D. Wilenchik, #029353
admin@wb-law.com

GOLDMAN & ZWILLINGER PLLC
ATTORNEYS AT LAW
Mark Goldman, #012156
Vincent R. Mayr, #013954
Jeff S. Surdakowski, #030988
17851 North 85th Street, Suite 175
Scottsdale, AZ 85255
Main: (480) 626-8483
Facsimile: (480) 502-7500
docket@gzlawoffice.com
Attorneys for Defendant Joseph M. Arpaio

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America, **Plaintiff,** **v.** **Joseph M. Arpaio,** **Defendant.**	**Case No.: 2:16-cr-01012-SRB-1** **DEFENDANT'S MOTION FOR VACATUR AND DISMISSAL WITH PREJUDICE** **(Oral Argument Requested)** **(Assigned to the Honorable Susan R. Bolton)**

Pursuant to Fed.R.Crim.P. 48 *inter alia*, Defendant Joseph M. Arpaio ("Defendant") respectfully moves to vacate the verdict and all other orders in this matter, as well as the

Sentencing on October 5th, and to dismiss this matter with prejudice. This Motion is made on the grounds that on August 25th, 2017, the President of the United States of America issued a full and unconditional pardon of Defendant. A copy of the Executive Grant of Clemency is submitted to the Court as Exhibit "A" hereto, and incorporated as if set forth herein. The President's pardon moots the case, and it warrants an automatic vacatur of all opinions, judgments, and verdicts related to the criminal charge. This Motion is supported by the following Memorandum of Points and Authorities, and a proposed form of Order is submitted herewith.

Defendant respectfully requests that the Court rule on the instant Motion promptly, in order to enable the Defendant to update the United States Supreme Court as to the "final" status of this case before its scheduled conference on September 25th, 2017 (and/or to take action to withdraw the Petition to that Court, as appropriate).

RESPECTFULLY SUBMITTED August 28, 2017.

WILENCHIK & BARTNESS, P.C.

/s/ Dennis and Jack Wilenchik
Dennis I. Wilenchik, Esq.
John D. Wilenchik, Esq.
The Wilenchik & Bartness Building
2810 North Third Street
Phoenix, Arizona 85004
admin@wb-law.com

GOLDMAN & ZWILLINGER PLLC

/s/ Mark D. Goldman
Mark D. Goldman, Esq.
Vincent R. Mayr, Esq.
Jeff S. Surdakowski, Esq.
17851 North 85th Street, Suite 175
Scottsdale, AZ 85255
docket@gzlawoffice.com

Attorneys for Defendant Joseph M. Arpaio

MEMORANDUM OF POINTS AND AUTHORITIES

"[T]he vacatur of all opinions, judgments, and verdicts related to a criminal charge against the defendant is appropriate when the presidential pardon is granted during the pendency of the appeals process, which has the effect of rendering moot all the ongoing appeals; the efficacy of the verdict finding the defendant guilty of the charge is lost to the same mootness." 67A C.J.S. Pardon & Parole § 33; *citing U.S. v. Schaffer*, 240 F.3d 35 (D.C. Cir. 2001)(vacating guilty verdict where pardon was issued before conclusion of appeals). In

Schaffer, the defendant (Schaffer) was pardoned while his appeal of the conviction was still pending. *Id.* Schaffer filed a motion to dismiss, which was unopposed; but "the prosecutor advance[d] the odd suggestion that Schaffer's conviction is established as a matter of law." *Schaffer*, 240 F.3d at 38. The D.C. Circuit Court disagreed and held that because "[f]inal judgment never ha[d] been reached," and "the appeals process was terminated prematurely," then "[f]inality was never reached on the *legal question* of Schaffer's guilt." *Id.* (emphasis original). "When a case becomes moot on appeal…this court generally vacates the District Court's judgment, vacates any outstanding panel decisions, and remands to the District Court with direction to dismiss." *Id.* "Because the present mootness results not from any voluntary acts of settlement or withdrawal by Schaffer, but from the unpredictable grace of a presidential pardon, vacatur is here just and appropriate." *Id*. The D.C. Circuit then vacated "all opinions, judgment, and verdicts" of the district court (on the grounds that the defendant's claim of innocence "will never again be tried"), and it remanded the case to the district court, with directions to dismiss the case as moot. *Id.* The Ninth Circuit also has a clearly "established practice" of vacatur whenever mootness prevents appellate review. *See Dilley v. Gunn*, 64 F.3d 1365, 1369 (9th Cir. 1995)(Section "IV," subsection "A" of the Opinion). The only exception (which was also addressed in *Schaffer*) is when the defendant has caused the mootness that results in dismissal by "his own voluntary act," e.g. by entering into a plea agreement, or voluntarily ceasing the conduct that forms the basis for litigation. *See id.* (finding that rule of automatic vacatur is "inapplicable" if mootness results from the parties' voluntary settlement of the case, because in such event "the judgment is not unreviewable, but simply unreviewed by the appellant's own choice")(internal bracketing omitted). But as the D.C. Circuit Court found in *Schaffer*, *supra*, "the unpredictable grace of a presidential pardon" does not fall into such a category of "voluntary act[s]." *Schaffer*, 240 F.3d at 38. This is strikingly true for the case at bar in which the Defendant did not even ask the President for a pardon before it was granted.

. . .

Because the President issued a pardon before sentencing and judgment—and clearly, before the conclusion of any appeals—the Court is obligated to vacate its verdict and all other orders in this matter, and to dismiss the case with prejudice. Because Defendant will never have the benefit or opportunity to seek a reversal of the court's verdict through appeal (and a re-trial by jury), it is only fair that the Court vacate its verdict and all other rulings in the case. Further, as a practical matter, if the Court does not vacate its orders then it will have the certain effect of causing Defendant to maintain his appeal to the United States Supreme Court for a trial by jury, and to pursue a direct appeal, because of the collateral consequences of a standing conviction. Vacating the verdict would therefore achieve judicial economy, and save taxpayer expense.

In *Robson v. United States*, 526 F.2d 1145 (1st Cir. 1975), the defendant received an unconditional pardon from the President soon after his conviction; but when the defendant filed a Motion to Vacate the sentence, the district court denied the Motion and the defendant appealed. *Id.* at 1146, 1147, n.2. The First Circuit held that because the district court declined to vacate the sentence, then the appeal was not moot, because "the fact that petitioner has been pardoned does not relieve him from all the disabilities of a conviction. His conviction may be considered at sentencing in any subsequent criminal proceeding,[1] and may result in heavier penalties,[2] or may be introduced to impeach credibility.[3] In light of these adverse collateral consequences, the termination of petitioner's custody does not moot an action to review the validity of his criminal conviction."[4] *Id.* (internal citations omitted for readability, see footnotes). Accordingly, the First Circuit proceeded to review the case, and it reversed the

---

[1] *Citing Carlesi v. New York*, 233 U.S. 51, 34 S.Ct. 576, 58 L.Ed. 843 (1914).

[2] *Citing United States v. Morgan*, 346 U.S. 502, 512-13, 74 S.Ct. 247, 98 L.Ed. 248 (1954).

[3] *Citing Richards v. United States*, 89 U.S.App.D.C. 354, 192 F.2d 602 (1951), *cert. denied*, 342 U.S. 946, 72 S.Ct. 560, 96 L.Ed. 703, *rehearing denied*, 343 U.S. 921, 72 S.Ct. 676, 96 L.Ed. 1334 (1952).

[4] *Citing Carafas v. LaBallee*, 391 U.S. 234, 237-38, 88 S.Ct. 1556, 20 L.Ed.2d 554 (1968); *see also Gosa v. Mayden*, 413 U.S. 665, 670 n. 3, 93 S.Ct. 2926, 37 L.Ed.2d 873 (1973).

district court's order and remanded. *Id. See also People v. Chiappa*, 53 Ill. App. 3d 639, 368 N.E.2d 925 (1977)(finding that governor's pardon of police officer did not render case moot, where trial court apparently did not vacate the conviction). Likewise, if the Court does not vacate the Defendant's conviction, then Defendant will certainly pursue his appeals to achieve that, which would be—to put it bluntly—a waste of everyone's time and money, and patently contrary to the rule of automatic vacatur that applies in these situations. Further, the appellate courts would reverse the conviction on the grounds that Defendant was clearly entitled to a trial by jury under 18 U.S.C. § 402, ending the case in more needless effort and a reversal.

CONCLUSION

For the foregoing reasons, Defendant moves the Court to vacate its verdict and other orders in this matter, including the order setting a hearing for sentencing, and to dismiss the case with prejudice. A proposed form of Order is submitted herewith.

RESPECTFULLY SUBMITTED August 28, 2017.

WILENCHIK & BARTNESS, P.C.

/s/ Dennis and Jack Wilenchik
Dennis I. Wilenchik, Esq.
John D. Wilenchik, Esq.
The Wilenchik & Bartness Building
2810 North Third Street
Phoenix, Arizona 85004
admin@wb-law.com

GOLDMAN & ZWILLINGER PLLC

/s/ Mark D. Goldman
Mark D. Goldman, Esq.
Vincent R. Mayr, Esq.
Jeff S. Surdakowski, Esq.
17851 North 85th Street, Suite 175
Scottsdale, AZ 85255
docket@gzlawoffice.com

Attorneys for Defendant Joseph M. Arpaio

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2017, I electronically transmitted the foregoing Notice to the Clerk of the Court through the CM/ECF system, which will send a Notice of Electronic Filing to all CM/ECF registrants for this matter.

/s/Wendy L. Echols

EXHIBIT A

WILENCHIK & BARTNESS
A PROFESSIONAL CORPORATION

EXECUTIVE GRANT OF CLEMENCY

DONALD J. TRUMP

President of the United States of America

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

BE IT KNOWN, THAT THIS DAY, I, DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, PURSUANT TO MY POWERS UNDER ARTICLE II, SECTION 2, CLAUSE 1, OF THE CONSTITUTION, HAVE GRANTED UNTO

JOSEPH M. ARPAIO

A FULL AND UNCONDITIONAL PARDON

FOR HIS CONVICTION of Section 401(3), Title 18, United States Code (Docket No. 2:16-CR-01012-SRB) in the United States District Court for the District of Arizona, of which he was convicted on July 31, 2017, and for which sentencing is currently set for October 5, 2017; and

FOR ANY OTHER OFFENSES under Chapter 21 of Title 18, United States Code that might arise, or be charged, in connection with *Melendres v. Arpaio* (Docket No. 2:07-CV-02513-GMS) in the United States District Court for the District of Arizona.

IN TESTIMONY WHEREOF, I have hereunto signed my name and caused the seal of the Department of Justice to be affixed.

Done at the City of Washington this twenty-fifth day of August, in the year of our Lord two thousand and seventeen and of the Independence of the United States of America the two hundred and forty-second.

DONALD J. TRUMP
PRESIDENT

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America, **Plaintiff,** **v.** **Joseph M. Arpaio,** **Defendant.**	**Case No.: 2:16-cr-01012-SRB-1** **ORDER**

On August 25th, 2017, the President of the United States signed an Executive Grant of Clemency[1] granting Defendant Joseph M. Arpaio ("Defendant") "a full and unconditional pardon for his conviction of Section 401(3), Title 18, United States Code (Docket No. 2:16-CR-01012-SRB) in the United States District Court for the District of Arizona, of which he was convicted on July 31, 2017, and for which sentencing is currently set for October 5, 2017."[2]

[1] A copy of the Executive Grant of Clemency, bearing the seal of the Department of Justice and the signature of the President of the United States, has been submitted by Defendant to the Court.

[2] The Executive Grant of Clemency also grants a full and unconditional pardon "for any other offenses under Chapter 21 of Title 18, United States Code that might arise, or be charged, in connection with

Following this grant of a full and unconditional pardon, Defendant filed a "Motion for Vacatur and Dismissal with Prejudice" requesting that this matter be dismissed with prejudice, and that the Court's orders and verdict be vacated, including the Defendant's Sentencing currently set for October 5th, 2017. The Court, having reviewed the Executive Grant of Clemency and Defendant's Motion, now enters the following orders:

IT IS ORDERED vacating the Court's "Findings of Fact and Conclusions of Law" (Dkt. 210). The Court hereby vacates its finding that Defendant is guilty of criminal contempt, and the Defendant's conviction for the same.

IT IS FURTHER ORDERED vacating the Sentencing hearing currently set for October 5, 2017 at 10:00 a.m.

IT IS FURTHER ORDERED that all verdicts, orders and rulings in this matter are vacated, and that this matter is dismissed with prejudice.

Dated this ___ day of _____, 2017.

_____
Susan R. Bolton
United States District Judge

Melendres v. Arpaio (Docket No. 2:07-CV-02513-GMS) in the United States District Court for the District of Arizona."

defendant motion for acquittal.pdf

WILENCHIK & BARTNESS
A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW
The Wilenchik & Bartness Building
2810 North Third Street Phoenix, Arizona 85004

Telephone: 602-606-2810 Facsimile: 602-606-2811

Dennis I. Wilenchik, #005350
John D. Wilenchik, #029353
admin@wb-law.com

GOLDMAN & ZWILLINGER PLLC
ATTORNEYS AT LAW

Mark Goldman, #012156
Vincent R. Mayr, #013954
Jeff S. Surdakowski, #030988
17851 North 85th Street, Suite 175
Scottsdale, AZ 85255
Main: (480) 626-8483
Facsimile: (480) 502-7500
docket@gzlawoffice.com
Attorneys for Defendant Joseph M. Arpaio

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America, **Plaintiff,** **v.** **Joseph M. Arpaio,** **Defendant.**	**Case No.: 2:16-cr-01012-SRB-1** **DEFENDANT'S MOTION FOR A JUDGMENT OF ACQUITTAL** **(Oral Argument Requested)**

Defendant Joseph M. Arpaio ("Defendant") hereby moves for a Judgment of Acquittal under Rule 29, Federal Rules of Criminal Procedure.

I. The Court's conclusion that the Preliminary Injunction was "clear and definite" to the MCSO in 2011 is unsupported by the evidence; and the Court's own cold reading of the Order last month—nearly six years later—is not evidence, much less of any probative value, concerning whether the order was clear to its audience in 2011.

There was no evidence to support that the Preliminary Injunction was clear and definite, *to its audience* (the Maricopa County Sheriff's Office) *at the time it was issued* (2011), that holding illegal aliens for immediate turnover to federal authorities was enjoined; much less that holding them at the express direction and encouragement of federal authorities was enjoined. This evidence was needed[1] to meet the substantive elements of the crime of criminal contempt, including that there was a "clear and definite order."[2] The only evidence that the Court cited in support of this element was testimony by Defendant's lawyer, Timothy Casey, that Mr. Casey "told Defendant that his [the Defendant's] backup plan of transporting people to Border Patrol was 'likely' a violation of the Order." (Trial Tr. Day 1-PM 148:10-19.) But as the Court knows, the actual quote by Mr. Casey was:

> THE WITNESS: I told the sheriff that in my judgment it was likely, **not definitively**, but likely a violation.

(Trial Tr. Day 1-PM 148:18-19.)(Emphasis added.)

The Court's deliberate omission of *the next two words* (and/or the preceding two

---

[1] "A court reviewing for sufficiency of the evidence must first view the evidence in the light most favorable to the prosecution and then determine whether this evidence, so viewed, is adequate to allow any rational trier of fact to find **the essential elements** of the crime beyond a reasonable doubt." *United States v. Jenkins*, 633 F.3d 788, 801 (9th Cir. 2011)(emphasis added). "Reversal is warranted when the evidence so construed may still be so supportive of innocence that no rational juror could conclude that the government proved its case beyond a reasonable doubt or is insufficient to establish **every element of the crime**." *Id.* (quotation marks omitted)(emphasis added).

[2] "Criminal contempt is established when there is [1] **a clear and definite order of the court**, [2] the contemnor knows of the order, and [3] the contemnor willfully disobeys the order." *United States v. Powers*, 629 F.2d 619, 627 (9th Cir. 1980). Also, "[w]here there is ambiguity in the court's direction, it precludes the essential finding in a criminal contempt proceeding of willful and contumacious resistance to the court's authority." *United States v. Joyce*, 498 F.2d 592, 596 (7th Cir. 1974), *citing Traub v. United States*, 232 F.2d 43, 47 (D.C. Cir. 1955).

words)—"not definitively"—concisely demonstrates that Defendant did not receive a fair trial from an impartial factfinder, which in turn casts doubt on the legitimacy of its verdict and of its motivations in refusing to grant the Defendant a trial by jury. A reasonable and unbiased trier of fact could not accord this one word of Mr. Casey's testimony credibility, but ignore the rest of the sentence, and in fact the entirety of the rest of Mr. Casey's uncontroverted testimony on this critical element of the case:

- Mr. Casey testified that "we weren't sure what it [the Order] meant" (Day 1, pps. 153-154).
- Mr. Casey testified that the Order did not discuss the issue of turnovers to ICE "anywhere" (Day 1, p. 118).
- Mr. Casey testified that the language in the Order was "unclear" on the issue (*id.*).
- Mr. Casey testified that there was "ambiguity" in the Preliminary Injunction Order (Day 1, p. 158).
- Mr. Casey testified that he "shared with the [Defendant] sheriff that we could make a good faith argument that under Judge Snow's order, there was some language about there needed to be something more, the magic words something more, that perhaps this [cooperating with federal authorities] was the something more, that we can make a good faith argument" (Day 1, pps. 49-50).

As Mr. Casey himself testified, context matters. The Court's verdict cited none of this testimony and apparently ignored it. The Court appears to have accorded *one word* of one sentence by Mr. Casey credibility, but to have entirely disregarded everything else that he said on exactly the same subject, including the rest of even the same sentence. This demonstrates a bias and improper motive on behalf of the Court—namely, to disregard the evidence in order to vindicate the authority of a fellow judge, and to effectuate what the Court perceived to be his intent in making this criminal referral. These are not proper reasons to convict an innocent man;

and in doing so, the Court does even greater damage to the authority, the credibility, the esteem and the legacy of this Court. It also makes a mockery of the concept of being proven guilty beyond "a reasonable doubt," where the Court has to strain to even find even a reasonable basis to support its verdict.

The Court cites only its own cold interpretation of the Order last month, nearly six years after it was issued, for statements such as, "[t]hese detentions, in violation of the Fourth Amendment, were exactly what the preliminary injunction intended to stop" (verdict, page 13, lines 23-24); and the Court relies only on its own "full reading" of the Order in July 2017 to conclude that the Order was "clear and definite." The Court's own reading and interpretation is not evidence in this case; but even if it were, it would be of no probative value as to whether the Order was clear and definite to its audience—the MCSO, its counsel, and Defendant—in 2011. Nor may the Court decide whether the Order was clear and definite as a matter of law: "[t]he reasonableness of the specificity of an order is a *question of fact* and must be evaluated in the *context in which it is entered and the audience to which it is addressed*. For example, it may well be necessary that the specificity of orders directed to laypersons be greater than that of orders to lawyers." *United States v. Turner*, 812 F.2d 1552, 1565 (11th Cir. 1987)(emphasis added). And to "serve as a valid basis for contempt, the court's direction must be clear and unequivocal *at the time it is issued*." *Traub v. United States*, 232 F.2d 43, 47 (D.C. Cir. 1955). The Order was not addressed to the Hon. Susan Bolton sitting in her chambers in July 2017. It was addressed to the Maricopa County Sheriff's Office—and by extension its counsel, the Defendant, and over three thousand other hard-working men and women—in December 2011. Every member of the MCSO and its counsel who testified on this subject said, without *any* controverting evidence, that the Order was not clear and definite to them at the time that illegal aliens could not still be detained for the sole purpose of immediate turnover to federal authorities (and at the express request and encouragement of federal authorities, no less), which was and is a common practice

by law enforcement agencies; and this was not clarified until Judge Snow's permanent injunction was issued in 2013.[3] Every witness who testified on the subject said—again without controverting testimony or evidence—that the 2013 permanent injunction *was* a clear order, which provided explicit directions to the MCSO; and that this caused the Sheriff's Office to issue an equally clear directive to stop turnovers to federal authorities. The Court fails to articulate any theory to explain away this inconvenient and uncontroverted fact, i.e. why the Sheriff's Office stopped turnovers immediately after the permanent injunction was issued, and at no time before. The obvious and only inference is that the permanent injunction was clear on this issue, but the preliminary injunction was not. There was absolutely no evidence from which a reasonable trier of fact could conclude, much less beyond a reasonable doubt, that the Order *actually was* clear and definite to the MCSO in 2011 that such turnovers were enjoined. In reality, the Order contained confusing conditions and qualifications that you could drive a Mack truck through—"detaining any person based only on…without more"—and it did not address whether and how the MCSO could or should continue to interact or cooperate with federal authorities *at all*, much less specify any "clear and definite" changes that the MCSO would need to make to its operations in this respect. It is clear that Judge Snow left such ambiguity in the Preliminary Injunction because he did not want his Order to be so restrictive that it would be reversed on appeal, and because he could not and did not foresee at that time how it would actually affect the MCSO's operations. But in doing so, he merely enabled it to be interpreted and enforced arbitrarily, which violates the Due Process Clause in a criminal context, as discussed below. Finally, for the Court to now say—with the benefit of six years' hindsight—that Judge Snow was clearly ordering specific changes to the MCSO's operations to occur, and

[3] *See e.g.* testimony of Michael Trowbridge, Day 3 PM, pps. 739:22-740:14; 745:13-21; Brian Jakowinicz on Day 3 AM, pps. 601:17-602:1, 615:18-616:17; testimony of Timothy Casey, Day 2 AM, page 309:15-23.

that Defendant willfully defied such a "clear and definite" directive, lacks any rational basis in fact.

Further, there *was* evidence admitted in this case of how three Judges of the Ninth Circuit interpreted the Order in 2013: Judges Clifford Wallace, Susan Graber, and Marsha Berzon (Exhibit 45). Even their interpretation, which was made *at the time* and with more knowledge of the context in which the Order was entered than this Court has, disagreed with this Court's interpretation that the Order was "exactly" intended to stop holding illegal aliens for turnover to federal authorities.[4] In contrast to this Court's conclusion that the Order was intended to stop the MCSO from "delivering [its] detainees to the nearest Border Patrol station," Judge Susan Graber said in 2013: "all [Judge Snow's] enjoined is stopping someone for human trafficking on the sole ground that the person themselves, that people themselves are here unlawfully. So I don't understand what's wrong with that." (Exhibit 45.) Judge Clifford Wallace interpreted the PIO much more narrowly than this Court, to mean that the MCSO was enjoined from only "one process," which was from "stop[ping]" persons for being illegal aliens. (Exhibit 45.) His full statement, which was admitted into evidence in this case (Exhibit 45), was:

> The only thing we really have before us is an Order. We don't have an Opinion, we have an Order. And the Order says that the Sheriff cannot enforce federal civil cases. **That's all it says**. And it says the officers are hereby enjoined from detaining any person based upon knowledge or reasonable belief, without more –**he's put the "without more" in**– that the person is unlawfully present within the United States. And he explains that's a civil not a criminal case **so you can't stop them**. And he said specifically in here he's not enjoining the police officers from going ahead and processing their own cases, their own crimes. You're **only stopped for one process**. Now, assuming that that's right, that there's enough in here that he could enforce this temporary injunction, in two weeks or three weeks **we're going to find out what he really means**.

(Exhibit 45)(emphasis added).

[4] Of course, the opinions of Judges Clifford, Graber, and Berzon in 2013 are of limited evidentiary value because the Ninth Circuit was not the audience to whom the Order was directed either; but their opinion still holds greater evidentiary value than the opinion of this Court in 2017, which has none.

Finally, there was copious evidence and testimony introduced that the persons to whom the Order was actually addressed—the MCSO—had various and conflicting interpretations of the Order at the time, even after reading it for themselves. Lieutenant Jakowinicz testified that when he read the order, he interpreted it to mean that "we cannot stop people based on race" (Day 3, page 65); and Sergeant Trowbridge testified that when he read the order, he believed that it was "essentially an injunction against stopping people on the basis of race and detaining them on that basis" "[o]r that they're here illegally." (Day 3, page 130.) Lieutenant Sousa testified that when he read the Order, his interpretation was that "[i]f ICE or Border Patrol says, yeah, we wanted them, then we considered it their detainment.…So when I read this, my first thought is hey, we're not in violation of this." (Day 4: p. 874.) Lieutenant Sousa testified that he shared his view of the Order with the Defendant and other executive MCSO staff, as well as with Timothy Casey, and that none of them disagreed or expressed that they understood the Order to clearly and definitely say otherwise. (Day 4, 877:3 - 879:21.) Sergeant Michael Trowbridge also testified that the Order did not appear at the time to require any change in the MCSO's operations. (722:16-18; 723:4-6; **727:4-7**; 755:20 – 25, 756:5-7.)

The Court cites various public statements by Defendant that he would continue to enforce immigration laws, but it is unclear what probative value the Court believes that these statements have, since the Defendant *was* entitled, if not obligated, to enforce immigration laws, including state immigration laws—i.e., the employer sanctions law and the human smuggling law, which even Judge Snow's Order acknowledged were valid and enforceable state immigration laws, *at the time*. While the Court gives weight to Defendant's statements that he would not change anything after the Order, it also fails to identify a single thing that the Order clearly required to be changed. Lieutenant Sousa testified that he believed that no changes were needed because the MCSO was not arresting people just for being in the country illegally,[5] it was stopping them for

[5] Testimony by Joseph Sousa, Day 4, p. 874:6-17; 877:3-6.

violations of state law (or other criminal laws), then holding them as directed by and in cooperation with federal authorities, which the Order did not clearly (or even logically) enjoin. Sergeant Michael Trowbridge also testified that based on his own independent reading of the Order at the time, it did not clearly require any changes to the MCSO's practices.[6] In other words, and to quote Judge Graber, because the Order only appeared to enjoin the MCSO from stopping someone for human trafficking (or some other crime) on the sole ground that the person was an illegal alien—something that the MCSO did not have a practice of doing—then the MCSO did not believe that anything needed to change. Nor did the Order give any clear or specific directions to the MCSO to change anything, such as the final permanent injunction did, which is fatal to this case.

Further, the Court's finding that Defendant did not do anything to implement the Order is completely unsupported by the evidence; but it would support only a civil contempt finding (on a negligence standard) at best, not the willfulness that is required for a criminal conviction. The finding is also irrelevant, because the Order did not clearly and definitely specify any changes that needed to be made, much less order that the Defendant himself make them. The evidence in fact showed that the Defendant directed Tim Casey to work with Joe Sousa and the Human Smuggling Unit on training the MCSO on whatever they needed to be trained on under the Order; but that this process effectively broke down at the lower levels, mainly because the Order did not clearly spell out any particular change to the MCSO's practices and did not appear to require any, and because it was a turbid and legalistic order that was open to various interpretations to begin with. Further, the Order did not direct the Defendant to personally implement the Order; in fact, it was addressed to the entire MCSO. For the Court to conclude that the Order created a specific and definite obligation for the Defendant to personally involve himself in following up on its implementation is not supported by any evidence in this case.

[6] 727:4-7 *et seq.*

Again, the Court is taking advantage of the vagueness in this Order to enforce it arbitrarily, now by claiming that it created some clear obligation for the Defendant to personally oversee the implementation of changes that it did not even clearly define.

The bottom line is that the Court's conclusion that Judge Snow's order was clear to the MCSO at the time (2011-2013) that the MCSO could not hold illegal aliens for immediate turnover to federal authorities is not supported by any actual evidence in this case. It is supported only by the Court's own gloss of the order in 2017, which is inadmissible, and which was in turn clearly influenced only by its desire to vindicate the authority of Judge Snow. (See e.g. the Court's statements, "[t]he Court concludes that *Judge Snow*'s order was clear and definite," and "the Court finds that *Judge Snow* issued a clear and definite order," rather than merely referring to "the court order" being clear.) But the Court in fact does more harm to the authority and dignity of the Court by issuing a verdict that is completely contrary to the evidence at trial, and to the truth. And the Court plays to the worst weaknesses of judicial temperament, and "summons forth the prospect of the most tyrannical licentiousness," by finding an innocent man guilty of contempt. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 833–34 (1994)(Scalia, J.). For all of the foregoing reasons, the verdict must be vacated, and a judgment of acquittal must be entered.

II. The uncontroverted evidence sustains a defense of reliance on the "good faith" advice of counsel

Reliance on the "good faith" advice of counsel is a defense to criminal contempt. *In re Eskay*, 122 F.2d 819, 822 (3d Cir. 1941). "It is a good defense to an attachment for criminal, but not civil contempt that the contemnor acted in good faith upon advice of counsel." *Id*. The Ninth Circuit distinguishes between "good faith reliance upon counsel's advice that what the defendant did was not a violation of the court's order," which is a valid defense to criminal contempt; and advice by counsel to disobey an "unambiguous" order of which the defendant was aware, which

is not a defense, and "in such a case the attorney is also in contempt." *United States v. Snyder*, 428 F.2d 520, 523 (9th Cir. 1970); *United States v. Armstrong*, 781 F.2d 700, 706 (9th Cir. 1986). The uncontroverted evidence showed that even Mr. Casey – whose understanding of the "context in which [the Order was] entered" clearly surpasses this Court's own inadmissible gloss six years later – did not believe that the Order was clear or definite at the time, and that he advised the Defendant of this and that he could make a good faith argument in support of cooperating with federal authorities. By finding that the Defendant committed criminal contempt in spite of such advice being given, the Court must also be finding that Mr. Casey was in criminal contempt of an "unambiguous" order—in which case, this Court's failure to refer him for prosecution, and the prosecution's failure to charge him, could be viewed as evidence of wrongful selective prosecution, as addressed below. But the reality is that the Order was ambiguous to Mr. Casey, and even more so to the laypeople at the MCSO, including Defendant, when it was issued. Further, the uncontroverted evidence at trial demonstrated that that the MCSO's practice of turning over illegal aliens without state charges was and is a "common practice" by law enforcement agencies across the state, and that it was encouraged and directed by federal authorities.[7] The MCSO would not reasonably believe that Judge Snow was ordering them to undermine the mission of federal law enforcement, or to refuse to cooperate with federal authorities in their mission to enforce federal immigration laws. A reasonable and unbiased trier of fact could not conclude, based on this evidence, that the Order was clear and definite that cooperation with federal authorities was enjoined, where the Order does not even mention the subject, or the subject of holding people for the sole purpose of turning them over to federal law enforcement, at all.

[7] *See e.g.* testimony of Christopher Clem, Day 3 PM, p. 775:20-777:10, 784:11-20; testimony of Salvador Hernandez, Day 4 AM, 859:3-15, 862:9-13.

III. The Court's finding that the Order was "clear and definite" does not pass constitutional muster under the Due Process Clause of the Fifth Amendment.

The Fifth Amendment requires at a minimum that in order to convict a defendant for criminal contempt of a court order, the order must give notice to a person of "ordinary intelligence" that his conduct was "plainly and unmistakably" criminal, and the order must have been definite enough that men of "common intelligence" need not guess at the order's meaning and could not differ as to its application. *United States v. Lanier*, 520 U.S. 259, 266 (1997); *Johnson v. United States*, 135 S. Ct. 2551, 2556 (2015); *United States v. Bass*, 404 U.S. 336, 348 (1971). In other words, the Order cannot be unconstitutionally vague as applied to the Defendant's conduct. *See United States v. Trudell*, 563 F.2d 889, 892 (8th Cir. 1977)(analogizing criminal contempt element of "clear and definite" to the constitutional vagueness doctrine). The Court violated the Defendant's Fifth Amendment due process rights by finding him guilty of violating an ambiguous Order that was "hedged about by conditions and qualifications which cannot be performed, or which may be confusing to one of ordinary intelligence." *N.L.R.B. v. Bell Oil & Gas Co*., 98 F.2d 405, 406 (5th Cir. 1938). The Preliminary Injunction was so inherently vague – providing only that the MCSO could not detain "based solely on" illegal alienage, "without more," and failing to address the obvious question of whether the MCSO could still hold illegal aliens for immediate turnover to federal authorities – that it cannot support any action for criminal contempt at all on this issue. The injunction was clear that the MCSO was enjoined from *stopping* illegal immigrants solely for being illegal immigrants; but it simply did not clearly address whether the MCSO could still detain them in strict cooperation with the federal government. The only testimony at trial on this subject, even when viewed in a light most favorable to the Government, showed that the Defendant believed and was advised by his attorney that there was a "good faith argument" that cooperation with federal authorities was the "something more" required by the Order, especially given that the actual context of the Order was that the MCSO had simply lost its *own* unilateral immigration

enforcement authority, not that the immigration laws themselves were no longer unenforceable, or that it could not otherwise cooperate with federal authorities. If Judge Snow intended to order that the MCSO could not cooperate even with federal authorities in holding or turning over illegal aliens, then he needed to have said that. To hold the Defendant culpable in the absence of such a "plain and unmistakable" direction from the Court is to allow the Court to arbitrarily enforce its own orders criminally. This is violative of the Constitution, which provides that a criminal defendant must be put on fair notice that his conduct is plainly and unmistakably criminal. In the context of this case, it also raises certain *ex post facto* issues, to the extent that the Court issued an ambiguous order which said one thing; it allowed the Defendant to do another; and then after the Court issued its final order (the permanent injunction) that clearly prohibited the defendant's conduct, it prosecuted him for his prior conduct anyway, even though it was not clearly illegal when it occurred.

Further, as a matter of law, federal and state law expressly authorized, and even *required*, the MCSO to cooperate with federal authorities to hold or turn illegal aliens over, which the Preliminary Injunction did not clearly define or address. *See* Appendix of Law, Exhibit "A" hereto and incorporated herein. The Court's interpretation of the Order appears to be that the MCSO simply had to release illegal aliens without cooperating with federal authorities, which would clearly undermine federal immigration enforcement. A person of ordinary intelligence would not conclude that is "exactly what the preliminary injunction intended." Even a person of extraordinary intelligence, like Justice Antonin Scalia, remarked just months after the Preliminary Injunction was entered that it would be an "assault on logic"[8] to say that a known or suspected illegal alien could not be detained at least for the time that it takes to contact immigration authorities for direction; and *this very Court* has ruled, both before and after the

[8] *Arizona v. United States*, 567 U.S. 387, 410, 427 (June 25, 2012)(Scalia, J.)

Preliminary Injunction, that detaining persons pursuant to direction from Border Patrol and holding or transporting them for federal detainment is not illegal. *Friendly House v. Whiting*, No. CV 10-1061-PHX-SRB (October 8, 2010); *Sol v. Whiting*, CV-10-01061-PHX-SRB (September 4, 2015).

Finally, where the order that is the subject of a criminal contempt proceeding contains any ambiguity, such ambiguity must be resolved in favor of the Defendant, following the Rule of Lenity, which is likewise applied to the interpretation of vague criminal statutes. *See e.g. Bass*, 404 U.S. at 348.[9] What the Court did here was the opposite. It chose to resolve all doubts against the Defendant, and to conclude—based on no actual evidence in the case, but only its "own reading" last month—that the Order was clear and definite, beyond a reasonable doubt.

IV. The Uncontroverted Evidence Sustained Defendant's Public Authority Defense

Defendant's raised an affirmative defense, the "public authority" defense, which was sustained by the undisputed evidence but entirely overlooked by the Court. "The public authority defense is properly used when the defendant reasonably believed that a government agent authorized her to engage in illegal acts." *United States v. Bear*, 439 F.3d 565, 568 (9th Cir. 2006). The Ninth Circuit Criminal Jury Instruction on the Public Authority defense states that:

> The defendant contends that if he committed the acts charged in the indictment, he did so at the request of a government agent. Government authorization of the defendant's acts legally excuses the crime charged. The defendant must prove by a preponderance of the evidence that he had a reasonable belief that he was acting as an authorized government agent to assist in law enforcement activity at the time of the offense charged in the indictment… If you find that the defendant has proved that he reasonably believed that he was acting as an authorized government agent as provided in this instruction, you must find the defendant not guilty.

Ninth Circuit Manual of Model Criminal Jury Instructions, Instruction 6.11 (2010 Edition, last updated 6/2017)(alternative bracketing omitted, as inapplicable).

[9] See also Defendant's Memorandum of Law, section 1 on pages 3-5, incorporated herein by reference.

The Government has of course never claimed that the Defendant himself detained persons in violation of the Order. Rather, its theory—although it has never clearly acknowledged it as such—has been that the Defendant was an "accomplice" to this act, because he allegedly "commanded" or otherwise directed persons to violate the Order, per 18 U.S.C. § 2 ("[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal"). And so the public authority defense should be modified slightly, to reflect that the defendant contends that if his "principals"—i.e., the MCSO—committed the acts charged, then they did so at the request of a government agent, i.e. Border Patrol (or ICE); and that authorization by Border Patrol (or ICE) legally excuses the crime charged. The uncontroverted evidence, and particularly the testimony of the Border Patrol agents who testified at trial, demonstrated by more than preponderance of the evidence that the Defendant and MCSO had a "reasonable belief that [they] were acting as authorized government agent[s] to assist in law enforcement activity at the time of the offense charged." At trial, Agent Hernandez of the Border Patrol testified that CBP would "request" that the MCSO transport (i.e. turn over) illegal aliens to CBP, and that "[i]f we [CBP] are short on manpower and they [MCSO] had bodies and we couldn't respond to that area, I have instructed them to bring them to our checkpoint, yes." (Day 4 AM, 859:3-15; 862:9-13.) The agent in charge of the entire Casa Grande station at all relevant times, Chris Clem, further testified that "it was an expectation of cooperation" that "[i]f you suspected you had an illegal alien, and you were willing to hold them, and we were able to respond," to temporarily detain them in order for CBP to take custody. (Day 3 PM, 784:11-20.) "[I[f they [agencies such as MCSO] catch somebody they think is illegal, if we are available, give us a call. If we could respond, we would. I mean, that's pretty much a common practice that we still do to this day." (Day 3 PM, 775:20-23.) Timothy Casey's letter to the Plaintiffs in *Melendres* (attached to Exhibit 26) also stated this. Because the uncontroverted evidence—even when viewed in a light most favorable to the Government—

demonstrates that the Defendant and MCSO had a "reasonable belief that [they] were acting as authorized government agent[s] to assist in law enforcement activity at the time of the offense charged," the public authority defense also provides a complete defense, as a matter of law.

V. The prosecution of Defendant constitutes impermissible selective prosecution for exercise of political speech

The Government's decision to proceed with charges against only Defendant—even though his case is clearly subject to the same one-year statute of limitations in 18 U.S.C.A. § 3285, on which basis the Government voluntarily dismissed the other defendants in this case—as well as the Government's decision to "announce" that it would charge him just two weeks before his election, and its heavy use of his political speech against him at trial—all reek of unconstitutional selective prosecution in violation of the Defendant's First Amendment rights, warranting the entry of a judgment of acquittal.

Further, there was uncontroverted testimony at trial that the Defendant's lawyer, Timothy Casey, advised him that holding illegal aliens for turnover to federal authorities was "likely, *but not definitively*" a violation of the Order, and that he advised the Defendant could make a "good faith" argument that it was allowed. For the Court to have found the Defendant in contempt despite such advice from his lawyer, the Court must be saying at the minimum that Mr. Casey was also guilty of "willfully" defying an "unambiguous" order. In which case, the Government's decision to charge only Mr. Arpaio constitutes evidence of selective prosecution.[10]

VI. This case is barred by the statute of limitations, 18 U.S.C. § 3285

Defendant incorporates herein and re-urges the entirety of his prior Motion for a Judgment of Acquittal regarding the Statute of Limitations (Doc. 188), and his original Motion to Dismiss based on the Statute of Limitations (Doc. 130).

[10] In reality, however—and to Mr. Casey's credit—the Order was ambiguous; and the Court's verdict to the contrary is utterly unsupported by the actual evidence in this case.

VII. The Trial Violated the Double Jeopardy Clause of the Fifth Amendment

The trial constituted a violation of the Defendant's right not to be tried twice for the same crime, because Judge Snow's alleged "civil" contempt trial and findings—which in fact focused on elements and defenses that are exclusive to a criminal contempt proceeding, such as the defendant's willfulness and alleged reliance on advice of counsel, and which concerned an alleged disobedience which even Judge Snow admitted had ended years before the proceeding began—was a *de facto* criminal contempt trial.

"A court's characterization of its proceedings is but one factor to consider in determining the true character of contempt proceedings….Problems arise when it is unclear what form of contempt proceedings was contemplated by the court or *when the court mislabels the proceedings*." *United States v. Powers*, 629 F.2d 619, 626 (9th Cir. 1980). "Actions and proceedings need not be wholly civil or wholly criminal and the choice of one label does not prevent application of both forms of contempt punishment." *Id.* at 627. The purpose of civil contempt is remedial, and it is designed to enforce compliance with a court order. *Id.* For that reason, the punishment in a civil contempt matter is conditional and must be lifted if the contemnor obeys the order of the court; in other words, the term of punishment for civil contempt cannot extend beyond compliance with the court's order. *Id.* On the other hand, the penalty for criminal contempt is punitive in nature. It serves to vindicate the authority of the court and does not terminate upon compliance with the court's order. *Id.*

Judge Snow first raised the possibility of a criminal contempt proceeding at a status conference on November 20, 2014,[11] at which he stated, in response to a question from counsel about whether he was contemplating civil or criminal contempt proceedings: "Well, I mean, that is one of the interesting things I'm looking at….There is civil contempt and there is criminal contempt….and it may be that matters are appropriate subjects both of criminal and civil

[11] *See* Doc. 803, transcript.

contempt."[12] At the following hearing[13] on December 4, 2014, Judge Snow then laid out his charges against the Defendant, or in his words, why he felt that criminal contempt was "at issue."[14] At that hearing, Judge Snow displayed a copy of 18 U.S.C.A. § 401 on the courtroom monitors, which concerns criminal contempt proceedings; and he proceeded to identify exactly the same issues that appear in the Order to Show Cause in this matter: whether Defendant violated the December 23, 2011 preliminary injunction's prohibition on detaining persons "based only on knowledge or reasonable belief, without more, that the person is unlawfully present within the United States," because "Sheriff Arpaio's position was that he could continue to detain immigrants who he didn't have a cause to hold on any state charges and turn them over to ICE."[15] (Compare with the O.S.C. in this case: "[t]he MCSO continued to stop and detain persons based on factors including their race, and frequently arrested and delivered such persons to ICE when there were no state charges to bring against them…"[16]) And even at that hearing, Judge Snow acknowledged that this alleged violation of his Preliminary Injunction had already occurred: "that is a serious violation in direct contradiction to this Court's authority that apparently *lasted* for months and months, more than a year at the minimum, it appears." (Doc. 817 in *Melendres*, page 17 at lines 13-16.) At the hearing, Judge Snow resolved to begin what he labeled as a "civil" contempt proceeding; and around two months later, or on February 12, 2015, Judge Snow entered his Order to Show Cause. In the proceedings leading up the hearing, Judge Snow emphasized to the Defendant that he needed to have "skin in the game"[17]; and even though "[i]ntent is not an issue in civil contempt proceedings,"[18] Judge Snow put the

---

[12] Doc. 803, page 39, lines 12-23.
[13] See Doc. 817, transcript of hearing.
[14] Doc. 817, page 5, lines 5-6.
[15] Doc. 817, page 17, lines 5-9.
[16] Doc. 36 at page 3, lines 7 – 10.
[17] See transcript of May 31, 2016 hearing in *Melendres*.
[18] *Donovan v. Mazzola,* 716 F.2d 1226, 1240 (9th Cir.1983).

Defendant's "state of mind" at the forefront of his "civil" contempt trial, and of his resulting findings in the civil contempt matter. Judge Snow claimed that "[t]he state of mind of Sheriff Arpaio … impacts the Court's ability to craft remedies that are tailored to the particular problems that gave rise to the contemptuous act in the first place." (Doc. 1094 in *Melendres*, at 7:8 – 9.) However, Judge Snow admitted, both before and after[19] the purported civil contempt proceedings began, that the MCSO had already been in compliance with the preliminary injunction for years, since 2013. All of this indicates that Judge Snow conducted the civil contempt hearings for the true purpose of determining whether the Defendant willfully disobeyed his order, and punishing him for it, making his "civil" trial into a *de facto* criminal contempt proceeding. Further, and as described in Defendant's Motion for New Trial, Judge Snow found a waiver of the attorney-client privilege because he claimed that the Defendant had asserted a defense of "reliance on counsel"; but "[i]t is a good defense to an attachment for criminal, [and] not civil contempt that the contemnor acted in good faith upon advice of counsel." *In re Eskay*, 122 F.2d 819, 822 (3d Cir. 1941); *see also Crystal Palace Gambling Hall, Inc. v. Mark Twain Indus., Inc.*, 817 F.2d 1361, 1365 (9th Cir.1987)(in a civil contempt proceeding, a "good faith exception to the requirement of obedience to a court order has no basis in law"). In other words, Judge Snow was applying the elements and defenses of a criminal contempt proceeding. Because Judge Snow's civil trial was in fact a criminal proceeding, then the conduct of a second trial in this case, which was substantially the same as the original trial, constituted Double Jeopardy.

CONCLUSION

For the foregoing reasons, Defendant moves for a directed verdict of acquittal in his favor.

---

[19] *See* May 13, 2016 Finding of Fact, Doc. No. 1677, Case 2:07-cv-02513-GMS at ¶ 10: "The MCSO continued these unconstitutional practices until this Court entered its Findings of Fact and Conclusions of Law in May 2013."

RESPECTFULLY SUBMITTED August 14, 2017.

WILENCHIK & BARTNESS, P.C.

/s/ Dennis and Jack Wilenchik
Dennis I. Wilenchik, Esq.
John D. Wilenchik, Esq.
The Wilenchik & Bartness Building
2810 North Third Street
Phoenix, Arizona 85004
admin@wb-law.com

GOLDMAN & ZWILLINGER PLLC

/s/ Mark D. Goldman
Mark D. Goldman, Esq.
Vincent R. Mayr, Esq.
Jeff S. Surdakowski, Esq.
17851 North 85th Street, Suite 175
Scottsdale, AZ 85255
docket@gzlawoffice.com

Attorneys for Defendant Joseph M. Arpaio

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2017, I electronically transmitted the foregoing Notice to the Clerk of the Court through the CM/ECF system, which will send a Notice of Electronic Filing to all CM/ECF registrants for this matter.

/s/ Christine M. Ferreira

Exhibit A

Arizona Law

Beginning in September 2012, Arizona law actually *required* that state law enforcement contact ICE or CBP when they encountered an illegal alien during a lawful stop (A.R.S. § 11-1051(B)).[1] A.R.S. § 11-1051(D)[2] explicitly provided at all relevant times (and even today) that a state law enforcement agency may, "notwithstanding any other law," "securely transport an alien who the agency has received verification is unlawfully present in the United States and who is in the agency's custody to a federal facility in this state or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency." The validity of this subsection has apparently only been challenged twice; and incidentally both times were in this Court, and it was upheld. See *Friendly House v. Whiting*, No. CV 10-1061-PHX-SRB (October 8, 2010); *Sol v. Whiting*, CV-10-01061-PHX-SRB (September 4, 2015). Both cases were facial challenges; and in the former case, this Court stated: "[s]ection 2(D) requires that verification of the person's unlawful presence be obtained and that the person already be in the agency's custody before the transportation occurs. Plaintiffs have not stated a claim that this provision plausibly violates the Fourth Amendment. *See United States v. Means*, 252 Fed.Appx. 830, 834 (9th Cir. 2007) (unpublished) ("[Plaintiff] cites no authority holding the transportation of a lawfully detained individual violates the Fourth Amendment, and we have found none.") In the latter case (*Sol v. Whiting*), and even more germane to the issues herein, the Court stated (in response to the argument that Section 2(D) is preempted): "federal law authorizes

[1] Also referred to as Section 2(B) of SB 1070, injunction lifted by this Court on September 18, 2012.

[2] Also referred to as Section 2(D) of SB 1070, enacted on April 23, 2010.

state and local officials to perform immigration enforcement duties under cooperation agreements and in other circumstances, see, e.g., 8 U.S.C. § 1357(g)(1) [citations omitted]. These duties can include transporting detainees.…The verification and transport process the law recognizes is consistent with state officials' enforcement actions taken under cooperation agreements and as authorized under the federal statutes listed above." In a footnote to this paragraph (footnote 16), the Court further stated: "This analysis also applies to Plaintiffs' argument that Section 2(D) authorizes state officials to unilaterally act without federal direction. Because Section 2(D) can be interpreted to cover **situations in which federal officials request state officials' assistance—a situation that does not implicate the constitutional concerns Plaintiffs identify**—the law is not facially preempted" (referring to "the constitutional concerns mentioned in the *Arizona* opinion, including potential violations of Fourth Amendment")(emphasis added).

Federal Law

Federal law expressly provided at all relevant times (and provides today) that no person or entity may restrict state law enforcement from contacting and communicating with ICE or CBP with respect to a person's immigration status. 8 U.S. Code § 1373 (a). Federal law also allows for "cooperation" between state law enforcement and ICE or CBP in the "identification, apprehension, detention, or removal of aliens not lawfully present in the United States." 8 U.S.C. § 1357(g)(10)(B). This expressly includes "communicat[ion] with [ICE or CBP] regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States." 8 U.S.C. § 1357(g)(10)(A). The United States Supreme Court decision in *Arizona v. United States*—which came down six month *after* the Preliminary Injunction was issued, and essentially halfway through the PIO injunction "period"—underscores just how ambiguous

these issues were at the time and remain, even outside of Judge Snow's permanent injunction. Justice Kennedy, writing for the majority, stated that "[t]here may be some ambiguity as to what constitutes cooperation under the federal law…" *Arizona*, 567 U.S. at 410 (emphasis added). He wrote that "no coherent understanding of the term [cooperation] would incorporate the unilateral decision of state officers to arrest an alien for being removable absent any request, approval, or other instruction from the Federal Government." *Id.* In support of this, he cited to a 2011 Memorandum by the Department of Homeland Security, which contained "examples of what would constitute cooperation under federal law," and which specifically listed as an example of cooperation, "where state government officials learn in the normal course of state business of possible violations of federal immigration law, referring those possible violations to DHS [BP and ICE] immigration officials on a case-by-case basis."[3] "Paragraph (10) of subsection 1357(g) allows state and local officers to participate in certain aspects of the enforcement of immigration laws outside of a formal written agreement, through formal or informal cooperation with the Secretary…[S]tate and local law enforcement officers render assistance to DHS on a case-by-case basis as immigration matters come to their attention in the performance of their regular duties under state or local law." (Memorandum, page 7.) "Where state and local officers and DHS officers work closely together, often along the U.S. border, state and local officers are responsive to the requests, needs, and guidance of the federal agency"; and "[t]he Federal Government may, at times, take a secondary, supporting role to a state enforcement effort that is primarily aimed at enforcing state law."

[3] The Memorandum is available at https://www.dhs.gov/sites/default/files/publications/guidance-state-local-assistance-immigration-enforcement.pdf. The Court may regard the Memorandum as a legal authority, like the Supreme Court did, or otherwise take judicial notice of it. The quoted section is on page 13.

(Memorandum, page 5.) A state law enforcement officer may communicate information about a person's immigration status to the Department of Homeland Security "when the officer learns of information incidentally in the performance of regular police functions." (Memorandum, page 13.) All of this, even according to Justice Kennedy (writing for a majority of United States Supreme Court), constituted "cooperation" with federal authorities within the meaning of the law as of even 2011. In the same decision, Justice Antonin Scalia wrote that it would even be an "assault on logic" to believe that local law enforcement could not, after encountering an illegal alien, "contact federal immigration authorities, and follow their lead on what to do next." *Arizona v. United States*, 567 U.S. 387, 410, 427 (June 25, 2012). "[I]t is an assault on logic to say that identifying a removable alien and holding him for federal determination whether he should be removed" is illegal, because "federal law expressly provides that state officers may cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States, 8 U.S.C. § 1357(g)(10)(B); and cooperation requires neither identical efforts nor prior federal approval. It is consistent…with the cooperative system that Congress has created, for state officials to arrest a removable alien, **contact federal immigration authorities, and follow their lead on what to do next**." *Id*. (internal citations, quotation marks, bracketing omitted; emphasis added). The majority did not disagree on this point, except to say that "unilaterally" holding an illegal alien without contacting ICE or CBP or taking direction from them would raise constitutional concerns. *See Arizona*, 567 U.S. at 410, 413 (Kennedy, J., *supra*). And of course, "contact[ing] federal immigration authorities and follow[ing] their lead on what to do next" is exactly what the MCSO did and is alleged to be criminal here – something that Justice Scalia remarked it would be "an assault on logic" to think was illegal, and that the Preliminary

Injunction did not clearly and definitely enjoin. Even when the evidence is viewed in a light most favorable to the Government, it demonstrates that the Order was ambiguous; and because any such ambiguity (and the mere fact of the ambiguity) must be read in favor of the Defendant, the Government's evidence was insufficient to convict.

US v Schaffer DC Circuit.pdf

240 F.3d 35
United States Court of Appeals,
District of Columbia Circuit.

UNITED STATES of America, Appellant,
v.
Archibald R. SCHAFFER III, Appellee.

No. 99-3153.
|
Filed Feb. 2, 2001.

After defendant was convicted by jury of violating Meat Inspection Act and federal gratuity statute, the United States District Court for the District of Columbia, James Robertson, J., 29 F.Supp.2d 1, granted defendant's motion for judgment of acquittal and also conditionally denied his new trial motion. Government appealed, and defendant filed conditional cross-appeal. The Court of Appeals, 183 F.3d 833, affirmed in part and reversed and remanded in part, reinstating jury verdict on Meat Inspection charge. The District Court granted defendant's motion for new trial on that charge based on new evidence. The Court of Appeals, 214 F.3d 1359, reversed new trial order and remanded case for sentencing. The District Court, 121 F.Supp.2d 29, denied motion for stay pending defendant's petition for rehearing and en banc review and sentenced defendant. Petition for rehearing was denied by a panel of the Court of Appeals, 229 F.3d 284, but the Court of Appeals, en banc, 234 F.3d 36, granted petition for rehearing in banc, vacated panel decision at 214 F.3d 1359 that had reversed new trial order, and recalled mandate that had set in motion expedited sentencing. The President of the United States then granted full and unconditional pardon to defendant. Defendant moved the Court of Appeal to dismiss all pending appeals as moot. The Court of Appeals, en banc, held that: (1) defendant's conviction was not established as matter of law prior to pardon, (2) pardon rendered case moot and required vacatur of all opinions and judgments as well as jury verdict.

Vacation ordered; remanded with directions.

Vacating 234 F.3d 36, 229 F.3d 284, 214 F.3d 1359, 183 F.3d 833, 83 F.Supp.2d 52, 121 F.Supp.2d 29, and vacating in part, 1997 WL 335794, 7 F.Supp.2d 40, 29 F.Supp.2d 1.

West Headnotes (5)

[1] **Pardon and Parole**
Effect of Pardon

Effect of Presidential pardon was to act solely on any outstanding conviction without purporting to address defendant's guilt or innocence.

Cases that cite this headnote

[2] **Pardon and Parole**
Effect of Pardon

Acceptance of a pardon may imply a confession of guilt.

Cases that cite this headnote

[3] **Pardon and Parole**
Pardon

Defendant's conviction was not established as matter of law prior to Presidential pardon where appeals process was pending at that time; although defendant had been sentenced after new trial order was reversed, Court of Appeals, en banc, had vacated panel decision reversing new trial order, recalled mandate that resulted in expedited sentencing, and granted petition for en banc review.

3 Cases that cite this headnote

[4] **Criminal Law**
Directing Judgment in Lower Court

When a case becomes moot on appeal, whether it be during initial review or in connection with consideration of a petition for rehearing or

 © 2017 Thomson Reuters. No claim to original U.S. Government Works.

rehearing en banc, general practice of Court of Appeals is to vacate district court's judgment, vacate any outstanding panel decisions, and remand to the District Court with direction to dismiss.

3 Cases that cite this headnote

[5] **Pardon and Parole**
Effect of Pardon

Vacatur of all opinions, judgments and verdicts related to criminal charge against defendant was appropriate when Presidential pardon was granted during pendency of appeals process, which had effect of rendering moot all ongoing appeals; efficacy of verdict finding defendant guilty of charge was lost to same mootness.

Cases that cite this headnote

***36 **112** On Motion to Dismiss as Moot.
Before: EDWARDS, Chief Judge, WILLIAMS, GINSBURG, HENDERSON, ROGERS, and TATEL, Circuit Judges.*

Opinion

Opinion for the Court en banc filed PER CURIAM.

PER CURIAM:

On December 22, 2000, then-President Clinton granted a full and unconditional pardon to Archibald R. Schaffer III, for his conviction in the District Court of violating the anti-bribery provision of the Meat Inspection Act, 21 U.S.C. § 622 (1994). Schaffer now moves this court to dismiss the case as moot.

The parties agree that the pardon rendered moot the ongoing appeals. They are quite right on this point. Accordingly, under well-established principles governing the disposition of cases rendered moot during the pendency of an appeal, we hereby vacate the disputed panel decision in this case and all underlying judgments, verdicts, and decisions of the District Court.

I.

Because this case has had a long and curious history, we offer a brief chronicle of the record leading to the instant motion:

In the early summer of 1998, a jury found Schaffer guilty on two counts of a seven count indictment-one for violating the anti-bribery provision of the Meat Inspection Act and one for providing unlawful gratuities to a public official. Persuaded that the prosecution had submitted ***37 **113** insufficient evidence to sustain the verdict, the District Court granted Schaffer's motion for acquittal on both counts, *United States v. Schaffer,* 29 F.Supp.2d 1 (D.D.C.1998) (order), and conditionally denied his request for a new trial, *Schaffer,* Cr. No. 96-0314 (D.D.C. Oct. 6, 1998) (order). The independent counsel appealed. On July 23, 1999, a panel of this court affirmed the District Court's judgment of acquittal on the unlawful gratuities charge, reversed and reinstated the jury verdict on the Meat Inspection Act charge, and remanded for sentencing on the latter charge. *United States v. Schaffer,* 183 F.3d 833 (D.C.Cir.1999) ("*Schaffer I*").

Before this court's decision in *Schaffer I* was issued, Schaffer filed a second motion for a new trial, this time pursuant to Rule 33 of the Federal Rules of Criminal Procedure. Schaffer cited the newly-found and arguably exculpatory testimony of former Secretary of the Department of Agriculture, Alphonso Michael Espy, which had become available following Espy's own acquittal in a related prosecution. Subsequently, after the decision in *Schaffer I* issued, the District Court granted Schaffer's Rule 33 motion for a new trial on the Meat Inspection Act charge. *United States v. Schaffer,* 83 F.Supp.2d 52 (D.D.C.1999).

The independent counsel again appealed, this time challenging the trial court's order granting a new trial. On June 27, 2000, a different panel of this court reversed the order granting a new trial, reinstated the jury verdict on the Meat Inspection Act charge, and remanded the case for sentencing. *United States v. Schaffer,* 214 F.3d 1359 (D.C.Cir.2000) ("*Schaffer II*").

This court's ruling in *Schaffer II* set in motion two distinct trajectories of response. First, the panel granted the

 © 2017 Thomson Reuters. No claim to original U.S. Government Works.

independent counsel's unopposed motion to expedite issuance of the panel's mandate to the District Court without, as would be the normal case, waiting for any potential petitions for rehearing and rehearing *en banc* to run their course. *Schaffer,* No. 99-3153 (D.C.Cir. July 17, 2000) (per curiam order). On remand, Schaffer moved the trial court to delay sentencing pending the outcome of his petitions for rehearing and *en banc* review in the Court of Appeals. The District Court denied the motion and, on September 25, 2000, sentenced Schaffer to a term of imprisonment of one year and one day. *United States v. Schaffer,* 121 F.Supp.2d 29 (D.D.C.2000).

Second, on July 19, 2000, Schaffer filed petitions for rehearing and rehearing *en banc* of the *Schaffer II* decision. The *Schaffer II* panel denied the petition for rehearing three months later. *United States v. Schaffer,* 229 F.3d 284 (D.C.Cir.2000) (per curiam order). Shortly thereafter, on November 22, 2000, the full court granted Schaffer's petition for rehearing *en banc,* vacated the panel's June 27, 2000 *Schaffer II* decision, and scheduled oral argument for April 4, 2001. *United States v. Schaffer,* 234 F.3d 36 (D.C.Cir.2000) (en banc) (per curiam order). In a separate order, the court recalled the July 27, 2000 expedited mandate, which had set in motion the September 25, 2000 sentencing. *Schaffer,* No. 99-3153 (D.C.Cir. Dec. 1, 2000) (en banc) (per curiam order). On December 14, 2000, the full court granted defendant's motion to continue his release pending appeal. *Schaffer,* No. 99-3153 (D.C.Cir. Dec. 14, 2000) (en banc) (per curiam order).

On December 22, 2000, then-President Clinton granted a full and unconditional pardon to Schaffer. Schaffer filed an unopposed motion and memorandum to dismiss all pending appeals as moot on January 4, 2001. In a supplemental memorandum filed the next day, Schaffer urged this court to remand the case to the District Court so that it might determine what action, if any, should be taken to reconcile the "unreversed" new trial order and the preceding conviction.

II.

The independent counsel, the appellant in this case, concedes that "these appeals ***38 **114** are moot and that the Presidential pardon ends all litigation." Response of United States to Schaffer's Supplemental Memorandum at 2. We agree. In making this concession, however, the prosecutor advances the odd suggestion that Schaffer's conviction is established as a matter of law. We disagree. Final judgment never has been reached on this issue, because the appeals process was terminated prematurely.

[1] [2] Certainly, a pardon does not, standing alone, render Schaffer innocent of the alleged Meat Inspection Act violation. *See In re North,* 62 F.3d 1434, 1437 (D.C.Cir.1994) (citing *United States v. Noonan,* 906 F.2d 952, 960 (3d Cir.1990)). In fact, acceptance of a pardon may imply a confession of guilt. *See North,* 62 F.3d at 1437 (citing *Burdick v. United States,* 236 U.S. 79, 91, 94, 35 S.Ct. 267, 59 L.Ed. 476 (1915)). In the present case, the pardon states only that Schaffer receive

> A Full and Unconditional Pardon for his conviction in the United State District Court for the District of the District [sic] of Columbia of the charge of violation of Section 622, Title 21, United States Code, as set forth in an indictment (Criminal Action No. 96-0314 (JR)), for which he was sentenced on September twenty-fifth, 2000, to one year and one day's imprisonment and fined five thousand dollars ($5000).

Pres. William J. Clinton, Executive Grant of Clemency (Dec. 22, 2000). In other words, the pardon acts on Schaffer's supposed conviction, without purporting to address Schaffer's innocence or guilt.

[3] Nevertheless, the independent counsel is wrong to suggest that Schaffer's conviction is a *fait accompli*. Finality was never reached on the *legal question* of Schaffer's guilt. The District Court ordered a new trial following Espy's acquittal; the prosecutor exercised a legitimate right to appeal that order; a panel of this court reversed the order of the trial court; the court expedited issuance of the mandate in *Schaffer II*; and Schaffer was sentenced on September 25, 2000. However, the matter was never actually put to rest, because this court granted Schaffer's petition for *en banc* review and recalled the mandate on December 1, 2000. And in agreeing to *en banc* review, this court vacated the panel decision in *Schaffer II*. It was at that uncertain juncture that then President Clinton pardoned Schaffer, thus rendering the case moot.

[4] [5] When a case becomes moot on appeal, whether it be during initial review or in connection with consideration of a petition for rehearing or rehearing *en banc,* this court generally vacates the District Court's judgment, vacates any outstanding panel decisions, and remands to the District Court with direction to dismiss. *See*

Mortgage Co. v. Bonner Mall P'ship, 513 U.S. 18, 25, 29, 115 S.Ct. 386, 130 L.Ed.2d 233 (1994); *United States v. Munsingwear, Inc.,* 340 U.S. 36, 39, 71 S.Ct. 104, 95 L.Ed. 36 (1950); *Clarke v. United States,* 915 F.2d 699, 706-08 (D.C.Cir.1990) (en banc); *Flynt v. Weinberger,* 762 F.2d 134, 135-36 (D.C.Cir.1985). Because the present mootness results not from any voluntary acts of settlement or withdrawal by Schaffer, but from the unpredictable grace of a presidential pardon, vacatur is here just and appropriate. *See U.S. Bancorp,* 513 U.S. at 24-25, 115 S.Ct. 386.

Given this posture of the case, the efficacy of the jury verdict against Schaffer remains only an unanswered question lost to the same mootness that the independent counsel so readily concedes. The same is true of Schaffer's claim of innocence. That claim will never again be tried.

We hereby vacate all opinions, judgments, and verdicts of this court and the District Court relating to the Meat Inspection Act charge. The matter will be remanded to the District Court with directions to dismiss the case as moot.

So ordered.

All Citations

240 F.3d 35, 345 U.S.App.D.C. 111

Footnotes

* Judges Sentelle, Randolph, and Garland did not participate in this matter.

End of Document © 2017 Thomson Reuters. No claim to original U.S. Government Works.

Robson v US 1st Circuit.pdf

526 F.2d 1145
United States Court of Appeals,
First Circuit.

Gerald Hardy ROBSON, III, Plaintiff-Appellant,
v.
UNITED STATES of America, Appellee.

No. 75-1259.
|
Argued Nov. 6, 1975.
|
Decided Dec. 17, 1975.

Petitioner filed motion to vacate sentence. The United States District Court for the District of New Hampshire, Hugh H. Bownes, J., entered judgment denying the motion, and petitioner appealed. The Court of Appeals, McEntee, Circuit Judge, held that failure of Government to make any effort to contact registrant through names he had provided to his local board of persons he had said would 'always know his address' precluded conviction for failure to keep local board advised of current address, and thus conviction was violation of due process.

Judgment reversed and case remanded.

West Headnotes (6)

[1] **Criminal Law**
Custody of Movant or Petitioner

Fact that petitioner was in prison at time he filed motion to vacate sentence, as authorized by statute, was sufficient "custody" to meet jurisdictional requirement. 28 U.S.C.A. § 2255.

3 Cases that cite this headnote

[2] **Criminal Law**
Custody of Movant or Petitioner

Fact that petitioner was no longer in custody and had been released from effect of sentence by a presidential pardon did not moot petitioner's action to review validity of his conviction under statute authorizing motions to vacate sentence. 28 U.S.C.A. § 2255.

3 Cases that cite this headnote

[3] **Criminal Law**
Consideration Despite Waiver or Other Bar

On a motion to vacate sentence, Court of Appeals will not review grounds for relief previously considered and determined, but such rule is not so inflexible that it may not yield to exceptional circumstances where the need for the remedy afforded by the writ is apparent. 28 U.S.C.A. § 2255.

1 Cases that cite this headnote

[4] **Criminal Law**
Fundamental or Constitutional Error; Innocence

Constitutional issues not raised on direct appeal from conviction are reviewable on a motion to vacate sentence. 28 U.S.C.A. § 2255.

3 Cases that cite this headnote

[5] **Criminal Law**
Cause

In a motion to vacate sentence, a petitioner is not precluded from raising legal issues that were raised in a prior direct appeal and determined against him, if there has been an intervening change in law. 28 U.S.C.A. § 2255.

7 Cases that cite this headnote

 © 2017 Thomson Reuters. No claim to original U.S. Government Works.

[6] **Armed Services**
Defenses
Constitutional Law
Selective Service and the Draft

Failure of Government to make any effort to contact registrant through names he had provided to his local draft board of persons he had said would "always know his address" precluded conviction for failure to keep local board advised of current address, and thus conviction was violation of due process. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

Cases that cite this headnote

Attorneys and Law Firms

***1146** David Rosenberg, with whom Rosenberg & Baker, Cambridge, Mass., was on brief, for appellant.

William J. Deachman, U.S. Atty., and W. H. D. Townley-Tilson, Asst. U.S. Atty., on motion to dismiss appeal and memorandum in support thereof.

Before ALDRICH, McENTEE and CAMPBELL, Circuit Judges.

Opinion

McENTEE, Circuit Judge.

Petitioner appeals from the district court's denial of his motion to vacate sentence brought pursuant to 28 U.S.C. s 2255 (1970). Petitioner's motion challenges the validity of his conviction under 50 U.S.C. App. s 462(a) for failing to keep his local draft board informed of his current address as required by 32 C.F.R. s 1641.3 (1971), as amended, 32 C.F.R. s 1641.1(a) (1974).

This case has an extensive prior history part of which is relevant to a disposition here. Previously petitioner was indicted for failure to report for induction, 50 U.S.C. App. s 462(a); 32 C.F.R. s 1632.14. The court, sitting without a jury, found petitioner had not received the notice of induction and, in an unpublished opinion, held he had not 'knowingly and wilfully' failed to report, and acquitted him. Subsequently, petitioner was indicted for failure to keep his local board advised of his current address, the charge which has led to this appeal. He was tried by a jury and found guilty. Petitioner then appealed his conviction ***1147** and on March 28, 1972, in an unpublished opinion we affirmed.[1]

[1] [2] The government contends that petitioner cannot here avail himself of a s 2255 motion, first, because he is no longer in custody, and, second, because he has been released from the effect of the sentence by a presidential pardon.[2] However, neither claim is persuasive. It is uncontested that petitioner was imprisoned at the time he filed the s 2255 motion. This is sufficient 'custody' to meet the jurisdictional requirement. Hensley v. Municipal Court, 411 U.S. 345, 352, 93 S.Ct. 1571, 36 L.Ed.2d 294 (1973). Further, the fact that petitioner has been pardoned does not relieve him from all the disabilities of a conviction. His conviction may be considered at sentencing in any subsequent criminal proceeding, Carlesi v. New York, 233 U.S. 51, 34 S.Ct. 576, 58 L.Ed. 843 (1914), and may result in heavier penalties, United States v. Morgan, 346 U.S. 502, 512-13, 74 S.Ct. 247, 98 L.Ed. 248 (1954), or may be introduced to impeach credibility, Richards v. United States, 89 U.S.App.D.C. 354, 192 F.2d 602 (1951), cert. denied, 342 U.S. 946, 72 S.Ct. 560, 96 L.Ed. 703, rehearing denied, 343 U.S. 921, 72 S.Ct. 676, 96 L.Ed. 1334 (1952). In light of these adverse collateral consequences, the termination of petitioner's custody does not moot an action to review the validity of his criminal conviction. See Carafas v. LaBallee, 391 U.S. 234, 237-38, 88 S.Ct. 1556, 20 L.Ed.2d 554 (1968);[3] see also Gosa v. Mayden, 413 U.S. 665, 670 n. 3, 93 S.Ct. 2926, 37 L.Ed.2d 873 (1973).

[3] [4] [5] The district court denied petitioner's s 2255 motion on the grounds that this court may already have considered the substance of his claims, although they were never explicitly briefed or argued in his prior appeal, and that, in any case, on a motion to vacate sentence he is barred from raising claims that could and should have been presented on direct appeal of the conviction. However, this holding overstates the limitations on a s 2255 motion. While it is true that '(o)n a motion to vacate sentence . . . we will not re-review grounds for relief previously considered and determined,' Dirring v. United States, 370 F.2d 862, 864 (1st Cir. 1967), nevertheless 'the rule is "not so inflexible that it may not yield to exceptional circumstances where the need for the remedy afforded by the writ . . . is apparent."' Desmond v. United States, 333 F.2d 378, 380 (1st Cir. 1964), on remand, 345 F.2d 225 (1st Cir. 1965). More importantly, constitutional issues not raised on the direct appeal from conviction are reviewable on a s 2255 motion. Kaufman v. United States,

supra. And a petitioner is not precluded from raising in a s 2255 proceeding legal issues that were raised in a prior direct appeal and determined against him if there has been 'an intervening change in ***1148** law.' Davis v. United States, 417 U.S. 333, 342, 94 S.Ct. 2298, 41 L.Ed.2d 109, (1974).[4]

Petitioner's claim in this action is that the judge's findings of fact in the nonjury trial in which he was acquitted of violating 50 U.S.C. App. s 462(a); 32 C.F.R. s 1632.14, constitute clear evidence that he was not guilty (despite a jury verdict to the contrary) of violating 32 C.F.R. s 1641.3 in light of applicable law and especially in light of United States v. Malde, 513 F.2d 97, decided by this court on March 25, 1975. In effect petitioner claims his due process rights have been violated because his conviction is based on a record that is devoid of evidence of guilt.

The Supreme Court has held that a registrant satisfies the duty of keeping his local draft board advised of the address where mail will reach him if, in good faith, he provides the first link in a chain of forwarding addresses by which mail will seasonably reach him. Bartchy v. United States, 319 U.S. 484, 489, 63 S.Ct. 1206, 87 L.Ed. 1534 (1943). And a registrant's noncompliance, in order to justify a conviction, must be the result of a 'deliberate purpose' not to comply. Ward v. United States, 344 U.S. 924, 73 S.Ct. 494, 97 L.Ed. 711 (1953), rev'g per curiam, 195 F.2d 441 (5th Cir. 1952); see Venus v. United States, 368 U.S. 345, 82 S.Ct. 384, 7 L.Ed.2d 341 (1961), rev'g per curiam, 287 F.2d 304 (9th Cir. 1961). In United States v. Malde, supra, we held that in order for the government to make out a case of failure to provide a good address where a registrant's selective service file 'contains the name and address of one purported to 'always know (his) address" the government must show that it made an effort to trace the registrant via that person. 513 F.2d at 99. In light of these principles there would appear to be no bar to petitioner's motion to vacate sentence.

[6] An examination of the findings of fact made by the district court in petitioner's previous trial clearly demonstrates that the government did not make any effort to contact petitioner through the names he had provided to his local board of persons he had said would 'always know his address.'[5] In light of this factual record there is no reasonable basis by which petitioner could have been found guilty of failing ***1149** to keep his local board advised 'of the address where mail will reach him' as required by 50 U.S.C. App. s 462(a); 32 C.F.R. s 1641.3 (1971). Consequently, petitioner's conviction was a violation of due process, Thompson v. City of Louisville, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed.2d 654 (1960); see Vachon v. New Hampshire, 414 U.S. 478, 480, 94 S.Ct. 664, 38 L.Ed.2d 666, rehearing denied, 415 U.S. 952, 94 S.Ct. 1477, 39 L.Ed.2d 568 (1974); Douglas v. Buder, 412 U.S. 430, 93 S.Ct. 2199, 37 L.Ed.2d 52 (1973); Harris v. United States, 404 U.S. 1232, 1233, 92 S.Ct. 10, 30 L.Ed.2d 25 (1971) (Douglas, J., in chambers); Johnson v. Florida, 391 U.S. 596, 598, 88 S.Ct. 1713, 20 L.Ed.2d 838 (1968) (per curiam); Adderley v. Florida, 385 U.S. 39, 44, 87 S.Ct. 242, 17 L.Ed.2d 149 (1966); Garner v. Louisiana, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed.2d 207 (1961); and he is entitled to a hearing on his motion to vacate sentence.

The judgment of the district court is accordingly reversed and the case remanded for appropriate action consistent with this opinion.

All Citations

526 F.2d 1145

Footnotes

1 The grounds of the direct appeal were that the evidence did not warrant the verdict and that the court should not have permitted a particular government witness to testify.

2 After affirmance of his conviction by this court, petitioner was incarcerated briefly in the Lewisburg Federal Penitentiary and thereafter at the minimum security Federal Prison Camp at Allenwood, Pennsylvania. He left the latter facility without authorization and shortly thereafter surrendered to federal authorities in March, 1975. On April 7, 1975, he was arraigned on an indictment for escape, entered a plea of not guilty, and was returned to prison. While in prison petitioner filed the present s 2255 motion and also a petition for clemency with the Presidential Clemency Board. On May 16, 1975, the district court released him on bail pending final disposition of the s 2255 motion. On May 26, 1975, the President granted him an unconditional pardon on his conviction. On July 28, 1975, the pending escape indictment was dismissed on the motion of the government.

3 Although Carafas involved an attack on a state court conviction via federal habeas corpus, s 2255 provides a remedy essentially identical in scope for those challenging a federal conviction and sentence. United States v. Hayman, 342 U.S. 205, 219, 72 S.Ct. 263, 96 L.Ed. 232 (1952); see Kaufman v. United States, 394 U.S. 217, 221, 89 S.Ct. 1068, 22

 © 2017 Thomson Reuters. No claim to original U.S. Government Works.

L.Ed.2d 227 (1969).

4 However, a petitioner might be barred from bringing certain claims in a s 2255 proceeding if he has 'deliberately bypassed' the opportunity to raise his claims on direct appeal. See Fay v. Noia, 372 U.S. 391, 438, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963). No such circumstances obtain here.

5 In the nonjury trial on the charge of failing to report for induction the court found the following pertinent facts:
'(P)rior to 1968, (petitioner) had carefully complied with all the orders of his local' draft board.
On his 1963 classification questionnaire petitioner had given 'the address of his grandfather . . . as the person other than a member of his household who would always know his address.'
In response to a 1965 'current information questionnaire' petitioner 'gave the name and address of his father, (a) Lieutenant Colonel . . . then stationed at Westover Air Force Base, Chicopee, Massachusetts, as a person who would always know his address.'
In October, 1966 petitioner notified his board by telephone and by letter that he had moved to 270 Newbury Street, in Boston.
The petitioner 'lacked actual knowledge of the induction order' mailed to 270 Newbury Street on October 4, 1968, because he had moved from that address on or about July 1, 1968.
Petitioner had not wilfully attempted to evade receipt of the notice since after he moved from 270 Newbury Street he 'lived at ten different places in and around Boston between July of 1968 and early 1970,' 'all of them . . . temporary.'
There was no evidence the local board made any attempt to contact petitioner's father at Westover Air Force Base 'which was the latest address given for him by (petitioner) in 1965.' Also the board made no effort to contact petitioner's grandfather although, the court noted, the FBI had subsequently contacted petitioner with no difficulty through information supplied by the grandfather.
United States v. Robson, Crim. No. 6940 (D.N.H., Oct. 15, 1970) (unpub. op.)

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

FW_ Freedom of Information Request_ DOJ Pardon.pdf

From: USPardon Attorney
To: Taylor, Will (OPATTY)
Cc: Mills, Jennifer K. (OPATTY)
Subject: FW: Freedom of Information Request: DOJ Pardon
Date: Monday, August 28, 2017 2:26:12 PM

From: (b) (6) [mailto:(b) (6)
Sent: Monday, August 28, 2017 3:23 AM
To: USPardon Attorney <Ex_USPardonAttorney@jmd.usdoj.gov>
Subject: Freedom of Information Request: DOJ Pardon

August 28, 2017
Department of Justice office of the pardon attorney
Office of the Pardon Attorney
Lawrence Kupers, Deputy Pardon Attorney
145 N Street N.E.
Room 5E.508
Washington, D.C. 20530

To Whom It May Concern:

This is a request under the Freedom of Information Act. I hereby request the following records:

All recommendations, reports, outgoing emails from the Office of the Pardon Attorney, and incoming emails to the Office of the Pardon Attorney from any ".gov" email address or Joe Arpaio concerning Joe Arpaio.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Joseph Uchill

Filed via MuckRock.com
E-mail (Preferred): (b) (6)
Upload documents directly: https://www.muckrock.com/accounts/agency_login/department-

of-justice-office-of-the-pardon-attorney-9697/doj-pardon-42508/?uuid-login=816f2463-072e-4b42-a334-175f907a4292&email=USPardon.Attorney%40usdoj.gov#agency-reply
Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):
MuckRock
DEPT MR 42508
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

FW_ Press inquiry.pdf

From: Taylor, Will (OPATTY)
To: Navas, Nicole (OPA)
Cc: Kupers, Lawrence B. (OPATTY)
Subject: FW: Press inquiry
Date: Wednesday, August 23, 2017 3:17:00 PM

Nicole,

(b) (5) [redacted]

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6) [redacted]
http://www.justice.gov/pardon/

From: USPardon Attorney
Sent: Wednesday, August 23, 2017 2:55 PM
To: Taylor, Will (OPATTY) (b) (6) [redacted]
Cc: Mills, Jennifer K. (OPATTY) (b) (6) [redacted]
Subject: FW: Press inquiry

FYI

From: Tierney Sneed [mailto(b) (6) [redacted]

Sent: Wednesday, August 23, 2017 2:50 PM
To: USPardon Attorney <Ex_USPardonAttorney@jmd.usdoj.gov>
Subject: Press inquiry

Hello,
Tierney Sneed from Talking Points Memo here. Have you received a pardon application, or any other type of paperwork, regarding a potential pardon for Sheriff Joe Arpaio, either from Sheriff Arpaio or the White House? Have you been asked to send the White House a pardon application or any other kind of paper work for a potential Arpaio pardon?

If you have anyone who could also just give me a run down on the nuts and bolts of the pardon process typically, that would also be helpful. I am willing to speak on background or off the record. You can reach me at 202 758 3048 ext 204.

Thanks,
Tierney

--
Tierney Sneed
Talking Points Memo
(b) (6)
@tierney_megan

Google Alert - Pardon attorney(1).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Friday, September 22, 2017 12:03:58 PM

Google Alerts

Pardon attorney

Daily update September 22, 2017

NEWS

Justice Department: Trump **pardon** merits nullifying rulings in Arpaio case

Politico (blog)

Citing the **pardon**, Arpaio's **attorneys** are asking that the convictions and all orders and opinions entered in the case be vacated—in essence, canceled ...

Flag as irrelevant

Prosecutors chime in on ex-Sheriff Joe Arpaio's **pardon**

KTAR.com

Former Maricopa County Sheriff Joe Arpaio, second from right, leaves U.S. District Court on the first day of his contempt-of-court trial with **attorney** Mark ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(10).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Monday, September 11, 2017 12:03:04 PM

Google Alerts

Pardon attorney

Daily update September 11, 2017

NEWS

I beg your **pardon**, Trump

PCC Courier

"The president has the authority to make this **pardon**, but doing so at this time undermines his claim for the respect of rule of **law** as Mr. Arpaio has ...

Flag as irrelevant

Groups urge **pardon** of Chen Shui-bian

Taipei Times

Tsai Yi-yu has proposed amending the **law** to allow the president to **pardon** people for crimes even before a conviction, as Chen still has trails pending ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(11).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Sunday, September 10, 2017 12:02:27 PM

Google Alerts

Pardon attorney

Daily update September 10, 2017

NEWS

Could President Trump **Pardon** Someone in Secret?

TIME

In general, pardons are vetted by the Office of the **Pardon Attorney** in the Justice Department. But the regulations governing that process don't interfere ...

Flag as irrelevant

Judge Bolton Should Let Someone Make the Argument Against Vacating Joe Arpaio's Conviction

Lawfare (blog)

Does the **pardon** have any consequences on potential prosecutions under state **law**? Does Supreme Court precedent describing acceptance of a ...

Flag as irrelevant

Getting royal **pardon** no easy feat, AG says

Malay Mail Online

The **Attorney**-General (AG) wrote in an opinion piece in the Sunday edition of Berita Harian, BH Ahad, that the **pardon** cannot simply be applied at any ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(12).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Friday, September 8, 2017 12:07:35 PM

Google Alerts

Pardon attorney

Daily update September 8, 2017

NEWS

Podcast: Presidential **pardons** and the rule of **law**

Constitution Daily (blog)

Recently, President Donald Trump announced that he would **pardon** Sheriff Joe Arpaio, an Arizona sheriff who was found guilty of criminal contempt ...

Why Russia investigation could take new turn - CNBC

A special prosecutor should challenge Joe Arpaio's special **pardon** - The Boston Globe

Full Coverage

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(13).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Thursday, September 7, 2017 12:05:22 PM

Google Alerts

Pardon attorney

Daily update September 7, 2017

NEWS

Trump's **pardon** of Joe Arpaio disturbs some legal observers

The Columbus Dispatch

Trump's **pardon** of Joe Arpaio disturbs some legal observers ... Columbus defense **attorney** Steve Nolder once had a client who, in exchange for ...

Trump's **pardon** of Arpaio sets a dangerous course - Chicago Tribune
Full Coverage

Flag as irrelevant

Trump's **pardon** of Arpaio, CPS pension funding, Judicial Hellholes, legal Issues in the wake of ...

WGN Radio

... Pritzker School of **Law** Professor Martin Redish discusses Trump's **pardon** of ... **Attorney** Jarrett Adams discusses his journey from convicted felon to ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(14).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Wednesday, September 6, 2017 12:06:27 PM

Google Alerts

Pardon attorney

Daily update September 6, 2017

NEWS

An Unpardonable **Pardon**

Palisades Hudson Financial Group

Normally the Justice Department's Office of the **Pardon Attorney** makes pardon recommendations to a president. These are generally subject to a ...

Flag as irrelevant

Pardon of Sheriff Arpaio undermines Rule of **Law**

Wyoming Tribune

As a practicing **attorney** with more than 40 years of experience, I am deeply concerned about President Trump's **pardon** of Joe Arpaio, the former ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(15).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Monday, September 4, 2017 12:06:12 PM

Google Alerts

Pardon attorney

Daily update September 4, 2017

NEWS

Pardons rare in Minnesota, North Dakota

WDAZ

On May 10, Burgum signed a **pardon** for Kacey Marie Songer, a Minot ... In Minnesota, the governor sits on the **pardon** board, along with **Attorney** ...

Former Prosecutor and Sheriff Arpaio **Attorney**: Trump Was Perfectly in His Right to **Pardon** Him - Townhall

Full Coverage

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(16).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Saturday, September 2, 2017 12:12:03 PM

Google Alerts

Pardon attorney

Daily update September 2, 2017

NEWS

The Arpaio **Pardon**: Why it Matters to **Attorneys**

Above the Law

I do solemnly swear that I will faithfully execute the office of President of the United States and will to the best of my ability, preserve, protect and ...

Pardon me, Mr. President - Mountain View Journal

Norms Watch: Democracy, the Trump Administration, and Reactions to It (August 25-September 1) - Just Security

Matthew T. Mangino: Mueller sends Trump administration message on **pardons** - The Hutchinson News

Full Coverage

Flag as irrelevant

'**Pardon**? The Dreamer program?' Leading Alabama Senate candidate has 'What is Aleppo?' moment

Chicago Tribune

Luther Strange to fill the U.S. Senate seat previously held by **Attorney** ... 26 runoff to fill the seat that Jeff Sessions left to become **attorney** general.

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(17).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Friday, September 1, 2017 12:11:25 PM

Google Alerts

Pardon attorney

Daily update September 1, 2017

NEWS

Trump and Manafort get big reminder that **pardon** power does not extend to state crimes

Washington Post

Politico reported Wednesday that New York's **attorney** general Eric Schneiderman is now working with special counsel Robert S. Mueller III in the ...

Mueller looks to bypass Trump **pardons** by working with NY **attorney** general on Manafort probe - Hot Air

Robert Mueller and New York **Attorney** General 'team up on Manafort probe', stopping Trump from ... - The Independent

Mueller reportedly working with top Trump foe, could end-run presidential **pardon** - Fox News

Full Coverage

Flag as irrelevant

Talk of Assange **pardon** worries intelligence community

The Hill

Talk of Assange pardon worries intelligence community ... Love, who served as the Department of Justice **pardon attorney** between 1990 and 1997.

Flag as irrelevant

Erwin Chemerinsky: Trump's Terrible **Pardon** of Sherriff Joe Arpaio

The Nation.

The dean of the **law** school at Berkeley explains why Trump's move violates basic tenets of the separation of powers.

Will Trump's Arpaio **Pardon** Help Swing Arizona to the Democrats? - Newsweek

Group home creating problems in Franklin; Trump is un-presidential | Feeback - NJ.com

The ethics of presidential **pardons** - ABC Online

Full Coverage

Flag as irrelevant

Robert Mueller just undercut Trump's use of the **pardon** power

Washington Post

Politico reported Wednesday that special counsel Robert S. Mueller III is teaming up with New York **Attorney** General Eric Schneiderman in the ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(18).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Thursday, August 31, 2017 12:02:24 PM

Google Alerts

Pardon attorney

Daily update - August 31, 2017

NEWS

House Dems call for hearing on Trump's Arpaio **pardon**

The Hill

Lawmakers noted that Trump issued the pardon through the White House, rather than the Office of the **Pardon Attorney** at the Department of Justice.

Joe Arpaio has been **pardoned**. But will a judge dismiss the verdict against him? - Washington Post
Conyers, Dems want Judiciary probe of Arpaio **pardon** - The Detroit News
Dems Urge House Judiciary Chair To Hold Hearing On Trump's Arpaio **Pardon** - TPM
Full Coverage

Flag as irrelevant

Mueller teams up with New York **attorney** general in Manafort probe

Politico

Mueller teams up with New York **attorney** general in Manafort probe ... While Trump has not signaled any public intention to **pardon** Manafort or ...

Flag as irrelevant

Trump **Pardon** Plan Blown Up As Special Counsel Is Working With New York AG On Russia Probe

PoliticusUSA

Trump's **pardon** power will be worthless as special counsel Robert Meuller is working with the New York **attorney** general in the clearest signal yet that ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(19).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Wednesday, August 30, 2017 12:07:56 PM

Google Alerts

Pardon attorney

Daily update - August 30, 2017

NEWS

Trump's Unmerited, Unnecessary, Impulsive **Pardon** of Sheriff Arpaio

National Review

Because a demonstration of contrition and a commitment to living a **law**-abiding life have always been thought an important part of earning a **pardon** ...

'We believe in the system': **Attorneys** stage lunchtime protest of Trump's **pardon** of Joe Arpaio - AZCentral.com

Kerik: Arpaio Charges Were Pure Politics – Just Like Criticism of **Pardon** - Newsmax

Beacon Journal editorial board: Arpaio, Trump and the **pardon** - Akron Beacon Journal

Full Coverage

Flag as irrelevant

Presidential **Pardons** Might Not End Russia Prosecutions

NBCNews.com

President Donald Trump's unusual **pardon** of former Arizona Sheriff Joe Arpaio ... According to a source with knowledge of one state **attorney** general's ...

Flag as irrelevant

Families, **Attorneys** Says Chance At **Pardon** Giving Iraqi Detainees New Hope

WEMU

Attorney Brad Maze represents many Iraqis who were detained by federal immigration authorities. Maze says a **pardon** gives detainees more legal ...

Flag as irrelevant

Local **Lawyers** to Arpaio: What Part of 'Rule of **Law**' Don't You Understand?

Phoenix New Times

The fact that the **pardon** was for criminal contempt made these **lawyers**' blood boil even more than the triple-digit heat. It's not just that Arpaio broke the ...

Flag as irrelevant

Mohammad Bin Rashid **pardons** 543 prisoners ahead of Eid Al Adha

gulfnews.com

Essam Issa Al Humaidan, **Attorney** General of Dubai, said that Shaikh Mohammad's order to **pardon** the prisoners will bring happiness to their families, ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.

Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(2).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Thursday, September 21, 2017 12:02:45 PM

Google Alerts

Pardon attorney

Daily update September 21, 2017

NEWS

Arpaio **Pardon**: Controversial but Not Unprecedented

Florida Political Review

Typically, pardons are also processed through the Department of Justice. The **pardon attorney** will make pardon recommendations after a convicted ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(20).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Tuesday, August 29, 2017 12:08:36 PM

Google Alerts

Pardon attorney

Daily update - August 29, 2017

NEWS

The Arpaio **Pardon** Has Plenty Of Precedents … That Got Other Presidents In Trouble

FiveThirtyEight

There's no question that Trump has the legal standing to issue the pardon, according to Margaret Colgate Love, who served as **pardon attorney** in the ...

Trump: 'I stand by my **pardon** of Sheriff Joe' - ABC News
The Arpaio **pardon** displays Trump's disdain for the rule of **law** - Washington Post
Trump Defends Controversial **Pardon** Of Former Arizona Sheriff Joe Arpaio - WHQR
Full Coverage

Flag as irrelevant

After Arpaio, 4 Answers To Questions About How **Pardons** Are Supposed To Work

NPR

Typically, the Justice Department's Office of **Pardon Attorney** reviews applications and makes recommendations. Under Justice Department guidelines ...

Trump's Arpaio **pardon**: Legal and disgraceful - CNN
Trump Defends **Pardon** of Arpaio, Saying He Was Treated Unfairly - Bloomberg
Arpaio's **attorney** files motion to vacate verdict after Trump **pardon** - KPNX 12 News TV
Full Coverage

Flag as irrelevant

Trump's Arpaio **Pardon** Definitely Was Not by the Book

NBCNews.com

WASHINGTON — One thing is certain after the presidential pardon of ... a recommendation from the Justice Department's Office of **Pardon Attorney** ...

Flag as irrelevant

Families, **Attorneys**, Say Chance At **Pardon** Giving Iraqi Detainees New Hope

WMUK

(MPRN-Lansing) Family members and **attorneys** for Iraqi Christians facing deportation say the possibility of **pardons** is giving them a new sense of ...

Flag as irrelevant

Will President Trump **Pardon** Disgraced Ex-Sheriff Lee Baca Next?

NBC Southern California

Baca's **attorney** Monday refused to comment when asked if there's any possibility of a presidential **pardon** for his client. Baca is fighting to stay out of ...

Flag as irrelevant

'Granting **pardon** to prison inmates by chief judges is unconstitutional'

Guardian (blog)

A Renowned constitutional **lawyer** and author, Chief Sebastine Hon (SAN) has declared the practice of granting **pardon** to offenders by chief judges as ...

Flag as irrelevant

Trump to **pardon** Baca after Arizona sheriff uproar? Ex-LA sheriff **attorney** won't say yes or no

MyNewsLA.com

In the wake of a controversial **pardon** for convicted ex-Arizona sheriff Joe ... Baca's **attorney** Monday refused to comment when asked if there's any ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(21).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Monday, August 28, 2017 12:06:25 PM

Google Alerts

Pardon attorney

Daily update - August 28, 2017

NEWS

The Arpaio **Pardon** Dangerously Accelerates Trump's Assault on the Rule of **Law**

The New Yorker

The Presidential **pardon** of Joe Arpaio, pictured here in 2013, is the most alarming example yet of Donald Trump's attack on the rules and norms ...

Correction: The president's **pardon** power and how it works - ABC News
Correction: The president's **pardon** power and how it works - WTOP
Joe Arpaio **pardon** isn't like most presidential **pardons** - Dallas News (blog)
Full Coverage

Flag as irrelevant

Joe Arpaio **Pardon** Unleashes Surge of Censure From **Lawyers**

Law.com (subscription)

However, several aspects of Trump's pardon of Arpaio are unconventional. The Justice Department's **pardon attorney** does not seem to have been ...

Flag as irrelevant

Trump's **Pardon** Of Sheriff Joe Is A Massive Signal To Those Being Investigated By Mueller

HuffPost

Trump skirted all of the regulations governing the process of pardons set down by the Department of Justice for the Office of the **Pardon Attorney**.

Flag as irrelevant

Trump's first **pardon** spares political ally Arpaio

Jefferson City News Tribune

President Donald Trump has **pardoned** former sheriff Joe Arpaio following his .... **Lawyers** in Trump's Justice Department prosecuted the case during a ...

Flag as irrelevant

It is Illegal for Chief Judges to **Pardon** Criminals, Says SAN

THISDAY Newspapers

State Chief Judges don't have the constitutional power to grant **pardon** to ... **Attorney**-General of the Federation (2002) 6 NWLR (Pt. 763) 264 at 369, ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.

Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(22).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Sunday, August 27, 2017 12:02:47 PM

Google Alerts

Pardon attorney

Daily update - August 27, 2017

NEWS

A look at the president's **pardon** power and how it works

PBS NewsHour

Arpaio didn't submit a pardon application through the Office of the **Pardon Attorney**. His pardoning also took place before he was sentenced. Arpaio ...

Why Trump's **Pardon** of Arpaio Follows **Law**, Yet Challenges It - New York Times
How President Trump's **Pardon** of Joe Arpaio Breaks With White House History - TIME
Why Trump's **pardon** of Joe Arpaio isn't like most presidential **pardons** - Washington Post
Full Coverage

Flag as irrelevant

Preet Bharara: Trump violated Justice Department guidelines with Joe Arpaio **pardon**

Washington Examiner

Former U.S. **Attorney** Preet Bharara accused President Trump of violating the Justice Department's guidelines for issuing **pardons** with his **pardon** of ...

Flag as irrelevant

Critics: Trump **pardon** his latest affront against judiciary

Los Angeles Times

President Donald Trump's **pardon** of former Arizona sheriff Joe Arpaio ... The Washington Post reported Saturday that Trump had asked **Attorney** ...

Paul Ryan joins the critics of Trump's **pardon** of Joe Arpaio - Minneapolis Star Tribune
Full Coverage

Flag as irrelevant

Critics say Trump's **pardon** his latest affront against judiciary

CTV News

But the **pardon** was unusual given that Arpaio was awaiting sentencing. ... The Washington Post reported Saturday that Trump had asked **Attorney** ...

Flag as irrelevant

Contempt for Contempt

New York Sun

President Trump's **pardon** of Sheriff Joseph Arpaio of the crime of contempt is no doubt going to met by the left with contempt. Under our **law**, after all, ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.

Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(23).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Saturday, August 26, 2017 12:03:00 PM

Google Alerts

Pardon attorney

Daily update - August 26, 2017

NEWS

Trump **Pardons** Former Sheriff Joe Arpaio, Who Illegally Targeted Latinos

HuffPost

His **pardon** of Arpaio is a presidential endorsement of racism." ... "If President Trump uses his power to **pardon** a discredited **law** enforcement official ...

Trump **Pardons** Joe Arpaio, Ex-Sheriff Convicted Over Immigration Crackdown - Bloomberg
The President Trump Who **Pardons** Arpaio May Use **Pardons** To Block Mueller - Forbes
Trump's first **pardon** spares political ally Arpaio - ABC News
Full Coverage

Flag as irrelevant

'A middle finger to America': What people are saying about Trump's first presidential **pardon**

Business Insider UK

Trump's "**pardon** of fellow birther Arpaio makes mockery of rule of **law**, ... Former Deputy **Attorney** General Sally Yates: Trump just revealed "his own ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(24).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Friday, August 25, 2017 12:03:15 PM

Google Alerts

Pardon attorney

Daily update - August 25, 2017

NEWS

White House: No decision on Joe Arpaio **pardon**

Washington Examiner

A Justice Department official told the Washington Examiner after Sanders' remark that the **pardon attorney's** office has nothing on file for Arpaio, who ...

OPINION | Pardoning Joe Arpaio undermines respect for the **law** - The Hill (blog)
Trump's Possible **Pardon** Of Joe Arpaio Is Destructive And Unpresidential - HuffPost
Republicans Weigh Fallout of **Pardon** for Arizona's Arpaio - RealClearPolitics
Full Coverage

Flag as irrelevant

Kamala Harris is either the stupidest or the cruelest senator in America

Washington Examiner

To say flatly that Arpaio doesn't deserve a **pardon** because he broke the **law**, is to say in the same breath that Ray and the thousands of others ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(25).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Thursday, August 24, 2017 12:07:17 PM

Google Alerts

Pardon attorney

Daily update - August 24, 2017

NEWS

President Trump Could Still **Pardon** Joe Arpaio. Here's How That Works

TIME

In general, people seeking presidential pardons submit applications to the Office of the **Pardon Attorney** in the Justice Department for evaluation.

No need for paperwork: Trump could **pardon** Sheriff Joe Arpaio in a tweet - USA TODAY

Out of mercy or for Trump's base, an Arpaio **pardon** is coming - The Hill (blog)

Trump considering a **pardon** of Joe Arpaio: What to know about the process - PolitiFact

Full Coverage

Flag as irrelevant

Pardon for Arpaio would be rare but not unprecedented act

Washington Post

For most applicants, seeking a pardon is a long, arduous process that begins with the **pardon attorney** at Justice Department headquarters — an ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.

Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(26).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Wednesday, August 23, 2017 12:06:36 PM

Google Alerts

Pardon attorney

Daily update - August 23, 2017

NEWS

Trump's Possible First **Pardon** Could Shatter Norms: QuickTake Q&A

Bloomberg

The vast majority of presidential pardons are processed and vetted through the U.S. Justice Department's Office of the **Pardon Attorney**. The pardon ...

Will an outcome of Trump's Phoenix rally be a **pardon** for Joe Arpaio? - Christian Science Monitor
Trump will not **pardon** Arpaio at Phoenix rally, White House says - Fox News
Trump planning Arpaio **pardon**? Ex-sheriff says 'we'll see what happens' - Fox News
Full Coverage

Flag as irrelevant

Families of soldiers hanged in Camp Logan case renew call for presidential **pardon** on rioting ...

Chron.com

The petition would be reviewed by the Office of the **Pardon Attorney** with the U.S. Department of Justice. A pardon itself would have to come from the ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(27).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Tuesday, August 22, 2017 12:07:55 PM

Google Alerts

Pardon attorney

Daily update - August 22, 2017

NEWS

Potential **pardon** for ex-sheriff Joe Arpaio not on DOJ's plate

CNN

In the typical clemency case, an applicant submits a petition to the Office of the **Pardon Attorney** at DOJ roughly five years after being sentenced, that ...

Experts Say A Presidential **Pardon** For Joe Arpaio Would Be Rare - KJZZ
Full Coverage

Flag as irrelevant

Trump **Pardon** Of Joe Arpaio Would Be A 'Bull Horn' Calling All Racists, Critics Say

HuffPost

Given his history with Trump and the fact that Arpaio hasn't been sentenced yet, DOJ's Office of the **Pardon Attorney** would be highly unlikely to ...

If Trump plans to **pardon** Joe Arpaio today, he apparently hasn't told the Justice Department about ... - The Week Magazine
Full Coverage

Flag as irrelevant

As Joe Arpaio waits for mercy, 5 things to know about presidential **pardons**

AZCentral.com

From William McKinley through Richard Nixon, presidents averaged 947 pardons each, according to figures from the Office of the **Pardon Attorney** in ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(28).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Monday, August 21, 2017 12:05:59 PM

Google Alerts

Pardon attorney

Daily update - August 21, 2017

NEWS

Donald Trump May Circumvent the Usual Process to **Pardon** Sheriff Joe Arpaio

Daily Beast

Trump has yet to name a new **pardon attorney** and while the vast majority of people who get presidential pardons wait for at least five years after being ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(29).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Sunday, August 20, 2017 12:01:35 PM

Google Alerts

Pardon attorney

Daily update - August 20, 2017

NEWS

Will Trump **pardon** Joe Arpaio?

Washington Examiner

President Trump said he's considering a pardon for former Maricopa ... There is no pardon paperwork for Arpaio processed by the **pardon attorney** ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(3).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Wednesday, September 20, 2017 12:04:56 PM

Google Alerts

Pardon attorney

Daily update September 20, 2017

NEWS

Krishnamoorthi calls on White House to disclose efforts to **pardon** Manafort

Chicago Daily Herald

Krishnamoorthi in July introduced the Presidential **Pardon** Transparency Act, which would require the U.S. **attorney** general to publish on the White ...

Flag as irrelevant

Federal Judge in Arpaio Case Prepares to Rule Trump **Pardon** Unconstitutional

The New American

"A **pardon** issued before entry of final judgment moots a criminal case because ... Arpaio's **attorney**, Mark Goldman of Goldman & Zwillinger PLLC in ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(30).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Thursday, August 17, 2017 12:02:51 PM

Google Alerts

Pardon attorney

Daily update - August 17, 2017

NEWS

Star Opinion: A **pardon** for Joe Arpaio would be a big mistake

Arizona Daily Star

Star Opinion: A pardon for Joe Arpaio would be a big mistake ... **Pardon Attorney** at the Department of Justice, but Arpaio is far from contrite, telling Fox ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(31).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Wednesday, August 16, 2017 12:04:56 PM

Google Alerts

Pardon attorney

Daily update - August 16, 2017

NEWS

Star Opinion: **Pardon** for Arpaio would be a big mistake

Arizona Daily Star

Star Opinion: Pardon for Arpaio would be a big mistake ... the Office of the **Pardon Attorney** at the Department of Justice, but Arpaio is far from contrite, ...

Trump Pardoning Guilty Arpaio? Then **Pardon** 'Jose and Maria' Equivalents - HuffPost
Full Coverage

Flag as irrelevant

Trump mulls **pardon** of ex-sheriff with same immigration views

The Herald

Still, Crouch said presidents can act as soon as they wish and don't have to wait for an investigation from the **Pardon Attorney's** office, which he said ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(32).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Tuesday, August 15, 2017 12:03:30 PM

Google Alerts

Pardon attorney

Daily update - August 15, 2017

NEWS

Trump says he's considering **pardon** for Joe Arpaio

Washington Post

Jack Wilenchik, Arpaio's **attorney**, said after Arpaio was convicted that the ...
Reacting to the prospect that Trump might **pardon** Arpaio, ACLU Deputy ...

Trump 'seriously considering' a **pardon** for ex-Sheriff Joe Arpaio - Fox News

President Donald Trump considering **pardon** for 'America's toughest sheriff,' Springfield native Joe ... - MassLive.com

Embattled ex-sheriff Joe Arpaio may be saved by a Trump **pardon** - RT

Full Coverage

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(33).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Saturday, August 12, 2017 12:00:44 PM

Google Alerts

Pardon attorney

Daily update - August 12, 2017

NEWS

Trump is off to a stingy start on clemency

Washington Examiner

The Justice Department's Office of the **Pardon Attorney**, which reviews applications, sent an unsigned email in June communicating the denial of ...

Flag as irrelevant

Ex-Sheriff Joe Arpaio Channels Trump While Insisting He Isn't Asking For A **Pardon** (But Would ...

UPROXX

The Justice Department's Office of the **Pardon Attorney** requires the submission of a formal petition, which must undergo a rigorous vetting process ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(34).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Thursday, August 10, 2017 12:01:30 PM

Google Alerts

Pardon attorney

Daily update - August 10, 2017

NEWS

Ex-Sheriff Joe Arpaio: I'd take a **pardon** from President Donald Trump

AZCentral.com

Individuals seeking a pardon are supposed to file a petition through the U.S. Department of Justice's **pardon attorneys**, according to former U.S. ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(35).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Wednesday, August 2, 2017 12:01:22 PM

Google Alerts

Pardon attorney

Daily update - August 2, 2017

NEWS

Joe Arpaio unsure if he could land Trump **pardon**

Washington Examiner

Joe Arpaio unsure if he could land Trump **pardon** ... Arpaio, the 85-year-old former Arizona **law** man, was found guilty Monday of misdemeanor ...

Flag as irrelevant

Vail **Law** column: The constitution and the president's power to **pardon**

Vail Daily News

(Part 1 of 2) When a priest seeks forgiveness, he tracks down another priest to intercede for him. When a rabbi pursues absolution, he beseeches it of ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(4).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Tuesday, September 19, 2017 12:02:50 PM

Google Alerts

Pardon attorney

Daily update September 19, 2017

NEWS

Will Judge Overturn Arpaio **Pardon**?

Center for Research on Globalization

The president's constitutional **pardon** power is absolute, they thought. Not so, argue **lawyers** and legal scholars in two proposed amicus briefs filed in ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(5).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Sunday, September 17, 2017 12:06:28 PM

Google Alerts

Pardon attorney

Daily update September 17, 2017

NEWS

Presidential **pardons**, explained

The Week Magazine

Typically, offenders make a formal request to the Justice Department's Office of the **Pardon Attorney**, which advises on executive clemency. (The DOJ ...

Flag as irrelevant

Will Judge Overturn Arpaio **Pardon**?

Truth-Out

Not so, argue **lawyers** and legal scholars in two proposed amicus briefs filed in US District Court in Arizona. They contend the Arpaio **pardon** is ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(6).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Friday, September 15, 2017 12:06:42 PM

Google Alerts

Pardon attorney

Daily update September 15, 2017

NEWS

My Turn: Arpaio's **pardon** isn't final, and that must be argued in court

AZCentral.com

And his former prosecutors at the Justice Department – the same Justice Department whose Office of the **Pardon Attorney** formally issued Arpaio's ...

Opinion: Is Trump's **pardon** of Joe Arpaio really legal? This **lawyer** thinks it's not - The Mercury News
Trump **pardon** of Sheriff Joe attacked in court - WND.com
Can Trump **pardon** himself and his children? Yes, but here's the catch - Raw Story
Full Coverage

Flag as irrelevant

Hickenlooper denies **pardon** for Peruvian woman in US illegally

9NEWS.com

... been denied a **pardon** by Gov. John Hickenlooper. Ingrid Encalada Latorre's stay of deportation expires Friday. Last week, her **attorney** said her only ...

Hickenlooper Denies **Pardon** To Peruvian Mother Facing Deportation - CBS Local
Full Coverage

Flag as irrelevant

DA: **Pardon** board will make right call on mom who drowned baby in toilet

PennLive.com

Dauphin County District **Attorney** Edward Marsico Jr. weighed in on news that Tina Brosius' case will go before the state Board of **Pardons** this week, ...

Life sentence for mom who killed baby in toilet to be reviewed - PennLive.com
Full Coverage

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(7).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Thursday, September 14, 2017 12:06:34 PM

Google Alerts

Pardon attorney

Daily update September 14, 2017

NEWS

Arizona judge considers ways to legally out-maneuver Trump's **pardon** of Joe Arpaio

Raw Story

Arguments lodged by Arpaio's **attorneys** allege that "(t)he president's **pardon** moots the case, and it warrants an automatic vacatur of all opinions, ...

Arizona judge defies Trump **pardon** of Sheriff Arpaio, considers ways to deny it - BizPac Review

Full Coverage

Flag as irrelevant

Can Trump Legally **Pardon** Himself and His Children?

AlterNet

Was it legal for Ronald Reagan to **pardon** George Steinbrenner? ... Mueller is coordinating with New York State **Attorney** General Eric Schneiderman.

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.

Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(8).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Wednesday, September 13, 2017 12:05:48 PM

Google Alerts

Pardon attorney

Daily update September 13, 2017

NEWS

READ: New Brief Argues Trump Violated Constitution With Arpaio **Pardon**

Above the Law

Berkeley's Dean Erwin Chemerinsky and retired professor Michael Tigar and **attorney** Jane Tigar have filed a proposed amicus brief arguing that ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney(9).pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Tuesday, September 12, 2017 12:09:49 PM

Google Alerts

Pardon attorney

Daily update September 12, 2017

NEWS

DOJ prosecutors agree Arpaio case should be tossed after Trump **pardon**

AZCentral.com

But the **pardon** has also galvanized a slate of non-profits and constitutional **attorneys**, all who are urging a federal judge to uphold Arpaio's conviction.

Group Founded By Obama Administration Alumni Says Joe Arpaio **Pardon** Was Unconstitutional - HuffPost

Justice Dept. supports Arpaio's post-**pardon** bid to have guilty finding thrown out - Washington Post

DOJ sides with Joe Arpaio, as groups ask Ct to declare **Pardon** unconstitutional - legal Insurrection (blog)

Full Coverage

Flag as irrelevant

Trump's DOJ agrees with Arpaio on vacating ex-sheriff's criminal conviction

TucsonSentinel.com

"It is only fair that the court vacate its verdict and all other rulings in the case," Arpaio's **lawyers** said, arguing that because the **pardon** was issued ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - Pardon attorney.pdf

From: Google Alerts
To: Taylor, Will (OPATTY)
Subject: Google Alert - Pardon attorney
Date: Thursday, September 28, 2017 12:09:42 PM

Google Alerts

Pardon attorney

Daily update September 28, 2017

NEWS

Rep. Hunter asks Trump to **pardon** border patrol agents who covered up their shooting of drug ...

The San Diego Union-Tribune

"Rather than reward these agents for their $1 million seizure, a U.S. **Attorney** offered the drug smuggler immunity in exchange for testimony to ...

Flag as irrelevant

Conyers, Dems ask court to deny Arpaio request

The Detroit News

Conyers has previously asked the House Judiciary Committee to investigate the Arpaio **pardon**, saying the **pardon** disregarded the rule of **law** and ...

Flag as irrelevant

Fired for refusal to defend travel ban, Yates candid on Russia investigation, DACA, presidential ...

Vanderbilt University News

People told Sally Yates her tenure as acting U.S. **attorney** general would be ... "What message does a **pardon** send as to respecting the rule of **law**?".

Flag as irrelevant

Virginia sheriff is pushing governor to **pardon** convicted killer

WRIC

ALBEMARLE COUNTY, Va. (WRIC) — A Virginia sheriff held a press conference today to discuss his push to **pardon** a convicted killer who he says is ...

Flag as irrelevant

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_(1).pdf

From: Google Alerts
To: jordan(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Friday, September 15, 2017 10:08:49 AM

Google Alerts

"office of the pardon attorney"

Daily update September 15, 2017

NEWS

My Turn: Arpaio's pardon isn't final, and that must be argued in court

AZCentral.com

And his former prosecutors at the Justice Department – the same Justice Department whose **Office of the Pardon Attorney** formally issued Arpaio's ...

Contentious presidential pardon: Lawful, but not right - Timesonline.com
Full Coverage

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_(10).pdf

From: Google Alerts
To: jordan(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Saturday, August 26, 2017 10:07:23 AM

Google Alerts

"office of the pardon attorney"

Daily update - August 26, 2017

NEWS

Trump Pardons Former Sheriff Joe Arpaio, Who Illegally Targeted Latinos

HuffPost

... Arpaio skipped over the typical review process for pardons, which are usually routed through the Justice Department's **Office of the Pardon Attorney**.

Trump's Pardon of Joe Arpaio 'Is a Presidential Endorsement of Racism,' ACLU Says - Daily Beast
Trump Pardons Joe Arpaio, Ex-Sheriff Convicted Over Immigration Crackdown - Bloomberg
Joe Arpaio's Pardon Did Not Go Through The Justice Department. It Didn't Have To. - BuzzFeed News
Full Coverage

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_(11).pdf

From: Google Alerts
To: jordan(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Friday, August 25, 2017 10:07:00 AM

Google Alerts

"office of the pardon attorney"

Daily update - August 25, 2017

NEWS

Trump's Possible Pardon Of Joe Arpaio Is Destructive And Unpresidential

HuffPost

... only exercises the clemency power after rigorous analysis of the particular case by the Department of Justice's **Office of the Pardon Attorney**.

White House: No decision on Joe Arpaio pardon - Washington Examiner
Why Donald Trump's plans to pardon sheriff Joe Arpaio are so troubling - The Guardian
OPINION | Pardoning Joe Arpaio undermines respect for the law - The Hill (blog)
Full Coverage

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_(12).pdf

From: Google Alerts
To: jordan(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Thursday, August 24, 2017 10:08:58 AM

Google Alerts

"office of the pardon attorney"

Daily update - August 24, 2017

NEWS

No need for paperwork: Trump could pardon Sheriff Joe Arpaio in a tweet

USA TODAY

The Justice Department confirmed that Arpaio has not formally applied for a pardon to the **Office of the Pardon Attorney**, which is the usual process for ...

President Trump Could Still Pardon Joe Arpaio. Here's How That Works - TIME
Out of mercy or for Trump's base, an Arpaio pardon is coming - The Hill (blog)
Trump's hinted pardon of ally Joe Arpaio called 'extremely unusual' - CBC.ca
Full Coverage

Flag as irrelevant

Families of soldiers hanged in Camp Logan Riot renew call for pardon on 100th anniversary

Chron.com

The petition would be reviewed by the **Office of the Pardon Attorney** with the U.S. Department of Justice. A pardon itself would have to come from the ...

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_(13).pdf

From: Google Alerts
To: jordan(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Tuesday, August 22, 2017 1:40:40 PM

Google Alerts

"office of the pardon attorney"

Daily update - August 22, 2017

NEWS

Trump's Possible First Pardon Could Shatter Norms: QuickTake Q&A

Bloomberg

The vast majority of presidential pardons are processed and vetted through the U.S. Justice Department's **Office of the Pardon Attorney**. The pardon ...

Trump Pardon Of Joe Arpaio Would Be A 'Bull Horn' Calling All Racists, Critics Say - HuffPost

If Trump plans to pardon Joe Arpaio today, he apparently hasn't told the Justice Department about ... - The Week Magazine

As Joe Arpaio waits for mercy, 5 things to know about presidential pardons - AZCentral.com

Full Coverage

Flag as irrelevant

Potential pardon for ex-sheriff Joe Arpaio not on DOJ's plate

CNN

In the typical clemency case, an applicant submits a petition to the **Office of the Pardon Attorney** at DOJ roughly five years after being sentenced, that ...

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_(14).pdf

From: Google Alerts
To: jordan(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Sunday, August 20, 2017 11:09:59 AM

Google Alerts

"office of the pardon attorney"

Daily update - August 20, 2017

NEWS

Will Trump pardon Joe Arpaio?

Washington Examiner

... would be done outside of the standard clemency process, in which petitions are first vetted by the Justice Department's **Office of the Pardon Attorney**.

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_(15).pdf

From: Google Alerts
To: jordan(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Wednesday, August 16, 2017 11:27:32 AM

Google Alerts

"office of the pardon attorney"

Daily update - August 16, 2017

NEWS

Star Opinion: Pardon for Arpaio would be a big mistake

Arizona Daily Star

... acceptance of responsibility for the crime," according to the **Office of the Pardon Attorney** at the Department of Justice, but Arpaio is far from contrite, ...

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_(16).pdf

From: Google Alerts
To: jordan(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Saturday, August 12, 2017 10:06:13 AM

Google Alerts

"office of the pardon attorney"

Daily update - August 12, 2017

NEWS

Trump is off to a stingy start on clemency

Washington Examiner

"The incompetence at the **Office of the Pardon Attorney** is hard to understand given the high profile nature of the case," said Addicott, who no longer ...

Flag as irrelevant

Ex-Sheriff Joe Arpaio Channels Trump While Insisting He Isn't Asking For A Pardon (But Would ...

UPROXX

The Justice Department's **Office of the Pardon Attorney** requires the submission of a formal petition, which must undergo a rigorous vetting process ...

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_(2).pdf

From: Google Alerts
To: jordan(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Sunday, September 10, 2017 10:06:47 AM

Google Alerts

"office of the pardon attorney"

Daily update September 10, 2017

NEWS

Judge Bolton Should Let Someone Make the Argument Against Vacating Joe Arpaio's Conviction

Lawfare (blog)

... and his former prosecutors at the Justice Department – the same Justice Department whose **Office of the Pardon Attorney** formally issued Arpaio's ...

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_(3).pdf

From: Google Alerts
To: jordan(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Friday, September 8, 2017 10:01:07 AM

Google Alerts

"office of the pardon attorney"

Daily update September 8, 2017

NEWS

Trump's pardon of Joe Arpaio disturbs some legal observers

The Columbus Dispatch

... or filed a pardon request with the Justice Department's **Office of the Pardon Attorney**, which assists the president in the use of executive clemency.

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_(4).pdf

From: Google Alerts
To: jorda(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Sunday, September 3, 2017 10:01:43 AM

Google Alerts

"office of the pardon attorney"

Daily update September 3, 2017

NEWS

Trump asked AG about dropping Arpaio case

HiTechFacts

As a procedural matter, the guidelines of the Justice Department's **office of the pardon attorney** - not binding on the president, of course, and not ...

Paul Ryan Issues Statement Condemning Trump's Pardon of Sheriff Joe Arpaio - Alive For Football
Full Coverage

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_(5).pdf

From: Google Alerts
To: jordan(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Saturday, September 2, 2017 10:02:06 AM

Google Alerts

"office of the pardon attorney"

Daily update September 2, 2017

NEWS

Erwin Chemerinsky: Trump's Terrible Pardon of Sherriff Joe Arpaio

The Nation.

JW: The Justice Department has an **Office of the Pardon Attorney** where, normally, people who are seeking pardons apply. The application says, "A ...

The Arpaio Pardon: Why it Matters to Attorneys - Above the Law

Pardon me, Mr. President - Mountain View Journal

United States lawmakers criticise Trump for pardoning Arpaio - AppsforPCdaily

Full Coverage

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_(6).pdf

From: Google Alerts
To: jordan(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Thursday, August 31, 2017 10:02:05 AM

Google Alerts

"office of the pardon attorney"

Daily update – August 31, 2017

NEWS

House Dems call for hearing on Trump's Arpaio pardon

The Hill

Lawmakers noted that Trump issued the pardon through the White House, rather than the **Office of the Pardon Attorney** at the Department of Justice.

Conyers, Dems want Judiciary probe of Arpaio pardon - The Detroit News
Dems Urge House Judiciary Chair To Hold Hearing On Trump's Arpaio Pardon - TPM
Trump's Pardon of Sheriff Joe Arpaio Is a Reminder that Presidential Pardon Powers Should Be ... - Reason (blog)
Full Coverage

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_(7).pdf

From: Google Alerts
To: jordanr(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Wednesday, August 30, 2017 10:02:26 AM

Google Alerts

"office of the pardon attorney"

Daily update - August 30, 2017

NEWS

The Arpaio Pardon Has Plenty Of Precedents … That Got Other Presidents In Trouble

FiveThirtyEight

Pardons are typically filtered through the **office of the pardon attorney** (a role that Trump has yet to fill), which evaluates petitions for clemency using a ...

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_(8).pdf

From: Google Alerts
To: jordan(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Tuesday, August 29, 2017 10:02:04 AM

Google Alerts

"office of the pardon attorney"

Daily update - August 29, 2017

NEWS

Trump's Arpaio pardon: Legal and disgraceful

CNN

... ignored Justice Department regulations in failing to run the pardon through the extensive vetting process of the DOJ's **Office of the Pardon Attorney**.

Trump Wanted Sessions to Kill Arpaio Case Months Ago - Patheos (blog)
Full Coverage

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_(9).pdf

From: Google Alerts
To: jordan(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Monday, August 28, 2017 10:02:00 AM

Google Alerts

"office of the pardon attorney"

Daily update - August 28, 2017

NEWS

How does a presidential pardon work?

WLWT Cincinnati

Arpaio didn't submit a pardon application through the **Office of the Pardon Attorney**. His pardoning also took place before he was sentenced. Arpaio ...

How President Trump's Pardon of Joe Arpaio Breaks With White House History - TIME

Why Trump's Pardon of Arpaio Follows Law, Yet Challenges It - New York Times

The Arpaio Pardon Dangerously Accelerates Trump's Assault on the Rule of Law - The New Yorker

Full Coverage

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Google Alert - _office of the pardon attorney_.pdf

From: Google Alerts
To: jordan(b) (6)
Subject: Google Alert - "office of the pardon attorney"
Date: Thursday, September 28, 2017 10:10:03 AM

Google Alerts

"office of the pardon attorney"

Daily update September 28, 2017

NEWS

Rep. Hunter asks Trump to pardon border patrol agents who covered up their shooting of drug ...

The San Diego Union-Tribune

... circumstances of the incident and I respectfully request that you instruct the **Office of the Pardon Attorney** to provide their cases full and fast attention.

Flag as irrelevant

Conyers, Dems ask court to deny Arpaio request

The Detroit News

... Committee to investigate the Arpaio pardon, saying the pardon disregarded the rule of law and circumvented the **Office of the Pardon Attorney** at the ...

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

Houston™s Poor Black Community Among Hurricane ....pdf

From: Praise DC
To: Alexander, Monique Y. (OPATTY)
Subject: Houston's Poor Black Community Among Hurricane Harvey's Most Vulnerable Victims
Date: Monday, August 28, 2017 12:06:26 PM

View In Browser | Add newsletter@email.praisedc.com to Your Address Book

PRAISE 104.1 fm
DC's Station for Inspiration

Powered by LiveIntent
AdChoices

Today's Most Important Stories

Houston's Poor Black Community Among Hurricane Harvey's Most Vulnerable Victims

In Houston, as with many other major cities, poor communities of color are the most vulnerable during super storms. They tend to live in segregated, flood risk neighborhoods.

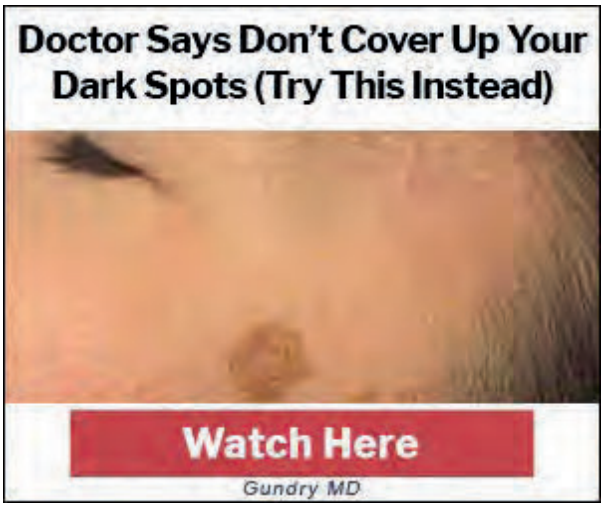
Read More

Two Black Pastors Sue Coca-Cola For Being More Destructive Than Violence

Two Black pastors from Washington, D.C. have filed a lawsuit against Coca-Cola and the American Beverage Association saying the organizations and "deceptive marketing" are destroying their communities more than street violence. Pastors William Lamar of the African Methodist Episcopal Church, and Delman Coates, from Mount Enon Church in Maryland, claim that the soda manufacturer's campaign aims to confuse consumers about […]

Read More

Advertisement



Visit Praise DC on Facebook & Twitter!

Like Us

Follow Us

Bishop Charles E. Black And Pastor Shirley Caesar To Host CBC Breakfast

Bishop Charles E. Blake and gospel powerhouse Pastor Shirley Caesar are headed to D.C. next month to headline the Congressional Black Caucus Foundation's Annual Legislative Conference Prayer Breakfast. Celebrating faith, freedom and resilience, this year's event will introduce a creative worship experience with liturgical dancers Stacy J. & Unified Praise from Houston, Texas and will also feature a […]

Read More

[Podcast] Strategic Breakthroughs With Bishop Bulla: Moving The Heart Of God

Read More

Get Your Free Tickets For 10th Annual Praise 104.1 Spirit Of Praise!

Join Praise 104.1 and WYCB 1340 as we celebrate the 10th Annual Spirit of Praise. This year's event is free and will be held at City of Praise in Landover, MD. Come help up celebrate with us Saturday October 7th! This is a free event but you must register for your free ticket in order to attend. Get your ticket NOW!! This year's Spirit of Praise will be PACKED and you don't want to miss out!!

Read More

BEAUTIFUL NEWS! Man Follows Suicidal Woman Onto NYC Subway Beam, Talks Her Out Of Jumping

A good Samaritan followed the distressed young woman about 10 feet out onto a beam some 20 feet above the platform.

Read More

Advertisement

As Houston Faces Catastrophic Flooding And Rain, Trump Tweets A Storm Of Self-Congratulations

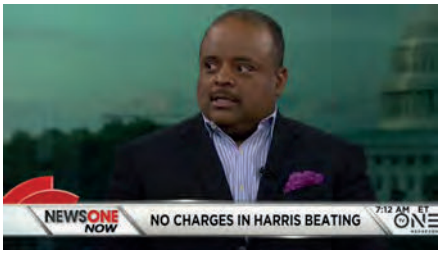
Hurricane Harvey—now Tropical Storm Harvey—has devastated parts of Texas leaving five dead and thousands being rescued from dangerously high water.

Read More

10-Day March Against White Supremacy Begins Monday

Social justice groups are joining forces for a 10-day march that will begin in Charlottesville on Monday and end in Washington, D.C.

Read More



NewsOne Now Recap: “Prophet Not Profitable”

From the death of Dick Gregory to schooling Pastor Paula White and of course Trump's never ending shenanigans, this week was a tough one.

Read More

Gary…The Thespian?

Rickey is trying his hand at directing and enlists Gary as one of the actors for a possible new sitcom, but there may be a few issues.

Read More

Scripture For The Week “God Has A Plan For Me”

Jeremiah 29:11 (NIV) “For I know the plans I have for you,” declares the LORD, “plans to prosper you and not harm you, plans to give you hope and a future.” Explanation: We’re all encouraged by a leader who stirs us to move and who will be with us all the way. God is that […]

Read More

Paul Ryan Denounces Pardon Of Racial Profiling Ex-Sheriff Joe Arpaio

House Speaker Paul Ryan has condemned President Donald Trump's decision to pardon ex-Sheriff Joe Arpaio.

Read More

Check These Out

Get Up Erica

- GRIFF Prayer: Mayweather Vs. McGregor Fight Was Worth The Money [EXCLUSIVE VIDEO]
- Bishop Charles E. Blake & Pastor Shirley Caesar To Host CBC Breakfast
- Tyler Perry Opens Up About Why He Still Gives His "Abusive" Father Money [VIDEO]

Local

- Civil Rights Activist and Comedian Dick Gregory Dead at 84
- Arrest Made in Murder of 3 Children in Clinton, Maryland
- Back 2 School Give-A-Ways

Photos

- Then & Now: The Evolution of Deitrick Haddon
- Anita Wilson At Busboys & Poets For The "Sunday Soul Mixer"
- Anita Wilson "Sunday Soul" Meet & Greet At Carolina Kitchen

Praise DC, 4 NY PLAZA 501, NEW YORK, NY 10004, USA
Copyright© 2017 Interactive One, Inc. All Rights Reserved.

This message was sent to (b) (6)

Privacy Unsubscribe Manage Preferences

Hurricane Harvey Record Rainfall Floods Lawyers...(1).pdf

From: The National Law Journal Daily Headlines
To: Pendergrass, Matthew J. (OPATTY)
Subject: Hurricane Harvey Record Rainfall Floods Lawyers" Homes, Shutters Law Firms
Date: Tuesday, August 29, 2017 7:04:03 AM

THE NATIONAL LAW JOURNAL DAILY HEADLINES

TODAY'S TOP STORIES

Hurricane Harvey Record Rainfall Floods Lawyers' Homes, Shutters Law Firms

The torrential rain in Houston from Hurricane Harvey, which made landfall in South Texas on Aug. 25, is disrupting the... **READ MORE »**

The 2017 D.C.'s Rising Stars

We are proud to present our 2017 Rising Stars. This year, we share their keys to success in their own words, edited... **READ MORE »**

Amid Arpaio Storm, Calif. Moves to Restrict Immigration-Status Disclosure

As California lawmakers moved Monday to shield the immigration statuses of litigants and witnesses in open court, debate...

READ MORE »

Batman, Barrels, and the Beast 666: Crazy Case Names

In this slideshow, check out some of the oddest case names in legal history. Some of them are self-explanatory, some... **READ MORE »**

'What Universe Does That Come From?' Key Questions From 9th Circuit Travel Ban Hearing

A three-judge panel at the Ninth Circuit heard oral arguments Monday over whether a lower court's ruling allowing grandparents...

READ MORE »

Big Law Takes On the Trans Military Ban

Two lawsuits were filed Monday against President Donald Trump's ban on transgender people serving in the military, with...

READ MORE »

'Horrific' Storm Shutters Houston-Area Law Schools

Leonard Baynes was en route to India as a Fulbright Scholar on Thursday, but the dean of the University of Houston Law...

READ MORE »

A Law Firm 'Cleverly' Used Ellipses to Fight a CFPB Investigation. But It Still Lost.

The Consumer Financial Protection Bureau has prevailed in its latest standoff with a law firm, as a federal judge ordered... READ MORE »

SPONSORED SPOTLIGHT:
Cyber concerns: how security risks and new data rules are impacting law firms

Law firms are racing to untangle the myriad technology and cybersecurity challenges they must overcome to meet what has become an increasingly complex and expensive compliance backdrop. READ MORE »

MORE STORIES FROM ALM

BMW Class Action Settlement and $1.2M in Attorney Fees Gets Green Light

A federal judge has approved a settlement agreement that will provide drivers of defective BMW 6-series convertibles...

READ MORE »

Two Big Law Firms Shed Partners Ahead of Mergers

Australia's Henry Davis York and British firm Olswang both saw large groups of partners leave their ranks prior to combinations....

READ MORE »

DOJ Eyes Conflict in Blank Rome's 9/11 Victim Fund Work

A recent report has raised questions about a Blank Rome lawyer's work as deputy special master for the September 11th...

READ MORE »

NEW JOB OPENINGS

POWERED BY LAWJOBS.COM

Supervisory Trial Attorney
U.S. Securities and Exchange Commission | Philadelphia, Pennsylvania

Patent Agent - Mechanical
Laurence Simons Intl. Legal Recruitment | Milwaukee, Wisconsin

Employee Benefits Department / Staff Attorney (Multiple Locations)
The Partners Group | Atlanta, Georgia

Associate Legal Counsel
Expereo USA | Reston, Virginia

Email Management Area

Please do not reply to the address you received this email from. Manage your email communications below.

Why you received this email message:

You are subscribed to the NLJ Daily Headlines as (b) (6) [redacted]. You may be subscribed to multiple publications as part of your relationship with us.

To stop receiving the NLJ Daily Headlines (unsubscribe) or to update your email marketing preferences, please click here. On this page, please update your subscription choices to this publication, and any others you may receive. You may also change your opt-in of email marketing promotions from ALM. It may take up to 10 days for your changes to take effect.

How to contact us should you have questions:

The National Law Journal®
120 Broadway, 5th Floor,
New York, NY 10271-1101
Customer Service Phone: 1-877-256-2472

About ALM | Customer Support | Privacy Policy | Terms & Conditions

© 2017 ALM Media Properties, LLC.

All rights reserved.

Hurricane Harvey Record Rainfall Floods Lawyers....pdf

From: The National Law Journal Daily Headlines
To: Kupers, Lawrence B. (OPATTY)
Subject: Hurricane Harvey Record Rainfall Floods Lawyers" Homes, Shutters Law Firms
Date: Tuesday, August 29, 2017 7:04:04 AM

THE NATIONAL LAW JOURNAL DAILY HEADLINES

TODAY'S TOP STORIES

Hurricane Harvey Record Rainfall Floods Lawyers' Homes, Shutters Law Firms

The torrential rain in Houston from Hurricane Harvey, which made landfall in South Texas on Aug. 25, is disrupting the... **READ MORE »**

The 2017 D.C.'s Rising Stars

We are proud to present our 2017 Rising Stars. This year, we share their keys to success in their own words, edited... **READ MORE »**

Amid Arpaio Storm, Calif. Moves to Restrict Immigration-Status Disclosure

As California lawmakers moved Monday to shield the immigration statuses of litigants and witnesses in open court, debate...

READ MORE »

Batman, Barrels, and the Beast 666: Crazy Case Names

In this slideshow, check out some of the oddest case names in legal history. Some of them are self-explanatory, some... **READ MORE »**

'What Universe Does That Come From?' Key Questions From 9th Circuit Travel Ban Hearing

A three-judge panel at the Ninth Circuit heard oral arguments Monday over whether a lower court's ruling allowing grandparents...

READ MORE »

Big Law Takes On the Trans Military Ban

Two lawsuits were filed Monday against President Donald Trump's ban on transgender people serving in the military, with...

READ MORE »

'Horrific' Storm Shutters Houston-Area Law Schools

Leonard Baynes was en route to India as a Fulbright Scholar on Thursday, but the dean of the University of Houston Law...

READ MORE »

A Law Firm 'Cleverly' Used Ellipses to Fight a CFPB Investigation. But It Still Lost.

The Consumer Financial Protection Bureau has prevailed in its latest standoff with a law firm, as a federal judge ordered... READ MORE »

SPONSORED SPOTLIGHT:
Cyber concerns: how security risks and new data rules are impacting law firms

Law firms are racing to untangle the myriad technology and cybersecurity challenges they must overcome to meet what has become an increasingly complex and expensive compliance backdrop. READ MORE »

MORE STORIES FROM ALM

Private Investigators Say They Warned Lawyers Waffle House Sex Tape Was Illegal

When two lawyers asked how to secure video evidence of an alleged workplace sexual encounter between the CEO of Waffle...

READ MORE »

2017 Midlevel Associate Survey

Midlevel associates at the nation's largest law firms are pleased as punch, according to results from our annual survey... READ MORE »

Manhattan Courthouse Rehab Presents Thorny Issues for NYC

The state courthouse complex in lower Manhattan is known for its architectural splendor, but proposals over the past... READ MORE »

NEW JOB OPENINGS

POWERED BY LAWJOBS.COM

Supervisory Trial Attorney
U.S. Securities and Exchange Commission | Philadelphia, Pennsylvania

Patent Agent - Mechanical
Laurence Simons Intl. Legal Recruitment | Milwaukee, Wisconsin

Employee Benefits Department / Staff Attorney (Multiple Locations)
The Partners Group | Atlanta, Georgia

Associate Legal Counsel
Expereo USA | Reston, Virginia

Email Management Area

Please do not reply to the address you received this email from. Manage your email communications below.

Why you received this email message:

You are subscribed to the NLJ Daily Headlines as lawrence.b.kupers@usdoj.gov. You may be subscribed to multiple publications as part of your relationship with us.

To stop receiving the NLJ Daily Headlines (unsubscribe) or to update your email marketing preferences, please click here. On this page,

please update your subscription choices to this publication, and any others you may receive. You may also change your opt-in of email marketing promotions from ALM. It may take up to 10 days for your changes to take effect.

How to contact us should you have questions:

The National Law Journal®
120 Broadway, 5th Floor,
New York, NY 10271-1101
Customer Service Phone: 1-877-256-2472

About ALM | Customer Support | Privacy Policy | Terms & Conditions

© 2017 ALM Media Properties, LLC.

All rights reserved.

Information Copy from Rosalind Sargent for SPEC....pdf

From:	Rosalind Sargent-Burns
To:	Taylor, Will (OPATTY)
Subject:	Information Copy from Rosalind Sargent for SPECIAL # 272804 (Service 272804) (Intranet Quorum IMA00773194)
Date:	Tuesday, September 5, 2017 7:55:18 AM

Hi Will - the only thing missing from this WF is the actual returned blue receipt; it can then be closed out. If you take a look at MR 2486670 (the cover letter to the recipient's atty), you'll find the complete scanned in package w/ Larry's signatures. In addition to that, there are the notifications to the FBI (2486672), the clerk (2486706), Public Integrity (2486760), and the SJ (2486765). Let me know if you need anything else. Thanks - Ros

Contact: Mr. Joseph M. Arpaio
https://iqapp.justapps.doj.gov/opa/workflowhome.aspx?showfolder=workflow&showcontent=ID272804&fa=y&iAccount=OPA

Information Copy from Will Taylor for SPECIAL #...(1).pdf

From: Will Taylor
To: Kupers, Lawrence B. (OPATTY)
Subject: Information Copy from Will Taylor for SPECIAL # 272804 (Service 272804) (Intranet Quorum IMA00773147)
Date: Friday, September 1, 2017 10:00:23 PM

Ros,

How close are we to closing this WF? I want to wait until all of the documents are in the WF and the WF is closed so that I can review the entire WF for FOIA and see if there is anything that can be proactively disclosed other than the warrant, which is already publicly available on our website. I doubt it, but I may want to do heavy redactions or page-level redactions and disclose it to remove the mystery surrounding this case. We have already received well over 3 FOIA requests for all records related to this matter, so technically, we are supposed to do a proactive release anyway.

Thanks,
Will

Contact: Mr. Joseph M. Arpaio

Information Copies Sent to: Rosalind Sargent-Burns, Larry Kupers, Kira Gillespie, Jennifer Mills, Sarah Rifkin.
https://iqapp.justapps.doj.gov/opa/workflowhome.aspx?showfolder=workflow&showcontent=ID272804&fa=y&iAccount=OPA

Information Copy from Will Taylor for SPECIAL #...(3).pdf

From:	Will Taylor
To:	Pendergrass, Matthew J. (OPATTY)
Subject:	Information Copy from Will Taylor for SPECIAL # 272804 (Service 272804) (Intranet Quorum IMA00772282)
Date:	Friday, August 25, 2017 6:03:31 PM

Jordan & Jen,

For some reason, I am unable to detach files from a SPECIAL WF. Please detach the (2) versions of the warrant that do not have a gold seal and look into my WF rights.

Thanks,
Will

Contact: Mr. Joseph M. Arpaio

Information Copies Sent to: Jordan Pendergrass, Jennifer Mills.
https://iqapp.justapps.doj.gov/opa/workflowhome.aspx?showfolder=workflow&showcontent=ID272804&fa=y&iAccount=OPA

Information Copy from Will Taylor for SPECIAL #...(4).pdf

From:	Will Taylor
To:	Kupers, Lawrence B. (OPATTY)
Subject:	Information Copy from Will Taylor for SPECIAL # 272804 (Service 272804) (Intranet Quorum IMA00772277)
Date:	Friday, August 25, 2017 5:38:03 PM

Larry,

I just created this SPECIAL WF to house the signed warrant for Sheriff Arpaio. Any correspondence that needs to be added to this WF should also have a PR for those who are contacted.

Thanks,

Contact: Mr. Joseph M. Arpaio

Information Copies Sent to: Larry Kupers, Kira Gillespie, Rosalind Sargent-Burns, Jennifer Mills, Jordan Pendergrass.
https://iqapp.justapps.doj.gov/opa/workflowhome.aspx?showfolder=workflow&showcontent=ID272804&fa=y&iAccount=OPA

Is the Arpaio pardon a continuing saga_.pdf

From:	Kupers, Lawrence B. (PARDON)
To:	Gillespie, Kira (PARDON); Holloway, Tammy (OPATTY); Opanga, Eric (PARDON); Paolucci, Jaclyn A. (PARDON); Potter, Casey J. (PARDON); Rifkin, Sarah E.B (PARDON); Sargent-Burns, Rosalind A (PARDON); Smith, Christina (PARDON); Smith, Meredith C. (PARDON); Stutsman, Thomas (PARDON); Trujillo, Jennifer K. (PARDON); Williams, Emilie F. (PARDON); Winquist, Jennifer J. (OPATTY); Liberman, Danielle L. (OPATTY)
Subject:	Is the Arpaio pardon a continuing saga?
Attachments:	Amicus brief ONE that Arpaio pardon is unconstitutional.pdf Amicus brief TWO that Arpaio pardon is unconstitutional.pdf Arpaio USA response to Arpaio motion for vacatur.pdf

---

Esteemed:

If you are interested, please join me for a discussion of post-pardon proceedings in the Arpaio matter in the district court in Arizona. Two amicus briefs arguing that the pardon is unconstitutional are attached as well as the government's response to the Arpaio motion for vacatur.

Amicus brief ONE that Arpaio pardon is unconst.pdf

Larry A. Hammond, 004049
Joshua D. Bendor, 031908
OSBORN MALEDON, P.A.
2929 N. Central Ave., Suite 2100
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
jbendor@omlaw.com

Attorneys for Erwin Chemerinsky, Michael E. Tigar, and Jane B. Tigar

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

United States of America, Plaintiffs, v. Joseph M. Arpaio, Defendant.	No. CR-16-01012-001-PHX-SRB **[PROPOSED] MEMORANDUM OF *AMICI CURIAE* ERWIN CHEMERINSKY, MICHAEL E. TIGAR, AND JANE B. TIGAR**

OSBORN MALEDON
A PROFESSIONAL ASSOCIATION ATTORNEYS AT LAW

Erwin Chemerinsky, Michael E. Tigar, and Jane B. Tigar, by and through counsel, submit this Memorandum as *Amici Curiae* in opposition to the Defendant's Motion to Vacate. Amici are law teachers, human rights lawyers and legal scholars with broad experience in the fields of judicial review and constitutional law. They submit that their expressed views may assist the Court in its task. In addition, given the shifting positions taken by counsel for the United States, this is one of those cases when an amicus filing may be especially significant. The Court has the inherent power in cases of contempt to appoint a special prosecutor, *Young v. United States ex rel. Vuitton et Fils*, 481 U.S. 787, 795 (1987), so it surely has the power to hear amici.

I. INTRODUCTION

The President's purported pardon of Mr. Arpaio is void. The President's action is not authorized by the article 2, sec. § 2, limited grant of the pardon power, because Mr. Arpaio's contempt is not an "Offense" within the meaning of that grant.

In addition, the purported pardon violates two basic constitutional principles. First, Article III courts have a duty to provide effective redress when a public official commits harm by violating the Constitution. As discussed below, Chief Justice Marshall described this duty in *Marbury v. Madison*, 5 U.S. 137 (1803), and his words have guided the federal courts ever since.

Second, Article III courts possess inherent power to enforce their orders, and this power exists outside and beyond legislative empowerment and executive whim. This power has as good or better a constitutional pedigree than any presidential claim. The Framers of the Constitution believed that this inherent power was, in Hamilton's words "particularly essential in a limited Constitution."

II. PROCEDURAL HISTORY

This case began as one of many lawsuits by victims of Mr. Arpaio's unconstitutional conduct. Well after the injunctions were issued, the United States intervened. Mr. Arpaio violated the injunctions.

Relevant history of this case is set out in the contempt finding, July 31, 2017, Docket No. 2:16-cr-01012, Docket #210. Other relevant history was related by lawyers for the United States in a Supreme Court brief in opposition to Mr. Arpaio's Petition for Writ of Mandamus, *In re Arpaio*, No. 16-1422, 2017 WL 2839354, discussed in more detail below.

III. THE CONSTITUTIONAL BASIS FOR, AND LIMITS UPON, THE PARDON POWER

The pardon power, U.S. const., art. 2, § 2, extends to "Offenses against the United States." That power is broad, see *Schick v. Reed*, 419 U.S. 256 (1974) (6-3), but not limitless. The purported pardon of Mr. Arpaio was beyond the Constitution-granted power.

Ex parte Grossman, 267 U.S. 87 (1925) (Taft, C.J.) (unanimous), is a leading case on the pardon power, and was heavily relied on by the majority in *Schick*, 419 U.S.

at 266. The Court held that a pardon issued by the President with respect to Grossman's contempt was valid.

A cursory review might suggest that *Grossman* supports the purported pardon at issue in this case. That would be mistaken, for reasons that appear within the Court's opinion, and are bolstered by the constitutional context within which this case arises.

Grossman arose under the National Prohibition Act, 41 Stat. 305 (1919) (Volstead Act or "Act"). Title II of the Act, entitled "Prohibition of Intoxicating Beverages," declared numerous activities with respect to alcohol "unlawful." If any person committed any of these unlawful acts, the government had two options. Under § 22 of the Act, the government could obtain an injunction to abate that "nuisance." The government also had the option to proceed directly with a prosecution for violating the Act. The Act, § 29.

The government chose the "nuisance" option. But despite the issuance of an injunction, Grossman apparently persisted in his unlawful activity. The government prosecuted him under § 24 of the Act, which defined his alleged conduct as a "contempt" and provided the mode of trial. He was convicted and sentenced to six months' imprisonment. The President issued a pardon. The district court held the pardon to have been invalid and ordered Grossman to jail. Grossman sought habeas corpus. The Supreme Court held the pardon to have been valid. It held that the pardon power found in art. 2, § 2 is based on the Crown's power of pardon as it existed in 1787, and that such power is broad enough to cover Grossman's case.

Although § 24 of the Act denominated Grossman's offense as "contempt," several important distinctions appear from reading the case:

> The unlawful conduct was defined by the Congress in a statute, § 22 of the Act. In the present case, the duties imposed on Mr. Arpaio were defined by the court. We show in detail below why this fact is significant.
> The Act created a series of offenses, and gave the government options as to how to proceed against offenders.
> The "contempt" mentioned in § 24 of the Act was not the "contempt" to which the present 18 U.S.C. § 401 refers. Sec. 401 is complete unto itself. The Volstead Act created offenses and provided for modes of enforcement.

> The proceedings against Grossman were conducted by public authority to vindicate a public interest. In the case now before the Court, private persons sought and obtained judicial relief from unlawful governmental action. The Court expressly noted that the common law recognized, a purported pardon's "inefficacy to halt or interfere with the remedial part of the court's order necessary to secure the rights of the injured suitor."

The last-noted distinction refers to common law practice that was rooted in the struggle to restrain and control the Crown's claims of unlimited power. The English historian W.S. Holdsworth wrote about these developments:

> This process of interpretation tended, more especially after the Revolution, to limit the independent action of the King.
>
> The King could not, for instance, arrest a man. Powers of arrest were fettered by strict legal conditions. For a wrongful arrest the injured person must have a remedy, which he could not have if the King in person could make the arrest. Similarly, the jurisdiction of courts depended on the rules of the common law. The King could not interfere with the boundaries of these jurisdictions, because he had no power to change the rules of the common law. For the same reason the King could not, by an exercise of his prerogative, prejudice those rights of his subjects which were secured to them by the rules of the common law.
>
> "The King's prerogative," says Finch, "stretcheth not to the doing of any wrong." This was a serious limitation upon his powers. Thus, he could not, by the exercise of his power to pardon, prejudice the right of an injured person to prosecute a criminal appeal. . . .

10 W.S. Holdsworth, A History of English Law 361 (1938).

Holdsworth's statement concerning limits on the pardon power cites Lord Coke's Third Institute, which in turn cites Bracton. Coke wrote the Institutes between 1628 and 1644. The Supreme Court has regarded them as an authoritative statement of the common law. *See, e.g., Roe v. Wade*, 410 U.S. 113, 134 (1973). Henry de Bracton was a 13th Century English legal scholar whose treatise "On the Laws and Customs of England" is likewise considered authoritative.

The term "appeal of felony" refers to the common law procedure whereby a victim of crime could bring a criminal case against the wrongdoer, obtaining compensation and a criminal punishment. Appeals of felony were thus private lawsuits, bearing some resemblance to modern civil rights and other tort litigation. If the Crown prosecuted an offense in its own name, the Crown would reap the financial rewards that

might result from a conviction. If the plaintiff who brought an appeal of felony lost the case, he or she might then be subjected to penalties, and would have to seek a royal pardon. But as Coke and Bracton noted, the Crown had no power to pardon the defendant/wrongdoer. *See generally* Margaret Kerr, The Distinction Between Crime and Tort in the Early Common Law, 76 B.U.L.Rev. 59 (1996) (noting that the appeal of felony was one aspect of the intertwined nature of crime and tort).

It is not surprising that, in the 1600s, the Crown was considered to have no power to deprive a private litigant of rights nor to curtail the judicial power of royal courts to vindicate the rights of a private litigant. After all, in c. 40 of Magna Charta – perhaps the best known of all its provisions – King John had promised: "To no one will we sell, to no one will we deny, or delay right or justice." And Lord Coke had famously said in Parliamentary debate: "Magna Charta is such a fellow that he will have no sovereign." On the English Revolution, its antecedents and consequences, including the motivation of Coke and his allies to limit royal prerogative and elevate judicial power, *see generally* Christopher Hill, Reformation to Industrial Revolution (1967).

The common law limits on the Crown's power are particularly important in considering the Constitution of 1787 and its mandated separation of powers. Madison promised us that we would, under this Constitution, be free from the "impious doctrine of the Old World that people were made for Kings and not Kings for people." Federalist No. 45.

The distinction between offenses prosecuted by the sovereign and punishments imposed by a court to protect private rights is reflected as well in 18 U.S.C. §§ 40l, 402. The Trump administration Justice Department recognized this distinction, and set out its reasoning in the Supreme Court pleading quoted below. The Department filed a Supreme Court brief on behalf of the United States in opposition to Mr. Arpaio's Petition for Writ of Mandamus, *In re Arpaio*, No. 16-1422, 2017 WL 2839354. The Court had referred the matter to the government for prosecution. This was simply a matter of judicial discretion as to the mode of proceedings, as the Court had the inherent

power to select who was to prosecute. *See Young v. United States ex rel. Vuitton et Fils*, 481 U.S. 787, 795 (1987) (inherent power to appoint private prosecutor). As the United States told the Supreme Court, 2017 WL 2839354 at *4:

> The government responded by agreeing to prosecute petitioner for contempt under 18 U.S.C. § 401(3). . . . The government concluded that petitioner's conduct was criminal solely because it was contumacious, and that his acts were not of such character as to constitute another federal or state crime. . . . The government further concluded, however, that Section 401 applied to the other individuals because their allegedly contumacious conduct - concealing documents and hard drives - was of such character as to constitute obstruction of justice under 18 U.S.C. §§ 1503 and 1512. . . . The government therefore concluded that a prosecution of the other individuals would be time-barred. *Ibid.*
>
> On October 25, 2016, the newly assigned district court judge issued an Order to Show Cause under 18 U.S.C. §401(3) as to whether petitioner should be held in criminal contempt for willfully disobeying the Melendres preliminary injunction. See Pet. App. 9a-12a. ., . .

The government's participation was not based on a finding that there had been an "offense" previously defined by Congress. Indeed, the Order to Show Cause was the last step in the process.

Because this Court acted in reliance on the United States' position that this was a contempt to vindicate the rights of litigants, no lawyer for the United States should be heard to take a different position.

IV. THE CONSTITUTIONAL FOUNDATIONS FOR THE DISTINCTION BETWEEN PUBLIC PROSECUTION FOR "OFFENSES" AND COURT ACTION TO PROTECT LITIGANT RIGHTS AND THE COURT'S OWN PROCESSES

Two separate lines of constitutional authority support the reasoning set out above. The first is the judicial duty to redress governmental violations of rights. The second is the inherent character of the judicial contempt power, a power with as good or better a common law pedigree than any presidential claim.

V. THE FIRST PRINCIPLE: RIGHT TO REDRESS

The victims of Mr. Arpaio's conduct had a right – based on Article III of the Constitution – to have their claims heard and decided, that is, to have a remedy. Chief Justice Marshall wrote in *Marbury v. Madison*, 5 U.S. at 17:

> The very essence of civil liberty consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection…. The government of the United States has been emphatically termed a government of law and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested right…. If this obloquy is to be cast on the jurisprudence of our country, it must arise from the peculiar nature of this case.

Marshall wrote those words in 1803. Once the 14th amendment was ratified, the scope of judicial duty and authority was expanded to include protection from state as well as federal official misconduct.

Marshall's views echoed those of his contemporaries. In a famous dissent by Judge Cranch, whose view prevailed in the Supreme Court, we find:

> It then becomes the duty of the judiciary calmly to poise the scales of justice, unmoved by the arm of power, undisturbed by the clamor of the multitude.

United States v. Bollman, 24 F.Cas. 1189 (C.C.D.C. 1807) (No. 14622) (Cranch, J., dissenting), *rev'd*, 8 U.S. 75 (1807), discussed in Bloch & Ginsburg, Celebrating the 200th Anniversary of the Federal Courts of the District of Columbia, 90 Geo.L.J. 549 (2002).

Another important separation of powers ruling was *Gilchrist v. Collector of Charleston*, 10 Fed. Cas. 355 (C.C.D.S.C. 1808) (No. 5420). In 1807, Congress – seeking to retaliate against British and French interests – authorized an embargo on foreign seaborne commerce. In 1808, amending legislation authorized the customs collector at any port to detain any vessel suspected of engaging in foreign commerce. The customs collector at Charleston, South Carolina – a federal official – denied a ship belonging to Adam Gilchrist clearance to leave the port, suspecting that Gilchrist was not engaged in coastwise domestic shipping but rather foreign travel. Justice William Johnson, sitting as circuit judge, heard evidence and ordered the collector to let Gilchrist's ship leave the port. Johnson held that despite the broad statutory language, federal courts had the power to control actions of the executive branch. Jefferson, who had appointed Johnson to the Supreme Court, was enraged at the decision. He directed

Attorney General Caesar Rodney to write a public letter attacking Johnson's ruling. Johnson responded to the letter in a second published opinion. Johnson said he was reluctant to be drawn into public controversy, but felt compelled to do so:

> But when a bias is attempted to be given to public opinion by the overbearing influence of high office, and the reputation of ability and information, the ground is changed; and to be silent could only result from being borne down by weight of reasoning or awed by power.

Johnson went on to repeat his insistence on judicial power to control executive action.

Justice Johnson's observations are particularly relevant in the present case: the intent to issue a pardon was announced at a rally, with rhetorical flourishes designed to excite passion and prejudice about the issues in these cases.

The views of Marshall, Cranch and Johnson about judicial duty reflected Anglo-American history dating to the 1600s. We have noted above some of the legal, historical, and ideological underpinnings of judicial power. For a thorough examination of these questions, as they arose at common law and therefore influenced our own Constitution, *see* Stephen Sedley, Lions Under the Throne (2015) (an edited version of Lord Justice Sedley's Oxford lectures on the history of English public law).

The American colonists chafed under royal (executive) decrees that interfered with judicial independence. The Declaration of Independence charged that the King "obstructed the administration of justice by refusing his assent to laws for establishing judiciary power. He has made judges dependent on his will alone for the tenure of their office and the amount and payment of their salaries." *See also* Joseph H. Smith, An Independent Judiciary: The Colonial Background, 124 U. Penn. L. Rev. 1104 (1976).

VI. THE SECOND PRINCIPLE – INHERENT JUDICIAL POWER

During the debates over the proposed constitution, Patrick Henry feared that the judicial branch would not be equal to its assigned task of upholding the law in the face of executive bullying:

> If your American chief be a man of ambition and abilities, how easy is it for him to render himself absolute! The army is in his hands, and if he be a man of address, it will be attached to him, and it will be the subject of

> long meditation with him to seize the first auspicious moment to accomplish his design, and, sir, will the American spirit solely relieve you when this happens? I would rather infinitely—and I am sure most of this Convention are of the same opinion—have a king, lords, and commons, than a government so replete with such insupportable evils. If we make a king we may prescribe the rules by which he shall rule his people, and interpose such checks as shall prevent him from infringing them; but the president, in the field, at the head of his army, can prescribe the terms on which he shall reign master, so far that it will puzzle any American ever to get his neck from under the galling yoke. I can not with patience think of this idea. If ever he violate the laws, one of two things will happen: he will come at the head of the army to carry everything before him, or he will give bail, or do what Mr. Chief Justice will order him.

Henry Steele Commager, ed., 1 Documents of American History (H.S. Commager ed.) (1944) 147.

Alexander Hamilton, in more measured tones, recognized the potential problem, but believed that life tenure would be a bulwark against undue impositions. He wrote in Federalist No. 78:

> This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community.

In this connection, note also Justice Johnson's deliberate rebuke to Jefferson's attempt to control judicial proceedings – a rebuke all the more significant because Jefferson had nominated Johnson to the Court.

Marshall's ruling, Henry's concerns, and Hamilton's counsel refer to the judiciary's most important duty: to act as a "counter-majoritarian" check on excesses threatened or committed by the coordinate branches of government. This does not mean that the courts have the discretionary power or duty to frustrate the popular will. The judiciary's counter-majoritarian functions are most often used in ways that foster and support the fundamental values of democratic government. These values include, for example, the rights of all persons regardless of race, ethnicity, gender, and sexual orientation to participate in and benefit from equal rights. In this very case, one

fundamental value at stake is the right to even-handed treatment at the hands of law enforcement – surely a democratic value.

We submit that when it fulfills this counter-majoritarian role, the court has its highest and best claim to resist interference by the coordinate branches.

VII. INHERENT JUDICIAL POWER, AND THE PARDON POWER

As shown above, only the Congress has constitutional power to create and define an "Offense." The Constitution uses several different terms to describe penal laws: "Piracies and Felonies," "Offenses," "Crimes."

The Constitution, as interpreted from the Republic's earliest days, makes a crucial distinction: The federal courts have power to try "crimes," which can be created only by the legislative branch. That is, there are no "common law crimes" in the federal system. Thomas Jefferson's assertions to the contrary, in an effort to get at his enemies by prosecutions for criminal libel, were rejected by the Supreme Court in *United States v. Hudson*, 11 U.S. 32, 34 (1812). Justice Johnson, speaking for the Court, wrote that "[t]he legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offense." *Id.* Note the use of the term "offense" in this passage.

Justice Johnson then drew a sharp distinction:

> Certain implied powers must necessarily result to our courts of justice from the nature of their institution. But jurisdiction of crimes against the state is not among those powers. To fine for contempt -- imprison for contumacy -- enforce the observance of order, &c., are powers which cannot be dispensed with in a court, because they are necessary to the exercise of all others, and so far our courts no doubt possess powers not immediately derived from statute; but all exercise of criminal jurisdiction in common law cases we are of opinion is not within their implied powers.

Ibid.

This power of contempt was recognized in the Judiciary Act of 1789, 1 Stat. 73. In § 9 of the Act, the federal district courts were given power to try "crimes and offences." Separately, in § 17, the Act recognized the power "to punish by fine and imprisonment, at the discretion of said court, all contempt of authority in any cause or

hearing before the same." That is, the inherent contempt power was not thought to be part and parcel of the power to try those accused of crime.

In 1831, the Congress prescribed certain limits on the contempt power, enacting what is now codified to 18 U.S.C. § 401 and § 1503. An Act Declaratory of the Law Concerning Contempts of Court, 4 Stat. 487. The statute was a reaction to the controversy surrounding Judge James H. Peck and his use of the contempt power. *See generally* https://en.wikipedia.org/wiki/James_H._Peck. This statute did not derogate from the inherent power of courts, but rather defined that power.

Thus, the constitutional structure, and the legislation passed by the First Congress, recognize this important distinction: there are crimes, felonies and offenses, defined by the legislature. Legislative enactment is a precondition to any prosecution. On the other hand, there are contempts, the punishment of which is within the inherent judicial power. The pardon power logically and textually refers only to the former category.

The facts of *Grossman* bear out this analysis. The proceedings against Grossman were based on Congressional creations of criminal offenses, the prosecution of which had "abatement" enforcement as an auxiliary remedy.

The Supreme Court reaffirmed the inherent power of district courts to enforce compliance in *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991). Chambers was sued, related to the sale of a broadcast station. He and his counsel engaged in conduct designed to impede the orderly resolution of the case. The district judge imposed a $1 million sanction, but did not rely on statutory authority under 28 U.S.C. § 1927 or Fed. R. Civ. P. 11. The Supreme Court held that federal courts have an inherent power to protect their processes. The Court traced the history of "inherent power," and relied on many of the authorities cited in this memorandum.

The "inherent power" analysis is particularly important in cases like this. Yes, there would be a public purpose served by charging Mr. Arpaio with a crime and vindicating the public interest in that way. But Mr. Arpaio's consistent conduct, if

tolerated, undermines this court's constitutional right and duty to protect its *own* processes and the lives and liberty of those who come to seek justice. Once, in their Supreme Court pleading, lawyers in the Trump executive department recognized this distinction and relied on it. Their credibility may fairly be questioned if they change course now.

As noted above, it is purely adventitious that the United States prosecuted Arpaio using its own personnel, which might give an inattentive observer the false impression that this is an ordinary criminal case. The district judge has the inherent power to appoint a special prosecutor to bring contempt charges. As the Court held in *Young v. United States ex rel. Vuitton et Fils*, 481 U.S. 787, 795 (1987):

> [Fed.R.Crim.P. 42(b)'s] assumption that private attorneys may be used to prosecute contempt actions reflects the longstanding acknowledgment that the initiation of contempt proceedings to punish disobedience to court orders is a part of the judicial function. . . . As this Court declared in *Michaelson v. United States ex rel. Chicago*, St. P., M., & O. R. Co., 266 U. S. 42 (1924):
>
> > "That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice. The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once became possessed of the power."

This holding again underscores the inviolable nature of the contempt power and its distinction from the power to try persons accused of crime. Indeed, a contempt case of this kind is perhaps the closest modern analogue to the historic appeal of felony.

VIII. CONCLUSION

Few Presidents have questioned their duty to enforce judicial decrees affecting private rights. We can reflect on several of our nation's proudest moments when Presidents have stepped in to support the federal courts. In 1957, President Eisenhower ordered the military and National Guard to end Arkansas governor Faubus's resistance to school segregation. In 1962, President Kennedy sent troops and U.S. Marshals to escort James Meredith into the University of Mississippi.

An historic instance of law defiance by a sheriff repays study in this context. In 1906, Ed Johnson, an African-American, was condemned to death in Chattanooga, Tennessee. Supreme Court Justice Harlan granted a stay of execution pending federal review of the case, and remanded Johnson to Sheriff Shipp's custody. Shipp conspired with others to allow a mob to take Johnson from the jail and lynch him. President Theodore Roosevelt expressed outrage at this defiance of federal court authority. Shipp was prosecuted for and convicted of contempt of the Supreme Court – the only "trial" ever held before that Court. He was sentenced to imprisonment. *United States v. Shipp*, 203 U.S. 563 (1906), 214 U.S. 386 (1909); *see* Mark Curriden, Contempt of Court: The Turn-of-the-Century Lynching That Launched a Hundred Years of Federalism (1999). No President till now has proclaimed that a public official who violated the Constitution and flouted court orders was "doing his job." The purported pardon is an attempt to exercise a power that even the King of England did not possess in 1787. By that time, the English people had rejected what Madison termed the "impious doctrine of the Old World that people were made for Kings and not Kings for people." Federalist No. 45.

We respectfully submit that this Court should hold the purported pardon invalid.

DATED this 11th day of September, 2017.

OSBORN MALEDON, P.A.

By s/ Larry A. Hammond
Larry A. Hammond
Joshua D. Bendor
2929 N. Central Ave., Suite 2100
Phoenix, Arizona 85012-2793

Attorneys for Erwin Chemerinsky, Michael E. Tigar, and Jane B. Tigar

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2017, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

s/ Karen Willoughby

Amicus brief TWO that Arpaio pardon is unconst.pdf

Michael L. Piccarreta
State Bar No. 003962
mlp@pd-law.com
Jefferson Keenan
State Bar No. 013896
jkeenan@pd-law.com
PICCARRETA DAVIS KEENAN FIDEL PC
145 South Sixth Avenue
Tucson, AZ 85701-2007
(520) 622-6900
(520) 622-0521 (fax)

Ronald Fein *(pro hac vice* forthcoming*)* (MA Bar # 657930)
rfein@freespeechforpeople.org
FREE SPEECH FOR PEOPLE
1340 Centre St. #209
Newton, MA 02459
(617) 244-0234

Louise H. Renne, admission *pro hac vice* (CA Bar #36508)
lrenne@publiclawgroup.com
Dennis Aftergut, admission *pro hac vice* (CA Bar # 75656)
da1.cppd@gmail.com
Co-Founders of Amicus Coalition to Preserve,
Protect and Defend
350 Sansome Street, Suite 300
San Francisco, California 94104
Telephone: (415) 678-3800
Facsimile: (415) 678-3838

Attorneys for Amici Martin Redish, Free Speech for People and Coalition to Preserve, Protect and Defend

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

Joseph M. Arpaio,

Defendants.

Case No. CR-16-01012-001-PHX-SRB

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE MARTIN REDISH, FREE SPEECH FOR PEOPLE AND COALITION TO PRESERVE, PROTECT AND DEFEND IN OPPOSITION TO MOTION OF DEFENDANT JOSEPH ARPAIO FOR VACATUR AND DISMISSAL WITH PREJUDICE

Professor Martin Redish, Free Speech For People, and the Coalition to Preserve, Protect, and Defend ("amici"), respectfully move this Court for leave to file the attached Brief of Amici Curiae in Opposition to Motion of Defendant Joseph Arpaio for Vacatur and Dismissal with Prejudice. [Doc. 220]. Counsel for the United States has given blanket consent to participation from amici curiae. As of the time of this filing, amici had not received a response from counsel for Defendants to amici's request for consent for this filing.

Amici respectfully request that this Court rule upon this motion without an oral hearing. Amici do not request the opportunity to participate in oral argument.

As grounds for this motion, Amici state:

1. Defendant has requested that the criminal proceeding be dismissed, and his conviction vacated, in light of a presidential pardon issued to him on August 24, 2017.

2. The proposed amicus brief advances Amici's unique perspective, which can help the court beyond the help provided by the lawyers for the parties in this case. As set forth in the brief, the President's pardon power is not unlimited, and, in particular, does not extend to pardoning a public official for criminal contempt of court after that official willfully disobeyed a judicial injunction to cease violations of individuals' constitutional rights. The brief presents an important analysis of the limits of the President's pardon power that would not otherwise be presented.

3. Martin H. Redish, the Louis and Harriet Ancel Professor of Law and Public Policy at Northwestern University Pritzker School of Law, has written extensively about the importance of judicial independence to our constitutional system and the role that the Due Process Clause plays in assuring such independence. He is the author of *Judicial Independence and the American Constitution: A Democratic Paradox* (Stanford University Press; 2017).

4. Free Speech For People (FSFP) is a national non-partisan 501(c)(3) organization working to renew our democracy and our Constitution for we, the people. FSFP has filed amicus briefs in constitutional cases in federal district courts across the

country. On August 29, FSFP (along with another organization, Protect Democracy) sent an open letter to the U.S. Department of Justice asking it to oppose the instant motion by defendant Arpaio, for reasons substantially similar to those presented in the brief. Lacking a response from the Department, FSFP seeks to ensure that these arguments are presented to this Court.

5. The Coalition to Preserve, Protect and Defend ("The Coalition") is a California nonprofit corporation dedicated to upholding the rule of law. Comprised of some of California's most seasoned attorneys – most of whom have extensive experience working in government – the Coalition was formed to participate in litigation supporting government accountability, just laws, open government, and, perhaps most critically, to protect the public's right to an independent and impartial judiciary. This case goes to the heart of the Coalition's mission, as the President's pardon of Mr. Arpaio undermines the constitutional power of the judiciary to remedy non-compliance with court orders safeguarding fundamental constitutional rights.

6. This Court has "broad discretion to appoint or reject *amici curiae*." *Friendly House v. Whiting*, 2010 WL 11452277, at *19 n.15 (D. Ariz. 2010), quoting *Roptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982). In such briefs, amici may "'take a legal position and present legal arguments in support of it.'" *Friendly House*, 2010 WL 11452277, at *19 n.15 (quoting *Funbus Sys., Inc. v. Cal. Pub. Utils. Comm'n,* 801 F.2d 1120, 1125 (9th Cir. 1986)). "Courts have permitted parties to file amicus briefs where 'the brief will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties' briefs.'" *In re Search of Info. Associated with [redacted]@mac.com that is Stored at Premises Controlled by Apple, Inc.*, 2014 WL 4094565, *7 (D.D.C. 2014) (quoting *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003)).

7. The present case is uniquely suited for the filing of argument by a friend of the Court because issues of preeminent significance will go unaddressed if left to the parties. Importantly, the parties in the matter will not present the critical issues that amici

address. Defendant Arpaio will certainly not challenge a pardon he has publicly welcomed. On information and belief, the Department of Justice does not plan to argue that the president's action was unconstitutional. Accordingly, the Government will represent neither the interests of a whole class of individuals whose constitutional rights Defendant violated, nor the interests of the federal judiciary in being able to effectively enforce orders aimed at ensuring that state officials conform their actions to the requirements of the Constitution. *See Falstaff Brewing Corp. v. Miller Brewing Co*. 702 F.2d 770, 778 (9th Cir. 1983) ("The principal beneficiaries of [criminal contempt] order are the courts and the public interest."). Hence, exercise of the Court's discretion in favor of hearing a constitutionally significant argument by amici is useful, timely and appropriate.

8. Amici all state that they have no parent corporation, and no publicly held corporation owns more than 10% of any amicus. No party's counsel authored the proposed brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No person other than amici, their members, or their counsel contributed money that was intended to fund preparing or submitting the brief.

9. This motion and the proposed amici brief are timely filed, having been filed on September 11, 2017, the due date for the United States' response to Arpaio's motion to dismiss the criminal conviction. *See* L.R. Crim. 12.1(a); L.R. Civ. 7.2(c).

10. The proposed brief complies with the Federal and Local Rules of Criminal Procedure.

For the foregoing reasons, amici respectfully request that the Court grant this motion and permit their participation in this case as amicus curiae.

Dated: September 11, 2017

By: */s/ Michael L. Piccarreta*
PICCARRETA DAVIS KEENAN FIDEL PC
145 South Sixth Avenue
Tucson, AZ 85701-2007
(520) 622-6900
(520) 622-0521 (fax)
Michael L. Piccarreta
State Bar No. 003962
Email: mlp@pd-law.com
Jefferson Keenan
State Bar No. 013896
Email: jkeenan@pd-law.com

Ronald Fein, *pro hac vice* forthcoming
(MA Bar # 657930)
rfein@freespeechforpeople.org
FREE SPEECH FOR PEOPLE
1340 Centre St. #209
Newton, MA 02459
Telephone: 617-244-0234

Louise H. Renne, admission *pro hac vice*
(CA Bar #36508)
lrenne@publiclawgroup.com
Dennis Aftergut, admission *pro hac vice*
(CA Bar # 75656)
da1.cppd@gmail.com
Co-Founders of Amicus Coalition to Preserve, Protect and Defend
350 Sansome Street, Suite 00
San Francisco, CA 94104

Attorneys for Amici Martin Redish, Free Speech for People, and Coalition to Preserve, Protect and Defend

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2017, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Dennis Ira Wilenchik
John Douglas Wilenchik
Wilenchik & Bartness PC
2810 N 3rd St., Ste. 103
Phoenix, AZ 85004
602-606-2810
Fax: 602-606-2811
Email: diw@wb-law.com
Email: jackw@wb-law.com
Represents Defendant Joseph Arpaio

John Dixon Keller
US Dept of Justice Public Integrity Section
10th & Constitution Ave.
Washington, DC 20530
202-514-1412
Email: John.Keller2@usdoj.gov
Represents Plaintiff USA

Joseph John Popolizio
Justin Michael Ackerman
Linda Kim Tivorsak
Jones Skelton & Hochuli PLC
40 N Central Ave., Ste. 2700
Phoenix, AZ 85004
602-263-1700
Fax: 602200-7876
Email: jpopolizio@jshfirm.com
Email: jackerman@jshfirm.com
Email: ltivorsak@jshfirm.com
Represents Defendant Joseph Arpaio

Victor R Salgado
US Dept of Justice - Public Integrity Section,
1400 New York Ave. NW, 12th Fl.
Washington, DC 20005
202-353-4580
Email: victor.salgado@usdoj.gov
Represents Plaintiff USA

Jeffrey Sinclair Surdakowski
Mark David Goldman
Vincent Rene Mayr
Goldman & Zwillinger PLLC
17851 N 85th St., Ste. 175
Scottsdale, AZ 85255
480-626-8483
Fax: 480-502-7500
Email: jsurdakowski@gzlawoffice.com
Email: mgoldman@gzlawoffice.com
Email: vmayr@gzlawoffice.com
Represents Defendant Joseph Arpaio

Simon Joseph Cataldo
US Dept of Justice
1400 New York Ave., 12th Fl.
Washington, DC 20005
202-616-2464
Email: simon.cataldo@usdoj.gov
Represents Plaintiff USA

Karen Ann Clark
Adams & Clark PC
520 E Portland St., Ste. 200
Phoenix, AZ 85004
602-258-3542
Fax: 602-258-1377
Email: assistant@adamsclark.com
Represents Movant Timothy Casey

Locke E. Bowman
David M. Shapiro
RODERICK AND SOLANGE
MACARTHUR JUSTICE CENTER
Northwestern Pritzker School of Law
375 E. Chicago Avenue
Chicago, IL 60611
312.503.0711
david.shapiro@law.northwestern.edu
locke.bowman@law.northwestern.edu
Represents Amicus Curiae Roderick and Solange MacArthur Justice Center

/s/ Michael L. Piccarreta

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Plaintiff, vs. JOSEPH M. ARPAIO, Defendant.	)	NO. CR-16-01012-001-PHX-SRB ORDER

Having reviewed Martin Redish, Free Speech for People, and Coalition to Preserve, Protect and Defend's motion for leave to file a brief as *amici curiae,* and good cause appearing,

IT IS HEREBY ORDERED that the motion for leave to file a brief as *amici curiae* is GRANTED.

DATED THIS _____ day of September, 2017.

_____

HON. SUSAN BOLTON

Michael L. Piccarreta
State Bar No. 003962
mlp@pd-law.com
Jefferson Keenan
State Bar No. 013896
jkeenan@pd-law.com
PICCARRETA DAVIS KEENAN FIDEL PC
145 South Sixth Avenue
Tucson, AZ 85701-2007
(520) 622-6900
(520) 622-0521 (fax)

Ronald Fein *(pro hac vice* forthcoming*)* (MA Bar # 657930)
rfein@freespeechforpeople.org
FREE SPEECH FOR PEOPLE
1340 Centre St. #209
Newton, MA 02459
(617) 244-0234

Louise H. Renne, admission *pro hac vice* (CA Bar #36508)
lrenne@publiclawgroup.com
Dennis Aftergut, admission *pro hac vice* (CA Bar # 75656)
da1.cppd@gmail.com
Co-Founders of Amicus Coalition to Preserve,
Protect and Defend
350 Sansome Street, Suite 300
San Francisco, California 94104
Telephone: (415) 678-3800
Facsimile: (415) 678-3838

Attorneys for Amici Martin Redish, Free Speech for People and Coalition to Preserve, Protect and Defend

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America, Plaintiff, v. Joseph M. Arpaio, Defendants.	Case No. CR-16-01012-001-PHX-SRB **[PROPOSED] BRIEF OF AMICI CURIAE MARTIN REDISH, FREE SPEECH FOR PEOPLE AND COALITION TO PRESERVE, PROTECT AND DEFEND IN OPPOSITION TO MOTION OF DEFENDANT JOSEPH ARPAIO FOR VACATUR AND DISMISSAL WITH PREJUDICE**

I. INTRODUCTION

Amici Martin Redish, Free Speech for People, and Coalition to Preserve, Protect and Defend, respectfully oppose the Motion of Defendant Joseph Arpaio for Vacatur and Dismissal With Prejudice. [Doc. 220]. In the narrow and unprecedented circumstances of this case, the exercise of the pardon power has exceeded the limits that the Due Process Clause of the Fifth Amendment imposes on the President's authority. Accordingly, the Court should hold the pardon unconstitutional, deny Defendant's motion, and proceed to sentencing.[1]

II. ARGUMENT

The Exercise of the Pardon Power in the Narrow Circumstances of this Case Undermines Judicial Protection of Constitutional Rights and Exceeds Due Process Constraints on the President's Authority to Pardon

The Due Process Clause of the Fifth Amendment to the United States Constitution guarantees individuals the right to a hearing before an independent judicial body before any branch of the federal government may deprive those individuals of life, liberty or property. *See e.g., Hamdi v. Rumsfeld*, 542 U.S. 507, 530-32 (2004); *Bartlett v. Bowen*, 816 F.2d 695, 703-07 (D.C. Cir. 1987); *Battaglia v. Gen. Motors Corp.*, 169 F.2d 254, 257 (2d Cir. 1948). As these cases show, under due process principles, the judiciary serves as the counter-majoritarian guardian of constitutionally protected individual rights against encroachment by the political branches of government.[2]

---

[1] In considering the Defendant's motion, the Court has full authority to resolve the issues Amici raise. Federal courts' inherent powers "to prevent abuse, oppression, and injustice" are "as extensive and efficient as may be required by the necessity for their exercise, and may be invoked by strangers to the litigation as incident to the jurisdiction already vested." *Gumbel v. Pitkin*, 124 U.S., 146 (1888); see *Chambers v. NASCO, Inc.,* 501 U.S. 32, 43-44 (1991). Courts may invoke this inherent power *sua sponte, Chambers, supra,* 501 U.S. at 49, or at the request of amici, particularly where the parties' alignment precludes their raising an issue of importance to the administration of justice. *See U.S. v. Mercedes-Benz of North America, Inc.,* 547 F.Supp. 399, 400 (N.D. Cal. 1982); *Green v. Nevers*, No. 92-CV-76881-DT) 1993 WL 1620511, at *12 (E.D. Mich., Apr. 13, 1993). That is the situation here.

[2] Constitutionally protected liberty interests under the Fourth Amendment were among the

Critically, the power of contempt for violating injunctions requiring government officers to cease their unconstitutional actions – or risk fine, imprisonment or both – is a vital means by which the judiciary enforces constitutional rights. As stated in *Institute of Cetacean Research v. Sea Shepherd Conservation Society,* 774 F.3d 935, 951–52 (9th Cir. 2014):

> [T]he purpose of contempt proceedings is to uphold the power of the court, *Bessette v. W.B. Conkey Co.,* 194 U.S. 324, 327 (1904), and to ensure that the court's vindication of litigants' rights is not merely symbolic. Our orders would have little practical force, and would be rendered essentially meaningless, if we were unable to prevent parties bound by them from flagrantly and materially assisting others to do what they themselves are forbidden to do.

If the President may employ his pardon power to relieve government officers of accountability and risk of penalty for defying injunctions imposed to enforce constitutional rights, that action will permanently impair the courts' authority and ability to protect those inalienable rights. The result would be an executive branch freed from the judicial scrutiny required to assure compliance with the dictates of the Bill of Rights and other constitutional safeguards. Such a result is constitutionally unacceptable.

1. The Due Process Clause Qualifies and Limits Otherwise Plenary Powers in the Body of the Constitution

To be sure, the Constitution expresses the President's pardon power in broad terms. U.S. Const., art. II, § 2.[3] On its face, the provision appears virtually unlimited in the discretion it vests in the President to pardon others for crimes. But the Constitution's structure makes every provision in the body of the document, including provisions

---

rights whose violation by Defendant this Court enjoined in the matter giving rise to his criminal contempt. *Melendres v. Arpaio,* No. CV-07-2513-PHX-GMS at 36, 40 (D. Ariz. December 23, 2011); *United States of America v. Joseph M. Arpaio*, No. CR-16-01012-001-PHX-SRB, 11-14 (D. Ariz. July 31, 2017); *see Hamdi, supra,* 542 U.S. at 529; *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001).

[3] "The President shall . . . have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment."

conferring broad power, subject to limitation by amendments that impose restrictions on government. As the Supreme Court stated in *Williams v. Rhodes*, 393 U.S. 23, 29 (1968):

> [T]he Constitution is filled with provisions that grant Congress or the States specific power to legislate in certain areas; these granted powers are always subject to the limitation that they may not be exercised in a way that violates other specific provisions of the Constitution. For example, Congress is granted broad power to 'lay and collect Taxes,' but the taxing power, broad as it is, may not be invoked in such a way as to violate the privilege against self-incrimination. Nor can it be thought that the power to select electors could be exercised in such a way as to violate express constitutional commands that specifically bar States from passing certain kinds of laws.

Similarly, no court could properly hold that Congress may use its plenary power over interstate commerce to restrict First Amendment rights of free speech or press.

Indeed, courts have long applied the Fifth Amendment's Due Process Clause to restrict plenary powers that the body of the Constitution explicitly confers on the political branches. *See Battaglia v. General Motors Corp.*, *supra,* 169 F.2d at 257. The power at issue in *Battaglia* was Congress' broad authority to grant or deny federal court jurisdiction. U.S. Const., art. III, §1.[4] The court held that that Congress' exercise of its broad constitutional authority must yield when in conflict with the Due Process Clause:

> [W]hile Congress has the undoubted power to give, withhold, and restrict the jurisdiction of courts other than the Supreme Court, it must not so exercise that power as to deprive any person of life, liberty, or property without due process of law or to take private property without just compensation.

Id. at 257. *Accord, Bartlett v. Bowen, supra,* 816 F.2d at 706; *cf. Lockerty v. Phillips,* 319 U.S. 182 (1943).

These same Constitutional restrictions apply to the Executive Branch when, as here, a protected liberty interest is at risk. In *Hamdi v. Rumsfeld,* 542 U.S. at 530-32, the

[4] "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

Court rejected the government's claim that its plenary powers in times of military conflict negated a citizen's right to due process in challenging his classification as an enemy-combatant. *See also Abourezk v. Reagan,* 785 F.2d 1043, 1061 (D.C. Cir. 1986), *aff'd*, 484 U.S. 1 (1987) ("The Executive has broad discretion over the admission and exclusion of aliens, but . . . [i]t . . . may not transgress constitutional limitations."). The Due Process Clause limits plenary powers conferred on the President in the body of the Constitution, just as the clause limits the powers of the Congress.

2. Courts Properly Constrain Application of the Pardon Power When its Exercise Conflicts with Due Process

Applying the same principles, the Supreme Court has been careful not to allow use of the Presidential pardon power in a way that treads on constitutional rights. In the only other case that Amici have found where a Presidential pardon infringed upon the Bill of Rights, the Supreme Court circumscribed application of the Presidential pardon power. *See Burdick v. United States*, 236 U.S. 79, 93-94 (1915).

In *Burdick*, a newspaper editor refused a Presidential pardon designed to compel him to disclose confidential sources to a grand jury; if effective, the pardon would have eliminated his Fifth Amendment privilege against self-incrimination, previously invoked to resist disclosure. The Court protected the privilege, holding that the editor's refusing the pardon rendered it void. Thus, the Court gave effect to an individual's Constitutional right and limited the pardon power's application where the two conflicted.

Biddle v. Perovich, 274 U.S. 480 (1927), proves the point in reverse. There, as in *Burdick,* the intended recipient of Presidential clemency rejected it. But unlike *Burdick,* the Court held that Executive reduction of Biddle's sentence, based on a criminal conviction but presenting no infringement on the Bill of Rights, was *effective*; Justice Holmes refused to extend *Burdick* to a case where the President's action did *not* transgress a constitutional right. *Id.* at 287-88. Critically, in neither *Burdick* nor *Biddle* did the Court decline to exercise its role as final arbiter of the pardon power's scope on the ground that the power is absolute.

Together, these cases teach that courts limit the President's pardon power where, and only where, competing constitutional rights are at stake. As Justice O'Connor, joined by three other justices, wrote in *Ohio Adult Parole Authority v. Woodard*:

> I do not, however, agree . . . that, because clemency is committed to the discretion of the executive, the Due Process Clause provides no constitutional safeguards . . . . Judicial intervention might, for example, be warranted in the face of a scheme whereby a state official flipped a coin to determine whether to grant clemency, or in a case where the State arbitrarily denied a prisoner any access to its clemency process.

523 U.S. 272, 288-89 (1998) (O'Connor, J., concurring).

The invocation of the pardon power in this case differs in critical ways from that power's traditional use. When the President pardons a private individual who has been convicted of a crime, there arises no risk that the President will circumvent judicial imposition, through injunction, of constitutional restraints on federal and state officials.

Here, by contrast, that is not only a danger, but it is precisely the result that the pardon would achieve. Defendant violated myriad individuals' constitutional rights, then ignored an injunction prohibiting him from continuing to do so. If the President is permitted to pardon Defendant's contempt conviction, the signal will be sent to all law enforcement officers that if their unconstitutional actions further presidential policies or preferences, they stand to benefit from the exercise of his pardon power, much as Defendant seeks to benefit here.

Just as Judge Snow issued his preliminary injunction to protect individuals in the future from the unconstitutional practices at issue in *Melendres v. Arpaio,* No. CV-07-2513-PHX-GMS, 36, 40 (D. Ariz. Dec. 23, 2011), this Court should protect the countless individuals whose constitutional rights will be placed at risk if this pardon is allowed to stand. The Court should recognize the serious constitutional pathology that would inescapably flow, and the peril to our constitutional system of checks and balances. A dangerous precedent would be set for any future presidential pardon that immunizes law

enforcement officers – or other government actors – from the penalties of contempt for violating judicial injunctions safeguarding constitutional rights.

Ex parte Grossman, 267 U.S. 87, 115, 120 (1925), involved no such danger. There, the Supreme Court recognized the President's power to pardon an individual for a contempt conviction arising from his flouting an injunction to stop selling liquor in the Prohibition era. The decision, however, is readily distinguishable.

The present case involves a pardon issued (1) for criminal contempt (2) for violating an injunction (3) issued to a government official (4) to cease a systemic practice of violating (5) individuals' constitutional rights. By contrast, *Grossman* involved only the first two elements. Absent the last three elements, the presidential pardon did not implicate the Due Process Clause. With them, the Court confronts a situation that threatens to empower the President, through use of his pardon power, to effectively eliminate the judiciary's ability to protect and enforce constitutional rights.

In our history's preeminent constitutional decision, *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 176-77 (1803), Chief Justice John Marshall wrote for a unanimous Court:

> To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction, between a government with limited and unlimited powers, is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation.

Chief Justice Marshall may not have foreseen a President's misuse of the pardon power to overcome constitutional limits on official actions antithetical to the Bill of Rights. Still, Marshall's warning is directly applicable to this situation. The Constitution loses its meaning as a restraint on government, and as a guarantor of individual rights, if the pardon power may be employed in the manner exercised in this case.

III. CONCLUSION

This case centers on a law enforcement officer's willful violation of court orders protecting constitutional rights. The power to pardon that contempt is the power to destroy

the protection of those rights. Amici respectfully urge this Court to find that this unprecedented exercise of the pardon power exceeds the limits of Presidential authority set by the Due Process Clause of the Fifth Amendment to the United States Constitution. The Court should hold that exercise invalid, deny Defendant's Motion and proceed to sentence him.

Dated: September 11, 2017

By: */s/ Michael L. Piccarreta*
PICCARRETA DAVIS KEENAN FIDEL PC
145 South Sixth Avenue
Tucson, AZ 85701-2007
(520) 622-6900
(520) 622-0521 (fax)
Michael L. Piccarreta
State Bar No. 003962
Email: mlp@pd-law.com
Jefferson Keenan
State Bar No. 013896
Email: jkeenan@pd-law.com

Ronald Fein (*pro hac vice* forthcoming)
(MA Bar # 657930)
rfein@freespeechforpeople.org
FREE SPEECH FOR PEOPLE
1340 Centre St. #209
Newton, MA 02459
Telephone: 617-244-0234

Louise H. Renne, admission *pro hac vice*
(CA Bar #36508)
lrenne@publiclawgroup.com
Dennis Aftergut, admission *pro hac vice*
(CA Bar # 75656)
da1.cppd@gmail.com
Co-Founders of Amicus Coalition to Preserve, Protect and Defend
350 Sansome Street, Suite 00
San Francisco, CA 94104

Attorneys for Amici Martin Redish, Free Speech for People, and Coalition to Preserve, Protect and Defend

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2017, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Dennis Ira Wilenchik
John Douglas Wilenchik
Wilenchik & Bartness PC
2810 N 3rd St., Ste. 103
Phoenix, AZ 85004
602-606-2810
Fax: 602-606-2811
Email: diw@wb-law.com
Email: jackw@wb-law.com
Represents Defendant Joseph Arpaio

John Dixon Keller
US Dept of Justice Public Integrity Section
10th & Constitution Ave.
Washington, DC 20530
202-514-1412
Email: John.Keller2@usdoj.gov
Represents Plaintiff USA

Joseph John Popolizio
Justin Michael Ackerman
Linda Kim Tivorsak
Jones Skelton & Hochuli PLC
40 N Central Ave., Ste. 2700
Phoenix, AZ 85004
602-263-1700
Fax: 602200-7876
Email: jpopolizio@jshfirm.com
Email: jackerman@jshfirm.com
Email: ltivorsak@jshfirm.com
Represents Defendant Joseph Arpaio

Victor R Salgado
US Dept of Justice - Public Integrity Section,
1400 New York Ave. NW, 12th Fl.
Washington, DC 20005
202-353-4580
Email: victor.salgado@usdoj.gov
Represents Plaintiff USA

Jeffrey Sinclair Surdakowski
Mark David Goldman
Vincent Rene Mayr
Goldman & Zwillinger PLLC
17851 N 85th St., Ste. 175
Scottsdale, AZ 85255
480-626-8483
Fax: 480-502-7500
Email: jsurdakowski@gzlawoffice.com
Email: mgoldman@gzlawoffice.com
Email: vmayr@gzlawoffice.com
Represents Defendant Joseph Arpaio

Simon Joseph Cataldo
US Dept of Justice
1400 New York Ave., 12th Fl.
Washington, DC 20005
202-616-2464
Email: simon.cataldo@usdoj.gov
Represents Plaintiff USA

Karen Ann Clark
Adams & Clark PC
520 E Portland St., Ste. 200
Phoenix, AZ 85004
602-258-3542
Fax: 602-258-1377
Email: assistant@adamsclark.com
Represents Movant Timothy Casey

Locke E. Bowman
David M. Shapiro
RODERICK AND SOLANGE
MACARTHUR JUSTICE CENTER
Northwestern Pritzker School of Law
375 E. Chicago Avenue
Chicago, IL 60611
312.503.0711
david.shapiro@law.northwestern.edu
locke.bowman@law.northwestern.edu
Represents Amicus Curiae Roderick and Solange MacArthur Justice Center

/s/ Michael L. Piccarreta

Arpaio USA response to Arpaio motion for vacat.pdf

AnnaLou Tirol
Acting Chief
Public Integrity Section, Criminal Division
U.S. Department of Justice

JOHN D. KELLER
Illinois State Bar No. 6293104
Deputy Chief
VICTOR R. SALGADO
DC Bar No. 975013
SIMON J. CATALDO
Massachusetts Bar No. 690879
Trial Attorneys
Public Integrity Section, Criminal Division
U.S. Department of Justice
1400 New York Ave, NW, 12th floor
Washington, D.C. 20005
Tel: (202) 514-1412
John.Keller2@usdoj.gov
Victor.Salgado@usdoj.gov
Simon.Cataldo@usdoj.gov

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

United States of America, Plaintiff, v. Joseph M. Arpaio, Defendant.	No. CR-16-01012-PHX-SRB **GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR VACATUR AND DISMISSAL WITH PREJUDICE**

The President issued a "Full and Unconditional Pardon" to defendant Joseph M. Arpaio ("Defendant"), whom this Court found guilty of criminal contempt for willfully disobeying a preliminary injunction issued in a civil case. Having accepted the presidential pardon, Defendant now moves to vacate the verdict and all other orders and to dismiss this case with prejudice. ECF 220. A pardon issued before entry of final judgment moots a criminal case because the defendant will face no consequences that result from the guilty verdict. Accordingly, the government agrees that the Court should vacate all orders and dismiss the case as moot.

THE PROCEEDINGS

From 1993 until 2016, Defendant was the sheriff of the Maricopa County Sheriff's Office ("MCSO"). In December 2007, a group of private plaintiffs filed a class-action lawsuit alleging that Defendant and the MCSO engaged in "illegal, discriminatory, and unauthorized enforcement of federal immigration laws against Hispanic persons." *Melendres v. Arpaio*, No. 2:07-cv-02513, (D. Ariz. Dec. 12, 2007), ECF No. 1. Following years of litigation, the district court (Snow, J.) entered a preliminary injunction in December 2011 enjoining "MCSO and all of its officers . . . from detaining any person based on knowledge, without more, that the person is unlawfully present within the United States." *Id.*, ECF No. 494 at 38. More litigation followed, and in May 2016, following twenty-one days of evidentiary hearings, the court held Defendant and others in civil contempt for "intentionally fail[ing] to implement" the preliminary injunction. *Id.*, ECF No. 1677 at 1.

In August 2016, the *Melendres* court entered an order under 18 U.S.C. § 401 and Federal Rule of Criminal Procedure 42 referring Defendant to another judge for a determination of whether he should be held in criminal contempt of court for his failure to implement the preliminary injunction. ECF No. 1 at 1. After the government informed the newly assigned district court judge that it agreed to prosecute Defendant, on October 2, 2016, this Court issued an Order to Show Cause under 18 U.S.C. § 401(3) as to whether Defendant should be held in criminal contempt for willfully disobeying the *Melendres* preliminary injunction. ECF No. 36.

The Court heard evidence during a five-day bench trial that concluded on July 6, 2017. On July 31, 2017, the Court found Defendant guilty. ECF No. 210.

On August 25, 2017, the President granted Defendant a full and unconditional pardon. ECF No. 221. The pardon applied to Defendant's "conviction" under Section 401(3). *Id.* The pardon also encompassed "any other offenses" under Chapter 21 in Title 18 of the U.S. Code, which covers criminal contempt, that "might arise, or be charged, in connection with" the *Melendres* litigation. *Id.* Defendant accepted the pardon and now

moves the Court to vacate all orders and dismiss his case with prejudice. ECF No. 220 at 1–4.

DISCUSSION

The Constitution authorizes the President to "grant Reprieves and Pardons" for federal offenses "except in Cases of Impeachment." U.S. Const. art. II, § 2. Chief Justice Marshall described the presidential pardon as "an act of grace" that "exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed." *United States v. Wilson*, 32 U.S. (7 Pet.) 150, 160 (1833); *see also United States v. Schaffer*, 240 F.3d 35, 38 (D.C. Cir. 2001). A pardon is a "private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended, and not communicated officially to the court." *Wilson*, 32 U.S. at 160–61.

The President's decision to grant Defendant a "[f]ull and [u]nconditional [p]ardon [f]or [h]is [c]onviction"—and Defendant's decision to accept it—ends this prosecution. ECF No. 221. The presidential pardon removes any punitive consequences that would otherwise flow from Defendant's non-final conviction and therefore renders the case moot. *See Schaffer*, 240 F.3d at 38; *cf. United States v. Surratt*, 855 F.3d 218, 219 (4th Cir. 2017) (en banc) (Wilkinson, J., concurring) (explaining, in case where commutation by the President mooted defendant's appeal, that "[a]bsent some constitutional infirmity," an exercise of the President's pardon power "simply closes the judicial door"). The pardon moots the case because Defendant faces no punishment or legal disabilities as a result of the Court's finding of guilt.* Because the presidential pardon moots Defendant's case,

* This Court need not determine whether any potential "collateral consequences" flowing from the guilty verdict defeat mootness in light of the case's unique procedural posture. *Compare Bjerkan v. United States*, 529 F.2d 125, 126–29 (7th Cir. 1975) (presidential pardon moots further appeal because it "do[es] away" with all "collateral consequences" of the conviction (internal quotation marks omitted)), *with Robson v. United States*, 526 F.2d 1145, 1147 (1st Cir. 1975) (presidential pardon did not moot further appeal because, notwithstanding the pardon, the defendant's conviction "may be considered at sentencing in any subsequent criminal proceeding") (citing *Carlesi v. New York*, 233 U.S. 51 (1914)); *see also Sibron v. New York*, 392 U.S. 40, 57 (1968) (defendant's appeal of criminal convictions moot where "there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction"). Unlike in *Bjerkan* and *Robson*, there is no final conviction here because this Court never entered

vacatur of the relevant orders is appropriate. *See Schaffer*, 240 F.3d at 38; *see also Camreta v. Greene*, 563 U.S. 692, 712 (2011) (noting the "established" practice in cases that have become moot "to vacate the judgment below") (citing *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950)). Where, as here, mootness results "not from any voluntary acts of settlement or withdrawal" by Defendant, "but from the unpredictable grace of a presidential pardon," vacatur is "just and appropriate." *Schaffer*, 240 F.3d at 38.

CONCLUSION

For the foregoing reasons, the government agrees that the Court should vacate all orders and dismiss the case as moot.

Respectfully Submitted,

ANNALOU TIROL
Acting Chief, Public Integrity Section

By: */s/ John D. Keller*
John D. Keller
Deputy Chief
Victor R. Salgado
Simon J. Cataldo
Trial Attorneys
United States Department of Justice
Public Integrity Section
1400 New York Ave. NW
Washington, DC 20005
(202) 514-1412
John.Keller2@usdoj.gov
Victor.Salgado@usdoj.gov
Simon.Cataldo@usdoj.gov

judgment, and no appellate review has occurred. The timing of Defendant's presidential pardon means that "the efficacy of the [Court's] verdict against [him] remains only an unanswered question lost to . . . mootness." *Schaffer*, 240 F.3d at 38

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing via the CM/ECF system on today's date which will provide notice to counsel of record for the defendant.

/s/ John D. Keller
John D. Keller
Deputy Chief

Justice Department, Divided Internally, Backed ...(1).pdf

From: The National Law Journal Daily Headlines
To: Pendergrass, Matthew J. (OPATTY)
Subject: Justice Department, Divided Internally, Backed Colorado Baker Over Gay Couple
Date: Monday, September 18, 2017 7:04:52 AM

THE NATIONAL LAW JOURNAL DAILY HEADLINES

TODAY'S TOP STORIES

Justice Department, Divided Internally, Backed Colorado Baker Over Gay Couple

U.S. Attorney General Jeff Sessions overcame reluctance among top lawyers under his command and pushed forward last... **READ MORE »**

Back to Work for Obama Lawyers; US Attorney Picks Raise Eyebrows; Dentons' Big New Referral Database

It's been another busy week in the nation's capital for lawyers and news-watchers alike. **READ MORE »**

Why Did a Federal Judge Sentence a Terminally Ill Mother to 75 Years for Health Care Fraud?

A federal judge in Texas sentenced a woman with advanced metastatic cancer to 75 years in prison for Medicare fraud...

READ MORE »

Covington Has Irish Eyes in Brexit's Aftermath

The Washington, D.C.-based Am Law 100 firm has become the second major law firm from the U.S. to open an office in Ireland...

READ MORE »

Equifax Executives' Stock Sales Raise 'Fundamental Questions' Tied to Breach

Equifax Inc. has maintained that three executives were unaware of a massive data breach when they made stock trades... **READ MORE »**

Q&A: Covington & Burling Partner Takes On Arpaio, Again

Covington & Burling's Stanley Young is still fighting against Sheriff Joe Arpaio in court, despite his pardon from President...

READ MORE »

Corporate Friend or Balanced Perspective? EEOC Chair Nominee's Experience Is Debated

Business leaders are welcoming a would-be EEOC chair in longtime general counsel Janet Dhillon, whose background in... **READ MORE »**

Sessions' Chief of Staff Tapped to Lead DOJ Civil Division

Career DOJ lawyer Joseph 'Jody' Hunt was nominated today.

READ MORE »

SPONSOR SPOTLIGHT:

U.S. Chamber Institute for Legal Reform
2017 Legal Reform Summit - 10.25.2017

Each year, ILR's Legal Reform Summit gathers top legal minds, business and industry leaders, and preeminent issue experts to discuss the current state of legal reform. Get current on the issues and earn CLE credits. Register today, seating is limited.
Click Here

MORE STORIES FROM ALM

Federal Prosecutors Shut Out Winner's Defense, Asking Judge for Secret Ruling

Federal prosecutors want to present evidence against accused leaker Reality Winner to the presiding judge in secret... **READ MORE »**

Why Are So Many Partners Leaving Ropes & Gray

Firm leadership defends its strategy, particularly in London, and says they aren't worried about the future. **READ MORE »**

10 Best Jobs of the Future: 2017

Kiplinger analyzed 785 jobs; these 10 have high salaries and are poised for strong growth in the coming decade. Financial...

READ MORE »

NEW JOB OPENINGS

POWERED BY LAWJOBS.COM

Associate Attorney- Atlanta, Ga
Confidential | Macon, Georgia

Investigator
Office of the Federal Public Defender | Baltimore, Maryland

Email Management Area

Please do not reply to the address you received this email from. Manage your email communications below.

Why you received this email message:

You are subscribed to the NLJ Daily Headlines as jordan.pendergrass@usdoj.gov. You may be subscribed to multiple publications as part of your relationship with us.

To stop receiving the NLJ Daily Headlines (unsubscribe) or to update your email marketing preferences, please click here. On this page, please update your subscription choices to this publication, and any others you may receive. You may also change your opt-in of email marketing promotions from ALM. It may take up to 10 days for your changes to take effect.

How to contact us should you have questions:

The National Law Journal®
120 Broadway, 5th Floor,
New York, NY 10271-1101
Customer Service Phone: 1-877-256-2472

About ALM | Customer Support | Privacy Policy | Terms & Conditions

© 2017 ALM Media Properties, LLC.

All rights reserved.

Justice Department, Divided Internally, Backed ...(2).pdf

From: NLJ Legal Times Afternoon Update
To: Kupers, Lawrence B. (OPATTY)
Subject: Justice Department, Divided Internally, Backed Colorado Baker Over Gay Couple
Date: Friday, September 15, 2017 4:17:36 PM

FROM THE NATIONAL LAW JOURNAL

LegalTimes AFTERNOON UPDATE

TODAY'S TOP STORIES

• Justice Department, Divided Internally, Backed Colorado Baker Over Gay Couple

• Sessions' Chief of Staff Tapped to Lead DOJ Civil Division

• Equifax Executives' Stock Sales Raise 'Fundamental Questions' Tied to Breach

• Corporate Friend or Balanced Perspective? EEOC Chair Nominee's Experience Is Debated

• Q&A: Covington & Burling Partner Takes On Arpaio, Again

• Figuring Out What Young Associates Want, Over 15 Coffees

• Gender-Pay Suit Against Google Seeks 'Fairness for Women'

• Federal Judge Sues Judicial Conference Over Forced Mental Health Evaluation

MORE STORIES FROM ALM

• Kaiser Chief to Congress: You Have Just Days to Save Individual Health

• Don't Expect Trump and Congress to Do Anything

• Bergen County Lawyer Charged With Trust Fund Raid, Forgery

Your digital membership gives you complimentary access to five articles per month from other award-winning ALM publications.

Justice Department, Divided Internally, Backed Colorado Baker Over Gay Couple

U.S. Attorney General Jeff Sessions overcame reluctance among top lawyers under...
READ MORE »

Sessions' Chief of Staff Tapped to Lead DOJ Civil Division

President Donald Trump announced Friday that Joseph Hunt, chief of staff to... **READ MORE »**

Equifax Executives' Stock Sales Raise 'Fundamental Questions' Tied to Breach

Equifax Inc. has maintained that three executives were unaware of a massive... **READ MORE »**

Corporate Friend or Balanced Perspective? EEOC Chair Nominee's Experience Is Debated

Business leaders are welcoming a would-be EEOC chair in longtime general counsel... **READ MORE »**

Q&A: Covington & Burling Partner Takes On Arpaio, Again

Covington & Burling's Stanley Young is still fighting against Sheriff Joe Arpaio... **READ MORE »**

Figuring Out What Young Associates Want, Over 15 Coffees

Sean Marotta, a senior appellate associate at Hogan Lovells in Washington, D.C.,... **READ MORE »**

Gender-Pay Suit Against Google Seeks 'Fairness for Women'

A class action filed Thursday against Google Inc. claims the tech company systemically... **READ MORE »**

Federal Judge Sues Judicial Conference Over Forced Mental Health Evaluation

A federal judge sued the federal judiciary's policymaking body Thursday, alleging... **READ MORE »**

Kaiser Chief to Congress: You Have Just Days to Save Individual Health

Bernard Tyson backs faster waiver approvals, combined with strong 'guardrails.' **READ MORE »**

Don't Expect Trump and Congress to Do Anything

The author contends that the president is 'all hat and no cattle.'

READ MORE »

Bergen County Lawyer Charged With Trust Fund Raid, Forgery

A Bergen County attorney is facing criminal charges that he gave clients a fraudulent... **READ MORE »**

Email Management Area

Please do not reply to the address you received this email from. Manage your email communications below.

Why you received this email message:

You are subscribed to the NLJ Legal Times Afternoon Update as lawrence.b.kupers@usdoj.gov. You may be subscribed to multiple publications as part of your relationship with us.

To stop receiving the NLJ Legal Times Afternoon Update (unsubscribe) or to update your email marketing preferences, please click here. On this page, please update your subscription choices to this publication, and any others you may receive. You may also change your opt-in of email marketing promotions from ALM. It may take up to 10 days for your changes to take effect.

How to contact us should you have questions:

The National Law Journal®
120 Broadway, 5th Floor,
New York, NY 10271-1101
Customer Service Phone: 1-877-256-2472

About ALM | Customer Support | Privacy Policy | Terms & Conditions

© 2017 ALM Media Properties, LLC.

All rights reserved.

Justice Department, Divided Internally, Backed ....pdf

From: The National Law Journal Daily Headlines
To: Kupers, Lawrence B. (OPATTY)
Subject: Justice Department, Divided Internally, Backed Colorado Baker Over Gay Couple
Date: Monday, September 18, 2017 7:05:01 AM

THE NATIONAL LAW JOURNAL DAILY HEADLINES

TODAY'S TOP STORIES

Justice Department, Divided Internally, Backed Colorado Baker Over Gay Couple

U.S. Attorney General Jeff Sessions overcame reluctance among top lawyers under his command and pushed forward last... **READ MORE »**

Back to Work for Obama Lawyers; US Attorney Picks Raise Eyebrows; Dentons' Big New Referral Database

It's been another busy week in the nation's capital for lawyers and news-watchers alike. **READ MORE »**

Why Did a Federal Judge Sentence a Terminally Ill Mother to 75 Years for Health Care Fraud?

A federal judge in Texas sentenced a woman with advanced metastatic cancer to 75 years in prison for Medicare fraud...

READ MORE »

Covington Has Irish Eyes in Brexit's Aftermath

The Washington, D.C.-based Am Law 100 firm has become the second major law firm from the U.S. to open an office in Ireland...

READ MORE »

Equifax Executives' Stock Sales Raise 'Fundamental Questions' Tied to Breach

Equifax Inc. has maintained that three executives were unaware of a massive data breach when they made stock trades... **READ MORE »**

Q&A: Covington & Burling Partner Takes On Arpaio, Again

Covington & Burling's Stanley Young is still fighting against Sheriff Joe Arpaio in court, despite his pardon from President...

READ MORE »

Corporate Friend or Balanced Perspective? EEOC Chair Nominee's Experience Is Debated

Business leaders are welcoming a would-be EEOC chair in longtime general counsel Janet Dhillon, whose background in... **READ MORE »**

Sessions' Chief of Staff Tapped to Lead DOJ Civil Division

Career DOJ lawyer Joseph 'Jody' Hunt was nominated today.

READ MORE »

SPONSOR SPOTLIGHT:

U.S. Chamber Institute for Legal Reform
2017 Legal Reform Summit - 10.25.2017

Each year, ILR's Legal Reform Summit gathers top legal minds, business and industry leaders, and preeminent issue experts to discuss the current state of legal reform. Get current on the issues and earn CLE credits. Register today, seating is limited.
Click Here

MORE STORIES FROM ALM

Kaiser Chief to Congress: You Have Just Days to Save Individual Health

Bernard Tyson backs faster waiver approvals, combined with strong 'guardrails.' **READ MORE »**

Don't Expect Trump and Congress to Do Anything

The author contends that the president is 'all hat and no cattle.'

READ MORE »

10 Ways South Florida Lawyers Can Help After Hurricane Irma

If you emerged from Hurricane Irma with a few downed trees but no major damage to your home or health, you might be... **READ MORE »**

NEW JOB OPENINGS

POWERED BY LAWJOBS.COM

Associate Attorney- Atlanta, Ga
Confidential Macon, Georgia

Investigator
Office of the Federal Public Defender Baltimore, Maryland

Email Management Area

Please do not reply to the address you received this email from. Manage your email communications below.

Why you received this email message:

You are subscribed to the NLJ Daily Headlines as lawrence.b.kupers@usdoj.gov. You may be subscribed to multiple publications as part of your relationship with us.

To stop receiving the NLJ Daily Headlines (unsubscribe) or to update your email marketing preferences, please click here. On this page, please update your subscription choices to this publication, and any others you may receive. You may also change your opt-in of email marketing promotions from ALM. It may take up to 10 days for your changes to take effect.

How to contact us should you have questions:

The National Law Journal®
120 Broadway, 5th Floor,
New York, NY 10271-1101
Customer Service Phone: 1-877-256-2472

About ALM | Customer Support | Privacy Policy | Terms & Conditions

© 2017 ALM Media Properties, LLC.

All rights reserved.

Law School Alums Call for Labor Secretary Acost....pdf

From: The National Law Journal Daily Headlines
To: Pendergrass, Matthew J. (OPATTY)
Subject: Law School Alums Call for Labor Secretary Acosta to Resign, Saying He"s "Complicit" with Trump
Date: Wednesday, August 30, 2017 7:03:26 AM

THE NATIONAL LAW JOURNAL DAILY HEADLINES

TODAY'S TOP STORIES

Law School Alums Call for Labor Secretary Acosta to Resign, Saying He's 'Complicit' with Trump

A group 47 alumni from Florida International University College of Law have signed a letter asking Alex Acosta to resign... **READ MORE »**

Supreme Court Preview: Blockbuster Cases Likely to Deliver a Contentious, Consequential Fall Term

If last term was the relatively quiet "calm before the storm" for the U.S. Supreme Court, then get ready. The clouds... **READ MORE »**

Eight Major SCOTUS Cases to Watch

Eight U.S. Supreme Court cases to watch this term. **READ MORE »**

The 2017 D.C.'s Rising Stars

We are proud to present our 2017 Rising Stars. This year, we share their keys to success in their own words, edited... **READ MORE »**

In Bid to Retain Talent, Quinn Emanuel Creates New Bonus Pool

Second- through sixth-year associates at bonus-happy Quinn Emanuel Urquhart & Sullivan will receive supplemental rewards... **READ MORE »**

Regulators Approve 18-Month Delay, Postponing Obama's 'Fiduciary Rule'

The Office of Management and Budget approved on Monday the 18-month delay for the more onerous provisions of the U.S.... **READ MORE »**

SPONSORED SPOTLIGHT:
Cyber concerns: how security risks and new data rules are impacting law firms

Law firms are racing to untangle the myriad technology and cybersecurity challenges they must overcome to meet what has become an increasingly complex and expensive compliance backdrop. **READ MORE »**

MORE STORIES FROM ALM

BMW Class Action Settlement and $1.2M in Attorney Fees Gets Green Light

A federal judge has approved a settlement agreement that will provide drivers of defective BMW 6-series convertibles...

READ MORE »

Accepting a Pardon Means Admission of Guilt

When told that President Trump was seriously considering issuing a pardon, former Maricopa County Sheriff Joe Arpaio,... **READ MORE »**

Two Big Law Firms Shed Partners Ahead of Mergers

Australia's Henry Davis York and British firm Olswang both saw large groups of partners leave their ranks prior to combinations....

READ MORE »

NEW JOB OPENINGS

POWERED BY LAWJOBS.COM

Corporate Counsel - Labor & Employment
Huntington Ingalls Industries | Newport News, Virginia

Supervisory Trial Attorney
U.S. Securities and Exchange Commission | Philadelphia, Pennsylvania

Patent Agent - Mechanical
Laurence Simons Intl. Legal Recruitment | Milwaukee, Wisconsin

Email Management Area

Please do not reply to the address you received this email from. Manage your email communications below.

Why you received this email message:

You are subscribed to the NLJ Daily Headlines as jordan.pendergrass@usdoj.gov. You may be subscribed to multiple publications as part of your relationship with us.

To stop receiving the NLJ Daily Headlines (unsubscribe) or to update your email marketing preferences, please click here. On this page, please update your subscription choices to this publication, and any others you may receive. You may also change your opt-in of email marketing promotions from ALM. It may take up to 10 days for your changes to take effect.

How to contact us should you have questions:

The National Law Journal®
120 Broadway, 5th Floor,
New York, NY 10271-1101
Customer Service Phone: 1-877-256-2472

About ALM | Customer Support | Privacy Policy | Terms & Conditions

© 2017 ALM Media Properties, LLC.

All rights reserved.

OPA FOIA 2017-273043 (b) (6) [redacted] (Intr....pdf

From: PardonAttorneyFOIA@usdoj.gov
To: (b) (6)
Subject: OPA FOIA 2017-273043 (b) (6) (Intranet Quorum IMA00772895)
Date: Thursday, August 31, 2017 4:14:11 PM
Attachments: IQFormatFile.txt

August 31, 2017

(b) (6)

Re: Freedom of Information Act Request: FOIA 2017-273043 (Full Grant)

Dear (b) (6)

This correspondence is in response to your Freedom of Information Act (FOIA) request dated and received in the Office of the Pardon Attorney (OPA) on August 23, 2017. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq*., you requested all records regarding a pardon or potential pardon of Joseph Michael Arpaio since July 31, 2017.

After carefully considering your request, I have determined that the one document that is appropriate for release in full is already proactively disclosed on our website and can be downloaded at https://www.justice.gov/pardon/pardons-granted-president-donald-trump.

As you may have learned from news reports, Mr. Arpaio did not apply for clemency through the Department of Justice, so the Office of the Pardon Attorney does not have a clemency case file for him. Had he applied through the Department, most of those documents would be exempt under 5 U.S.C. § 552(b)(5), deliberative (pre-decisional) communications pertaining to agency and presidential decision-making because they would be confidential and unavailable under existing case law interpreting the Freedom of Information Act and Privacy Act. In addition, pursuant to 28 CFR § 1.5, petitions, reports, memoranda, and communications submitted or furnished in connection with the consideration of a petition for executive clemency generally shall be available only to the officials concerned with the consideration of the petition. Moreover, as a general matter, Presidents in recent times have rarely announced their reasons for granting or denying clemency, although the President may choose to do so in a given case. Consistent with long-standing policy, if the President does not issue a public statement concerning his action in a clemency matter, no explanation is provided by the Department of Justice.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may email this office at PardonAttorneyFOIA@usdoj.gov for any further assistance with your FOIA request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: https://foiaonline.regulations.gov/foia/action/public/home. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

William N. Taylor II
Executive Officer
Office of the Pardon

Attorney

U.S. Department of

Justice

Freedom Of Information Act Exemption Typically Applicable To Executive Clemency Files

5 U.S.C. § 552(b)(1), which protects information that is properly classified in the interest of national security pursuant to Executive Order 13526

5 U.S.C. § 552(b)(2), which concerns matters that are related solely to internal agency personnel rules or practices

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute

5 U.S.C. § 552(b)(4), which concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential

5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by [**the deliberative process privilege / the attorney work-product privilege / the attorney-client privilege / the presidential communications privilege**]

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(A), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings;

5 U.S.C. § 552(b)(7)(B), which concerns records or information compiled for law enforcement purposes the release of which would deprive a person of a right to a fair trial or an impartial adjudication;

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(D), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential

sources and information furnished by such sources;

5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions;

5 U.S.C. § 552(b)(7)(F), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

5 U.S.C. § 552(b)(8), which concerns matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

5 U.S.C. § 552(b)(9), which concerns geological and geophysical information and data, including maps, concerning wells.

IQFormatFile.pdf

<APP>WORKFLOW
<TRANS>772895</TRANS>
<ORIG_EMAIL>uspardon.attorney@usdoj.gov</ORIG_EMAIL>
<ORIG_NAME>LMTO</ORIG_NAME>
<DUE_DATE></DUE_DATE>
<ORIG_WFID>273043</ORIG_WFID>
</APP>

OPA FOIA 2017-273063 (Ms. Tierney Sneed) (Intra....pdf

From: PardonAttorneyFOIA@usdoj.gov
To: (b) (6)
Subject: OPA FOIA 2017-273063 (Ms. Tierney Sneed) (Intranet Quorum IMA00772944)
Date: Thursday, August 31, 2017 5:37:50 PM
Attachments: IQFormatFile.txt

August 31, 2017

Ms. Tierney Sneed
Talking Points Memo
(b) (6)

Re: Freedom of Information Act Request: FOIA 2017-273063 (Full Grant)

Dear Ms. Sneed:

This correspondence is in response to your Freedom of Information Act (FOIA) request dated and received in the Office of the Pardon Attorney (OPA) on August 24, 2017. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq*., you requested documents containing information as to whether a pardon or commutation application has been filed by or on behalf of Joseph M. Arpaio; what type of application was filed (pardon or commutation); the date the application was filed; and the disposition of that application (pending, granted, or denied).

Please be advised that the FOIA does not require federal agencies to answer questions, create records, or conduct research in response to a FOIA request, but rather is limited to requiring agencies to provide access to reasonably described, nonexempt records. See Students Against Genocide v. Dep't of State, 257 F.3d 828, 837 (D.C. Cir. 2001). However, most questions related to executive clemency can be answered by reviewing our Frequently Asked Questions page at https://www.justice.gov/pardon/frequently-asked-questions-concerning-executive-clemency.

As you are probably aware, Mr. Arpaio did not submit a clemency petition through the Department of Justice prior to being pardoned by the President on Friday, August 25, 2017. The only responsive document to your request is the clemency warrant signed by the President, which has already proactively disclosed on our website as a result of being a public document that is also frequently requested. You may download the document at https://www.justice.gov/pardon/pardons-granted-president-donald-trump. As a result of not having a clemency casefile for Mr. Arpaio, we have no additional documents to produce, there has been no fee assessed for the search of our records, and this will be our final correspondence in relation to your request.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may email this office at PardonAttorneyFOIA@usdoj.gov for any further

assistance with your FOIA request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: https://foiaonline.regulations.gov/foia/action/public/home. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

William N. Taylor II
Executive Officer
Office of the Pardon

Attorney

U.S. Department of

Justice

Freedom Of Information Act Exemption Typically Applicable To Executive Clemency Files

5 U.S.C. § 552(b)(1), which protects information that is properly classified in the interest of national security pursuant to Executive Order 13526

5 U.S.C. § 552(b)(2), which concerns matters that are related solely to internal agency personnel rules or practices

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute

5 U.S.C. § 552(b)(4), which concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential

5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by [**the deliberative process privilege / the attorney work-product privilege / the attorney-client privilege / the presidential communications privilege**]

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(A), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings;

5 U.S.C. § 552(b)(7)(B), which concerns records or information compiled for law enforcement purposes the release of which would deprive a person of a right to a fair trial or an impartial adjudication;

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of

the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(D), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources;

5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions;

5 U.S.C. § 552(b)(7)(F), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

5 U.S.C. § 552(b)(8), which concerns matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

5 U.S.C. § 552(b)(9), which concerns geological and geophysical information and data, including maps, concerning wells.

IQFormatFile_1.pdf

<APP>WORKFLOW
<TRANS>772944</TRANS>
<ORIG_EMAIL>uspardon.attorney@usdoj.gov</ORIG_EMAIL>
<ORIG_NAME>LMTO</ORIG_NAME>
<DUE_DATE></DUE_DATE>
<ORIG_WFID>273063</ORIG_WFID>
</APP>

OPA FOIA 2017-273064 (Ms. Susan Elizabeth Seage....pdf

From: PardonAttorneyFOIA@usdoj.gov
To: susaneseager(b) (6)
Subject: OPA FOIA 2017-273064 (Ms. Susan Elizabeth Seager) (Intranet Quorum IMA00772946)
Date: Thursday, August 31, 2017 6:12:50 PM
Attachments: IQFormatFile.txt

August 31, 2017

Ms. Susan Elizabeth Seager
First Amendment Columnist
(b) (6)

Re: Freedom of Information Act Request: FOIA 2017-273064 (Full Grant)

Dear Ms. Seager:

This correspondence is in response to your Freedom of Information Act (FOIA) request dated and received in the Office of the Pardon Attorney (OPA) on August 25, 2017. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq*., you requested all documents mentioning or relating to President Trump's pardon of Joseph Michael Arpaio on Aug. 25, 2017.

As you are probably aware, Mr. Arpaio had not submitted a clemency petition to the Department of Justice when he was pardoned by the President on Friday, August 25, 2017, so the only document responsive to your request is the warrant of clemency, which has already been proactively disclosed on our website. You may download the document at https://www.justice.gov/pardon/pardons-granted-president-donald-trump. No fee has been charged for the search, review or production of this document.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may email this office at PardonAttorneyFOIA@usdoj.gov for any further assistance with your FOIA request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: https://foiaonline.regulations.gov/foia/action/public/home. Your

appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,

William N. Taylor II
Executive Officer
Office of the Pardon Attorney

U.S. Department of Justice

Freedom Of Information Act Exemption Typically Applicable To Executive Clemency Files

5 U.S.C. § 552(b)(1), which protects information that is properly classified in the interest of national security pursuant to Executive Order 13526

5 U.S.C. § 552(b)(2), which concerns matters that are related solely to internal agency personnel rules or practices

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute

5 U.S.C. § 552(b)(4), which concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential

5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by [**the deliberative process privilege / the attorney work-product privilege / the attorney-client privilege / the presidential communications privilege**]

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(A), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings;

5 U.S.C. § 552(b)(7)(B), which concerns records or information compiled for law enforcement purposes the release of which would deprive a person of a right to a fair trial or an impartial adjudication;

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(D), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources;

5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions;

5 U.S.C. § 552(b)(7)(F), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

5 U.S.C. § 552(b)(8), which concerns matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for

the regulation or supervision of financial institutions."

5 U.S.C. § 552(b)(9), which concerns geological and geophysical information and data, including maps, concerning wells.

IQFormatFile_2.pdf

<APP>WORKFLOW
<TRANS>772946</TRANS>
<ORIG_EMAIL>uspardon.attorney@usdoj.gov</ORIG_EMAIL>
<ORIG_NAME>LMTO</ORIG_NAME>
<DUE_DATE></DUE_DATE>
<ORIG_WFID>273064</ORIG_WFID>
</APP>

OPA FOIA 2017-273065 (b) (6) [redacted] (Intr....pdf

From: PardonAttorneyFOIA@usdoj.gov
To: (b) (6)
Subject: OPA FOIA 2017-273065 (b) (6) (Intranet Quorum IMA00772947)
Date: Thursday, August 31, 2017 7:16:23 PM
Attachments: IQFormatFile.txt

August 31, 2017

(b) (6)

Re: Freedom of Information Act Request: FOIA 2017-273065 (No Record)

Dear (b) (6):

This correspondence is in response to your Freedom of Information Act (FOIA) request dated and received in the Office of the Pardon Attorney (OPA) on August 26, 2017. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq*., you requested any written advice, communication, decision or information from the pardon attorney involved, directed to Donald Trump regarding his pardon of Joseph Arpaio.

As you may be aware from news reports, Mr. Arpaio did not submit a clemency petition to the Department of Justice prior to being pardoned by the President on Friday, August 25, 2017. As a result, we have no documents pursuant to your request. However, the only document that may be potentially relevant to your request is the presidential warrant, which is already proactively disclosed on our website. You may download it at https://www.justice.gov/pardon/pardons-granted-president-donald-trump.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may email this office at PardonAttorneyFOIA@usdoj.gov for any further assistance with your FOIA request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: https://foiaonline.regulations.gov/foia/action/public/home. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope

should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,

William N. Taylor II
Executive Officer
Office of the Pardon Attorney

U.S. Department of Justice

Freedom Of Information Act Exemption Typically Applicable To Executive Clemency Files

5 U.S.C. § 552(b)(1), which protects information that is properly classified in the interest of national security pursuant to Executive Order 13526

5 U.S.C. § 552(b)(2), which concerns matters that are related solely to internal agency personnel rules or practices

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute

5 U.S.C. § 552(b)(4), which concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential

5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by [**the deliberative process privilege / the attorney work-product privilege / the attorney-client privilege / the presidential communications privilege**]

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(A), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings;

5 U.S.C. § 552(b)(7)(B), which concerns records or information compiled for law enforcement purposes the release of which would deprive a person of a right to a fair trial or an impartial adjudication;

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(D), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources;

5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions;

5 U.S.C. § 552(b)(7)(F), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

5 U.S.C. § 552(b)(8), which concerns matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

5 U.S.C. § 552(b)(9), which concerns geological and geophysical information and data, including

maps, concerning wells.

IQFormatFile_3.pdf

<APP>WORKFLOW
<TRANS>772947</TRANS>
<ORIG_EMAIL>uspardon.attorney@usdoj.gov</ORIG_EMAIL>
<ORIG_NAME>LMTO</ORIG_NAME>
<DUE_DATE></DUE_DATE>
<ORIG_WFID>273065</ORIG_WFID>
</APP>

OPA FOIA 2017-273066 (b) (6) Intranet Quor....pdf

From: PardonAttorneyFOIA@usdoj.gov
To: (b) (6)
Subject: OPA FOIA 2017-273066 (b) (6) (Intranet Quorum IMA00772948)
Date: Thursday, August 31, 2017 7:55:12 PM
Attachments: IQFormatFile.txt

August 31, 2017

(b) (6)

Re: Freedom of Information Act Request: FOIA 2017-273066 (Acknowledgement & No Response)

Dear (b) (6) :

This correspondence is in response to your Freedom of Information Act (FOIA) request dated and received in the Office of the Pardon Attorney (OPA) on August 27, 2017. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq*., you requested all emails sent or received by Deputy Pardon Attorney Lawrence Kupers that contain the words 'Arpaio' or 'Sheriff Joe.'; memos written by Mr. Kupers that include the words 'Arpaio' or 'Sheriff Joe.'; requests for clemency or pardon sent by or on behalf of Joseph Michael Arpaio.

With regard to the portion of your request that deals with memos a pardon petition, I searched the official files of this office and determined that we do not have any documents pursuant to your request. As you may have read in news reports, Mr. Arpaio did not apply for clemency through the Department of Justice, which means the Department did not make a recommendation for or against clemency.

Based on my understanding of the first part of your request for emails sent or received from Deputy Pardon Attorney Kupers and the fact that OPA does not have the ability to perform broad and conclusive email searches in-house, I will in turn have to request a search be conducted across emails to or from Mr. Kupers by the Department of Justice's Office of the Chief Information Officer (OCIO). As a result, your request falls within "unusual circumstances." See 5 U.S.C. § 552(a)(6)(B)(i)-(iii). Because of these unusual circumstances, we are extending the time limit to respond to your request beyond the ten additional days provided by the statute. Until OCIO completes a search to determine whether there are any records within the scope of your request, I will be unable to review responsive records and provide an estimated response time. The time needed to process your request will depend on the complexity of our records search and on the volume of any records located as being potentially responsive. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests within the same track. Simple requests usually receive a response within one month, whereas complex requests take longer. At this time, your request has been assigned to the complex track because it is not one that can be responded to without the assistance of another DOJ office. You may feel free to inquire back about the status of your request at any point, but I can assure you that I will review and provide a response to your request as soon as the results of the search have been provided to me and I am able to review any potentially relevant records.

Please be also be advised that deliberative (pre-decisional) communications pertaining to agency and presidential decision-making are confidential and not available under existing case law interpreting the Freedom of Information Act and Privacy Act. In addition, pursuant to 28 CFR § 1.5, petitions, reports, memoranda, and communications submitted or furnished in connection with the consideration of a petition for executive clemency generally shall be available only to the officials concerned with the consideration of the petition. Moreover, as a general matter, Presidents in recent times have rarely announced their reasons for granting or denying clemency, although the President may choose to do so in a given case. Consistent with long-standing policy, if the President does not issue a public statement concerning his action in a clemency matter, no explanation is provided by the Department of Justice.

You may email this office at PardonAttorneyFOIA@usdoj.gov for any further assistance with your FOIA request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

William N. Taylor II
Executive Officer
Office of the Pardon

Attorney

U.S. Department of

Justice

Freedom Of Information Act Exemption Typically Applicable To Executive Clemency Files

5 U.S.C. § 552(b)(1), which protects information that is properly classified in the interest of national security pursuant to Executive Order 13526

5 U.S.C. § 552(b)(2), which concerns matters that are related solely to internal agency personnel rules or practices

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute

5 U.S.C. § 552(b)(4), which concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential

5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by [**the deliberative process privilege / the attorney work-product privilege / the attorney-client privilege / the presidential communications privilege**]

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(A), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings;

5 U.S.C. § 552(b)(7)(B), which concerns records or information compiled for law enforcement

purposes the release of which would deprive a person of a right to a fair trial or an impartial adjudication;

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(D), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources;

5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions;

5 U.S.C. § 552(b)(7)(F), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

5 U.S.C. § 552(b)(8), which concerns matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

5 U.S.C. § 552(b)(9), which concerns geological and geophysical information and data, including maps, concerning wells.

IQFormatFile_4.pdf

<APP>WORKFLOW
<TRANS>772948</TRANS>
<ORIG_EMAIL>uspardon.attorney@usdoj.gov</ORIG_EMAIL>
<ORIG_NAME>LMTO</ORIG_NAME>
<DUE_DATE></DUE_DATE>
<ORIG_WFID>273066</ORIG_WFID>
</APP>

OPA FOIA 2017-273135 (Mr. Jason Leopold) (Intra...(1).pdf

From: PardonAttorneyFOIA@usdoj.gov
To: [redacted] b) (6)
Subject: OPA FOIA 2017-273135 (Mr. Jason Leopold) (Intranet Quorum IMA00773138)
Date: Friday, September 1, 2017 6:29:27 PM
Attachments: Freedom Of Information Act Exemptions.pdf
IQFormatFile.txt

September 1, 2017

Mr. Jason Leopold
Senior Investigative Reporter
BuzzFeed News
(b) (6) [redacted]

Re: Freedom of Information Act Request: FOIA 2017-273135 (Acknowledgment)

Dear Mr. Leopold:

This correspondence is in response to your Freedom of Information Act (FOIA) request dated and received in the Office of the Pardon Attorney (OPA) on August 28, 2017. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq*., you requested any and all records, which includes but is not limited to emails, memos, letters, mentioning or referring to "Arpaio" and/or "JOE" or "JOSEPH ARPAIO" between August 1, 2017 through August 28, 2017.

Based on my understanding of your request and the fact that OPA does not have the ability to perform broad and conclusive email searches in-house, I will have to request a search be conducted across emails to or from all OPA employees by the Department of Justice's Office of the Chief Information Officer (OCIO), so your request falls within "unusual circumstances." See 5 U.S.C. § 552(a)(6)(B)(i)-(iii). Because of these unusual circumstances, we are extending the time limit to respond to your request beyond the ten additional days provided by the statute. Until OCIO completes a search to determine whether there are any records within the scope of your request, I will be unable to review responsive records and provide an estimated response time. The time needed to process your request will depend on the number of data requests in queue prior to yours, the complexity of their records search, and the volume of any records located as being potentially responsive. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests within the same track. Simple requests usually receive a response within one month, whereas complex requests take longer. At this time, your request has been assigned to the complex track because it is not one that can be responded to without the assistance of another DOJ office. You may feel free to inquire back about the status of your request at any point, but I can assure you that I will review and provide a response to your request as soon as the results of the search have been provided to me and I am able to review any potentially relevant records for responsiveness.

As a recognized member of the press, I welcome you to submit a media inquiry to the Department's Office of Public Affairs to see if you might be able to get answers to your questions more quickly instead of waiting for a document search and review, which will take

well over a month. E-mails from news organizations and other media may be directed to the Office of Public Affairs at Press@usdoj.gov. Please notify me if your inquiry is satisfied by the public affairs office and I will close your FOIA request without further action.

You may email this office at PardonAttorneyFOIA@usdoj.gov for any further assistance with your FOIA request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

William N. Taylor II
Executive Officer
Office of the Pardon Attorney
U.S. Department of Justice

Freedom Of Information Act Exemptions.pdf

Freedom Of Information Act Exemptions

5 U.S.C. § 552(b)(1), which protects information that is properly classified in the interest of national security pursuant to Executive Order 13526

5 U.S.C. § 552(b)(2), which concerns matters that are related solely to internal agency personnel rules or practices

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute

5 U.S.C. § 552(b)(4), which concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential

5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by [**the deliberative process privilege / the attorney work-product privilege / the attorney-client privilege / the presidential communications privilege**]

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(A), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings;

5 U.S.C. § 552(b)(7)(B), which concerns records or information compiled for law enforcement purposes the release of which would deprive a person of a right to a fair trial or an impartial adjudication;

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(D), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources;

5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions;

5 U.S.C. § 552(b)(7)(F), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

5 U.S.C. § 552(b)(8), which concerns matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

5 U.S.C. § 552(b)(9), which concerns geological and geophysical information and data, including maps, concerning wells.

IQFormatFile_5.pdf

<APP>WORKFLOW
<TRANS>773138</TRANS>
<ORIG_EMAIL>uspardon.attorney@usdoj.gov</ORIG_EMAIL>
<ORIG_NAME>LMTO</ORIG_NAME>
<DUE_DATE></DUE_DATE>
<ORIG_WFID>273135</ORIG_WFID>
</APP>

OPA FOIA 2017-273135 (Mr. Jason Leopold) (Intra....pdf

From: PardonAttorneyFOIA@usdoj.gov
To: (b) (6) [redacted]
Subject: OPA FOIA 2017-273135 (Mr. Jason Leopold) (Intranet Quorum IMA00773138)
Date: Friday, September 1, 2017 6:53:36 PM
Attachments: Freedom Of Information Act Exemptions.pdf
IQFormatFile.txt

September 1, 2017

Mr. Jason Leopold
Senior Investigative Reporter
BuzzFeed News
(b) (6) [redacted]

Re: Freedom of Information Act Request: FOIA 2017-273135 (Follow-up)

Dear Mr. Leopold:

Thanks for the quick response. I will go ahead and request the search and get back to you as soon as I can. Based on my role as a senior manager in this office, I can confirm even without a search that there are no memos or letters to or from this office referencing Mr. Arpaio because a clemency petition was never submitted to DOJ on his behalf. As a result, we would not have created a clemency casefile for him, which is where any memo or letter would be housed in connection with his clemency case, if we had one. I won't confirm or deny whether emails might be located with the search criteria you have provided, but if they are, I can assure you that they will most likely be withheld from disclosure, pursuant to 5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by the deliberative process if they are internal to this office and the Office of the Deputy Attorney General, and the presidential communications privilege if they are transmitted to or from the Office of White House Counsel. Nonetheless, I will have the search conducted and we can handle privilege assertions at that time.

Sincerely,

William N. Taylor II
Executive Officer
Office of the Pardon

Attorney

U.S. Department of

Justice

Freedom Of Information Act Exemptions_1.pdf

Freedom Of Information Act Exemptions

5 U.S.C. § 552(b)(1), which protects information that is properly classified in the interest of national security pursuant to Executive Order 13526

5 U.S.C. § 552(b)(2), which concerns matters that are related solely to internal agency personnel rules or practices

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute

5 U.S.C. § 552(b)(4), which concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential

5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by [**the deliberative process privilege / the attorney work-product privilege / the attorney-client privilege / the presidential communications privilege**]

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(A), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings;

5 U.S.C. § 552(b)(7)(B), which concerns records or information compiled for law enforcement purposes the release of which would deprive a person of a right to a fair trial or an impartial adjudication;

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(D), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources;

5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions;

5 U.S.C. § 552(b)(7)(F), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

5 U.S.C. § 552(b)(8), which concerns matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

5 U.S.C. § 552(b)(9), which concerns geological and geophysical information and data, including maps, concerning wells.

IQFormatFile_6.pdf

<APP>WORKFLOW
<TRANS>773138</TRANS>
<ORIG_EMAIL>uspardon.attorney@usdoj.gov</ORIG_EMAIL>
<ORIG_NAME>LMTO</ORIG_NAME>
<DUE_DATE></DUE_DATE>
<ORIG_WFID>273135</ORIG_WFID>
</APP>

OPA FOIA 2017-273137 (Mr. Joseph Uchill) (Intra....pdf

From: PardonAttorneyFOIA@usdoj.gov
To: (b) (6) [redacted]
Subject: OPA FOIA 2017-273137 (Mr. Joseph Uchill) (Intranet Quorum IMA00773140)
Date: Friday, September 1, 2017 8:02:14 PM
Attachments: Freedom Of Information Act Exemptions.pdf
IQFormatFile.txt

September 1, 2017

Mr. Joseph Uchill
MuckRock News
(b) (6) [redacted]

Re: Freedom of Information Act Request: FOIA 2017-273137 (Acknowledgment)

Dear Mr. Uchill:

This correspondence is in response to your Freedom of Information Act (FOIA) request dated and received in the Office of the Pardon Attorney (OPA) on August 28, 2017. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq*., you requested all recommendations, reports, outgoing emails from the Office of the Pardon Attorney, and incoming emails to the Office of the Pardon Attorney from any ".gov" email address or Joe Arpaio concerning Joe Arpaio.

Based on my understanding of your request and the fact that OPA does not have the ability to perform broad and conclusive email searches in-house, I will have to request a search be conducted across emails to or from all OPA employees by the Department of Justice's Office of the Chief Information Officer (OCIO), so your request falls within "unusual circumstances." See 5 U.S.C. § 552(a)(6)(B)(i)-(iii). Because of these unusual circumstances, we are extending the time limit to respond to your request beyond the ten additional days provided by the statute. Until OCIO completes a search to determine whether there are any records within the scope of your request, I will be unable to review responsive records and provide an estimated response time. The time needed to process your request will depend on the number of data requests in queue prior to yours, the complexity of their records search, and the volume of any records located as being potentially responsive. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests within the same track. Simple requests usually receive a response within one month, whereas complex requests take longer. At this time, your request has been assigned to the complex track because it is not one that can be responded to without the assistance of another DOJ office. You may feel free to inquire back about the status of your request at any point, but I can assure you that I will review and provide a response to your request as soon as the results of the search have been provided to me and I am able to review any potentially relevant records for responsiveness.

You may email this office at PardonAttorneyFOIA@usdoj.gov for any further assistance with your FOIA request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire

about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

William N. Taylor II
Executive Officer
Office of the Pardon Attorney

U.S. Department of Justice

Freedom Of Information Act Exemptions_2.pdf

Freedom Of Information Act Exemptions

5 U.S.C. § 552(b)(1), which protects information that is properly classified in the interest of national security pursuant to Executive Order 13526

5 U.S.C. § 552(b)(2), which concerns matters that are related solely to internal agency personnel rules or practices

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute

5 U.S.C. § 552(b)(4), which concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential

5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by [**the deliberative process privilege / the attorney work-product privilege / the attorney-client privilege / the presidential communications privilege**]

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(A), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings;

5 U.S.C. § 552(b)(7)(B), which concerns records or information compiled for law enforcement purposes the release of which would deprive a person of a right to a fair trial or an impartial adjudication;

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(D), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources;

5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions;

5 U.S.C. § 552(b)(7)(F), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

5 U.S.C. § 552(b)(8), which concerns matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

5 U.S.C. § 552(b)(9), which concerns geological and geophysical information and data, including maps, concerning wells.

IQFormatFile_7.pdf

<APP>WORKFLOW
<TRANS>773140</TRANS>
<ORIG_EMAIL>uspardon.attorney@usdoj.gov</ORIG_EMAIL>
<ORIG_NAME>LMTO</ORIG_NAME>
<DUE_DATE></DUE_DATE>
<ORIG_WFID>273137</ORIG_WFID>
</APP>

OPA FOIA 2017-273139 (Ms. Beth France Esq.) (In....pdf

From: PardonAttorneyFOIA@usdoj.gov
To: (b) (6) [redacted]
Subject: OPA FOIA 2017-273139 (Ms. Beth France Esq.) (Intranet Quorum IMA00773142)
Date: Friday, September 1, 2017 8:50:02 PM
Attachments: Freedom Of Information Act Exemptions.pdf
IQFormatFile.txt

September 1, 2017

Ms. Beth France Esq.
Counsel
AmericanOversight.org
(b) (6) [redacted]

Re: Freedom of Information Act Request: FOIA 2017-273139 (Acknowledgment)

Dear Ms. France:

This correspondence is in response to your Freedom of Information Act (FOIA) request dated and received in the Office of the Pardon Attorney (OPA) on August 29, 2017. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq*., you requested any and all records, documents, communications or decisions regarding the presidential pardon for Joseph Arpaio, including but not limited to emails, memos, meetings, calendar events, notes, etc... between any Office of the Pardon Attorney employee and any other stakeholder (OAG, ODAG, OLC, or The White House) in the executive clemency process from January 20, 2017 to August 29, 2017.

As you are aware from the media reports that you cited in your request, Mr. Arpaio did not apply for clemency through the Department of Justice prior to being pardoned by the President on Friday, August 25, 2017. As a result, we do not have a clemency casefile for him, which is what we would use to house a petition and any other supporting records related to a clemency request. As a result of not having a clemency casefile to search, we do not have any documents pursuant to the majority of your request. However, based on my understanding of your request and the fact that OPA does not have the ability to perform broad and conclusive email searches in-house, I will request a search be conducted across emails to or from all OPA employees by the Department of Justice's Office of the Chief Information Officer (OCIO). Therefore, your request falls within "unusual circumstances." See 5 U.S.C. § 552(a)(6)(B)(i)-(iii). Because of these unusual circumstances, we are extending the time limit to respond to your request beyond the ten additional days provided by the statute. Until OCIO completes a search to determine whether there are any email records within the scope of your request, I will be unable to review responsive records and provide an estimated response time. The time needed to process your request will depend on the number of data requests in queue prior to yours with the OCIO, the complexity of their records search, and the volume of any records located as being potentially responsive. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests within the same track. Simple requests usually receive a response within one month, whereas complex requests take longer. At this time, your request has been assigned to the complex track because it is not one that can be responded to without the assistance of another DOJ office. You may feel free to inquire

back about the status of your request at any point, but I can assure you that I will review and provide a response to your request as soon as the results of the search have been provided to me and I am able to review any potentially relevant records for responsiveness.

In advance of receiving the results of the search you have requested, please be advised that deliberative (pre-decisional) communications pertaining to agency and presidential decision-making are confidential and not available under existing case law interpreting the Freedom of Information Act and Privacy Act. In addition, pursuant to 28 CFR § 1.5, petitions, reports, memoranda, and communications submitted or furnished in connection with the consideration of a petition for executive clemency generally shall be available only to the officials concerned with the consideration of the petition. Moreover, as a general matter, Presidents in recent times have rarely announced their reasons for granting or denying clemency, although the President may choose to do so in a given case. Consistent with long-standing policy, if the President does not issue a public statement concerning his action in a clemency matter, no explanation is provided by the Department of Justice.

You may email this office at PardonAttorneyFOIA@usdoj.gov for any further assistance with your FOIA request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

William N. Taylor II
Executive Officer
Office of the Pardon Attorney

U.S. Department of Justice

Freedom Of Information Act Exemptions_3.pdf

Freedom Of Information Act Exemptions

5 U.S.C. § 552(b)(1), which protects information that is properly classified in the interest of national security pursuant to Executive Order 13526

5 U.S.C. § 552(b)(2), which concerns matters that are related solely to internal agency personnel rules or practices

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute

5 U.S.C. § 552(b)(4), which concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential

5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by [**the deliberative process privilege / the attorney work-product privilege / the attorney-client privilege / the presidential communications privilege**]

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(A), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings;

5 U.S.C. § 552(b)(7)(B), which concerns records or information compiled for law enforcement purposes the release of which would deprive a person of a right to a fair trial or an impartial adjudication;

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(D), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources;

5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions;

5 U.S.C. § 552(b)(7)(F), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

5 U.S.C. § 552(b)(8), which concerns matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

5 U.S.C. § 552(b)(9), which concerns geological and geophysical information and data, including maps, concerning wells.

IQFormatFile_8.pdf

<APP>WORKFLOW
<TRANS>773142</TRANS>
<ORIG_EMAIL>uspardon.attorney@usdoj.gov</ORIG_EMAIL>
<ORIG_NAME>LMTO</ORIG_NAME>
<DUE_DATE></DUE_DATE>
<ORIG_WFID>273139</ORIG_WFID>
</APP>

OPA FOIA 2017-273141 (Mr. Jack Gillum) (Intrane....pdf

From: PardonAttorneyFOIA@usdoj.gov
To: (b) (6) [redacted]
Subject: OPA FOIA 2017-273141 (Mr. Jack Gillum) (Intranet Quorum IMA00773144)
Date: Friday, September 1, 2017 9:27:34 PM
Attachments: Freedom Of Information Act Exemptions.pdf
IQFormatFile.txt

September 1, 2017

Mr. Jack Gillum
The Washington Post
(b) (6) [redacted]

Re: Freedom of Information Act Request: FOIA 2017-273141 (Acknowledgment)

Dear Mr. Gillum:

This correspondence is in response to your Freedom of Information Act (FOIA) request dated and received in the Office of the Pardon Attorney (OPA) on August 30, 2017. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq*., you requested all documents relating to the pardon of former Maricopa County Sheriff Joe Arpaio, including but is not limited to, the pardon attorney's recommendation, as well as any emails to or from pardon attorney staff in which "eop.gov" was in the To, From, CC, BCC, Subject or Body fields of the message.

In response to the portion of your request that deals with anything other than emails, as you are probably aware from news reports, Mr. Arpaio had not submitted a clemency petition to the Department of Justice when he was pardoned by the President on Friday, August 25, 2017. Therefore, we did not have a clemency casefile for him, which is where all non email records would be contained. As a result, we have no documents to search or produce with regard to that portion of your request. However, based on your request for emails, please be advised that OPA does not have the ability to perform broad and conclusive email searches in-house, so I will have to request a search be conducted across emails to or from all OPA employees by the Department of Justice's Office of the Chief Information Officer (OCIO), which means your request falls within "unusual circumstances." See 5 U.S.C. § 552(a)(6)(B)(i)-(iii). Because of these unusual circumstances, we are extending the time limit to respond to your request beyond the ten additional days provided by the statute. Until OCIO completes a search to determine whether there are any records within the scope of your request, I will be unable to review responsive records and provide an estimated response time. The time needed to process your request will depend on the number of data requests in queue with OCIO prior to yours, the complexity of their records search, and the volume of any records located as being potentially responsive. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests within the same track. Simple requests usually receive a response within one month, whereas complex requests take longer. At this time, your request has been assigned to the complex track because it is not one that can be responded to without the assistance of another DOJ office. You may feel free to inquire back about the status of your request at any point, but I can assure you that I will review and provide a response to your request as soon as the results of the search have been provided to

me and I am able to review any potentially relevant records for responsiveness.

As a recognized member of the press, I welcome you to submit a media inquiry to the Department's Office of Public Affairs to see if you might be able to get answers to your questions more quickly instead of waiting for a document search and review, which will take well over a month. E-mails from news organizations and other media may be directed to the Office of Public Affairs at Press@usdoj.gov. Please notify me if your inquiry is satisfied by the public affairs office and I will close your FOIA request without further action.

Please also be advised that deliberative (pre-decisional) communications pertaining to agency and presidential decision-making are confidential and not available under existing case law interpreting the Freedom of Information Act and Privacy Act. In addition, pursuant to 28 CFR § 1.5, petitions, reports, memoranda, and communications submitted or furnished in connection with the consideration of a petition for executive clemency generally shall be available only to the officials concerned with the consideration of the petition.

You may email this office at PardonAttorneyFOIA@usdoj.gov for any further assistance with your FOIA request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

William N. Taylor II
Executive Officer
Office of the Pardon Attorney

U.S. Department of Justice

Freedom Of Information Act Exemptions_4.pdf

Freedom Of Information Act Exemptions

5 U.S.C. § 552(b)(1), which protects information that is properly classified in the interest of national security pursuant to Executive Order 13526

5 U.S.C. § 552(b)(2), which concerns matters that are related solely to internal agency personnel rules or practices

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute

5 U.S.C. § 552(b)(4), which concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential

5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by [**the deliberative process privilege / the attorney work-product privilege / the attorney-client privilege / the presidential communications privilege**]

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(A), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings;

5 U.S.C. § 552(b)(7)(B), which concerns records or information compiled for law enforcement purposes the release of which would deprive a person of a right to a fair trial or an impartial adjudication;

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(D), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources;

5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions;

5 U.S.C. § 552(b)(7)(F), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

5 U.S.C. § 552(b)(8), which concerns matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

5 U.S.C. § 552(b)(9), which concerns geological and geophysical information and data, including maps, concerning wells.

IQFormatFile_9.pdf

<APP>WORKFLOW
<TRANS>773144</TRANS>
<ORIG_EMAIL>uspardon.attorney@usdoj.gov</ORIG_EMAIL>
<ORIG_NAME>LMTO</ORIG_NAME>
<DUE_DATE></DUE_DATE>
<ORIG_WFID>273141</ORIG_WFID>
</APP>

OPA FOIA 2017-273143 (b) (6) [redacted] (Intran....pdf

From: PardonAttorneyFOIA@usdoj.gov
To: (b) (6)
Subject: OPA FOIA 2017-273143 (b) (6) (Intranet Quorum IMA00773151)
Date: Friday, September 1, 2017 10:23:15 PM
Attachments: Freedom Of Information Act Exemptions.pdf
IQFormatFile.txt

September 1, 2017

(b) (6)

Re: Freedom of Information Act Request: FOIA 2017-273143 (Acknowledgment)

Dear (b) (6) :

This correspondence is in response to your Freedom of Information Act (FOIA) request dated and received in the Office of the Pardon Attorney (OPA) on September 1, 2017. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq*., you requested the following:

1. Any communications (emails, memoranda, etc.) from or to your office concerning the pardon of Joseph (Joe) Michael Arpaio, a well-known public figure who President Trump recently pardoned for criminal contempt of a federal court;
2. Mr. Arpaio's clemency application, if any;
3. Any communication (emails, memoranda, etc.) with the Office of Legal Counsel (OLC) concerning the scope of presidential pardon power; and
4. Any communication (emails, memoranda, etc.) between your Office and the White House concerning the scope of presidential pardon power, including the legal permissibility of President Trump using the power to pardon himself

In response to request number 2 above, as you may already be aware, Mr. Arpaio did not apply for clemency through the Department of Justice prior to being pardoned by the President on Friday, August 25, 2017, so we do not have a clemency petition for him.

With regard to the rest of your request, please be advised that OPA does not have the ability to perform broad and conclusive email searches in-house, so I will have to request a search be conducted across emails to or from all OPA employees by the Department of Justice's Office of the Chief Information Officer (OCIO). Therefore, your request falls within "unusual circumstances." See 5 U.S.C. § 552(a)(6)(B)(i)-(iii). Because of these unusual circumstances, we are extending the time limit to respond to your request beyond the ten additional days provided by the statute. Until OCIO completes a search to determine whether there are any records within the scope of your request, I will be unable to review responsive records and provide an estimated response time. The time needed to process your request will depend on the number of data requests in queue with OCIO prior to yours, the complexity of their records search, and the volume of any records located as being potentially responsive. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests within the same track. Simple requests usually receive a

response within one month, whereas complex requests take longer. At this time, your request has been assigned to the complex track because it is not one that can be responded to without the assistance of another DOJ office. You may feel free to inquire back about the status of your request at any point, but I can assure you that I will review and provide a response to your request as soon as the results of the search have been provided to me and I am able to review any potentially relevant records for responsiveness.

In advance of the Department's email search and/or review, please be advised that deliberative (pre-decisional) communications pertaining to agency and presidential decision-making are confidential and not available under existing case law interpreting the Freedom of Information Act and Privacy Act. In addition, pursuant to 28 CFR § 1.5, petitions, reports, memoranda, and communications submitted or furnished in connection with the consideration of a petition for executive clemency generally shall be available only to the officials concerned with the consideration of the petition.

You may email this office at PardonAttorneyFOIA@usdoj.gov for any further assistance with your FOIA request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

William N. Taylor II
Executive Officer
Office of the Pardon Attorney

U.S. Department of Justice

Freedom Of Information Act Exemptions_6.pdf

Freedom Of Information Act Exemptions

5 U.S.C. § 552(b)(1), which protects information that is properly classified in the interest of national security pursuant to Executive Order 13526

5 U.S.C. § 552(b)(2), which concerns matters that are related solely to internal agency personnel rules or practices

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute

5 U.S.C. § 552(b)(4), which concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential

5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by [**the deliberative process privilege / the attorney work-product privilege / the attorney-client privilege / the presidential communications privilege**]

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(A), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings;

5 U.S.C. § 552(b)(7)(B), which concerns records or information compiled for law enforcement purposes the release of which would deprive a person of a right to a fair trial or an impartial adjudication;

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(D), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources;

5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions;

5 U.S.C. § 552(b)(7)(F), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

5 U.S.C. § 552(b)(8), which concerns matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

5 U.S.C. § 552(b)(9), which concerns geological and geophysical information and data, including maps, concerning wells.

IQFormatFile_11.pdf

<APP>WORKFLOW
<TRANS>773151</TRANS>
<ORIG_EMAIL>uspardon.attorney@usdoj.gov</ORIG_EMAIL>
<ORIG_NAME>LMTO</ORIG_NAME>
<DUE_DATE></DUE_DATE>
<ORIG_WFID>273143</ORIG_WFID>
</APP>

Post article.pdf

From:	Kupers, Lawrence B. (OPATTY)
To:	Bolitho, Zachary (ODAG)
Subject:	Post article
Date:	Thursday, August 24, 2017 12:32:00 PM
Attachments:	Wash Post on pardon for Arpaio.pdf

Zac:

I've attached the Post article I mentioned to you.

Larry

Wash Post on pardon for Arpaio.pdf

The Washington Post

National Security

Pardon for Arpaio would be rare but not unprecedented act

By Devlin Barrett August 23 at 7:35 PM

If former Arizona sheriff Joe Arpaio is pardoned in coming days — as President Trump strongly suggested Tuesday night — the move will be the latest in a long line of hotly debated political pardons that critics say violate the spirit but not the laws of executive authority.

The U.S. Constitution gives presidents sweeping power to grant pardons to convicts or to people who have not even been charged with a federal crime.

For most applicants, seeking a pardon is a long, arduous process that begins with the pardon attorney at Justice Department headquarters — an overloaded, understaffed office that currently does not have an appointed leader. The department recommends anyone seeking pardons wait at least five years after conviction, and be able to demonstrate their remorse and regret for what they've done.

Arpaio, 85, has done none of that, and it's unlikely he will. If pardoned, the former sheriff of Maricopa County, who was an ardent supporter of Trump's 2016 campaign, will be one of the rare but not unprecedented instances when a president decides to short-circuit ongoing or expected legal proceedings and preemptively grant a reprieve.

Arpaio was convicted last month of contempt of court after a judge found he had violated a previous court order not to detain people on the mere suspicion that they were illegal immigrants . Arpaio is awaiting a sentencing hearing scheduled in October.

“Was Sheriff Joe convicted for doing his job?” Trump asked the cheering crowd. “He should have had a jury but you know what, I’ll make a prediction, I think he’s going to be just fine. But I won’t do it tonight because I don’t want to cause any controversy. But Sheriff Joe should feel good.”

Robert Bauer, a former White House counsel during the Obama administration, said an Arpaio pardon would ignore criteria long used to evaluate potential pardons — that a presidential act of mercy should correct some past injustice or oversight, or serve some greater public good.

Granting a pardon now, Bauer said, “is a de facto interference in the administration of justice.”

Other presidents have granted what pardon lawyers sometimes refer to as “political pardons” — grants that anger not just prosecutors but the opposition party, and have led to charges of favoritism or abuse of authority.

President Gerald Ford granted a preemptive pardon for his disgraced predecessor Richard Nixon. President George H.W. Bush granted full pardons to six former Reagan administration officials, including former defense secretary Caspar W. Weinberger. Those pardons were granted as Weinberger was preparing to face trial on charges he lied to Congress about the Iran-contra affair.

In the final days of his presidency, President Bill Clinton pardoned fugitive financier Marc Rich, an act that led to a long-running corruption investigation but ultimately no charges. Clinton also pardoned his half brother for an old drug conviction.

The Constitution describes the pardon power in simple, broad language: The president “shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.”

P.S. Ruckman Jr., who writes the Pardon Power blog , said it would be “cruel and unusual punishment” for Trump to suggest a pardon for Arpaio and not deliver. But when it is granted, Ruckman said, “it will send a horrible signal that only the rich and famous get pardoned. That’s false. There’s people who’ve been waiting for pardons 10 or 15 years, and those people will certainly be heartbroken.”

Arpaio's conviction was the end result of a years-long battle with the courts over his hard line tactics on immigration. During the Obama administration, the Justice Department found his deputies routinely discriminated against Hispanics, including many citizens and legal residents, targeting them for unmerited scrutiny in a hunt for illegal immigrants.

Jonathan Smith, a former Justice Department official who handled that case, said a pardon of Arpaio "would be a travesty."

"There's nothing improper or illegal about it, but it does send a message . . . that the president is going to permit violation of the rights of not only immigrants, but people who are residents and citizens of the United States. He's sending a message that if you're not white, if you're Hispanic, that your rights don't matter," Smith said.

Arpaio's lawyer Jack Wilenchik rejected such accusations, and said Wednesday he hopes the pardon will come before his client's October sentencing.

"This has been a political show trial from day one, and it's only fair that it has a political end," Wilenchik said. "There's no such thing as a normal pardon process. History is full of examples of pardons that were political — that's what a pardon is."

Wilenchik said his client was not guilty of any crime, but rather became a target of the Obama administration, which he accused of "laying a trap for law enforcement."

Wilenchik attended the Trump rally Tuesday in Phoenix, but the former sheriff did not. In an interview Wednesday with Fox News, Arpaio said: "I really appreciate the president's nice comments and support. One day I'll go public and talk about the tremendous abuse of the process. If they can do what they did to me, they can do it to anybody."

Activists in Phoenix who have long opposed Arpaio's police practices were furious about the expected pardon from Trump.

"He's doing nothing but spitting in the face of the people in Arizona who have suffered through what Sheriff Arpaio has done to us," said Carlos Garcia, executive director of Puente Arizona, which advocates for migrant workers. "By pardoning Arpaio, not only is he erasing what he's done to our people, but he's tying himself to that legacy."

John Wagner contributed to this report.

Devlin Barrett writes about national security, homeland security and counterterrorism for The Post. He joined the newspaper in 2017 after 15 years with The Wall Street Journal and the AP. His first newspaper job was as a copy boy at the New York Post, and has covered law enforcement – from local cops to global manhunts - for more than 20 years.

Follow @DevlinBarrett

Share news tips with us confidentially

Do you have information the public should know? Here are some ways you can securely send information and documents to Post journalists.

Learn more

Press correction - Time Magazine.pdf

From: Taylor, Will (OPATTY)
To: Navas, Nicole (OPA)
Cc: Kupers, Lawrence B. (OPATTY)
Subject: Press correction - Time Magazine
Date: Monday, August 28, 2017 12:31:40 PM

Nicole,

I note the below factual inaccuracy that should be corrected if possible.
http://time.com/4876374/donald-trump-joe-arpaio-pardons-history/

"A presidential pardon wipes a criminal record…". That is not true and the link the include doesn't indicate that. The only way to "wipe a criminal record" is through expungement, which is a judicial remedy separate and apart from the President's power to pardon. Expungement is handled by the court. See our FAQ on this topic at https://www.justice.gov/pardon/frequently-asked-questions-concerning-executive-clemency#18

Thanks,

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6) [redacted]
[redacted]
http://www.justice.gov/pardon/

RE_ Acknowledgment of Pardon by Sheriff Joseph ....pdf

From: Sargent-Burns, Rosalind A (OPATTY)
To: Mills, Jennifer K. (OPATTY); Medley, Ashlie (OPATTY)
Cc: Taylor, Will (OPATTY)
Subject: RE: Acknowledgment of Pardon by Sheriff Joseph M. Arpaio
Date: Monday, September 25, 2017 4:02:58 PM

I have, indeed. Thanks!

Rosalind

From: Mills, Jennifer K. (OPATTY)
Sent: Monday, September 25, 2017 3:59 PM
To: Medley, Ashlie (OPATTY) (b) (6)
Cc: Taylor, Will (OPATTY) (b) (6) Sargent-Burns, Rosalind A (OPATTY) (b) (6)
Subject: RE: Acknowledgment of Pardon by Sheriff Joseph M. Arpaio

Yes, please! I believe she has been waiting for this.

Thank you!
Jen

From: Medley, Ashlie (OPATTY)
Sent: Monday, September 25, 2017 3:57 PM
To: Mills, Jennifer K. (OPATTY) (b) (6)
Cc: Taylor, Will (OPATTY) (b) (6) Sargent-Burns, Rosalind A (OPATTY) (b) (6)
Subject: FW: Acknowledgment of Pardon by Sheriff Joseph M. Arpaio

Hey Jen,

Should I assign this to Ros?

-Ashlie

From: (b) (6)
Sent: Friday, September 22, 2017 7:35 PM
To: USPardon Attorney <Ex_USPardonAttorney@jmd.usdoj.gov>
Cc: (b) (6)
Subject: Acknowledgment of Pardon by Sheriff Joseph M. Arpaio

Dear Mr. Kupers:

(b) (6)

(b) (6)

E-MAIL CONFIDENTIALITY NOTICE: The contents of this e-mail message and any attachments are for the sole use of the intended recipient(s) and may contain information that is confidential and/or subject to a legal privilege. Any review, use, disclosure, copying, storage, or distribution by persons or entities other than the intended recipient(s) or any attachment herein is expressly prohibited. If you are not an intended recipient of this message, please immediately alert the sender by reply e-mail and delete this message and any attachments from all systems.

RE_ Arpaio Notices.pdf

From:	Kupers, Lawrence B. (OPATTY)
To:	Sargent-Burns, Rosalind A (OPATTY); Mills, Jennifer K. (OPATTY); Taylor, Will (OPATTY); Gillespie, Kira (OPATTY)
Cc:	Pendergrass, Matthew J. (OPATTY)
Subject:	RE: Arpaio Notices
Date:	Monday, August 28, 2017 11:24:12 AM

The warrant has a seal. I'm okay with the letters going out under my signature. I'll sign them when I'm in the office tomorrow. And let's get a blue receipt ready to send the lawyer. I sent the lawyer a copy of the warrant on Friday but I'll send it to him again and ask him to get his client to sign it and return it.

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Monday, August 28, 2017 10:54 AM
To: Kupers, Lawrence B. (OPATTY) (b) (6) ; Mills, Jennifer K. (OPATTY) (b) (6) ; Taylor, Will (OPATTY) (b) (6) ; Gillespie, Kira (OPATTY) (b) (6)
Cc: Pendergrass, Matthew J. (OPATTY) (b) (6)
Subject: RE: Arpaio Notices

Are we adding a seal to the warrant we have? And if these are going out as regular notifications (no actual signature from Larry), then I'm fine with Jordan creating those, getting Larry's approval, and sending them out as normal. Also, do we know which of his attorneys of record should be receiving the affidavit and blue receipt?

Rosalind

From: Kupers, Lawrence B. (OPATTY)
Sent: Monday, August 28, 2017 10:39 AM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6) ; Mills, Jennifer K. (OPATTY) (b) (6) ; Taylor, Will (OPATTY) (b) (6) ; Gillespie, Kira (OPATTY) (b) (6)
Cc: Pendergrass, Matthew J. (OPATTY) (b) (6)
Subject: RE: Arpaio Notices

Yes, that would be my preference and seems to be Jordan's as well.

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Monday, August 28, 2017 10:32 AM
To: Kupers, Lawrence B. (OPATTY) (b) (6) ; Mills, Jennifer K. (OPATTY) (b) (6) ; Taylor, Will (OPATTY) (b) (6) ; Gillespie, Kira (OPATTY) (b) (6) >
Cc: Pendergrass, Matthew J. (OPATTY) (b) (6)
Subject: RE: Arpaio Notices

(b) (5) [redacted]

Rosalind

From: Kupers, Lawrence B. (OPATTY)
Sent: Monday, August 28, 2017 10:01 AM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6) [redacted]; Mills, Jennifer K. (OPATTY) (b) (6) [redacted]; Taylor, Will (OPATTY) (b) (6) [redacted]
Cc: Pendergrass, Matthew J. (OPATTY) (b) (6) [redacted]
Subject: RE: Arpaio Notices

(b) (5) [redacted]

(b) (5) [redacted]

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Monday, August 28, 2017 8:49 AM
To: Mills, Jennifer K. (OPATTY) (b) (6) [redacted]; Taylor, Will (OPATTY) (b) (6) [redacted]; Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Cc: Pendergrass, Matthew J. (OPATTY) (b) (6) [redacted]
Subject: RE: Arpaio Notices

Good Morning, Jen,

Most of the necessary notices on this one have been drafted already. The USA and SJ notices will need to be sent out a little bit differently under a letter signed by Larry. Since sentencing is pending, a motion to the court is going to be necessary. Once Larry is able to sign those, depending on whether we mail or email them, either Kira or I will get those out today. The only other notification associated with this one will be the clerk, which has already been drafted and I'll email it out today.

No FBI check was done here, but we should still send a notice so that Arpaio's rap sheet can be updated, so Jordan, if you can take care of that one, that'd be great.

Thanks!

Rosalind

From: Mills, Jennifer K. (OPATTY)
Sent: Monday, August 28, 2017 8:35 AM
To: Taylor, Will (OPATTY) (b) (6) [redacted]; Kupers, Lawrence B. (OPATTY)

(b) (6) ; Sargent-Burns, Rosalind A (OPATTY) (b) (6)
Cc: Pendergrass, Matthew J. (OPATTY) (b) (6)
Subject: Arpaio Notices

Good morning all –

I saw Will's note in the Special WF re: notifications for this grant. Jordan usually handles notices for FBI/USA/SJ, but it sounded like notices might need to be handled differently in this case based on ODAG instruction, so I wanted to get clarification on whether Jordan should take care of these or not.

Ros – if you were planning on drafting or if you need any assistance, just let us know.

Thanks!
Jen

Jennifer K. Mills
Supervisory Paralegal Specialist
Office of the Pardon Attorney, DOJ
2CON | 145 N Street N.E. | Room 5E.105
Washington, DC 20530
(b) (6)

RE_ Arpaio Pardon Warrant.pdf

From: Taylor, Will (OPATTY)
To: Kupers, Lawrence B. (OPATTY)
Subject: RE: Arpaio Pardon Warrant
Date: Friday, August 25, 2017 5:57:55 PM
Attachments: Warrant_Pardon_Arpaio-J_20170725.pdf

Updated to include a DOJ seal.

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
[redacted]
http://www.justice.gov/pardon/

From: Kupers, Lawrence B. (OPATTY)
Sent: Friday, August 25, 2017 5:23 PM
To: Taylor, Will (OPATTY) (b) (6) [redacted]
Subject: RE: Arpaio Pardon Warrant

Thanks, Will.

From: Taylor, Will (OPATTY)
Sent: Friday, August 25, 2017 5:21 PM
To: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Subject: Arpaio Pardon Warrant

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
[redacted]
http://www.justice.gov/pardon/

Warrant_Pardon_Arpaio-J_20170725.pdf

EXECUTIVE GRANT OF CLEMENCY

DONALD J. TRUMP

President of the United States of America

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

BE IT KNOWN, THAT THIS DAY, I, DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, PURSUANT TO MY POWERS UNDER ARTICLE II, SECTION 2, CLAUSE 1, OF THE CONSTITUTION, HAVE GRANTED UNTO

JOSEPH M. ARPAIO

A FULL AND UNCONDITIONAL PARDON

FOR HIS CONVICTION of Section 401(3), Title 18, United States Code (Docket No. 2:16-CR-01012-SRB) in the United States District Court for the District of Arizona, of which he was convicted on July 31, 2017, and for which sentencing is currently set for October 5, 2017; and

FOR ANY OTHER OFFENSES under Chapter 21 of Title 18, United States Code that might arise, or be charged, in connection with *Melendres v. Arpaio* (Docket No. 2:07-CV-02513-GMS) in the United States District Court for the District of Arizona.

IN TESTIMONY WHEREOF, I have hereunto signed my name and caused the seal of the Department of Justice to be affixed.

Done at the City of Washington this twenty-fifth day of August, in the year of our Lord two thousand and seventeen and of the Independence of the United States of America the two hundred and forty-second.

DONALD J. TRUMP
PRESIDENT

RE_ Arpaio Pardon.pdf

From: uspardon.attorney@usdoj.gov
To: (b) (6)
Subject: RE: Arpaio Pardon
Date: Wednesday, August 30, 2017 8:06:41 PM

August 30, 2017

Dear (b) (6) :

This is in response to your email dated Sunday, August 27, 2017, addressed to the Deputy Pardon Attorney, expressing extreme concern that the President pardoned Joseph Arpaio and requesting that the Department examine and overturn the President's pardon of Mr. Arpaio.

Please be advised that the regulations contained in 28 CFR §§ 1.1 thru 1.11 are advisory only and for the internal guidance of Department of Justice personnel. They create no enforceable rights in persons applying for executive clemency, nor do they restrict the authority granted to the President under Article II, Section 2 of the Constitution. For additional information, please see our Frequently Asked Questions page at https://www.justice.gov/pardon/frequently-asked-questions-concerning-executive-clemency.

Thank you for writing and I hope this response is helpful to you.

Sincerely,

Office of the Pardon Attorney

PR7254750

RE_ Arpaio case.pdf

From: Kupers, Lawrence B. (OPATTY)
To: Taylor, Will (OPATTY); Gillespie, Kira (OPATTY); Sargent-Burns, Rosalind A (OPATTY)
Subject: RE: Arpaio case
Date: Tuesday, August 29, 2017 12:49:08 PM

(b) (5) [redacted]

From: Taylor, Will (OPATTY)
Sent: Tuesday, August 29, 2017 10:46 AM
To: Gillespie, Kira (OPATTY) (b) (6) [redacted] >; Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]; Sargent-Burns, Rosalind A (OPATTY) (b) (6) [redacted]
Subject: RE: Arpaio case

(b) (5) [redacted]

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6) [redacted]
http://www.justice.gov/pardon/

From: Gillespie, Kira (OPATTY)
Sent: Tuesday, August 29, 2017 10:39 AM
To: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]; Sargent-Burns, Rosalind A (OPATTY) (b) (6) [redacted]; Taylor, Will (OPATTY) (b) (6) [redacted]
Subject: RE: Arpaio case

Larry,

(b) (5) [redacted]

(b) (5)

[redacted]

[redacted]

From: Kupers, Lawrence B. (OPATTY)
Sent: Tuesday, August 29, 2017 10:15 AM
To: Gillespie, Kira (OPATTY) (b) (6) [redacted]; Sargent-Burns, Rosalind A (OPATTY) (b) (6) [redacted]>; Taylor, Will (OPATTY) (b) (6) [redacted]
Subject: RE: Arpaio case

Kira:

[redacted] (b) (5) [redacted]

[redacted]

Let me know your thoughts.

From: Gillespie, Kira (OPATTY)
Sent: Tuesday, August 29, 2017 8:01 AM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6) [redacted]; Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]; Taylor, Will (OPATTY) (b) (6) [redacted]

Subject: RE: Arpaio case

Larry,

(b) (5)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

From: Sargent-Burns, Rosalind A (OPATTY)

Sent: Monday, August 28, 2017 6:31 PM
To: Kupers, Lawrence B. (OPATTY) (b) (6) ; Taylor, Will (OPATTY) (b) (6) ; Gillespie, Kira (OPATTY) (b) (6)
Subject: RE: Arpaio case

(b) (5)

Rosalind

From: Kupers, Lawrence B. (OPATTY)
Sent: Monday, August 28, 2017 6:12 PM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6) ; Taylor, Will (OPATTY) (b) (6) ; Gillespie, Kira (OPATTY) (b) (6)
Subject: RE: Arpaio case

(b) (5)

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Monday, August 28, 2017 6:01 PM
To: Taylor, Will (OPATTY) (b) (6) ; Kupers, Lawrence B. (OPATTY) (b) (6) ; Gillespie, Kira (OPATTY) (b) (6)
Subject: RE: Arpaio case

(b) (5)

-------- Original message --------
From: "Taylor, Will (OPATTY)" (b) (6)
Date: 8/28/17 5:54 PM (GMT-05:00)
To: "Kupers, Lawrence B. (OPATTY)" (b) (6) , "Sargent-Burns, Rosalind A (OPATTY)" (b) (6) , "Gillespie, Kira (OPATTY)" (b) (6)
Subject: RE: Arpaio case

(b) (5) [redacted]

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6) [redacted]
http://www.justice.gov/pardon/

From: Kupers, Lawrence B. (OPATTY)
Sent: Monday, August 28, 2017 5:47 PM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6) [redacted]; Gillespie, Kira (OPATTY) (b) (6) [redacted]
Cc: Taylor, Will (OPATTY) (b) (6) [redacted]
Subject: Arpaio case

Time to reset. Just spoke on the phone with Public Integrity. It turns out that the USAO in Arizona recused itself so Arpaio's prosecution was handled by Public Integrity. So our notification needs to go to them

(b) (5) [redacted]

RE_ Arpaio inquiries.pdf

From:	Medley, Ashlie (OPATTY)
To:	Mills, Jennifer K. (OPATTY)
Cc:	Newsome, William (OPATTY); Pendergrass, Matthew J. (OPATTY)
Subject:	RE: Arpaio inquiries
Date:	Monday, August 28, 2017 11:51:49 AM

I only had two letter in the campaign folder I created (both miscor.). One was from two weeks ago and one from this weekend (both opposing the pardon); I created MRs and assigned them to Will. ☺

From: Mills, Jennifer K. (OPATTY)
Sent: Monday, August 28, 2017 11:49 AM
To: Medley, Ashlie (OPATTY) (b) (6)
Cc: Newsome, William (OPATTY) (b) (6) Pendergrass, Matthew J. (OPATTY) (b) (6)
Subject: RE: Arpaio inquiries

Sorry about that; I haven't received a press release from the WH or ODAG, if one has been issued, which is how we would usually notify everyone in the office. It's been a bit disorganized since we didn't really have a heads up on the action due to the time it was issued.

The press themselves have obviously gotten word and we have a warrant, but that's about all the info I have ☺

As a side note, Will originally asked for ALL mail to be sent directly to him, but I see now that he doesn't want MiscCorr like the letter of support. So go ahead and create MRs for anything that isn't an actual "inquiry" i.e. letter of support, and assign to Will, per his last request. If you have any questions about anything else that comes in, you can send them to me first if you'd like, so the call to send or not send to Will is on me.

From: Medley, Ashlie (OPATTY)
Sent: Monday, August 28, 2017 11:39 AM
To: Mills, Jennifer K. (OPATTY) (b) (6)
Cc: Newsome, William (OPATTY) (b) (6) Pendergrass, Matthew J. (OPATTY) (b) (6)
Subject: RE: Arpaio inquiries

I actually wasn't aware. Thanks for the update. A support letter came in from what appeared to be a random citizen and it forwarded it to the campaign folder I created for the sheriff. I will send it to Will.

From: Mills, Jennifer K. (OPATTY)
Sent: Monday, August 28, 2017 11:37 AM
To: Medley, Ashlie (OPATTY) (b) (6)
Cc: Newsome, William (OPATTY) (b) (6); Pendergrass, Matthew J. (OPATTY)

(b) (6) [redacted]
Subject: Arpaio inquiries

Good morning,

As you may know by now, the president granted a pardon to Sheriff Arpaio late Friday evening. That being said, please forward any and all incoming correspondence (press inquiries or otherwise) regarding Arpaio as soon as you come across them to Will, at his request. He will address them as they come in.

Ashlie, you'll likely be the first to see them, but I'm including William in case we get anything hard copy and Jordan for situational awareness.

Let me know if you have any questions.

Thanks!
Jen

Jennifer K. Mills
Supervisory Paralegal Specialist
Office of the Pardon Attorney, DOJ
2CON | 145 N Street N.E. | Room 5E.105
Washington, DC 20530
Office: (b) (6) [redacted]

RE_ Arpaio pardon application.pdf

From: Navas, Nicole (OPA)
To: Taylor, Will (OPATTY)
Subject: RE: Arpaio pardon application
Date: Wednesday, August 23, 2017 9:58:12 AM

Thank you. (b) (5)

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)
(b) (6) (office)
(b) (6) (cell)
(b) (6)

From: Taylor, Will (OPATTY)
Sent: Wednesday, August 23, 2017 9:50 AM
To: Navas, Nicole (OPA) (b) (6)
Subject: RE: Arpaio pardon application

(b) (5)

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
http://www.justice.gov/pardon/

From: Navas, Nicole (OPA)
Sent: Tuesday, August 22, 2017 6:57 PM
To: Taylor, Will (OPATTY) (b) (6)
Subject: RE: Arpaio pardon application

(b) (5)

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

From: Taylor, Will (OPATTY)
Sent: Tuesday, August 22, 2017 4:16 PM
To: Navas, Nicole (OPA) (b) (6) ; Hornbuckle, Wyn (OPA)
(b) (6)
Subject: RE: Arpaio pardon application

(b) (5)

[redacted]

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
[redacted]
http://www.justice.gov/pardon/

From: Navas, Nicole (OPA)
Sent: Tuesday, August 22, 2017 3:08 PM
To: Taylor, Will (OPATTY) (b) (6) ; Hornbuckle, Wyn (OPA)
(b) (6)
Subject: RE: Arpaio pardon application

(b) (5) [redacted]

[redacted]

From: Taylor, Will (OPATTY)
Sent: Tuesday, August 22, 2017 2:57 PM
To: Hornbuckle, Wyn (OPA) (b) (6) [redacted]; Navas, Nicole (OPA)
(b) (6) [redacted]
Subject: RE: Arpaio pardon application

(b) (5) [redacted]

Thanks,

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6) [redacted]
[redacted]
http://www.justice.gov/pardon/

From: Hornbuckle, Wyn (OPA)
Sent: Tuesday, August 22, 2017 2:48 PM
To: Navas, Nicole (OPA) (b) (6) [redacted]
Cc: Taylor, Will (OPATTY) (b) (6) [redacted]
Subject: FW: Arpaio pardon application

(b) (5) [redacted]

From: Korte, Gregory [mailto:(b) (6) [redacted]
Sent: Tuesday, August 22, 2017 2:36 PM
To: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Cc: Hornbuckle, Wyn (OPA) (b) (6) [redacted]
Subject: Arpaio pardon application

Larry,

Do you have a pending pardon application for Joe Arpaio?

Thanks!

Gregory.

Gregory Korte
White House correspondent
(b) (6)
Office: (b) (6)
Cell: (b) (6)
Twitter: @gregorykorte

From: Kupers, Lawrence B. (OPATTY) [mailto:(b) (6)
Sent: Tuesday, February 14, 2017 11:52 AM
To: Korte, Gregory (b) (6)
Subject: RE: Petraeus application

I will forward your email to them and ask them to respond or authorize me to respond.

From: Korte, Gregory (b) (6)
Sent: Tuesday, February 14, 2017 11:49 AM
To: Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: RE: Petraeus application

Unfortunately, they haven't responded to me since the Obama administration.

From: Kupers, Lawrence B. (OPATTY) (b) (6)
Sent: Tuesday, February 14, 2017 11:30 AM
To: Korte, Gregory (b) (6)
Subject: RE: Petraeus application

Mr. Korte:

Greetings to you as well. I have to ask you to direct inquiries such as your question about David Petraeus to the Office of Public Affairs because that office is the principal point of contact for the Department of Justice with the news media. They can be reached at (202) 514-2007 or https://www.justice.gov/opa.

Larry Kupers

From: Korte, Gregory [mailto:(b) (6)
Sent: Tuesday, February 14, 2017 10:01 AM
To: (b) (6)
Subject: Petraeus application

Mr. Kupers,

Greetings! As you may know, I'm a White House reporter for USA TODAY who's written frequently about the president's use of clemency.

In the past, I've been able to call up the pardon attorney to confirm whether a specific clemency petition had been filed. Could I get an update on whether David Petraeus has filed an application for clemency?

Thanks for your help!

Gregory.

Gregory Korte
White House correspondent
USA TODAY
(b) (6)
Office: (b) (6)
Twitter: @gregorykorte

RE_ Arpaio pardon_1.pdf

From: uspardon.attorney@usdoj.gov
To: (b) (6) [redacted]
Subject: RE: Arpaio pardon
Date: Wednesday, August 30, 2017 8:11:54 PM

August 30, 2017

Dear (b) (6) [redacted]:

This is in response to your email dated Sunday, August 27, 2017, addressed to the Deputy Pardon Attorney, expressing extreme concern regarding the President's grant of clemency to Mr. Joseph Arpaio. You also requested the Justice Department examine and overturn the President's pardon decision.

Please be advised that the President's clemency power is conferred by Article II, Section 2, Clause 1 of the Constitution of the United States, which provides: "The President... shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment." Thus, the President's authority to grant clemency is limited to federal offenses and offenses prosecuted by the United States Attorney for the District of Columbia in the name of the United States in the D.C. Superior Court. The regulations contained in 28 CFR §§ 1.1 thru 1.11 are advisory only and for the internal guidance of Department of Justice personnel. They create no enforceable rights in persons applying for executive clemency, nor do they restrict the authority granted to the President under Article II, Section 2 of the Constitution. For additional information, please see our Frequently Asked Questions page at https://www.justice.gov/pardon/frequently-asked-questions-concerning-executive-clemency.

Thank you for writing to the Deputy Pardon Attorney and I hope this information was helpful to you.

Sincerely,

Office of the Pardon Attorney

PR7254751

RE_ Arpaio(1).pdf

From: Taylor, Will (OPATTY)
To: Sargent-Burns, Rosalind A (OPATTY); Mills, Jennifer K. (OPATTY); Gillespie, Kira (OPATTY)
Cc: Pendergrass, Matthew J. (OPATTY)
Subject: RE: Arpaio
Date: Monday, August 28, 2017 1:21:02 PM

Yes – I'll give Kira the stamp for the self addressed envelope.

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
[redacted]
http://www.justice.gov/pardon/

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Monday, August 28, 2017 1:19 PM
To: Mills, Jennifer K. (OPATTY) (b) (6) [redacted]; Gillespie, Kira (OPATTY)
(b) (6) [redacted]
Cc: Taylor, Will (OPATTY) (b) (6) [redacted]; Pendergrass, Matthew J. (OPATTY)
(b) (6) [redacted]
Subject: RE: Arpaio

Great! Thanks for indulging my cluelessness ☺

Rosalind

From: Mills, Jennifer K. (OPATTY)
Sent: Monday, August 28, 2017 1:17 PM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6) [redacted]; Gillespie, Kira (OPATTY)
(b) (6) [redacted]
Cc: Taylor, Will (OPATTY) (b) (6) [redacted]; Pendergrass, Matthew J. (OPATTY)
(b) (6) [redacted]
Subject: RE: Arpaio

Oh ok, great! Thank you!

Yep, the FedEx envelope can just get dropped in the outbox and Angelo will pick up with his regular mail rounds. I'll set up the FedEx shipment so that I receive notification of delivery; I usually PDF that notice and drop it in the WF to confirm receipt.

From: Sargent-Burns, Rosalind A (OPATTY)

Sent: Monday, August 28, 2017 1:09 PM
To: Mills, Jennifer K. (OPATTY) (b) (6) Gillespie, Kira (OPATTY)
(b) (6)
Cc: Taylor, Will (OPATTY) <(b) (6) ; Pendergrass, Matthew J. (OPATTY)
(b) (6)
Subject: RE: Arpaio

The clerk notice has already been prepared, so that won't be necessary. Here's the address for the FedEx. Does it then just go in the outbox?

(b) (6)

Thanks a bunch!

Rosalind

From: Mills, Jennifer K. (OPATTY)
Sent: Monday, August 28, 2017 1:03 PM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6) Gillespie, Kira (OPATTY)
(b) (6)
Cc: Taylor, Will (OPATTY) (b) (6) Pendergrass, Matthew J. (OPATTY)
(b) (6)
Subject: RE: Arpaio

Thanks, Ros!

Just so we're all on the same page, Jordan has prepared the FBI notice, but it doesn't look like we have a notice to the Clerk yet, to complete the grant package docs. Should Jordan also prepare that?

As for FedEx, I can create the shipping label for you and send it to you as a PDF to print tomorrow, if you send me the address it should be shipped to. There are FedEx envelopes in the small copy room, on the counter all the way to the right. If you have any trouble finding them tomorrow, let me know!

Thanks,
Jen

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Monday, August 28, 2017 12:31 PM
To: Gillespie, Kira (OPATTY) (b) (6)

Cc: Taylor, Will (OPATTY) (b) (6) ; Mills, Jennifer K. (OPATTY)
(b) (6)
Subject: RE: Arpaio

This is perfect, Kira, thank you. I'll print out everything else and have Larry sign it all together tomorrow.

Will, I believe you are the keeper of the stamps, so if you could leave me one, that'd be great.

Jen, I am not well-versed in our FedExing, so if you could give me a quick tutorial of what I need to do to get the affidavit out tomorrow, that'd be great.

I'll plan on scanning in the signed letters and sending the USA and SJ notifications via email.

Thanks!
Rosalind

From: Gillespie, Kira (OPATTY)
Sent: Monday, August 28, 2017 12:17 PM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6)
Subject: Arpaio

Ros,

I went ahead and created a MR for the attorney 2486670 and have kept it open pending the attachments of the signed receipts and affidavits I also printed out the cover letter to the attorney, the blue receipt to Arpaio, and the affidavit, all for Larry's signature. I do not have a copy of the Pardon benefits letter, and I could not find a blank envelope/stamp for the self-addressed envelope. I just wanted to let you know what I have done so that you don't bother printing out additional copies tomorrow morning, and I will slip the folder of printouts under your door. Also, is there anything else you want me to print out? Happy to do it, or to let you do it tomorrow, whichever you prefer.

Thanks!

Kira

Kira J. Gillespie, Senior Attorney Advisor
Office of the Pardon Attorney
Department of Justice
2 CON/ 145 N Street NE, Fifth Floor - East
Washington, DC 22303
(b) (6)

(b) (6)

RE_ Arpaio.pdf

From: Taylor, Will (OPATTY)
To: Kupers, Lawrence B. (OPATTY); Sargent-Burns, Rosalind A (OPATTY); Gillespie, Kira (OPATTY); Mills, Jennifer K. (OPATTY)
Subject: RE: Arpaio
Date: Tuesday, September 26, 2017 9:09:50 AM

Unfortunately, we're not quite done with it. I'm going to have to review the file to respond to various FOIA requests so I'll run my draft by you (and maybe ODAG) before I post it online.

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
http://www.justice.gov/pardon/

From: Kupers, Lawrence B. (OPATTY)
Sent: Tuesday, September 26, 2017 8:42 AM
To: Sargent-Burns, Rosalind A (OPATTY)(b) (6) Taylor, Will (OPATTY) (b) (6) ; Gillespie, Kira (OPATTY)(b) (6) ; Mills, Jennifer K. (OPATTY)(b) (6) Pendergrass, Matthew J. (OPATTY) (b) (6)
Subject: RE: Arpaio

Fine. We're done with that.

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Monday, September 25, 2017 4:16 PM
To: Kupers, Lawrence B. (OPATTY)(b) (6) ; Taylor, Will (OPATTY) (b) (6) ; Gillespie, Kira (OPATTY)(b) (6) ; Mills, Jennifer K. (OPATTY)(b) (6) ; Pendergrass, Matthew J. (OPATTY) (b) (6)
Subject: Arpaio

FYI – we have received the Arpaio blue receipt, and I have now closed the WF.

Thanks,
Ros

RE_ Arpaio_Mot. to Dismiss Complaint & Proposed....pdf

From:	Tirol, AnnaLou
To:	Kupers, Lawrence B. (OPATTY)
Cc:	Keller, John (CRM)
Subject:	RE: Arpaio_Mot. to Dismiss Complaint & Proposed Order
Date:	Monday, August 28, 2017 6:10:00 PM

(b) (5) [redacted]

From: Kupers, Lawrence B. (OPATTY)
Sent: Monday, August 28, 2017 5:58 PM
To: Tirol, AnnaLou (b) (6) [redacted]
Cc: Keller, John (CRM) (b) (6) [redacted]
Subject: RE: Arpaio_Mot. to Dismiss Complaint & Proposed Order

(b) (5) [redacted]

From: Tirol, AnnaLou
Sent: Monday, August 28, 2017 5:51 PM
To: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Cc: Keller, John (CRM) (b) (6) [redacted] >
Subject: RE: Arpaio_Mot. to Dismiss Complaint & Proposed Order

(b) (5) [redacted]

From: Kupers, Lawrence B. (OPATTY)
Sent: Monday, August 28, 2017 5:41 PM
To: Tirol, AnnaLou (b) (6) [redacted]
Subject: RE: Arpaio_Mot. to Dismiss Complaint & Proposed Order

AnnaLou:

(b) (5) [redacted]

Larry

From: Tirol, AnnaLou
Sent: Monday, August 28, 2017 5:05 PM
To: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Subject: FW: Arpaio_Mot. to Dismiss Complaint & Proposed Order

Hi Larry,
(b) (5) [redacted]

Thanks,
AnnaLou

AnnaLou Tirol
Acting Chief
Public Integrity Section
U.S. Department of Justice
(b) (6) [redacted]

From: Cataldo, Simon (CRM)
Sent: Monday, August 28, 2017 3:36 PM
To: Hulser, Raymond (CRM) (b) (6) [redacted]; Tirol, AnnaLou (b) (6) [redacted]
Cc: Keller, John (CRM) (b) (6) [redacted] Salgado, Victor (CRM) (b) (6) [redacted]
Subject: Arpaio_Mot. to Dismiss Complaint & Proposed Order

Attached.

Simon Cataldo
Trial Attorney
Public Integrity Section
U.S. Department of Justice
(b) (6) [redacted]

RE_ Correction Request(1).pdf

From: Navas, Nicole (OPA)
To: Taylor, Will (OPATTY)
Subject: RE: Correction Request
Date: Wednesday, August 30, 2017 12:35:29 PM

You bet! Thank you for bringing them to my attention

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)
[redacted] (office)
(b) (6) (cell)
[redacted]

From: Taylor, Will (OPATTY)
Sent: Wednesday, August 30, 2017 10:54 AM
To: Navas, Nicole (OPA) (b) (6) [redacted]
Subject: RE: Correction Request

You're the best! We really could have used you during the last administration. There were so many inaccuracies in the reporting on the Obama Clemency Initiative. It would have been great to have those articles corrected. Thanks again!

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6) [redacted]
[redacted]
http://www.justice.gov/pardon/

From: Navas, Nicole (OPA)
Sent: Wednesday, August 30, 2017 10:33 AM
To: Taylor, Will (OPATTY) (b) (6) [redacted]
Subject: FW: Correction Request

FYI

From: Carrie Johnson [mailto:(b) (6) [redacted]
Sent: Wednesday, August 30, 2017 10:25 AM
To: Navas, Nicole (OPA) (b) (6) [redacted]
Subject: RE: Correction Request

We have corrected and republished.
Very SORRY for the error.

Carrie

From: Navas, Nicole (OPA) [mailto:(b) (6)
Sent: Tuesday, August 29, 2017 8:15 PM
To: Carrie Johnson
Subject: RE: Correction Request

Thank you

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)
(b) (6) (office)
(b) (6) (cell)
(b) (6)

From: Carrie Johnson [mailto(b) (6)
Sent: Tuesday, August 29, 2017 5:40 PM
To: Navas, Nicole (OPA) (b) (6)
Subject: Re: Correction Request

Hi Nicole have been away from the office - reading this now and will be back in touch. Sorry for the delay but I was unable to check my phone for a while today.

Carrie

Sent from my iPhone

On Aug 29, 2017, at 4:11 PM, Navas, Nicole (OPA) (b) (6) wrote:

> Hi Carrie,
> I hope all is well. Your article titled, "After Arpaio, 4 Answers To Questions About How Pardons Are Supposed To Work" (http://www.npr.org/2017/08/28/546729186/after-arpaio-4-answers-to-questions-about-how-pardons-are-supposed-to-work) inaccurately reports that a pardon "wipes a record clean." It says, ***"It doesn't mean a person is innocent, but it wipes his record clean, allowing him to vote, serve as a member of a jury, run for political office and in many cases win licenses to own firearms and perform certain jobs."*** A pardon does not "wipe a record clean." The only way to "wipe a criminal record" is through expungement, which is a judicial remedy separate and apart from the President's power to pardon. Expungement is handled by the Court. See FAQ on this topic at: https://www.justice.gov/pardon/frequently-asked-questions-concerning-executive-clemency#18. It also says, ***"A***

commutation shortens a person's prison sentence, but it does not remove a conviction from his or her record. People who win commutations are still required to pay restitution for their crimes." And ***"Under President George W. Bush, former vice presidential aide Lewis "Scooter" Libby won a commutation in a leak case involving the identity of a CIA operative."*** A federal felon can't "win" executive clemency (likes it's a lottery or something). "The President . . . shall have Power to **grant** Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment." Can you update your article online so your readers are better informed?

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

RE_ Correction Request.pdf

From: Navas, Nicole (OPA)
To: Taylor, Will (OPATTY)
Cc: Kupers, Lawrence B. (OPATTY)
Subject: RE: Correction Request
Date: Monday, September 25, 2017 8:38:39 PM

Hi,
This is now updated at: http://floridapoliticalreview.com/2017/09/arpaio-pardon-controversial-not-unprecedented/. thanks

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)
(b) (6) (office)
(b) (6) (cell)
(b) (6)

From: Taylor, Will (OPATTY)
Sent: Thursday, September 21, 2017 5:32 PM
To: Navas, Nicole (OPA) (b) (6)
Cc: Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: RE: Correction Request

(b) (5)

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
http://www.justice.gov/pardon/

From: Navas, Nicole (OPA)
Sent: Thursday, September 21, 2017 5:24 PM
To: Taylor, Will (OPATTY) (b) (6)

Cc: Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: FW: Correction Request

(b) (5)

From: Lievonen,Johnathan J [mailto (b) (6)
Sent: Thursday, September 21, 2017 5:21 PM
To: Navas, Nicole (OPA) (b) (6)
Subject: Re: Correction Request

Hello Ms. Navas,
Thank you for reaching out to us regarding our Sept. 20 article "Arpaio Pardon: Controversial but Not Unprecedented."

The information identifying Mr. Kupers as the acting attorney general was a typographical error, however, to more accurately correct the remaining indiscretions we are requesting some more information including:

1) Did Mr. Kupers advise, investigate or review the potential pardon of Mr. Arpaio prior to the president's action?
2) Although selected through the DoJ and not appointed by the president, Mr. Kupers still has the designation of acting pardon attorney. With that said, are there plans for Mr. Kupers to become the official pardon attorney or is there ongoing consideration to fill the position with another figure?

All the best,
John Lievonen
(b) (6)
Managing Editor- Florida Political Review

From: Navas, Nicole (OPA) (b) (6)
Sent: Thursday, September 21, 2017 3:46:11 PM
To: Lima,Benjamin A; Lievonen,Johnathan J; Majmundar,Payal D
Subject: Correction Request

Hi,
Your Sept. 20 article titled, "Arpaio Pardon: Controversial but Not Unprecedented" (http://floridapoliticalreview.com/2017/09/arpaio-pardon-controversial-not-unprecedented/) inaccurately reports that "Trump has yet to fill the seat of pardon attorney, so Arpaio's pardon did not go through this process, although Larry Kupers is currently serving as the acting attorney general."

The Pardon Attorney is a competitive career federal position within the Department of Justice and not presidentially appointed. Larry Kupers is the Acting Pardon Attorney, not the Acting Attorney General. Please let me know when your article has been corrected. Thank you

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)
(b) (6) (office)
(b) (6) (cell)
(b) (6)

RE_ Dismissal letters.pdf

From: Kupers, Lawrence B. (OPATTY)
To: Bolitho, Zachary (ODAG)
Subject: RE: Dismissal letters
Date: Friday, August 25, 2017 6:00:00 PM
Attachments: Warrant_Pardon_Arpaio with Seal.pdf

Zac:

Warrant with seal attached.

From: Bolitho, Zachary (ODAG)
Sent: Friday, August 25, 2017 5:55 PM
To: Kupers, Lawrence B. (OPATTY)(b) (6)
Subject: Dismissal letters

Larry,

Per Jim Crowell, please send the dismissal letters from OPA.

Thanks,
Zac

Warrant_Pardon_Arpaio with Seal.pdf

EXECUTIVE GRANT OF CLEMENCY

DONALD J. TRUMP

President of the United States of America

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

BE IT KNOWN, THAT THIS DAY, I, DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, PURSUANT TO MY POWERS UNDER ARTICLE II, SECTION 2, CLAUSE 1, OF THE CONSTITUTION, HAVE GRANTED UNTO

JOSEPH M. ARPAIO

A FULL AND UNCONDITIONAL PARDON

FOR HIS CONVICTION of Section 401(3), Title 18, United States Code (Docket No. 2:16-CR-01012-SRB) in the United States District Court for the District of Arizona, of which he was convicted on July 31, 2017, and for which sentencing is currently set for October 5, 2017; and

FOR ANY OTHER OFFENSES under Chapter 21 of Title 18, United States Code that might arise, or be charged, in connection with *Melendres v. Arpaio* (Docket No. 2:07-CV-02513-GMS) in the United States District Court for the District of Arizona.

IN TESTIMONY WHEREOF, I have hereunto signed my name and caused the seal of the Department of Justice to be affixed.

Done at the City of Washington this twenty-fifth day of August, in the year of our Lord two thousand and seventeen and of the Independence of the United States of America the two hundred and forty-second.

DONALD J. TRUMP
PRESIDENT

RE_ Florida Political Review Article.pdf

From: Kupers, Lawrence B. (OPATTY)
To: Taylor, Will (OPATTY)
Subject: RE: Florida Political Review Article
Date: Thursday, September 21, 2017 4:38:00 PM

Yep, no disagreement there.

From: Taylor, Will (OPATTY)
Sent: Thursday, September 21, 2017 4:38 PM
To: Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: RE: Florida Political Review Article

Trust me – you don't want that mantle. ☺

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (5)
[redacted]
http://www.justice.gov/pardon/

From: Kupers, Lawrence B. (OPATTY)
Sent: Thursday, September 21, 2017 4:35 PM
To: Taylor, Will (OPATTY) (b) (6)
Subject: RE: Florida Political Review Article

Wait a minute, Will, let me have a little run at Acting Attorney General for a minute.

From: Taylor, Will (OPATTY)
Sent: Thursday, September 21, 2017 4:26 PM
To: Navas, Nicole (OPA) (b) (6)
Cc: Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: RE: Florida Political Review Article

(b) (5)
[redacted]

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103

Washington, DC 20530
(b) (6)
[redacted]
http://www.justice.gov/pardon/

From: Navas, Nicole (OPA)
Sent: Thursday, September 21, 2017 4:24 PM
To: Taylor, Will (OPATTY) (b) (6) [redacted]
Cc: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Subject: RE: Florida Political Review Article

(b) (5) [redacted]

From: Taylor, Will (OPATTY)
Sent: Thursday, September 21, 2017 4:22 PM
To: Navas, Nicole (OPA) (b) (6) [redacted]
Cc: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Subject: RE: Florida Political Review Article

(b) (5) [redacted]

Thanks!

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
[redacted]
http://www.justice.gov/pardon/

From: Navas, Nicole (OPA)
Sent: Thursday, September 21, 2017 3:35 PM
To: Taylor, Will (OPATTY) (b) (6) [redacted]
Cc: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Subject: RE: Florida Political Review Article

Hi Will,
(b) (5) [redacted]

Nicole Navas Oxman

Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)
[redacted] (office)
(b) (6) (cell)
(b) (6) [redacted]

From: Taylor, Will (OPATTY)
Sent: Thursday, September 21, 2017 2:02 PM
To: Navas, Nicole (OPA) (b) (6) [redacted]
Cc: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Subject: Florida Political Review Article

Nicole,

Can you have the reporter correct this article?

http://floridapoliticalreview.com/2017/09/arpaio-pardon-controversial-not-unprecedented/

"Trump has yet to fill the seat of pardon attorney, so Arpaio's pardon did not go through this process, although Larry Kupers is currently serving as the acting attorney general." The Pardon Attorney is a competitive career federal position within DOJ and not presidentially appointed. Larry is the Acting Pardon Attorney, not the Acting Attorney General.

Thanks,

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6) [redacted]
[redacted]
http://www.justice.gov/pardon/

RE_ Freedom of Information Request_ DOJ Pardon.pdf

From: OPA FOIA
To: (b) (6) ; OPA FOIA
Subject: RE: Freedom of Information Request: DOJ Pardon
Date: Friday, September 1, 2017 9:32:21 PM

This is a duplicate of OPA FOIA 2017-273137, received on August 28, 2017, which we have already acknowledged receipt for. As a result, we will not be opening a new FOIA workflow for the request.

Regards,

FOIA Unit
Office of the Pardon Attorney
PardonAttorneyFOIA@usdoj.gov
https://www.justice.gov/pardon/pardon-attorney-foia

From: [redacted]
Sent: Thursday, August 31, 2017 5:08 PM
To: OPA FOIA <Ex_OpaFOIA@jmd.usdoj.gov>
Subject: Freedom of Information Request: DOJ Pardon

August 31, 2017
Office of the Pardon Attorney
Carolyn Veilleux
Office of the Pardon Attorney
1425 New York Avenue, N.W.
Suite 11000
Washington, D.C. 20530

To Whom It May Concern:

This is a request under the Freedom of Information Act. I hereby request the following records:

All recommendations, reports, outgoing emails from the Office of the Pardon Attorney, and incoming emails to the Office of the Pardon Attorney from any ".gov" email address or Joe Arpaio concerning Joe Arpaio.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to

receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Joseph Uchill

Filed via MuckRock.com
E-mail (Preferred): (b) (6)
Upload documents directly: https://www.muckrock.com/accounts/agency_login/office-of-the-pardon-attorney-454/doj-pardon-42508/?email=PardonAttorneyFOIA%40usdoj.gov&uuid-login=dfb1c20b-66f9-4b36-9346-b66f04206344#agency-reply
Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):
MuckRock
DEPT MR 42508
(b) (6)

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

RE_ Google Alert - _office of the pardon attorney_.pdf

From: Gillespie, Kira (OPATTY)
To: Pendergrass, Matthew J. (OPATTY)
Subject: RE: Google Alert - "office of the pardon attorney"
Date: Thursday, September 7, 2017 10:19:00 AM

I think he means that most pardons go through OPA for processing, but he said it inarticulately. That misconception is pretty common though. We receive the applications, are the repository of the records, and post the grants and denials on our website. It is sort of understandable.

From: Pendergrass, Matthew J. (OPATTY)
Sent: Thursday, September 07, 2017 10:17 AM
To: Gillespie, Kira (OPATTY) (b) (6)
Subject: FW: Google Alert - "office of the pardon attorney"

Interesting, but I still don't get why people think OPA grants pardons.

From: Google Alerts [mailto:googlealerts-noreply@google.com]
Sent: Thursday, September 7, 2017 10:01 AM
To: jordan (b) (6)
Subject: Google Alert - "office of the pardon attorney"

"office of the pardon attorney"

Daily update - September 7, 2017

NEWS

Trump's pardon of Arpaio sets a dangerous course
Chicago Tribune
Although the **Office of the Pardon Attorney** handles most pardons, the president retains the right to issue pardons to any person, at any time, for any ...

Flag as irrelevant

See more results | Edit this alert

You have received this email because you have subscribed to **Google Alerts**.
Unsubscribe | View all your alerts

Receive this alert as RSS feed

Send Feedback

RE_ Information Copy from Will Taylor for SPECI....pdf

From: Taylor, Will (OPATTY)
To: Mills, Jennifer K. (OPATTY)
Subject: RE: Information Copy from Will Taylor for SPECIAL # 272804 (Service 272804) (Intranet Quorum IMA00772283)
Date: Monday, August 28, 2017 8:52:00 AM

Thanks Jen!

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
http://www.justice.gov/pardon/

-----Original Message-----
From: Mills, Jennifer K. (OPATTY)
Sent: Monday, August 28, 2017 8:25 AM
To: Taylor, Will (OPATTY) (b) (6)
Subject: RE: Information Copy from Will Taylor for SPECIAL # 272804 (Service 272804) (Intranet Quorum IMA00772283)

We've adjusted your settings in IQ. When we last updated your settings to be able to delete attachments, we did so for all WF templates except Specials - an oversight and it has been fixed. Sorry about that.

Thanks!
Jen

-----Original Message-----
From: Will Taylor [mailto:uspardon.attorney@usdoj.gov]
Sent: Friday, August 25, 2017 6:03 PM
To: Mills, Jennifer K. (OPATTY) (b) (6)
Subject: Information Copy from Will Taylor for SPECIAL # 272804 (Service 272804) (Intranet Quorum IMA00772283)

Jordan & Jen,

For some reason, I am unable to detach files from a SPECIAL WF. Please detach the (2) versions of the warrant that do not have a gold seal and look into my WF rights.

Thanks,
Will

Contact: Mr. Joseph M. Arpaio

Information Copies Sent to: Jordan Pendergrass, Jennifer Mills.
https://iqapp.justapps.doj.gov/opa/workflowhome.aspx?showfolder=workflow&showcontent=ID272804&fa=y&iAccount=OPA

RE_ Late night today.pdf

From: Kupers, Lawrence B. (OPATTY)
To: Taylor, Will (OPATTY)
Subject: RE: Late night today
Date: Thursday, August 31, 2017 8:39:00 AM

Sounds good.

From: Taylor, Will (OPATTY)
Sent: Wednesday, August 30, 2017 9:17 PM
To: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Subject: Late night today

Larry,

I worked a few extra hours to knock out the Arpaio miscor. I'll turn my attention to FOIA's tomorrow while I'm teleworking. If I have a productive day tomorrow and Friday, I may take off early Friday to account for the extra hours I've worked this week without pay.

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6) [redacted]
[redacted]
http://www.justice.gov/pardon/

RE_ Message from US GOVT .pdf

From:	Sargent-Burns, Rosalind A (OPATTY)
To:	Taylor, Will (OPATTY); Gillespie, Kira (OPATTY); Pendergrass, Matthew J. (OPATTY); Kupers, Lawrence B. (OPATTY); Mills, Jennifer K. (OPATTY)
Subject:	RE: Message from US GOVT (b) (7)(E)
Date:	Monday, August 28, 2017 3:12:22 PM

Agreed.

Rosalind

From: Taylor, Will (OPATTY)
Sent: Monday, August 28, 2017 3:11 PM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6); Gillespie, Kira (OPATTY) (b) (6); Pendergrass, Matthew J. (OPATTY) (b) (6); Kupers, Lawrence B. (OPATTY) (b) (6); Mills, Jennifer K. (OPATTY) (b) (6)
Subject: RE: Message from US GOVT (b) (7)(E)

(b) (5)

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
http://www.justice.gov/pardon/

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Monday, August 28, 2017 2:56 PM
To: Gillespie, Kira (OPATTY) (b) (6); Pendergrass, Matthew J. (OPATTY) (b) (6); Kupers, Lawrence B. (OPATTY) (b) (6); Taylor, Will (OPATTY) (b) (6); Mills, Jennifer K. (OPATTY) (b) (6)
Subject: RE: Message from US GOVT (b) (7)(E)

So, I just spoke with (b) (7)(E)

(b) (7)(E)

Rosalind

From: Gillespie, Kira (OPATTY)
Sent: Monday, August 28, 2017 1:44 PM
To: Pendergrass, Matthew J. (OPATTY) (b) (6); Sargent-Burns, Rosalind A (OPATTY) (b) (6); Kupers, Lawrence B. (OPATTY) (b) (6); Taylor, Will (OPATTY) (b) (6); Mills, Jennifer K. (OPATTY) (b) (6)
Subject: RE: Message from US GOVT (b) (7)(E)

(b) (5)

From: Pendergrass, Matthew J. (OPATTY)
Sent: Monday, August 28, 2017 1:37 PM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6); Kupers, Lawrence B. (OPATTY) (b) (6); Gillespie, Kira (OPATTY) (b) (6); Taylor, Will (OPATTY) (b) (6); Mills, Jennifer K. (OPATTY) (b) (6)
Subject: RE: Message from US GOVT (b) (7)(E)

[joh-zuh f ahr- pahy- oh]

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Monday, August 28, 2017 1:31 PM
To: Kupers, Lawrence B. (OPATTY) (b) (6); Gillespie, Kira (OPATTY) (b) (6); Taylor, Will (OPATTY) (b) (6); Mills, Jennifer K. (OPATTY) (b) (6); Pendergrass, Matthew J. (OPATTY) (b) (6)
Subject: FW: Message from US GOVT (b) (7)(E)

(b) (5)

Rosalind

From: Cisco Unity Connection Messaging System [mailto:unityconnection@djjmdcmd01uvm01.gov]
Sent: Monday, August 28, 2017 1:25 PM
To: (b) (6) @djjmdcmd01uvm01.gov
Subject: Message from US GOVT (b) (7)(E)

RE_ clerk notice.pdf

From: Kupers, Lawrence B. (OPATTY)
To: Gillespie, Kira (OPATTY)
Subject: RE: clerk notice
Date: Tuesday, June 27, 2017 2:58:22 PM

(b) (5)

From: Gillespie, Kira (OPATTY)
Sent: Tuesday, June 27, 2017 2:56 PM
To: Kupers, Lawrence B. (OPATTY) <(b) (6)>
Subject: RE: clerk notice

Okay! Good to know, (b) (5)?

From: Kupers, Lawrence B. (OPATTY)
Sent: Tuesday, June 27, 2017 2:54 PM
To: Gillespie, Kira (OPATTY) <(b) (6)>
Subject: RE: clerk notice

Kira:

(b) (5)
Thanks,

Larry

From: Gillespie, Kira (OPATTY)
Sent: Tuesday, June 27, 2017 2:11 PM
To: Kupers, Lawrence B. (OPATTY) <(b) (6)>; Sargent-Burns, Rosalind A (OPATTY) <(b) (6)>
Subject: RE: clerk notice

(b) (5)

From: Kupers, Lawrence B. (OPATTY)
Sent: Tuesday, June 27, 2017 2:08 PM
To: Gillespie, Kira (OPATTY) <(b) (6)>; Sargent-Burns, Rosalind A (OPATTY) <(b) (6)>
Subject: RE: clerk notice

(b) (5)

From: Gillespie, Kira (OPATTY)
Sent: Tuesday, June 27, 2017 2:05 PM
To: Kupers, Lawrence B. (OPATTY) <(b) (6) >; Sargent-Burns, Rosalind A (OPATTY) <(b) (6) >
Subject: RE: clerk notice

Good point Larry! (b) (5)

From: Kupers, Lawrence B. (OPATTY)
Sent: Tuesday, June 27, 2017 2:02 PM
To: Gillespie, Kira (OPATTY) <(b) (6) >; Sargent-Burns, Rosalind A (OPATTY) <(b) (6) >
Subject: RE: clerk notice

(b) (5)

From: Gillespie, Kira (OPATTY)
Sent: Tuesday, June 27, 2017 1:54 PM
To: Sargent-Burns, Rosalind A (OPATTY) <(b) (6) >; Kupers, Lawrence B. (OPATTY) <(b) (6) >
Subject: RE: clerk notice

Hi Ros,

Larry and I were talking earlier, (b) (5)

Kira

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Tuesday, June 27, 2017 1:51 PM

To: Gillespie, Kira (OPATTY) <(b) (6) >; Kupers, Lawrence B. (OPATTY) <(b) (6) >
Subject: clerk notice

I've drafted the notice to the clerk and placed in the same folder. Feel free to edit as either of you see fit!

Rosalind Sargent-Burns
Senior Attorney Advisor
Office of the Pardon Attorney
U.S. Department of Justice
145 N Street, NE, Room 5E.508
Washington, DC 20530
Telephone: (b) (6)

From: Sargent-Burns, Rosalind A (OPATTY)
To: Gillespie, Kira (OPATTY); Kupers, Lawrence B. (OPATTY)
Subject: RE: (b) (5)
Date: Thursday, August 24, 2017 9:42:46 AM

(b) (5)

Rosalind

From: Gillespie, Kira (OPATTY)
Sent: Thursday, August 24, 2017 9:39 AM
To: Kupers, Lawrence B. (OPATTY) <(b) (6)>; Sargent-Burns, Rosalind A (OPATTY) <(b) (6)>
Subject: RE: (b) (5)

(b) (5)

From: Kupers, Lawrence B. (OPATTY)
Sent: Thursday, August 24, 2017 9:28 AM
To: Sargent-Burns, Rosalind A (OPATTY) <(b) (6)>
Cc: Gillespie, Kira (OPATTY) <(b) (6)>
Subject: RE: (b) (5)

Ros, Kira:

(b) (5)

(b) (5) [redacted]

Larry

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Wednesday, August 23, 2017 6:12 PM
To: Kupers, Lawrence B. (OPATTY) <(b) (6) [redacted]>
Cc: Gillespie, Kira (OPATTY) <(b) (6) [redacted]>
Subject: RE: (b) (5) [redacted]

(b) (5) [redacted]

I'll be teleworking bright and early tomorrow (unless you think I need to come in), so let me know if there's anything else I can do.

Rosalind

From: Kupers, Lawrence B. (OPATTY)
Sent: Wednesday, August 23, 2017 4:57 PM
To: Sargent-Burns, Rosalind A (OPATTY) <(b) (6) [redacted]>
Subject: (b) (5) [redacted]

Ros:

(b) (5) [redacted]

Thanks,

Larry

From: Raman, Sujit (ODAG)
To: Kupers, Lawrence B. (OPATTY)
Cc: Crowell, James (ODAG); Gannon, Curtis E. (OLC)
Subject: Re: Pardon
Date: Tuesday, June 27, 2017 1:26:42 PM

Approved. Thanks, Larry.

Please connect directly with Uttam if you don't hear from him. He should be there by 1:30.

On Jun 27, 2017, at 1:24 PM, Kupers, Lawrence B. (OPATTY) <(b) (6) > wrote:

> Jim, Sujit, Curtis:
>
> I've attached a draft of a cover letter.
>
> Larry
>
> ---
>
> **From:** Crowell, James (ODAG)
> **Sent:** Tuesday, June 27, 2017 10:57 AM
> **To:** Kupers, Lawrence B. (OPATTY) <(b) (6) >
> **Cc:** Gannon, Curtis E. (OLC) <(b) (6) >; Raman, Sujit (ODAG) <(b) (6) >
> **Subject:** Pardon
>
> Larry:
>
> (b) (5)
>
> Please let us know your questions.
>
> Thanks in advance for your help.
>
> Best,
>
> Jim

James A. Crowell IV
Chief of Staff and Associate Deputy Attorney General

Office of the Deputy Attorney General
U.S. Department of Justice
Office: (b) (6)
Cell: (b) (6)
(b) (6)

<Cover letter to WH Counsel.doc>

RE_ Notice of clemency grant.pdf

From: Kupers, Lawrence B. (OPATTY)
To: Taylor, Will (OPATTY); Sargent-Burns, Rosalind A (OPATTY)
Subject: RE: Notice of clemency grant
Date: Thursday, August 31, 2017 9:34:00 AM

(b) (5)

From: Taylor, Will (OPATTY)
Sent: Thursday, August 31, 2017 9:31 AM
To: Kupers, Lawrence B. (OPATTY) (b) (6); Sargent-Burns, Rosalind A (OPATTY) (b) (6)
Subject: RE: Notice of clemency grant

(b) (5)

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
http://www.justice.gov/pardon/

From: Taylor, Will (OPATTY)
Sent: Thursday, August 31, 2017 9:29 AM
To: Kupers, Lawrence B. (OPATTY) (b) (6); Sargent-Burns, Rosalind A (OPATTY) (b) (6)
Subject: RE: Notice of clemency grant

(b) (5)

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)

(b) (6)
http://www.justice.gov/pardon/

From: Kupers, Lawrence B. (OPATTY)
Sent: Thursday, August 31, 2017 9:22 AM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6); Taylor, Will (OPATTY) (b) (6)
Subject: RE: Notice of clemency grant

(b) (5)

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Thursday, August 31, 2017 9:18 AM
To: Kupers, Lawrence B. (OPATTY) (b) (6); Taylor, Will (OPATTY) (b) (6)
Subject: RE: Notice of clemency grant

(b) (5)

Rosalind

From: Kupers, Lawrence B. (OPATTY)
Sent: Thursday, August 31, 2017 9:08 AM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6); Taylor, Will (OPATTY) (b) (6)
Subject: RE: Notice of clemency grant

By the way, here is the latest docket entry in that case:

ORDER as to Joseph M Arpaio: IT IS ORDERED vacating the October 5, 2017 sentencing and the September 29, 2017 deadline for filing sentencing memoranda, motions for departure, letters, and the names of witnesses to testify or make statements. IT IS FURTHER ORDERED that the Government shall not file any response to the pending Motions for New Trial and For a Judgment of Acquittal (Docs. 217 & 218) pending further Order of the Court. IT IS FURTHER ORDERED setting oral argument on Defendant's Motion for Vacatur and Dismissal With Prejudice (Doc. 220) on Wednesday, October 4, 2017, at 10:00 a.m. [see attached Order for details]. Signed by Judge Susan R

Bolton on 8/29/17.(MAW) (Entered: 08/29/2017).

So the earliest the judge will rule on the motion for vacatur is 10/4/17 and probably the ruling will be later than that. (b) (5) [redacted]

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Thursday, August 31, 2017 8:57 AM
To: Taylor, Will (OPATTY) (b) (6) [redacted]
Cc: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Subject: FW: Notice of clemency grant

(b) (5) [redacted]

Rosalind

From: (b) (7)(F) [redacted]
Sent: Thursday, August 31, 2017 8:33 AM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6) [redacted]
Subject: FW: Notice of clemency grant

(b) (7)(E) [redacted]

[redacted]

From: (b) (7)(F) [redacted]
Sent: Monday, August 28, 2017 2:21 PM
To: 'USPardon Attorney' <USPardon.Attorney@usdoj.gov>
Cc: Sargent-Burns, Rosalind A (OPATTY) (JMD) (b) (6) [redacted]; (b) (7)(F) [redacted]
Subject: RE: Notice of clemency grant

(b) (7)(E) [redacted]

(b) (7)(F) [redacted]

(b) (7)(F) [redacted]

From: USPardon Attorney [mailto:USPardon.Attorney@usdoj.gov]
Sent: Monday, August 28, 2017 12:12 PM
To: [redacted] (b) (7)(F) [redacted]
Subject: Notice of clemency grant

(b) (7)(E) [redacted]

[redacted]

On August 25, 2017, President Trump pardoned one individual. Attached hereto are a copy of the clemency warrant and a memorandum providing additional information. Please provide this information to the appropriate divisions of the Bureau so that the clemency grant may be noted in the FBI's official records.

Thank you very much for your assistance, and please let me know if you have any questions.

Sincerely,

M. Jordan Pendergrass
Paralegal Specialist
Office of the Pardon Attorney
U.S. Department of Justice
(b) (6) [redacted]

RE_ Notifications.pdf

(b) [redacted]
(5) [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(b) (5) [redacted]

Thanks,

Rosalind Sargent-Burns
Senior Attorney Advisor
Office of the Pardon Attorney
U.S. Department of Justice
145 N Street, NE, Room 5E.508
Washington, DC 20530
Telephone: (b) (6) [redacted]

RE_ OPA FOIA 2017-273135 (Mr. Jason Leopold) (I....pdf

From: OPA FOIA
To: jason(b) (6) ; OPA FOIA
Bcc: Nicole Navas (OPA) (b) (6)
Subject: RE: OPA FOIA 2017-273135 (Mr. Jason Leopold) (Intranet Quorum IMA00773138)
Date: Friday, September 1, 2017 7:12:00 PM

I totally understand and hope you have a great holiday weekend as well.

Regards,

Will Taylor
Executive Officer
Office of the Pardon Attorney
http://www.justice.gov/pardon/

From: Jason Leopold [mailto:(b) (6)]
Sent: Friday, September 1, 2017 7:08 PM
To: OPA FOIA <Ex_OpaFOIA@jmd.usdoj.gov>
Subject: Re: OPA FOIA 2017-273135 (Mr. Jason Leopold) (Intranet Quorum IMA00773138)

Thank you, Mr. Taylor. I anticipated that would likely be the case and I certainly understand it. But given the high profile nature of the president's decision I have to at least make the attempt.

Have a great Labor Day weekend.

Best,
Jason

Jason Leopold
BuzzFeed News
Senior Investigative Reporter
(b) (6)
@jasonleopold
(b) (6)
Send me documents and tips, securely and anonymously: (b) (6)
PGP: http://bit.ly/1hpZzsd

On Sep 1, 2017 3:54 PM, <PardonAttorneyFOIA@usdoj.gov> wrote:

> September 1, 2017
>
> Mr. Jason Leopold
> Senior Investigative Reporter
> BuzzFeed News
> (b) (6)

Re: Freedom of Information Act Request: FOIA 2017-273135 (Follow-up)

Dear Mr. Leopold:

Thanks for the quick response. I will go ahead and request the search and get back to you as soon as I can. Based on my role as a senior manager in this office, I can confirm even without a search that there are no memos or letters to or from this office referencing Mr. Arpaio because a clemency petition was never submitted to DOJ on his behalf. As a result, we would not have created a clemency casefile for him, which is where any memo or letter would be housed in connection with his clemency case, if we had one. I won't confirm or deny whether emails might be located with the search criteria you have provided, but if they are, I can assure you that they will most likely be withheld from disclosure, pursuant to 5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by the deliberative process if they are internal to this office and the Office of the Deputy Attorney General, and the presidential communications privilege if they are transmitted to or from the Office of White House Counsel. Nonetheless, I will have the search conducted and we can handle privilege assertions at that time.

Sincerely,

William N. Taylor II
Executive Officer
Office of the Pardon Attorney

U.S. Department of Justice

RE_ OPA FOIA 2017-273285 (b) (6) (In....pdf

From: OPA FOIA
To: (b) (6) OPA FOIA
Subject: RE: OPA FOIA 2017-273285 (b) (6) (Intranet Quorum IMA00774725)
Date: Friday, September 15, 2017 10:08:00 PM

(b) (6) ,

I'm glad I was able to quickly get you a response. In response to your below follow up question, anytime the president favorably adjudicates a clemency decision, it is called a "grant" of clemency, so I apologize if the terminology was confusing. I, through the Department of Justice, wouldn't be able to confirm or deny whether any records were submitted to the White House or any other governmental agency because I have no access to or control over such documents. Please be advised that the FOIA operation of the federal government is decentralized and each federal agency maintains and processes FOIA requests for its own records. Accordingly, you will need to direct your request to the federal agency or agencies you believe have records pertaining to the subject of your request. Additional information regarding all agencies' administration of the FOIA, including their contact information and online request forms, if applicable, is available at www.FOIA.gov. Because it appears that you might be seeking records pertaining to the White House, you may wish to direct your records request to them directly. However, I can affirmatively state that Mr. Arpaio did not apply for executive clemency through this office, which is the only office within the Department of Justice that handles executive clemency on behalf of the President.

I hope this response is helpful.

Regards,

Will Taylor
Executive Officer
Office of the Pardon Attorney
http://www.justice.gov/pardon/

From: (b) (6)
Sent: Friday, September 15, 2017 8:44 PM
To: OPA FOIA <Ex_OpaFOIA@jmd.usdoj.gov>
Cc: (b) (6)
Subject: Re: OPA FOIA 2017-273285 (b) (6)) (Intranet Quorum IMA00774725)

Dear Mr. Taylor:

Re: Freedom of Information Act Request: FOIA 2017-273285 (Full Grant)

Thank you for your amazingly quick reply to my letter that I emailed to you this morning. I

very much appreciate your reply.

In reviewing your letter, I found the following comment that I would appreciate further clarification:

"Please be advised that Mr. Arpaio had not applied for clemency through the Department of Justice when the President granted his clemency request on August 25, 2017. As a result, there is no clemency petition or accompanying documents to review or release. We also do not have any records that verify Mr. Arpaio's acceptance of the pardon or admission of guilt. The clemency warrant signed by the President has already been proactively disclosed on our website at https://www.justice.gov/pardon/pardons-granted-president-donald-trump."

More specifically, you wrote: "Please be advised that Mr. Arpaio had not applied for clemency through the Department of Justice when the President *granted his clemency request on August 25, 2017."*

Did former Sheriff Arpaio, personally or through his attorney, at anytime, make a request for clemency from any governmental agency or the Office of the President? If so, when and to whom? I ask this because former Sheriff Arpaio repeatedly has stated to the media that he had never asked for a pardon from President Trump, but he would accept a pardon from President Trump if it were offered. Your written comment that "...the President *granted his clemency request*..." would appear to be in conflict with former Sheriff Arpaio's claim that he never asked for a pardon from the President. Would you please clarify this apparent conflict in positions?

Thank you again Mr. Taylor for your assistance. And again, the DOJ attorneys did a wonderful job obtaining a conviction in the Arpaio criminal contempt hearings of 2017.

Sincerely,

(b) (6)
[redacted]
[redacted]

From: PardonAttorneyFOIA@usdoj.gov <PardonAttorneyFOIA@usdoj.gov>

Sent: Friday, September 15, 2017 4:37 PM
To: (b) (6)
Subject: OPA FOIA 2017-273285 ((b) (6)) (Intranet Quorum IMA00774725)

September 15, 2017

(b) (6)

Re: Freedom of Information Act Request: FOIA 2017-273285 (Full Grant)

Dear (b) (6)

This correspondence is in response to your Freedom of Information Act (FOIA) request dated and received in the Office of the Pardon Attorney (OPA) on September 15, 2017. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq*., you requested all documents related to the Department of Justice's processing of the Joe Arpaio presidential pardon. Especially, the pardon application and any document Mr. Arpaio signed that would indicate his admission of guilt, through his acceptance of the pardon.

In order to provide you with the greatest possible access to responsive records, your request was reviewed under both the Privacy Act of 1974 and the FOIA. I have determined that the records responsive to your request are exempt from the access provision of the Privacy Act. See 5 U.S.C. § 552a(j)(2); see also 28 C.F.R. § 16.79 (2016). For this reason, I have reviewed your request under the FOIA.

The FOIA provides for disclosure of many agency (Department of Justice) records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities.

Please be advised that Mr. Arpaio had not applied for clemency through the Department of Justice when the President granted his clemency request on August 25, 2017. As a result, there is no clemency petition or accompanying documents to review or release. We also do not have any records that verify Mr. Arpaio's acceptance of the pardon or admission of guilt. The clemency warrant signed by the President has already been proactively disclosed on our website at https://www.justice.gov/pardon/pardons-granted-president-donald-trump.

Please be advised that deliberative (pre-decisional) communications pertaining to agency and presidential decision-making are confidential and not available under existing case law interpreting the Freedom of Information Act and Privacy Act. In addition, pursuant to 28 CFR § 1.5, petitions, reports, memoranda, and communications submitted or furnished in connection with the consideration of a petition for executive clemency generally shall be available only to the officials concerned with the consideration of the petition. Moreover, as a general matter, Presidents in recent times have rarely announced their reasons for granting or denying clemency, although the President may choose to do so in a given case. Consistent with long-standing policy, if the President does not issue a public statement concerning his action in a clemency matter, no explanation is provided by the Department of Justice.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may email this office at PardonAttorneyFOIA@usdoj.gov for any further assistance with your FOIA request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: https://foiaonline.regulations.gov/foia/action/public/home. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

William N. Taylor II
Executive Officer
Office of the Pardon Attorney
U.S. Department of Justice

RE_ PRESIDENTIAL CLEMENCY ACTION DURING THE TRU....pdf

From: Mills, Jennifer K. (OPATTY)
To: Newsome, William (OPATTY)
Subject: RE: PRESIDENTIAL CLEMENCY ACTION DURING THE TRUMP ADMINISTRATION
Date: Monday, August 28, 2017 8:43:27 AM

That worked, I figured it hadn't refreshed yet ☺ thanks, William!

From: Newsome, William (OPATTY)
Sent: Monday, August 28, 2017 8:42 AM
To: Mills, Jennifer K. (OPATTY) (b) (6)
Subject: RE: PRESIDENTIAL CLEMENCY ACTION DURING THE TRUMP ADMINISTRATION

Try putting some "????" At the end of the url it takes some time to update.

From: Mills, Jennifer K. (OPATTY)
Sent: Monday, August 28, 2017 8:41 AM
To: Newsome, William (OPATTY) (b) (6)
Subject: RE: PRESIDENTIAL CLEMENCY ACTION DURING THE TRUMP ADMINISTRATION

No problem! I just checked and I'm not seeing a change on the homepage?

From: Newsome, William (OPATTY)
Sent: Monday, August 28, 2017 8:35 AM
To: Mills, Jennifer K. (OPATTY) (b) (6)
Subject: RE: PRESIDENTIAL CLEMENCY ACTION DURING THE TRUMP ADMINISTRATION

Good catch I missed that one. I have updated the homepage now. Here is a link, https://www.justice.gov/pardon.

From: Mills, Jennifer K. (OPATTY)
Sent: Monday, August 28, 2017 8:24 AM
To: Newsome, William (OPATTY) (b) (6)
Subject: RE: PRESIDENTIAL CLEMENCY ACTION DURING THE TRUMP ADMINISTRATION

It looks like we still need to add the action to our homepage, at the bottom.

From: Newsome, William (OPATTY)
Sent: Monday, August 28, 2017 8:16 AM
To: Taylor, Will (OPATTY) (b) (6)
Cc: Mills, Jennifer K. (OPATTY) (b) (6); Gillespie, Kira (OPATTY) (b) (6); Sargent-Burns, Rosalind A (OPATTY) (b) (6)
Subject: RE: PRESIDENTIAL CLEMENCY ACTION DURING THE TRUMP ADMINISTRATION

Morning Will,

I have updated our webpage with the new information. Here is a link, https://www.justice.gov/pardon/pardons-granted-president-donald-trump.

From: Taylor, Will (OPATTY)
Sent: Friday, August 25, 2017 6:27 PM
To: Newsome, William (OPATTY) (b) (6)
Cc: Mills, Jennifer K. (OPATTY) (b) (6); Gillespie, Kira (OPATTY)
(b) (6); Sargent-Burns, Rosalind A (OPATTY) (b) (6)
Subject: PRESIDENTIAL CLEMENCY ACTION DURING THE TRUMP ADMINISTRATION

William,

When you log in on Monday, can you update our main page to include today's pardon grant and create a new link for **PARDONS GRANTED BY PRESIDENT DONALD J. TRUMP (2017-Present)** at https://www.justice.gov/pardon/clemencyrecipients.

Date: August 25, 2017
Joseph M. Arpaio
Offense: Contempt of court (District of Arizona)
Sentence: N/A

Thanks,

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
http://www.justice.gov/pardon/

RE_ Pardon attorney office Qs_.pdf

From: Hornbuckle, Wyn (OPA)
To: Taylor, Will (OPATTY)
Subject: RE: Pardon attorney office Qs?
Date: Tuesday, August 15, 2017 12:45:42 PM

Got it, thanks

From: Taylor, Will (OPATTY)
Sent: Tuesday, August 15, 2017 11:42 AM
To: Hornbuckle, Wyn (OPA) (b) (6)
Subject: RE: Pardon attorney office Qs?

Wyn,

(b) (5)

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
http://www.justice.gov/pardon/

From: Hornbuckle, Wyn (OPA)
Sent: Tuesday, August 15, 2017 11:18 AM
To: Taylor, Will (OPATTY) (b) (6)
Subject: FW: Pardon attorney office Qs?

(b) (5)

From: Andrea Noble [mailto:(b) (6)

Sent: Tuesday, August 15, 2017 11:15 AM
To: Prior, Ian (OPA) (b) (6)
Subject: Pardon attorney office Qs?

Hey Ian,
Who handles questions for the Office of the Pardon Attorney?
I'm trying to figure out whether Joe Arpaio has actually submitted a petition for a pardon or clemency.

Andrea Noble
The Washington Times
Phone: (b) (6)
Twitter: anobleDC

The information contained in this electronic transmission is intended for the exclusive use of the individuals to whom it is addressed and may contain information that is privileged and confidential, the disclosure of which is prohibited by law. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. In addition, any unauthorized copying, disclosure or distribution of the material in this e-mail and any attachments is strictly forbidden.

RE_ Pardon for Mr. Arpaio.pdf

From: Kupers, Lawrence B. (OPATTY)
To: (b) (6)
Subject: RE: Pardon for Mr. Arpaio
Date: Wednesday, September 20, 2017 1:24:00 PM
Attachments: image002.png

(b) (6)

[redacted]

[redacted]

Larry Kupers

From: (b) (6)
Sent: Tuesday, September 19, 2017 7:24 PM
To: Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: RE: Pardon for Mr. Arpaio

(b) (6)

[redacted]

[redacted]

WB
WILENCHIK & BARTNESS
— ATTORNEYS AT LAW —
A PROFESSIONAL CORPORATION FOUNDED IN 199

[redacted]

ATTORNEY/CLIENT COMMUNICATION

The information transmitted by this e-mail is intended only for the addressee and may contain confidential and/or privileged material. Any interception, review, retransmission, dissemination or other use of this information by persons or entities other than the intended recipient is prohibited by law and may subject them to criminal or civil liability. If you received this communication in error, please contact us immediately at (b) (6), and delete the communication from any computer or network system.

From: (b) (6)
Sent: Friday, August 25, 2017 4:16 PM
To: 'Kupers, Lawrence B. (OPATTY)' (b) (6)
Subject: RE: Pardon for Mr. Arpaio

Received, thank you.

Sincerely,

John "Jack" D. Wilenchik, Esq.

From: Kupers, Lawrence B. (OPATTY) (b) (6)
Sent: Friday, August 25, 2017 3:09 PM
To: (b) (6)
Subject: Pardon for Mr. Arpaio

(b) (6)

Larry Kupers
Deputy Pardon Attorney
Office of the Pardon Attorney
(b) (6)

image002.pdf

WB
WILENCHIK & BARTNESS
ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION FOUNDED IN 1991

RE_ Pardon of Arpaio(1).pdf

From: Medley, Ashlie (OPATTY)
To: Taylor, Will (OPATTY)
Subject: RE: Pardon of Arpaio
Date: Monday, August 28, 2017 11:44:03 AM

Will do.

From: Taylor, Will (OPATTY)
Sent: Monday, August 28, 2017 11:43 AM
To: Medley, Ashlie (OPATTY) (b) (6)
Cc: Mills, Jennifer K. (OPATTY) (b) (6)
Subject: RE: Pardon of Arpaio

Thanks Ashlie, but if it's miscor, please go ahead and add it to IQ and assign it to me. If it's a press inquiry, you can forward it to me without adding it to IQ.

Thanks,

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
http://www.justice.gov/pardon/

From: Medley, Ashlie (OPATTY)
Sent: Monday, August 28, 2017 11:40 AM
To: Taylor, Will (OPATTY) (b) (6)
Cc: Mills, Jennifer K. (OPATTY) (b) (6)
Subject: FW: Pardon of Arpaio

Will,

Per Jen's instruction, I am forwarding this to you.

Thanks,
Ashlie

From: (b) (6)
Sent: Sunday, August 27, 2017 8:31 PM
To: USPardon Attorney <Ex_USPardonAttorney@jmd.usdoj.gov>
Subject: Pardon of Arpaio

Dear Mr. Kupers,

I am extremely concerned about President Trump's pardon of Sheriff Arpaio, This pardon is a slap in the face to equal protection under our Constitution. It sets a dangerous precedent and sends the message that law enforcement can act with impunity, violate the rights of racial minorities, and suffer no legal consequences.

We are nearing a constitutional crisis. I respectfully ask that you use all means necessary within the Justice Department to examine, and if possible, overturn this pardon.

(b) (6)

[redacted]

RE_ Pardon of Arpaio.pdf

From: uspardon.attorney@usdoj.gov
To: (b) (6)
Subject: RE: Pardon of Arpaio
Date: Wednesday, August 30, 2017 8:22:09 PM

August 30, 2017

Dear (b) (6)

This is in response to your email dated Sunday, August 27, 2017, addressed to the Deputy Pardon Attorney, opposing the pardon of Joseph Arpaio and requesting the Department examine and overturn the President's pardon grant.

Please be advised that the President's clemency power is conferred by Article II, Section 2, Clause 1 of the Constitution of the United States, which provides: "The President shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment." Thus, the President's authority to grant clemency is limited to federal offenses and offenses prosecuted by the United States Attorney for the District of Columbia in the name of the United States in the D.C. Superior Court. The regulations contained in 28 CFR §§ 1.1 thru 1.11 are advisory only and for the internal guidance of Department of Justice personnel. They create no enforceable rights in persons applying for executive clemency, nor do they restrict the authority granted to the President under Article II, Section 2 of the Constitution.

Please review our Frequently Asked Questions page at https://www.justice.gov/pardon/frequently-asked-questions-concerning-executive-clemency. Thank you for writing to the Deputy Pardon Attorney. I hope this response was helpful to you.

Sincerely,

Office of the Pardon Attorney

PR7254630

RE_ President Trump’s Pardon of Joe Arpaio_ Fee....pdf

From: uspardon.attorney@usdoj.gov
To: (b) (6)
Subject: RE: President Trump"s Pardon of Joe Arpaio: Feedback and Request
Date: Wednesday, August 30, 2017 8:18:38 PM

August 30, 2017

Dear (b) (6) :

This is in response to your email dated Monday, August 28, 2017, addressed to the Deputy Pardon Attorney, opposing the pardon of Joseph Arpaio and requesting the Department examine and overturn the pardon.

Please be advised that the President's clemency power is conferred by Article II, Section 2, Clause 1 of the Constitution of the United States, which provides: "The President shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment." Thus, the President's authority to grant clemency is limited to federal offenses and offenses prosecuted by the United States Attorney for the District of Columbia in the name of the United States in the D.C. Superior Court. The regulations contained in 28 CFR §§ 1.1 thru 1.11 are advisory only and for the internal guidance of Department of Justice personnel. They create no enforceable rights in persons applying for executive clemency, nor do they restrict the authority granted to the President under Article II, Section 2 of the Constitution.

Please feel free to review our Frequently Asked Questions page at https://www.justice.gov/pardon/frequently-asked-questions-concerning-executive-clemency. Thank you for writing to the Deputy Pardon Attorney and I hope this information is helpful to you.

Sincerely,

Office of the Pardon Attorney

PR7254789

RE_ Quick question.pdf

From: Navas, Nicole (OPA)
To: Taylor, Will (OPATTY)
Subject: RE: Quick question
Date: Monday, August 28, 2017 11:59:33 AM

Thank you

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)
[redacted] (office)
(b) (6) (cell)
[redacted]

From: Taylor, Will (OPATTY)
Sent: Monday, August 28, 2017 11:55 AM
To: Navas, Nicole (OPA) (b) (6) [redacted]
Cc: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Subject: RE: Quick question

(b) (5) [redacted]

[redacted]

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6) [redacted]
[redacted]
http://www.justice.gov/pardon/

From: Navas, Nicole (OPA)
Sent: Monday, August 28, 2017 11:52 AM
To: Taylor, Will (OPATTY) (b) (6) [redacted]
Cc: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Subject: RE: Quick question

(b) (5) [redacted]

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

From: Taylor, Will (OPATTY)
Sent: Friday, August 25, 2017 9:00 PM
To: Navas, Nicole (OPA) (b) (6)
Cc: Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: Re: Quick question

(b) (5)

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
http://www.justice.gov/pardon/

On Aug 25, 2017, at 8:50 PM, Navas, Nicole (OPA) (b) (6) wrote:

(b) (5)

Thank you,

Nicole Navas Oxman
Spokeswoman
U.S. Department of Justice

Begin forwarded message:

From: "Chris Strohm (BLOOMBERG/ NEWSROOM:)"
(b) (6)
Date: August 25, 2017 at 8:32:29 PM EDT
(b) (6)
Subject: Quick question
Reply-To: Chris Strohm (b) (6)

On background was DoJ asked or involved in the pardon for Arpaio or did the White House act on its own? Thanks

RE_ Request for Comments - Applicant for Commut....pdf

From: Kupers, Lawrence B. (OPATTY)
To: Bolitho, Zachary (ODAG)
Subject: RE: Request for Comments - Applicant for Commutation of Sentence: (b) (6) (Intranet Quorum IMA00746159)
Date: Thursday, August 24, 2017 9:48:00 AM

(b) (5)

From: Bolitho, Zachary (ODAG)
Sent: Thursday, August 24, 2017 9:19 AM
To: Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: RE: Request for Comments - Applicant for Commutation of Sentence: (b) (6) (Intranet Quorum IMA00746159)

(b) (6)

Quick question on the first point. (b) (5)

On the second point, (b) (5)

From: Kupers, Lawrence B. (OPATTY)
Sent: Thursday, August 24, 2017 9:01 AM
To: Bolitho, Zachary (ODAG) (b) (6)
Cc: Sargent-Burns, Rosalind A (OPATTY) (b) (6) ; Gillespie, Kira (OPATTY) (b) (6)
Subject: RE: Request for Comments - Applicant for Commutation of Sentence: (b) (6) (Intranet Quorum IMA00746159)

Zac:

Happy to talk about this case; I just looked it over. Let me call you later so we can get through what might be some grants today. Chris just came by 2Con and picked up the warrants – (b) (6)

And that raises some other issues.

(b) (5)

(b) (5) [redacted]

[redacted]

From: Bolitho, Zachary (ODAG)
Sent: Wednesday, August 23, 2017 11:53 PM
To: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Subject: Fwd: Request for Comments - Applicant for Commutation of Sentence: (b) (6) [redacted] (Intranet Quorum IMA00746159)

Larry,

When you have time, I'd like to discuss this case with you. (b) (5) [redacted]

Thanks,
Zac

From: US Pardon Attorney (imailagent) [mailto:uspardon.attorney@usdoj.gov]
Sent: Wednesday, August 23, 2017 11:42 AM
To: Minkler, Josh (USAINS) (b) (6) [redacted]
Cc: Griffin, Carrie (USAINS) (b) (6) [redacted]
Subject: Request for Comments - Applicant for Commutation of Sentence: (b) (6) [redacted] (Intranet Quorum IMA00746159)

August 23, 2017

(b) (5) [redacted]

(b) (5)

RE_ Request for Correction.pdf

From: Taylor, Will (OPATTY)
To: Navas, Nicole (OPA)
Subject: RE: Request for Correction
Date: Tuesday, August 29, 2017 4:01:00 PM

Thanks Nicole!

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
[redacted]
http://www.justice.gov/pardon/

From: Navas, Nicole (OPA)
Sent: Tuesday, August 29, 2017 4:00 PM
To: Taylor, Will (OPATTY) (b) (6)
Subject: FW: Request for Correction

FYI

From: Waxman, Olivia - Time U.S. (b) (6)
(b) (6)
Sent: Tuesday, August 29, 2017 10:44 AM
To: Navas, Nicole (OPA) (b) (6)
Subject: Re: Request for Correction

Hi Nicole, Sorry for the delayed response, been on hurricane duty. A fix should be up this morning.

Olivia B. Waxman
Staff Writer at TIME
TIME.com/History
(b) (6)
[redacted]
(b) (6)
[redacted]

From: <Navas>, "Nicole (OPA)" (b) (6)
Date: Monday, August 28, 2017 at 4:39 PM
To: Olivia Waxman (b) (6)
Subject: Request for Correction

Hi Olivia,
Your article titled, “How President Trump’s Pardon of Joe Arpaio Breaks With White House

History" (http://time.com/4876374/donald-trump-joe-arpaio-pardons-history/) inaccurately reports that "A presidential pardon wipes a criminal record…" That is not true and the link included doesn't indicate that. The only way to "wipe a criminal record" is through expungement, which is a judicial remedy separate and apart from the President's power to pardon. Expungement is handled by the Court. See FAQ on this topic at: https://www.justice.gov/pardon/frequently-asked-questions-concerning-executive-clemency#18. Can you update your article online so your readers are better informed?

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

Please be alert for any emails that may ask you for login information or directs you to login via a link. If you believe this message is a phish or aren't sure whether this message is trustworthy, please send the original message as an attachment to 'phishing@timeinc.com'.

RE_ Request for a full Federal Presidential Par....pdf

From: OPA FOIA
To: (b)
Cc: USPardon Attorney
Bcc: Mills, Jennifer K. (OPATTY)
Subject: RE: Request for a full Federal Presidential Pardon for wrongful conviction
Date: Tuesday, August 29, 2017 2:25:00 PM

(b) (6)

Our website forces you to read important information before you get to the links that allow you to download the forms. If you were to continue reading the information at the link you provided below, it will direct you to the following embedded links at https://www.justice.gov/pardon/file/960561/download and https://www.justice.gov/pardon/file/960581/download, which allow you to download the Commutation of Sentence petition and the Pardon After Completion of Sentence petition.

Please be mindful that a clemency casefile will not be created for you if you submit a petition but are not eligible to apply.

Regards,

FOIA Unit
Office of the Pardon Attorney
PardonAttorneyFOIA@usdoj.gov
https://www.justice.gov/pardon/pardon-attorney-foia

From: (b) (6)
Sent: Monday, August 28, 2017 8:27 PM
To: OPA FOIA <Ex_OpaFOIA@jmd.usdoj.gov>; USPardon Attorney <Ex_USPardonAttorney@jmd.usdoj.gov>; (b) (6)
Subject: Re: Request for a full Federal Presidential Pardon for wrongful conviction

This link does not work for your information. I was not able to print off the forms at any computer.

https://www.justice.gov/pardon/application-forms

GENERAL INFORMATION
OFFICE OF THE
PARDON ATTORNEY

Application Forms | PARDON | Department of Justice

www.justice.gov

Federal Convictions Only. Under the Constitution, the President has the authority to grant pardon for federal offenses, including

those adjudicated in the United ...

From: (b) (6)
Sent: Monday, August 28, 2017 5:01:11 PM
To: PardonAttorneyFOIA@usdoj.gov; (b) (6) USPardon.Attorney@usdoj.gov
Subject: Fw: Request for a full Federal Presidential Pardon for wrongful conviction

Dear Mr. Robert A Zauzemer, Pardon Attorney for the Whitehouse

I have been waiting a year and a half for a Pardon. And Trump pardoned Arpaio in less then a month.

(b) (6)

From: (b) (6)
Sent: Tuesday, May 3, 2016 6:51 PM
To: (b) (6) USPardon.Attorney@usdoj.gov
Cc: PardonAttorneyFOIA@usdoj.gov
Subject: Request for a full Federal Presidential Pardon for wrongful conviction

Dear Mr. Robert A Zauzemer, Pardon Attorney for The White House

(b) (6)

(b) (6)

(b) (6)

[redacted]

(b) (6)

[redacted]

(b) (6)

RE_ Request for correction in ref article on Pa....pdf

From: Navas, Nicole (OPA)
To: Taylor, Will (OPATTY)
Subject: RE: Request for correction in ref article on Pardon Atty
Date: Thursday, August 24, 2017 2:00:52 PM

Thank you

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)
(b) (6) (office)
(b) (6) (cell)
(b) (6)

From: Taylor, Will (OPATTY)
Sent: Thursday, August 24, 2017 1:47 PM
To: Navas, Nicole (OPA) <(b) (6) >
Subject: RE: Request for correction in ref article on Pardon Atty

There hasn't been an Acting Pardon Attorney since Robert Zauzmer was appointed to the Pardon Attorney in the fall of 2016. When Mr. Zauzmer stepped down as Pardon Attorney on January 20, 2017, Larry Kupers became the de facto leader of the office as Deputy Pardon Attorney but his title didn't change. See our webpage, which will always have the most up to date information about OPA leadership at https://www.justice.gov/pardon.

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
http://www.justice.gov/pardon/

From: Navas, Nicole (OPA)
Sent: Thursday, August 24, 2017 1:00 PM
To: Taylor, Will (OPATTY) <wtaylor@jmd.usdoj.gov>
Subject: FW: Request for correction in ref article on Pardon Atty

Hi Will,
Please advise on below. Thank you

From: Korte, Gregory [mailto(b) (6)]

Sent: Thursday, August 24, 2017 12:36 PM
To: Navas, Nicole (OPA) (b) (6)
Subject: RE: Request for correction in ref article on Pardon Atty

Nicole,

My understanding was that Mr. Kupers is still the acting pardon attorney. Has there been any action on that front?

Thanks!

Gregory.

Gregory Korte
White House correspondent
USA TODAY
(b) (6)
Office: (b) (6)
Cell: (b) (6)
Twitter: @gregorykorte

From: Navas, Nicole (OPA) [mailto:(b) (6)
Sent: Thursday, August 24, 2017 12:31 PM
To: Korte, Gregory (b) (6)
Subject: Request for correction in ref article on Pardon Atty

Hi Greg,
I hope all is well. Your article (https://www.usatoday.com/story/news/college/2017/08/23/no-need-paperwork-trump-could-pardon-sheriff-joe-arpaio-tweet/594161001/) states, "He has yet to appoint a new pardon attorney…." For guidance in your reporting, the Pardon Attorney position in DOJ is not a presidentially appointed slot. It is a **Career Reserved position,** which, as defined in law, is "to ensure impartiality, or public's confidence of impartiality of government." These positions can only be filled by career appointees. Generally, the process includes widespread public notification of the job announcement where diverse populations are engaged in the recruitment phase, preliminary review of applications by a human resources specialist, rating and ranking of applicants by a panel with in-depth knowledge of the job's requirements, evaluation of each candidate's qualifications by an Executive Resources Board, and final recommendation to the appointing authority. See: https://www.opm.gov/policy-data-oversight/senior-executive-service/overview-history/. Thank you

No need for paperwork: Trump could pardon Sheriff Joe Arpaio in a tweet

Gregory Korte, USA TODAY Published 5:50 p.m. ET Aug. 23, 2017 | Updated 6:23 p.m. ET Aug. 23, 2017

WASHINGTON — President Trump has twice suggested that he may pardon former Arizona sheriff Joe Arpaio — and White House lawyers are reportedly busy drawing up the paperwork to do just that.

But the president's power to pardon is so absolute that there's actually very little required in terms of paperwork. In fact, the president could grant a pardon in a tweet.

"Neither the constitution nor any statute prescribes the method by which Executive clemency shall be exercised or evidenced," reads a memo from the Justice Department. "It is wholly a matter for the President to decide, as a practical matter of administrative policy."

That memo, obtained by USA TODAY earlier this year under the Freedom of Information Act, was written in 1929 under the Herbert Hoover administration. But the memo still has currency, as presidents George W. Bush and Barack Obama have relied on it as precedent for both presidents to sign bills remotely using a device known as an autopen.

Arpaio was convicted of contempt of a court last month for disregarding a federal judge's order to stop detaining people suspected of being in the country illegally but not accused of a state crime. He's scheduled to be sentenced Oct. 5.

A pardon for Arpaio would delight Trump's anti-immigrant supporters, who see him as victim of an overzealous prosecution for failing to adhere to an ambiguous court order.

But civil rights groups like the ACLU said a pardon would be "an official presidential endorsement of racism" at a time when Trump is still facing a backlash from comments excusing the behavior of neo-Confederate protesters who marched alongside neo-Naxis and white supremacists this month in Charlottesville, Va.

The Justice Department confirmed that Arpaio has not formally applied for a pardon to the Office of the Pardon Attorney, which is the usual process for seeking a pardon. Under Justice Department regulations, a pardon-seeker must have been convicted at least five years ago, making Arpaio ineligible through the regular channels. And Arpaio told the *Arizona Republic* this month that he wouldn't even ask Trump for a pardon.

But that hasn't stopped Trump from dangling the possibility — first in an interview with Fox News, and again at a Phoenix rally Tuesday.

"He should have had a jury, but you know what? I'll make a prediction. I think he's going to be just fine, OK?" Trump said, hinting at a pardon. "But I won't do it tonight, because I don't want to cause any controversy. Is that OK? All right?"

The Justice Department regulations are only advisory, since the Constitution itself gives the president the "power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment."

That same clause, legal scholars say, means that neither Congress nor the courts can put any limits on how the president exercises that authority. In fact, Trump technically doesn't even have to sign anything: "To burden the President with the labor of signing the warrants is, as a matter of law, wholly unnecessary," the 1929 memorandum said.

Other than the Arpaio pardon — and a comment via Twitter that "all agree the U.S. President has the complete power to pardon" — Trump has shown little interest in the pardon power in his first seven months in office. He has yet to appoint a new pardon attorney, and has not outlined his pardon policy for the Justice Department.

According to the Office of Pardon Attorney, 376 people have applied for pardons since Trump

took office. The president has taken no action on any of them.

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)
(b) (6) (office)
(b) (6) (cell)
(b) (6)

RE_ Request for correction_1.pdf

From: Taylor, Will (OPATTY)
To: Navas, Nicole (OPA)
Subject: RE: Request for correction
Date: Monday, August 28, 2017 5:44:00 PM

Thanks

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
[redacted]
http://www.justice.gov/pardon/

From: Navas, Nicole (OPA)
Sent: Monday, August 28, 2017 4:25 PM
To: Taylor, Will (OPATTY) (b) (6)
Subject: FW: Request for correction

FYSA

From: Gurman, Sadie [mailto:(b) (6)
Sent: Monday, August 28, 2017 4:22 PM
To: Navas, Nicole (OPA) (b) (6)
Subject: RE: Request for correction

Interesting. It was not me, but I will direct it to the right place, pronto.

From: Navas, Nicole (OPA) [mailto:(b) (6)
Sent: Monday, August 28, 2017 4:22 PM
To: Gurman, Sadie
Subject: Request for correction

Hi Sadie,
I am not sure who wrote the AP article titled, "A look at the president's pardon power and how it works" but there is a line in there highlighted below that is inaccurate. It says, ***"According to Justice Department statistics, as of Aug. 7 Trump had 376 requests for pardons pending and 1,508 requests for commutation, a reduction of a prison sentence a person is currently serving."*** Those statistics are only the new petitions received since Trump took office. The total number of petitions that haven't had presidential action is the column before that. There are 2,270 pardons and 8,953 commutations total that are still pending. See https://www.justice.gov/pardon/clemency-statistics#DonaldJTrump. Can this be at least corrected online?

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

http://www.pbs.org/newshour/rundown/presidents-pardon-power-works/

A look at the president's pardon power and how it works

BY Associated Press *August 26, 2017 at 5:12 PM EDT*

Maricopa County Sheriff Joe Arpaio arrives at a campaign rally for Republican U.S. Presidential candidate Donald Trump in Phoenix, Arizona, June 18, 2016. Photo by Nancy Wiechec/Reuters

President Donald Trump has exercised his pardon power for the first time, using it to pardon former Arizona Sheriff Joe Arpaio. A look at the president's unique power:

WHERE DOES THE PRESIDENT'S PARDON POWER COME FROM?

Article II, Section 2, Clause 1 of the Constitution says: "The President … shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment." The president's power can only be used to pardon someone for a federal crime, not a state one.

HOW DOES THE PARDON PROCESS USUALLY WORK?

Someone who has been convicted of a federal crime and wants to be pardoned makes a request for a pardon to the Justice Department's Office of the Pardon Attorney, which assists the president in exercising his pardon power. Department rules tell pardon seekers to wait at least five years after their conviction or their release from prison, whichever is later, before filing a pardon application.

It's then up to the pardon office to make a recommendation about whether a pardon is warranted. The office looks at such factors as how the person has acted following their conviction, the seriousness of the offense and the extent to which the person has accepted responsibility for their crime. Prosecutors in the office that handled the case are asked to weigh in. The pardon office's report and recommendation gets forwarded to the deputy attorney general, who adds his or her recommendation. That information is then forwarded to the White House for a decision.

WHAT MAKES ARPAIO'S PARDON UNUSUAL?

Arpaio didn't submit a pardon application through the Office of the Pardon Attorney. His pardoning also took place before he was sentenced. Arpaio was convicted July 31 of misdemeanor contempt of court for intentionally defying a 2011 court order to stop traffic patrols that targeted immigrants. He had been set to be sentenced Oct. 5 and faced up to six months in jail. The fact that Arpaio was pardoned for a misdemeanor offense, which carries a penalty of less than a year in jail, is also unusual. Generally those seeking presidential pardon have been convicted of felonies.

WHAT HAPPENS TO ARPAIO'S CASE NOW?

One of Arpaio's attorneys, Jack Wilenchik, said in a telephone interview Saturday that next week Arpaio's attorneys will file a motion to vacate his conviction and to dismiss the case with prejudice, "meaning forever." "This is the end," he said. Wilenchik said of the pardon the "president has done the right thing here."

WHO ELSE MIGHT TRUMP PARDON?

Arpaio's is Trump's first pardon, but hundreds of other people also want his help. According to Justice Department statistics, as of Aug. 7 Trump had 376 requests for pardons pending and 1,508 requests for commutation, a reduction of a prison sentence a person is currently serving. It's not unusual for presidents to ultimately use their power to help hundreds. During his time in office President Barack Obama granted 212 pardons and commuted the sentences of

approximately 1,700 people, including about 300 drug offenders he pardoned on his last day in office and Chelsea Manning, the transgender Army intelligence officer convicted of leaking more than 700,000 U.S. documents. President George W. Bush pardoned 189 people and commuted 11 sentences.

The information contained in this communication is intended for the use of the designated recipients named above. If the reader of this communication is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify The Associated Press immediately by telephone at +1-212-621-1500 and delete this email. Thank you.

RE_ Text of Arpaio Pardon.pdf

From: Navas, Nicole (OPA)
To: Taylor, Will (OPATTY)
Subject: RE: Text of Arpaio Pardon
Date: Tuesday, August 29, 2017 11:42:24 AM

---

thanks

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)
[redacted] (office)
(b) (6) (cell)
(b) (6)

-----Original Message-----
From: Taylor, Will (OPATTY)
Sent: Tuesday, August 29, 2017 11:24 AM
To: Navas, Nicole (OPA) (b) (6)
Cc: Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: RE: Text of Arpaio Pardon

(b) (5)

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
http://www.justice.gov/pardon/

-----Original Message-----
From: Navas, Nicole (OPA)
Sent: Tuesday, August 29, 2017 11:20 AM
To: Taylor, Will (OPATTY) (b) (6)
Cc: Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: RE: Text of Arpaio Pardon

(b) (5)

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)
(b) (6) (office)
(b) (6) (cell)

(b) (6)

-----Original Message-----
From: Taylor, Will (OPATTY)
Sent: Tuesday, August 29, 2017 11:15 AM
To: Navas, Nicole (OPA) (b) (6)
Cc: Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: FW: Text of Arpaio Pardon

(b) (5)

Thanks,

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
http://www.justice.gov/pardon/

-----Original Message-----
From: USPardon Attorney
Sent: Tuesday, August 29, 2017 11:00 AM
To: Taylor, Will (OPATTY) (b) (6)
Cc: Mills, Jennifer K. (OPATTY) (b) (6) >
Subject: FW: Text of Arpaio Pardon

FYI

-----Original Message-----
From: Evan Robinson [mailto: (b) (6)
Sent: Monday, August 28, 2017 11:08 PM
To: USPardon Attorney <Ex_USPardonAttorney@jmd.usdoj.gov>
Subject: Text of Arpaio Pardon

I'm a journalist writing at groupnewsblog.net.

Can you please provide me with the full text of the Arpaio pardon? A digital copy, including signature, would be best if available. Links to published documents will suffice.

Thank you.

Sent from my iPad

RE_ USA Today article correction.pdf

From: Taylor, Will (OPATTY)
To: Navas, Nicole (OPA)
Cc: Kupers, Lawrence B. (OPATTY)
Subject: RE: USA Today article correction
Date: Thursday, August 24, 2017 7:36:45 PM

FYI – he just FOIA'd us for a copy of the clemency warrant for James Cartwright so I assume he intends to use that in an upcoming article. I'll loop you in on my response.

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (5) [redacted]
[redacted]
http://www.justice.gov/pardon/

From: Navas, Nicole (OPA)
Sent: Thursday, August 24, 2017 7:34 PM
To: Taylor, Will (OPATTY) (b) (6) [redacted]
Cc: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Subject: RE: USA Today article correction

Right, which he never corrected and then got something else wrong…

From: Taylor, Will (OPATTY)
Sent: Thursday, August 24, 2017 7:33 PM
To: Navas, Nicole (OPA) (b) (6) [redacted]
Cc: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Subject: RE: USA Today article correction

Nicole,

The link you sent is actually a new article he posted today. The one you asked him to correct is still located at https://www.usatoday.com/story/news/college/2017/08/23/no-need-paperwork-trump-could-pardon-sheriff-joe-arpaio-tweet/594161001/.

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530

(b) (6)
[redacted]
http://www.justice.gov/pardon/

From: Navas, Nicole (OPA)
Sent: Thursday, August 24, 2017 6:30 PM
To: Taylor, Will (OPATTY) (b) (6) [redacted] >
Cc: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted] >
Subject: RE: USA Today article correction

Reporter updated the article at: https://www.usatoday.com/story/news/politics/2017/08/24/white-house-trump-follow-standard-process-arpaio-pardon/599240001/

It says: But in most cases, the standard pardoning process can take months or even years. There are seven layers of review, and case files are routed through the deputy attorney general and the White House counsel's office for recommendations before they reach the president.

Nicole Navas Oxman
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)
(b) (6) [redacted] (office)
(b) (6) [redacted] (cell)
(b) (6) [redacted]

From: Taylor, Will (OPATTY)
Sent: Thursday, August 24, 2017 12:20 PM
To: Navas, Nicole (OPA) (b) (6) [redacted] >
Cc: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Subject: USA Today article correction

Nicole,

Can you reach out Gregory Korte and ask for the same correction regarding the President's power to appoint a Pardon Attorney. I provided language about this recently and you had it corrected by another outlet.

https://www.usatoday.com/story/news/college/2017/08/23/no-need-paperwork-trump-could-pardon-sheriff-joe-arpaio-tweet/594161001/

Thanks,

Will Taylor
Executive Officer

Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
[redacted]
http://www.justice.gov/pardon/

RE_ Warrant draft.pdf

From: Kupers, Lawrence B. (OPATTY)
To: Sargent-Burns, Rosalind A (OPATTY)
Subject: RE: Warrant draft
Date: Friday, August 11, 2017 7:39:00 PM

Thanks; you too!

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Friday, August 11, 2017 7:31 PM
To: Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: RE: Warrant draft

No problem, Larry!
(b) (5)

Have a good weekend!

-------- Original message --------
From: "Kupers, Lawrence B. (OPATTY)" (b) (6)
Date: 8/11/17 6:17 PM (GMT-05:00)
To: "Sargent-Burns, Rosalind A (OPATTY)" (b) (6)
Subject: RE: Warrant draft

Thanks, Ros. (b) (5)

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Friday, August 11, 2017 3:52 PM
To: Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: RE: Warrant draft

(b) (5)

Hope you enjoyed your vacation!

Rosalind

From: Kupers, Lawrence B. (OPATTY)
Sent: Friday, August 11, 2017 2:28 PM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6)
Subject: RE: Warrant draft

Thanks, Ros. And I'm sorry to have missed the management meeting but things were hectic that day because we were on the move.
Let me know if there's anything that needs attention today because I'm available by phone or skype.

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Friday, August 11, 2017 2:26 PM
To: Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: FW: Warrant draft

(b) (5)

Rosalind

From: Bolitho, Zachary (ODAG)
Sent: Friday, August 11, 2017 2:11 PM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6)
Subject: RE: Warrant draft

Chris Grieco from WHCO should be calling you soon. Thanks!

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Friday, August 11, 2017 1:56 PM
To: Bolitho, Zachary (ODAG) (b) (6)
Cc: Gillespie, Kira (OPATTY) (b) (6) Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: Warrant draft

Good Afternoon, Zac,

Here's the draft copy of the pardon warrant. The actual sealed warrant has been prepared and is ready for signature. I'll await word on the courier and any other logistics of transmission.

Thanks,
Rosalind

Rosalind Sargent-Burns
Senior Attorney Advisor
Office of the Pardon Attorney
U.S. Department of Justice
145 N Street, NE, Room 5E.508
Washington, DC 20530
(b) (6)

Re_ Rubashkin-ASAP.pdf

From: Bolitho, Zachary (ODAG)
To: Kupers, Lawrence B. (OPATTY)
Subject: Re: back in the office
Date: Monday, August 14, 2017 11:35:43 AM

Larry,

(b) (5); Non-Responsive Information

Thanks,
Zac

On Aug 14, 2017, at 11:29 AM, Kupers, Lawrence B. (OPATTY) <(b) (6) > wrote:

> Thanks, Zac.
>
> (b) (5); Non-Responsive Information
>
> Larry
>
> ---
>
> **From:** Bolitho, Zachary (ODAG)
> **Sent:** Monday, August 14, 2017 7:51 AM
> **To:** Kupers, Lawrence B. (OPATTY) <(b) (6) >
> **Subject:** Re: back in the office
>
> (b) (6) . I haven't heard anything regarding the Arpaio matter, which I assume means nothing happens.
>
> I will look over the attached materials and reach out to Chris at WHCO. Thanks.
>
> On Aug 14, 2017, at 7:47 AM, Kupers, Lawrence B. (OPATTY) <(b) (6) > wrote:
>
> > Zac:

Good morning. (b) (6)
Let me know where things stand on the Arpaio matter.

Also, I'm attaching an email from and an article on (b) (6) . This is a (b) (6) . We sent him our routine correspondence advising him about the 5-year rule for applying for a pardon. The attached email is his protest against waiting 5 years to get a pardon. (b) (5) .

Larry

<(b) (6) email on 5 year rule.pdf>
<article on (b) (6) .pdf>

From: Kupers, Lawrence B. (OPATTY)
To: Bolitho, Zachary (ODAG)
Subject: pardon warrant
Date: Friday, August 25, 2017 5:25:00 PM
Attachments: Warrant_Pardon_Arpaio.pdf

Here it is. Uttam is going to call me back with some information on notification.

RE_ grant letter.pdf

From: Kupers, Lawrence B. (OPATTY)
To: Sargent-Burns, Rosalind A (OPATTY)
Subject: RE: grant letter
Date: Thursday, August 31, 2017 8:52:00 AM

As usual, I'm way behind the times. Thanks,

Larry

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Thursday, August 31, 2017 8:52 AM
To: Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: RE: grant letter

Already removed!
That one has your auto signature on it, so the entire package was sent out on Tuesday.

Rosalind

From: Kupers, Lawrence B. (OPATTY)
Sent: Thursday, August 31, 2017 8:50 AM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6)
Subject: RE: grant letter

Ros:

If you agree we should just take out the middle paragraph, then go ahead and print out a new version when you have a chance and I can sign it when I'm in the office. I'm teleworking today but will be in the office tomorrow. Thanks,

Larry

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Tuesday, August 29, 2017 12:53 PM
To: Kupers, Lawrence B. (OPATTY) (b) (6)
Subject: grant letter

Hey Larry – please take a look at the attached grant recipient letter for Arpaio. It's our standard letter we send to all recipients, as referenced in our cover letter to his attorney, but in reading it over and in light of what we've been discussing concerning the motion to vacate, do you think this will raise any additional issues?

Rosalind Sargent-Burns
Senior Attorney Advisor

Office of the Pardon Attorney
U.S. Department of Justice
145 N Street, NE, Room 5E.508
Washington, DC 20530
Telephone: (b) (6)

RE_ letters to judge and USA.pdf

From: Sargent-Burns, Rosalind A (OPATTY)
To: Gillespie, Kira (OPATTY); Kupers, Lawrence B. (OPATTY)
Subject: RE: (b) (5)
Date: Thursday, August 24, 2017 9:42:46 AM

(b) (5)

Rosalind

From: Gillespie, Kira (OPATTY)
Sent: Thursday, August 24, 2017 9:39 AM
To: Kupers, Lawrence B. (OPATTY) (b) (6) Sargent-Burns, Rosalind A (OPATTY) (b) (6)
Subject: RE: (b) (5)

(b) (5)

From: Kupers, Lawrence B. (OPATTY)
Sent: Thursday, August 24, 2017 9:28 AM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6)
Cc: Gillespie, Kira (OPATTY) (b) (6)
Subject: RE: (b) (5)

(b) (5)

(b) (5) [redacted]

Larry

From: Sargent-Burns, Rosalind A (OPATTY)
Sent: Wednesday, August 23, 2017 6:12 PM
To: Kupers, Lawrence B. (OPATTY) (b) (6) [redacted]
Cc: Gillespie, Kira (OPATTY) (b) (6) [redacted]
Subject: RE: (b) (5) [redacted]

(b) (5) [redacted]

[redacted]

I'll be teleworking bright and early tomorrow (unless you think I need to come in), so let me know if there's anything else I can do.

Rosalind

From: Kupers, Lawrence B. (OPATTY)
Sent: Wednesday, August 23, 2017 4:57 PM
To: Sargent-Burns, Rosalind A (OPATTY) (b) (6) [redacted]
Subject: (b) (5) [redacted]

Ros:

(b) (5) [redacted]

Thanks,

Larry

RE_ pardon.pdf

(b)
(5)

RE_ warrants.pdf

(b) [redacted]
(5) [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Re_ Arpaio Pardon Response .pdf

From: Tirol, AnnaLou
To: Kupers, Lawrence B. (OPATTY)
Subject: Re: Arpaio Pardon Response
Date: Monday, September 4, 2017 8:54:49 AM

(b) (5) [redacted]

On Sep 4, 2017, at 8:46 AM, Kupers, Lawrence B. (OPATTY) <lkupers@jmd.usdoj.gov> wrote:

> Thanks, AnnaLou. Hope you're enjoying the holiday weekend as well. (b) (5) [redacted]
>
> ---
>
> **From:** Tirol, AnnaLou
> **Sent:** Sunday, September 03, 2017 5:37 PM
> **To:** Kupers, Lawrence B. (OPATTY) <lkupers@jmd.usdoj.gov>
> **Cc:** Hulser, Raymond (CRM) <Raymond.Hulser@CRM.USDOJ.GOV>; Stemler, Patty (CRM) <Patty.Merkamp.Stemler@crm.usdoj.gov>; Wyderko, Joseph (CRM) <Joseph.Wyderko@CRM.USDOJ.GOV>; Pearce, James (CRM) <James.Pearce@CRM.USDOJ.GOV>; Keller, John (CRM) <John.Keller@CRM.USDOJ.GOV>; Salgado, Victor (CRM) <Victor.Salgado@CRM.USDOJ.GOV>; Cataldo, Simon (CRM) <Simon.Cataldo@CRM.USDOJ.GOV>
> **Subject:** Arpaio Pardon Response
>
> Hi Larry,
> I hope you're enjoying the holiday weekend. (b) (5) [redacted]
>
> [redacted]
>
> Thanks so much,
> AnnaLou

Re_ Correction for NPR.pdf

From: Taylor, Will (OPATTY)
To: Navas, Nicole (OPA)
Cc: Kupers, Lawrence B. (OPATTY)
Subject: Re: Correction for NPR
Date: Tuesday, August 29, 2017 4:25:51 PM

Thanks!

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6) – Direct Line
(b) (6)
http://www.justice.gov/pardon/

On Aug 29, 2017, at 4:11 PM, Navas, Nicole (OPA) (b) (6) wrote:

> I reached out to reporter. Thank you
>
> Nicole Navas Oxman
> Spokesperson/Public Affairs Specialist
> U.S. Department of Justice (DOJ)
> (b) (6) (office)
> (b) (6) (cell)
> (b) (6)
>
> ---
>
> **From:** Taylor, Will (OPATTY)
> **Sent:** Tuesday, August 29, 2017 12:58 PM
> **To:** Navas, Nicole (OPA) (b) (6)
> **Cc:** Kupers, Lawrence B. (OPATTY) (b) (6)
> **Subject:** Correction for NPR
>
> Nicole,
>
> Here is another article that could use some corrections.
> http://www.npr.org/2017/08/28/546729186/after-arpaio-4-answers-to-questions-about-how-pardons-are-supposed-to-work
>
> ***"It doesn't mean a person is innocent, but it wipes his record clean, allowing him to vote, serve as a member of a jury, run for political office and in many cases win licenses to own firearms and perform certain jobs."*** A pardon does

not “wipe a record clean”. The only thing that does that is expungement, which is a judicial remedy. See https://www.justice.gov/pardon/frequently-asked-questions-concerning-executive-clemency#18

“A commutation shortens a person's prison sentence, but it does not remove a conviction from his or her record. People who win commutations are still required to pay restitution for their crimes.” And ***“Under President George W. Bush, former vice presidential aide Lewis "Scooter" Libby won a commutation in a leak case involving the identity of a CIA operative.”*** A federal felon can’t “win” executive clemency. “The President . . . shall have Power to **grant** Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.” That winning language was used by the press during the Obama administration as well, which gave the impression that executive clemency was some sort of lottery, which it’s not.

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6) [redacted]
http://www.justice.gov/pardon/

Re_ FOIA Notification.pdf

From: Taylor, Will (OPATTY)
To: Schreiner, Susan (JMD)
Subject: Re: FOIA Notification
Date: Friday, September 15, 2017 2:08:34 PM

That sounds great. If you can invite Jennifer Mills that would be great.

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
[redacted]
http://www.justice.gov/pardon/

On Sep 15, 2017, at 1:53 PM, Schreiner, Susan (JMD) (b) (6) [redacted] wrote:

> Hi Will –
>
> We have an option we'd like to discuss with you that would involve using Microsoft's Compliance and Security Center product. I will arrange a meeting with Kevin Yasuda, you, and me to discuss. Who else should be invited from your staff?
>
> Thank you.
> Susan
>
> ---
>
> **From:** Taylor, Will (OPATTY)
> **Sent:** Wednesday, September 13, 2017 4:53 PM
> **To:** Schreiner, Susan (JMD) (b) (6) [redacted]
> **Subject:** RE: FOIA Notification
>
> Susan – any luck on this? The attached shows why this issue is so frustrating for me.
>
> Thanks,
>
> Will Taylor
> *Executive Officer*
> Office of the Pardon Attorney
> 2Con | 145 N Street N.E.
> Room 5E.103
> Washington, DC 20530
> (b) (6) [redacted]

(b) (6)
http://www.justice.gov/pardon/

From: Schreiner, Susan (JMD)
Sent: Tuesday, September 12, 2017 8:52 AM
To: Taylor, Will (OPATTY) (b) (6)
Subject: RE: FOIA Notification

No such luck. I keep hoping for the same – but work keeps coming to the people who get it done! ☺

Talk with you soon.

Susan

From: Taylor, Will (OPATTY)
Sent: Tuesday, September 12, 2017 8:31 AM
To: Schreiner, Susan (JMD) (b) (6); Devitt, Dawn (JMD) (b) (6); Forrester, Rosemarie (JMD) (b) (6); JMD_FEDC <Ex_FEDC@jmd.usdoj.gov>; Sarco, Shirley T. (JMD) (b) (6); Schreiner, James W (JMD) (b) (6); Devitt, Dawn (JMD) (b) (6); Schreiner, James W (JMD) (b) (6); Greer, Christopher M. (JMD) (b) (6)
Cc: Alexander, Monique Y. (OPATTY) (b) (6); Mills, Jennifer K. (OPATTY) (b) (6); Pendergrass, Matthew J. (OPATTY) (b) (6); Plante, Jeanette (JMD) (b) (6)
Subject: RE: FOIA Notification

Hi Susan,

I thought OPA would fall off the high visibility radar so we could focus on our huge backlog of cases, but we haven't been so lucky yet.

Thanks for looking into this and I look forward to hearing from you soon.

Regards,

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)

(b) (6)
http://www.justice.gov/pardon/

From: Schreiner, Susan (JMD)
Sent: Tuesday, September 12, 2017 7:57 AM
To: Taylor, Will (OPATTY) (b) (6); Devitt, Dawn (JMD) (b) (6); Forrester, Rosemarie (JMD) (b) (6); JMD_FEDC <Ex_FEDC@jmd.usdoj.gov>; Sarco, Shirley T. (JMD) (b) (6); Schreiner, James W (JMD) (b) (6); Devitt, Dawn (JMD) (b) (6); Schreiner, James W (JMD) (b) (6); Greer, Christopher M. (JMD) (b) (6)
Cc: Alexander, Monique Y. (OPATTY) (b) (6); Mills, Jennifer K. (OPATTY) (b) (6); Pendergrass, Matthew J. (OPATTY) (b) (6); Plante, Jeanette (JMD) (b) (6)
Subject: RE: FOIA Notification

Hi Will –

Hope all is well for you – see you are busy as usual. I have a few ideas – let me talk with Dawn D and the Microsoft team and I will get back with you soonest.

Thank you.
Susan

From: Taylor, Will (OPATTY)
Sent: Monday, September 11, 2017 6:04 PM
To: OCIO eDiscovery Team (b) (6); Schreiner, Susan (JMD) (b) (6); Devitt, Dawn (JMD) (b) (6); Schreiner, James W (JMD) (b) (6); Greer, Christopher M. (JMD) (b) (6)
Cc: Alexander, Monique Y. (OPATTY) (b) (6); Mills, Jennifer K. (OPATTY) (b) (6); Pendergrass, Matthew J. (OPATTY) (b) (6)
Subject: FW: FOIA Notification

I have had this discussion with a few of you in the past, so I hate to keep bringing it back up. However, given our nonexistent FOIA resources, OPA really needs to be able to utilize automated tools to search across our own email without burdening the eDiscovery Services group each time. Especially because (1) some of the search criteria overlaps, so it's a really poor use of our (my) time to have to review and make disclosure determinations on the same records multiple times; (2) we are starting to see more FOIA appeals, so it would be nice to be able to re-run the searches again when OIP reaches out to us about the completeness of a search and the need to supplement our original disclosure; and (3) it's a bit of a

challenge to keep track of our data requests by pestering Dawn and her group. Are there really no options available for us to accomplish this in-house using OCIO tools?

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
[redacted]
http://www.justice.gov/pardon/

From: Taylor, Will (OPATTY)
Sent: Monday, September 11, 2017 5:55 PM
To: All_OPA (JMD) (b) (6) [redacted] >
Subject: FOIA Notification

OPA:

Please allow this email to serve notice that JMD will be accessing each of our emails in relation to the below FOIA requests. The topics they will be looking for range from "all communications" to those specifically related to: President Trump, Jared Kushner, Bob Mueller, Mike Pence, Jeff Sessions, President Ford, President Nixon, Leonard Peltier, twitter, Joseph Arpaio, Michael Flynn, and James Comey.

FOIA 2017-272304
FOIA 2017-271943
FOIA 2017-273139
FOIA 2017-273141
FOIA 2017-272306
FOIA 2017-272307
FOIA 2017-273183
FOIA 2017-273066
FOIA 2017-272185
FOIA 2017-272323
FOIA 2017-272308
FOIA 2017-272403
FOIA 2017-273135
FOIA 2017-273136

FOIA 2017-268124
FOIA 2017-272405
FOIA 2017-273142
FOIA 2017-273143
FOIA 2017-272303
FOIA 2017-273083
FOIA 2017-273134
FOIA 2017-273137

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6) [redacted]
[redacted]
http://www.justice.gov/pardon/

Re_ Fox News request -- former Border Patrol ag....pdf

From: Prior, Ian (OPA)
To: Taylor, Will (OPATTY)
Cc: Navas, Nicole (OPA)
Subject: Re: Fox News request -- former Border Patrol agents w/ pending pardon requests -- info
Date: Wednesday, September 27, 2017 5:00:38 PM

Ok thx!

Ian D. Prior
Principal Deputy Director of Public Affairs
Office: (b) (6)
Cell: (b) (6)

For information on office hours, access to media events, and standard ground rules for interviews, please click here.

On Sep 27, 2017, at 4:58 PM, Taylor, Will (OPATTY) (b) (6) wrote:

(b) (5)

[redacted]

[redacted]

[redacted]

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
[redacted]
http://www.justice.gov/pardon/

From: Prior, Ian (OPA)
Sent: Wednesday, September 27, 2017 4:30 PM
To: Taylor, Will (OPATTY) (b) (6)
Cc: Navas, Nicole (OPA) (b) (6)
Subject: FW: Fox News request -- former Border Patrol agents w/ pending pardon requests -- info

Hey Will,

(b) (5) [redacted]

Ian D. Prior
Principal Deputy Director of Public Affairs
Department of Justice
Office: (b) (6) [redacted]
Cell: (b) (6) [redacted]

For information on office hours, access to media events, and standard ground rules for interviews, please click here.

From: Singman, Brooke [mailto:(b) (6) [redacted]
Sent: Wednesday, September 27, 2017 2:16 PM
To: Prior, Ian (OPA) (b) (6) [redacted]; Flores, Sarah Isgur (OPA) (b) (6) [redacted]
Subject: Fox News request -- former Border Patrol agents w/ pending pardon requests -- info

Hi Ian and Sarah,

Do you have anyone that can get me information on these cases?
Former Border Patrol Agents Ignacio Ramos and Jose Compean? I believe they have two pardon requests pending at Justice right now.

Deadline will be 4p EST.

Thanks!

Brooke

HUNTER REQUESTS PRESIDENTIAL PARDONS FOR FORMER BORDER PATROL AGENTS

Washington, DC -- Congressman Duncan Hunter (CA-50) sent a letter to President Trump requesting a presidential pardon for

former Border Patrol Agents Ignacio Ramos and Jose Compean who were sentenced to federal prison in 2006 for assault against the drug smuggler they were apprehending in the performance of their jobs. While President Bush commuted their 10-year sentence in 2009, these agents remain convicted felons adversely affecting their employment opportunities and quality of life.

"These agents were in process of apprehending an illegal alien smuggling over 700 pounds of drugs into our country," said Congressman Hunter. "In the course of a struggle, and in what appeared to be the suspect brandishing a weapon, these agents fired their guns and hit him in the backside as he escaped back into Mexico. Rather than reward these agents for their $1 million seizure, a U.S. Attorney offered the drug smuggler immunity in exchange for testimony to prosecute and convict them. President Bush's actions got Ramos and Compean out of prison and I'm calling on President Trump to take the next step and give these agents their lives back."

Congressman Hunter's letter comes after President Trump exercised his authority earlier this year to pardon former Arizona Sherriff Joe Arpaio. Both Ramos and Compean were veterans of the U.S. Border Patrol with unblemished service records and Agent Ramos had previously been nominated for Border Patrol Agent of the Year. Conversely, the drug smuggler, Mr. Aldrete-Davila, was captured again after this incident and pleaded guilty to multiple drug charges, including possession of a controlled substance with the intent to distribute.

Congressman Hunter's letter to President Trump is attached.

# # #

www.hunter.house.gov

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee. If you are not the addressee indicated in this message (or responsible for delivery of the message to the addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox News or Fox Business must not be taken to have been sent or endorsed by either of them. No representation is made that this email or its attachments are without defect.

Re_ Pardon_1.pdf

(b)
(5)

(b) (5) [redacted]

[redacted]

(b) (6) [redacted]

[redacted]

Re_ Rubashkin-ASAP.pdf

(b)
(5)

(b) (6)

(b) (6)

(b) (6)

(b) (5)
(b) (6)

Re_ Santa Cruz interlude.pdf

From: (b) (6)
To: Kupers, Lawrence B. (OPATTY)
Subject: Re: Santa Cruz interlude
Date: Friday, September 1, 2017 11:56:32 AM

Dear Larry,
I'm thinking of you as I read the briefs and analysis on the propriety of the Arpaio pardon.
Hope all is well as can be.
Best to you and your family. (b) (6)

Sent from my iPhone

On Aug 19, 2015, at 1:56 PM, Kupers, Lawrence B. (OPATTY) (b) (6) > wrote:

> Thanks, (b) (6) Again, I'm sorry to give such short notice but we would love to see you. I'll be in contact once we get to Oakland. Can you give me the best number or numbers to reach you. Each time I change jobs, I change cellphones and lose all my contact info.
>
> ---
>
> **From:** (b) (6)
> **Sent:** Wednesday, August 19, 2015 1:52 PM
> **To:** Kupers, Lawrence B. (OPATTY)
> **Subject:** Re: Santa Cruz interlude
>
> Yippee! We'd love to see you. Sunday dinner would be great. You're welcome to stay with us on Sunday or any other night of the coming week.
> More to follow. (b) (6)
>
> Sent from my iPhone
>
> On Aug 19, 2015, at 10:12 AM, Kupers, Lawrence B. (OPATTY) (b) (6) > wrote:
>
> > (b) (6)
> >
> > I hope this email finds you and yours healthy and happy. My wife, daughter and I are flying out to California this coming Friday, August 21, for a week in Northern California. We were thinking about driving down to Santa Cruz to visit you if you've got some time. Our tentative plan is to fly in Friday, stay with my brother Terry in Oakland on Friday and Saturday, and then drive down to Santa Cruz on Sunday. After that we will make our way up to Healdsburg to visit with my brother (b) (6) (who sends his greetings to you) and maybe stay as well in Oakland for a few days. I know this is late notice but if you have any time for us on Sunday, let me know. Otherwise, let's catch up by phone. I see you've gotten yourself famous by doing a great job representing a local politico, (b) (6). I hope private practice is giving you some satisfaction.

Larry Kupers
Deputy Pardon Attorney
Office of the Pardon Attorney
(b) (6)
(b) (6)

Re_ Sheriff Joe Arpaio pardon, matter.pdf

From: Taylor, Will (OPATTY)
To: Hornbuckle, Wyn (OPA)
Cc: Navas, Nicole (OPA); Kupers, Lawrence B. (OPATTY)
Subject: Re: Sheriff Joe Arpaio pardon, matter
Date: Monday, August 21, 2017 9:21:57 AM

Thanks Wyn.

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
http://www.justice.gov/pardon/

On Aug 21, 2017, at 9:08 AM, Hornbuckle, Wyn (OPA) (b) (6) wrote:

> Thanks I've already taken care of this.
>
> ---
>
> **From:** Taylor, Will (OPATTY)
> **Sent:** Monday, August 21, 2017 7:27 AM
> **To:** Hornbuckle, Wyn (OPA) (b) (6) ; Navas, Nicole (OPA) (b) (6)
> **Cc:** Kupers, Lawrence B. (OPATTY) (b) (6)
> **Subject:** Fwd: Sheriff Joe Arpaio pardon, matter
>
> FYI
>
> Will Taylor
> Executive Officer
> Office of the Pardon Attorney
> 2Con | 145 N Street N.E.
> Room 5E.103
> Washington, DC 20530
> (b) (6)
> http://www.justice.gov/pardon/
>
> Begin forwarded message:
>
> > **From:** USPardon Attorney <Ex_USPardonAttorney@jmd.usdoj.gov>
> > **Date:** August 21, 2017 at 7:21:52 AM EDT
> > **To:** "Taylor, Will (OPATTY)" (b) (6)
> > **Cc:** "Mills, Jennifer K. (OPATTY)" (b) (6)

Subject: FW: Sheriff Joe Arpaio pardon, matter

FYI

From: [b) (6) [mailto:(b) (6)
Sent: Friday, August 18, 2017 4:34 PM
To: Hornbuckle, Wyn (OPA) (b) (6); USPardon Attorney <Ex_USPardonAttorney@jmd.usdoj.gov>
Cc: Paul Weich (b) (6)
Subject: RE: Sheriff Joe Arpaio pardon, matter

Is there anything you CAN tell us? If not, why can't you tell us anything? Can the President just go it on his own or order you to make it happen?

Thanks and have a great weekend! --Paul

> -------- Original Message --------
> Subject: RE: Sheriff Joe Arpaio pardon, matter
> From: "Paul Weich" (b) (6)
> Date: Thu, August 17, 2017 11:13 am
> To: "Hornbuckle, Wyn (OPA)"
> (b) (6)
> USPardon.Attorney@usdoj.gov
> Cc: "Paul Weich" (b) (6)
>
> Wyn/William/Lawrence,
>
> Would one of you please give some comment on the general process, if not on the specific case? I think it would be very helpful for Maricopa County readers to get an accurate understanding of how the pardon process is supposed to work.
>
> Thanks--Paul
>
> > -------- Original Message --------
> > Subject: Sheriff Joe Arpaio pardon, matter
> > From: "Paul Weich" (b) (6)
> > Date: Tue, August 15, 2017 3:27 pm
> > To: "Hornbuckle, Wyn (OPA)"
> > (b) (6)
> > USPardon.Attorney@usdoj.gov
> >
> > Wyn, William, Lawrence:
> >
> > So, I understand declining to comment on the specific case of whether the President is considering a pardon of newly-convicted Sheriff Joe Arpaio.
> >
> > However, can you please comment on the general

process? It would appear that there is a detailed process set up in the CFR, and that your office must determine whether someone is appropriate for a pardon before the President can offer one. It would also appear that someone convicted 2 weeks ago and not yet sentenced would not be eligible.

Is this accurate? Can the President bypass the DOJ process and just issue pardons on his own? (Not even addressing that mega-question of self-pardoning)

Thanks--Paul

Paul Weich, co-founder

www.ArizonasPolitics.com

(b) (6)

> -------- Original Message --------
> Subject: RE: URGENT: Sheriff Joe Arpaio matter
> From: "Paul Weich"
> (b) (6)
> Date: Mon, August 14, 2017 3:18 pm
> To: "Hornbuckle, Wyn (OPA)"
> (b) (6)
>
> Thanks, Wyn, I understand. Can you at least comment on the ordinary process, in a generic way?
>
> > -------- Original Message --------
> > Subject: RE: URGENT: Sheriff Joe Arpaio matter
> > From: "Hornbuckle, Wyn (OPA)"
> > (b) (6)
> > Date: Mon, August 14, 2017 3:11 pm
> > To: (b) (6)
> >
> > Hi Paul,
> > We'll decline to comment.
> >
> > **From:** Paul Weich
> > [mailto:(b) (6)
> > **Sent:** Monday, August 14, 2017 4:44 PM

To: Hornbuckle, Wyn (OPA)
(b) (6)
Subject: RE: URGENT: Sheriff Joe Arpaio matter

Hi, Wyn!

Not sure if you've caught this yet, but the President told Fox News yesterday that he is "seriously considering a pardon for Sheriff Arpaio."

So, has the White House reached out to AG Sessions or anyone in the DOJ about last month's conviction and/or a possible pardon? If so, what details can you give and what timeline makes sense from the DOJ's perspective? (In fact, what is the standard process for a possible pardon/etc of a federal conviction, as far as interaction between the WH and DOJ?)

Thanks--Paul

Paul Weich, co-founder

www.ArizonasPpolitics.com

(b) (6)

> -------- Original Message --------
> Subject: RE: URGENT: Sheriff Joe Arpaio matter
> From: "Hornbuckle, Wyn (OPA)"
> (b) (6)
> Date: Wed, June 21, 2017 11:59 am
> To: Paul Weich
> (b) (6)
>
> The DAAG position supervises PIN.
>
> As I said, The department

is prepared for trial, currently scheduled for June 26 in Phoenix. We stand by our filings in federal court, and will decline to comment beyond those filings.

From: Paul Weich [mailto:(b) (6)
Sent: Wednesday, June 21, 2017 1:39 PM
To: Hornbuckle, Wyn (OPA)
(b) (6)
Subject: RE: URGENT: Sheriff Joe Arpaio matter

Thanks, Wyn! So, just shuffling people to fill holes here and there? But, does that mean Ray was removed as Section Chief for PIN, and a new Chief either has been or will be nominated?

And - I have to ask - this does not mean any changes in how PIN is handling either the Arpaio matter or the Arizona Corporation Commission matter, correct?

--Paul

> --------
> Original Message ------
> --
> Subject: RE: URGENT: Sheriff Joe Arpaio matter
> From: "Hornbuckle, Wyn (OPA)"

(b) (6)
Date: Wed, June 21, 2017 7:25 am
To: "'Paul Weich'"
(b) (6)

Ray is currently serving as an acting Deputy Assistant Attorney General for the Criminal Division, with responsibilities including PIN. AnnaLou Tirol is acting director of PIN.

From: Paul Weich [mailto:(b) (6)
Sent: Wednesday, June 21, 2017 1:58 AM
To: Hornbuckle, Wyn (OPA)
(b) (6)
Subject: RE: URGENT: Sheriff Joe Arpaio matter

Hi, Wyn! Thanks for quickly responding last time.

I noticed that you didn't respond to my question re: any possible changes in the

Public Integrity Section, and whether there might be any change in the Section's prosecution of Arpaio.

I now note that Raymond Hulser is no longer the Chief of the Section. What happened, and when? Did he leave for another position elsewhere?

Thanks, and please give me a call if you have questions about my questions, or wish to discuss verbally.

--Paul

Paul Weich,
co-founder

www.ArizonasPpolitics.com

(b) (6)

> -------
> -
> Original Message
> -------
> -
> Subject: RE: URGENT: Sheriff Joe Arpaio matter
> From:

"Hornbuckle, Wyn (OPA)"
(b) (6)
Date: Fri, June 09, 2017 1:46 pm
To:
(b) (6)

Hi Paul,

As far as the Arpaio case is concerned, the department is prepared for trial, currently scheduled for June 26 in Phoenix. We stand by our filings in federal court, and will decline to comment beyond

those filings.

On the petitions, we're aware of them and will not have a further response.

Respectfully,

Wyn Hornbuckle
Deputy Director, Office of Public Affairs
U.S. Department of Justice
(b) (6)
[redacted]

From: Paul Weich [mailto(b) (6) [redacted]
Sent: Thursday, June 8, 2017

4:58 PM

To: Press (b) (6)

Cc: Mitch Martinson (b) (6)

Subject: URGENT: Sheriff Joe Arpaio matter

Hi! I was just trying to reach Wyn Hornbuckle regarding the Sheriff Joe Arpaio matter. He was cited in the Breitbart account as accepting 40,000 support petitions.

We're looking to verify this ASAP, and to ask for (1) a copy

of the petitions; (2) information on what the DOJ did/does with those petitions; and (3) if the DOJ has any response to the petitions

Further, we would like to know if the DOJ has a position on Arpaio's appeal to the U.S. Supreme Court re: the jury trial issue, and if there have been any changes in the Public Integrity Section handling the matter (since

the change in DOJ leadership)?

Our deadline is at 7pm Eastern, so whatever you can get us in the next hour or two is great. If any other answers come after that, we'd appreciate it and would update our coverage.

Thanks-
-Paul

Paul Weich, co-founder

www.ArizonasPpolitics.com

(b) (6)

Re_ back in the office.pdf

From: Bolitho, Zachary (ODAG)
To: Kupers, Lawrence B. (OPATTY)
Subject: Re: back in the office
Date: Monday, August 14, 2017 11:35:43 AM

Larry,

Hmm. I've not heard anything about this at all. Let me check.

Thanks,
Zac

On Aug 14, 2017, at 11:29 AM, Kupers, Lawrence B. (OPATTY) <lkupers@jmd.usdoj.gov> wrote:

> Thanks, Zac.
>
> By the way, Will pointed me to this article in the Washington Times (link below) that discussed an alleged offer of the Pardon Attorney job by someone (?) to Paul Larkin. Will's concern is that it be understood that the job is not a political appointment but rather a competitive career position. He can certainly initiate the competitive process if there is interest in doing so.
>
> http://www.washingtonexaminer.com/trump-is-off-to-a-stingy-start-on-clemency/article/2631276
>
> Larry
>
> (b) (5) [redacted]
>
> (b) (6) [redacted]

(b) (6)

Re_ proposed corrections.pdf

From: Navas, Nicole (OPA)
To: Taylor, Will (OPATTY)
Subject: Re: proposed corrections
Date: Tuesday, August 22, 2017 1:54:02 PM

Great

Thank you,

Nicole Navas Oxman
Spokeswoman
U.S. Department of Justice

On Aug 22, 2017, at 1:50 PM, Taylor, Will (OPATTY) (b) (6) wrote:

> I'm over there for meetings at least twice a month. I'll keep you posted.
>
> Will Taylor
> *Executive Officer*
> Office of the Pardon Attorney
> 2Con | 145 N Street N.E.
> Room 5E.103
> Washington, DC 20530
> (b) (6)
> http://www.justice.gov/pardon/
>
> ---
>
> **From:** Navas, Nicole (OPA)
> **Sent:** Tuesday, August 22, 2017 12:55 PM
> **To:** Taylor, Will (OPATTY) (b) (6)
> **Subject:** RE: proposed corrections
>
> Hopefully, we can meet soon. Please let me know if you are ever at RFK. Thank you
>
> Nicole Navas Oxman
> Spokesperson/Public Affairs Specialist
> U.S. Department of Justice (DOJ)
> (b) (6) (office)
> (b) (6) (cell)
> (b) (6)
>
> ---
>
> **From:** Taylor, Will (OPATTY)
> **Sent:** Tuesday, August 22, 2017 10:03 AM
> **To:** Navas, Nicole (OPA) (b) (6)
> **Cc:** Hornbuckle, Wyn (OPA) (b) (6) ; Kupers, Lawrence B.

(OPATTY) (b) (6)
Subject: Re: proposed corrections

Thanks Nicole! I'll stop bothering Wyn now that you're back in the matrix.

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
[redacted]
http://www.justice.gov/pardon/

On Aug 21, 2017, at 11:22 PM, Navas, Nicole (OPA) (b) (6) wrote:

> I spoke to reporter and the article has been updated at: http://www.thedailybeast.com/donald-trump-may-circumvent-the-usual-process-to-pardon-sheriff-joe-arpaio
>
> Thank you,
>
> Nicole Navas Oxman
> Spokeswoman
> U.S. Department of Justice
>
> On Aug 21, 2017, at 12:34 PM, Taylor, Will (OPATTY) (b) (6) wrote:
>
> > Nicole and Wyn:
> >
> > The following highlighted statement from the linked article is one of many inaccuracies, but it's the only one I think is worth correcting at this time.
> >
> > http://www.thedailybeast.com/donald-trump-may-circumvent-the-usual-process-to-pardon-sheriff-joe-arpaio
> >
> > <!--[if !supportLists]-->1. <!--[endif]-->*"Trump has yet to name a new pardon attorney…"* – The Pardon Attorney position is a key position in DOJ; however, it is not a presidentially appointed slot. It is a **Career Reserved position,** which, as

defined in law, is "to ensure impartiality, or public's confidence of impartiality of government." These positions can only be filled by career appointees. Generally, the process includes widespread public notification of the job announcement where diverse populations are engaged in the recruitment phase, preliminary review of applications by a human resources specialist, rating and ranking of applicants by a panel with in-depth knowledge of the job's requirements, evaluation of each candidate's qualifications by an Executive Resources Board, and final recommendation to the appointing authority. See https://www.opm.gov/policy-data-oversight/senior-executive-service/overview-history/

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
[redacted]
http://www.justice.gov/pardon/

Requested warrant.pdf

(b) (5)

(b) (6)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Sincerely,

Rosalind Sargent-Burns
Senior Attorney Advisor
Office of the Pardon Attorney
U.S. Department of Justice
145 N Street, NE, Room 5E.508
Washington, DC 20530
Telephone: (b) (6)

(b) (5)

(b) (5)

[redacted]

Saturday’s Headlines_ At least 25 states resist....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: Saturday"s Headlines: At least 25 states resist sweeping data request by voting commission
Date: Saturday, July 1, 2017 6:02:57 AM

Democracy Dies in Darkness

Today's Headlines

The morning's most important stories, selected by Post editors

Information & Communications Technology Graduate Program
Bachelor's required, no GRE or GMAT!

University of Denver -...

LEARN MORE

Powered by Liveintent

AdChoices

Top Stories

At least 25 states resist sweeping data request by voting commission

The request brought the first significant attention to the commission since President Trump started it last month, following through on a vow to pursue unsubstantiated claims that voter fraud is rampant and cost him the popular vote in the presidential election.

By Mark Berman and David Weigel • Read more »

Health-care dispute within GOP widens as Trump backs idea to repeal first, replace later

As two senators and President Trump called for an outright repeal of the Affordable Care Act if a deal can't be reached, others demanded the Senate work through its August recess.

By Juliet Eilperin, Sean Sullivan and Kelsey Snell • Read more »

Some inside White House see Trump's media feud as 'winning'

This week had it all: vicious tweets, nasty nicknames, an entrenched foe in the mainstream media — and a chance for the president to rally his base of supporters while reprising the role of the victim.

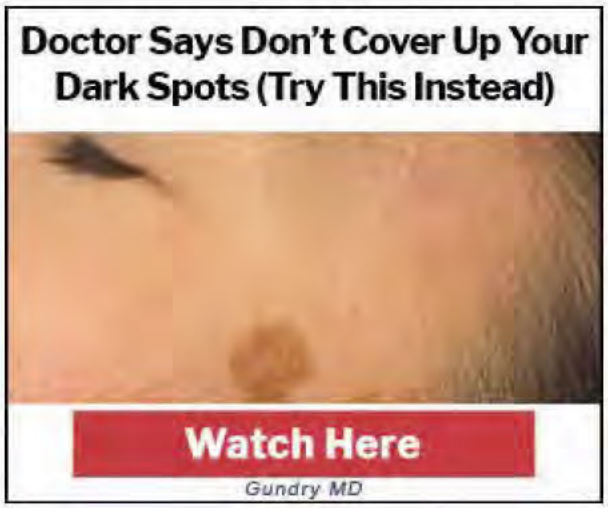
By Philip Rucker and Ashley Parker • Read more »

As an episode during his Mideast trip shows, Trump is seeing how hard it can be to land the 'ultimate' deal

After taking office, the president immediately dived into the conflict between Israel and the Palestinians — and he has gotten firsthand exposure to the maneuvering and pressure tactics used by both sides in the six-decade impasse.

By Anne Gearan and Karen DeYoung • Read more »

ADVERTISEMENT



Opinions

Is this it for Trump?

By Kathleen Parker • Read more »

America's shockingly violent birth

By George F. Will • Read more »

How U.S. presidents missed the Russia threat — until it was much, much too late

By Anne Applebaum • Read more »

Too many Americans still don't see black history as their own

By Margaret Jordan • Read more »

There's an ongoing terrorist attack in Ohio

By Gary Abernathy • Read more »

Joe Arpaio learns that he is not above the law

By Editorial Board • Read more »

ADVERTISEMENT

More News

China's president tells Hong Kong not to cross 'red line' by challenging Beijing

At a ceremony marking the 20th anniversary of Hong Kong's handover from British rule, President Xi Jinping made it clear that challenges to Beijing's authority would not be allowed.

By Simon Denyer • Read more »

First new Israeli-approved Jewish settlement in decades begins to rise in the West Bank

Prime Minister Benjamin Netanyahu hailed the construction of the Amichai settlement. But Palestinians and Israeli anti-occupation groups are wary of its effects on reviving peace talks.

By William Booth • Read more »

Top 50 NBA free agents: Stephen Curry back in the fold for Warriors with Kevin Durant expected to follow

The Warriors' superstars won't be going anywhere. That can't be said for the rest of the NBA's top free agents this summer.

By Tim Bontemps • Read more »

Why a million Russians waited in line — some as long as 10 hours — for a brief glimpse of a rib of Saint Nicholas

The saint who inspired the Santa Claus legend is known to

Gunman at Bronx hospital kills 1, wounds 6 others before taking own life, police say

The shooter, a former employee, attempted to set himself on fire in the hospital before he was found

Russians as a miracle worker, and his relics are on loan in Moscow for the first time from the Italian city where they rested for 930 years.

By David Filipov • Read more »

dead with what appeared to be a self-inflicted gunshot wound, police said.

By Wesley Lowery, Nicole Lewis and Mark Berman • Read more »

Democratic Senate staffers are mostly white and women, new report says

A first-of-its kind survey will help track the lack of diversity on Capitol Hill, advocates said. The report found that only 32 percent of staffers are "non-Caucasian."

By Ed O'Keefe • Read more »

On eve of deadline, Pentagon delays plan to allow transgender recruits by 6 months

Defense Secretary Jim Mattis has delayed a plan approved by the Obama administration a year ago to begin allowing transgender recruits to join the U.S. military, providing the Joint Chiefs of Staff with a six-month reprieve they requested.

By Dan Lamothe • Read more »

Share Today's Headlines: Twitter Facebook

Trouble reading? Click here to view in your browser.

You received this email because you are signed up for Headlines. For additional free newsletters or to manage your newsletters, click here.
We respect your privacy. If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, click here.
Contact us for help.

©2017 The Washington Post, 1301 K St NW, Washington DC 20071

Saturday’s Headlines_ Hurricane Harvey hits Tex....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: Saturday"s Headlines: Hurricane Harvey hits Texas, bringing heavy rain, storm surge
Date: Saturday, August 26, 2017 6:02:25 AM

The Washington Post

Democracy Dies in Darkness

Today's Headlines

The morning's most important stories, selected by Post editors

instant results

LIQUID LASH EXTENSIONS MASCARA™
SHOP NOW
thrive causemetics

Powered by LiveIntent

AdChoices

Top Stories

Hurricane Harvey hits Texas, bringing heavy rain, storm surge

After landfall on Friday at Category 4, Harvey weakened to a still-dangerous Category 2 storm early Saturday,

with the meteorologists predicting up to 30 inches of rain and “catastrophic” floods. Some parts of southeastern Texas reported 10 inches of rain within hours after Harvey came ashore.

By Tim Craig, Mary Lee Grant and Joel Achenbach • Read more »

Retropolis: The most devastating storms in U.S. history

From Galveston in 1900 to Katrina in 2005, people who ignored warnings to evacuate paid dearly for it. Will those in the path of Hurricane Harvey make the same mistake?

By Petula Dvorak • Read more »

Trump’s focus on Hurricane Harvey intensifies

The president faces his first big test of emergency management response a dozen years after Hurricane Katrina hobbled a Republican predecessor.

By David Nakamura • Read more »

Trump pardons former Arizona sheriff Joe Arpaio

The president’s first pardon keeps one of his staunchest political allies out of jail and will likely cheer his conservative base. Arpaio was convicted of contempt of court for continuing to detain people merely because he suspected they were in the

country illegally.
By Devlin Barrett and Abby Phillip •
Read more »

Trump confronts top aide's harsh public rebuke of Charlottesville response

National Economic Council director Gary Cohn's criticism was the most serious public condemnation of Trump's behavior by a member of his inner circle since his presidency began, and it raised the question of how a president who puts a heavy premium on loyalty would react.
By Damian Paletta and Philip Rucker •
Read more »

Sebastian Gorka, fiery nationalist and Bannon ally, quits White House

Gorka, who was a spokesman on national security matters, said he resigned because his faction was silenced. But White House officials said he was pushed out.
By Philip Rucker • Read more »

Mueller's team issues subpoenas to lobbying firms as part of Russia probe

The special counsel's investigation is zeroing in on the finances of Michael Flynn, President Trump's former national security adviser, and Paul

Manafort, former chairman of the Trump presidential campaign.
By Carol D. Leonnig and Tom Hamburger • Read more »

ADVERTISEMENT

Opinions

Trump goes back to his professional wrestling days

By David Von Drehle • Read more »

Give Robert Lee a raise

By Kathleen Parker • Read more »

Trump's chilling contempt for future generations

By John Podesta • Read more »

Ukraine has finally removed all 1,320 Lenin statues. Our turn.

By Anne Applebaum • Read more »

Nation-building is the only way out of Afghanistan

By P.J. Crowley • Read more »

Where, oh where, are all Trump's political appointees?

By Editorial Board • Read more »

ADVERTISEMENT

More News

Trump directs Pentagon to ban transgender service

members, prohibit sex-reassignment surgery

The presidential memorandum reverses an Obama administration decision but leaves it to military leaders to address the fate of current transgender service members.

By Abby Phillip • Read more »

North Korea launches multiple missiles, heightening tensions

The launches coincide with joint exercises between the U.S. and South Korean militaries, exercises that North Korea always strongly protests because it considers them preparation for an invasion.

By Anna Fifield • Read more »

In once-welcoming Italy, the mood turns sour amid seemingly endless waves of migrants

With thousands of new arrivals from Africa every month, more Italians are starting to rebel, and they are driving their leaders to pursue once-unthinkable solutions to halt the flow.

By Michael Birnbaum • Read more »

A C-SPAN caller confessed his racism to a black guest. A year later, he called back to say how he'd changed.

A white man from the South learned to reverse his racial prejudice.

By Colby Itkowitz • Read more »

American service member missing after Black Hawk crashes off Yemen's coast

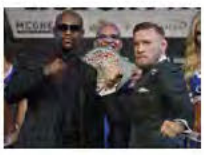
The aircraft crashed in what U.S. military officials are calling a training accident. U.S. forces rescued five other troops who were on board, U.S. Central Command said.

By Andrew deGrandpre • Read more »

6-year-old was locked in a basement and forced to eat carrots, police say

Brett Parker Tobiasson, 31, and his wife, Clarissa Anne Tobiasson, 27, who had adopted the boy, were charged with felony child abuse.

By Lindsey Bever • Read more »



Before Mayweather-McGregor, poll shows boxing holding its own in the face of MMA's growth

According to a new Washington Post-UMass Lowell poll, 28 percent of

Americans count themselves as fans of professional boxing, nearly matched by the 25 percent who say they're fans of MMA.

By Rick Maese and Scott Clement •

Read more »

Share Today's Headlines: Twitter Facebook

Trouble reading? Click here to view in your browser.

You received this email because you signed up for Today's Headlines or because it is included in your subscription. For additional free newsletters or to manage your newsletters, click here.

We respect your privacy. If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, click here. Contact us for help.

©2017 The Washington Post, 1301 K St NW, Washington DC 20071

Service Reassignment Alert (SPECIAL 272804) (In....pdf

From: Will Taylor
To: Gillespie, Kira (OPATTY)
Subject: Service Reassignment Alert (SPECIAL 272804) (Intranet Quorum IMA00772286)
Date: Friday, August 25, 2017 6:08:32 PM

User Will Taylor has reassigned the following Service for Mr. Joseph M. Arpaio, People ID #7254553, to you and others as User(s): Rosalind Sargent-Burns, Kira Gillespie:
Ros,

I am reassigning this WF to you. (b) (5) [redacted] Mr. Arpaio's attorney appears to be on vacation for the next few weeks. He left word with his office that it's important he return our call. However, he will likely find out from the press if he doesn't get back to us in the next few days.

Larry has also been instructed by ODAG to have the other notifications (USA, SJ, etc...) go out under OPA instead of ODAG.
https://iqapp.justapps.doj.gov/opa/workflowhome.aspx?showfolder=workflow&showcontent=ID272804&fa=y&iAccount=OPA

Sunday’s Headlines_ Harvey brings heavy damage ....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: Sunday"s Headlines: Harvey brings heavy damage to Texas coast, unloads torrential rain on Houston
Date: Sunday, August 27, 2017 7:43:16 AM

The Washington Post

Democracy Dies in Darkness

Today's Headlines

The morning's most important stories, selected by Post editors

Powered by LiveIntent

AdChoices

Top Stories

Harvey brings heavy damage to Texas coast, unloads torrential rain

on Houston

Harvey continued to pummel Texas during the early hours of Sunday morning, dropping 20 inches of rain on Houston and causing dire, and deadly, flash floods. Forecasters expect 15 to 30 inches of rain in many areas, with as much as 40 inches in isolated regions, according to the National Weather Service.

By Dylan Baddour, Kevin Sullivan and Wesley Lowery • Read more »

‘All night of slam, bang, boom,’ and then a scramble to assess the hurricane’s damage

In Rockport and the adjoining towns of Fulton and Aransas Pass, there were scores of damaged or destroyed properties. The Category 4 hurricane tossed mobile homes across streets, chewed through brick buildings and peeled off roofs and aluminum siding.

By Tim Craig • Read more »

Months before pardon, Trump asked Sessions about closing federal case against Arpaio

As the former Arizona sheriff’s federal case headed toward trial this spring, the president asked the attorney general whether the government could drop the criminal case, but was advised that would be inappropriate, according to people with knowledge of the conversation.

By Philip Rucker and Ellen Nakashima

- Read more »

Enraging his critics, Trump gives new meaning to the Friday night news dump

The multiple announcements he made as a hurricane approached enraged critics and buoyed supporters while leaving open the question of how they will be received by voters who don't fit into either camp.

By Abby Phillip • Read more »

Mayweather stops McGregor in 10th round of mega-fight

After months of hype, boxing superstar Floyd Mayweather Jr. took control in the later rounds to score a technical knockout of Conor McGregor, a UFC champion making his debut as a pro boxer.

By Rick Maese • Read more »

ADVERTISEMENT

Opinions

Mindfulness would be good for you. If it weren't so selfish.

By Thomas Joiner • Read more »

I fled despotism in Cuba. Now I'm fighting it in the U.S.

By Edel Rodriguez • Read more »

Where do we learn that poverty is dangerous? At the movies.

By Stephen Pimpare • Read more »

How I discovered my childhood priest was in the Ku Klux Klan

By Maria Santos Bier • Read more »

How it felt to be Pakistani in India during the triumph of Hindu nationalism

By Bilal Qureshi • Read more »

How Republicans may break a promise on tax reform

By Editorial Board • Read more »

ADVERTISEMENT

More News

How Charlottesville lost control amid a deadly protest

Confusion and conflicting information set the stage for what became one of the most violent white nationalist rallies in decades.

By Aaron C. Davis, Joe Heim and Laura Vozzella • Read more »

The latest 'breakthrough therapy' for soldiers suffering from PTSD? Ecstasy.

The psychedelic drug is headed for fast-track FDA review based on new research. The prospect of a government-sanctioned psychedelic drug has generated both excitement and concern, with many officials hesitant to embrace psychedelics because of the stigma attached to the drugs.

By William Wan • Read more »

Thousands in St. Louis will likely see smaller paychecks Monday as new law takes effect

In St. Louis, the minimum wage had increased to $10 after a Missouri Supreme Court decision following a two-year legal battle. Days after the ruling, Missouri's Republican-led Legislature passed a statewide uniform minimum wage requirement. The state minimum wage is $7.70 per hour.

By the Associated Press • Read more »

Hundreds arrested after riots in northern India leave 32 dead

The violence erupted after followers of the Dera Sacha Sauda sect's leader —

known as India's "rock-star baba" and the "guru of bling" — protested his rape conviction.

By Vidhi Doshi • Read more »

As the U.S. steps back, Vietnamese wonder if China is taking control

Vietnam is standing up to Beijing in public, but it may be a different matter in private.

By Vincent Bevins • Read more »

News quiz: Monumental moments

This week, we have questions about the amazing solar eclipse, two big speeches and national monuments. How closely did you follow the headlines?

By Tiffany Harness • Read more »

A hospital worker won the Powerball. Her prize: $758.7 million — and police outside her house.

By law, many lottery winners must have their names publicized or do news conferences. But the publicity can turn them into targets: some have fallen victim to fraudsters or thieves — or

worse.
By Cleve R. Wootson Jr. • Read more »

Share Today's Headlines: Twitter Facebook

Trouble reading? Click here to view in your browser.

You received this email because you signed up for Today's Headlines or because it is included in your subscription. For additional free newsletters or to manage your newsletters, click here.

We respect your privacy. If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, click here. Contact us for help.

©2017 The Washington Post, 1301 K St NW, Washington DC 20071

The 2017 D.C’s. Rising Stars(1).pdf

From: The National Law Journal Daily Headlines
To: Kupers, Lawrence B. (OPATTY)
Subject: The 2017 D.C"s. Rising Stars
Date: Monday, August 28, 2017 7:35:16 AM

THE NATIONAL LAW JOURNAL DAILY HEADLINES

TODAY'S TOP STORIES

The 2017 D.C's. Rising Stars

We are proud to present our 2017 Rising Stars. This year, we share their keys to success in their own words, edited... **READ MORE »**

Paul Manafort's Lawyer Leaves His Firm Two Weeks After Taking Case

Kevin Downing, a tax partner at Miller & Chevalier in Washington, D.C., left the firm Thursday. He will continue to... **READ MORE »**

Irell's Andrei Iancu Is Trump's Choice for PTO Director

Andrei Iancu, a heavy-hitting patent litigator and managing partner of Irell & Manella has been tapped to replace Michelle... **READ MORE »**

Joe Arpaio Pardon Unleashes Surge of Censure From Lawyers

President Donald Trump's pardon on Friday evening of ex-Maricopa County Sheriff Joe Arpaio took no one by surprise. **READ MORE »**

A New Crown Rises as Manatt's Consulting Group Breaks Away

Manatt, Phelps & Phillips' consulting arm is no more. Monarch Global Strategies LLC opened on Aug. 1 with offices in... **READ MORE »**

What the DreamHost/DOJ Battle Says About Search Warrants in the Digital Age

A battle over a DOJ's search warrant highlights the ongoing struggles to define the scope of search warrants and First... **READ MORE »**

Colorado Says DOJ's Dope Concerns Are All Smoke, CFPB and the U.S. Chamber Quarrel Over Arbitration: Roundup

Here's a weekly roundup of big regulatory news, including CFPB Director Richard Cordray taking to the NYT op-ed pages...

READ MORE »

Food Safety Legal Expert: 'Have a SWAT Team Ready'

As news of food-safety investigations ramps up, Corporate Counsel

recently spoke with Eric Kuwana, a partner at Katten... **READ MORE »**

SPONSORED SPOTLIGHT:
Cyber concerns: how security risks and new data rules are impacting law firms

Law firms are racing to untangle the myriad technology and cybersecurity challenges they must overcome to meet what has become an increasingly complex and expensive compliance backdrop. **READ MORE »**

MORE STORIES FROM ALM

'I Fully Expect to Be Sued': Buzbee Eyes Fallout Over Scrapped 'White Lives Matter' Rally

"If he thinks I'm scared. He should think again," Texas U&M regent Tony Buzbee said after squaring off with the organizer...

READ MORE »

Private Investigators Say They Warned Lawyers Waffle House Sex Tape Was Illegal

When two lawyers asked how to secure video evidence of an alleged workplace sexual encounter between the CEO of Waffle...

READ MORE »

Jewish Bar's 'Adopt a Nazi' Fundraiser Goes Viral

To counter rallies scheduled for San Francisco and Berkeley next weekend, the JBASF is holding an online fundraiser... **READ MORE »**

Walker County Lawyer Charged With Attempting to Influence Child Molestation Case

A North Georgia attorney's representation of a client facing felony child molestation charges morphed into felonies... **READ MORE »**

NEW JOB OPENINGS POWERED BY LAWJOBS.COM

Employee Benefits Department / Staff Attorney (Multiple Locations)
The Partners Group Atlanta, Georgia

Associate Legal Counsel
Expereo USA Reston, Virginia

Email Management Area

Please do not reply to the address you received this email from. Manage your email communications below.

Why you received this email message:

You are subscribed to the NLJ Daily Headlines as lawrence.b.kupers@usdoj.gov. You may be subscribed to multiple publications as part of your relationship with us.

To stop receiving the NLJ Daily Headlines (unsubscribe) or to update your email marketing preferences, please click here. On this page, please update your subscription choices to this publication, and any others you may receive. You may also change your opt-in of email marketing promotions from ALM. It may take up to 10 days for your changes to take effect.

How to contact us should you have questions:

The National Law Journal®
120 Broadway, 5th Floor,
New York, NY 10271-1101
Customer Service Phone: 1-877-256-2472

About ALM | Customer Support | Privacy Policy | Terms & Conditions

© 2017 ALM Media Properties, LLC.

All rights reserved.

The 2017 D.C’s. Rising Stars.pdf

From: The National Law Journal Daily Headlines
To: Pendergrass, Matthew J. (OPATTY)
Subject: The 2017 D.C"s. Rising Stars
Date: Monday, August 28, 2017 7:35:27 AM

THE NATIONAL LAW JOURNAL DAILY HEADLINES

TODAY'S TOP STORIES

The 2017 D.C's. Rising Stars

We are proud to present our 2017 Rising Stars. This year, we share their keys to success in their own words, edited... **READ MORE »**

Paul Manafort's Lawyer Leaves His Firm Two Weeks After Taking Case

Kevin Downing, a tax partner at Miller & Chevalier in Washington, D.C., left the firm Thursday. He will continue to... **READ MORE »**

Irell's Andrei Iancu Is Trump's Choice for PTO Director

Andrei Iancu, a heavy-hitting patent litigator and managing partner of Irell & Manella has been tapped to replace Michelle... **READ MORE »**

Joe Arpaio Pardon Unleashes Surge of Censure From Lawyers

President Donald Trump's pardon on Friday evening of ex-Maricopa County Sheriff Joe Arpaio took no one by surprise. **READ MORE »**

A New Crown Rises as Manatt's Consulting Group Breaks Away

Manatt, Phelps & Phillips' consulting arm is no more. Monarch Global Strategies LLC opened on Aug. 1 with offices in... **READ MORE »**

What the DreamHost/DOJ Battle Says About Search Warrants in the Digital Age

A battle over a DOJ's search warrant highlights the ongoing struggles to define the scope of search warrants and First... **READ MORE »**

Colorado Says DOJ's Dope Concerns Are All Smoke, CFPB and the U.S. Chamber Quarrel Over Arbitration: Roundup

Here's a weekly roundup of big regulatory news, including CFPB Director Richard Cordray taking to the NYT op-ed pages...

READ MORE »

Food Safety Legal Expert: 'Have a SWAT Team Ready'

As news of food-safety investigations ramps up, Corporate Counsel

recently spoke with Eric Kuwana, a partner at Katten... **READ MORE »**

SPONSORED SPOTLIGHT:
Cyber concerns: how security risks and new data rules are impacting law firms

Law firms are racing to untangle the myriad technology and cybersecurity challenges they must overcome to meet what has become an increasingly complex and expensive compliance backdrop. **READ MORE »**

MORE STORIES FROM ALM

BMW Class Action Settlement and $1.2M in Attorney Fees Gets Green Light

A federal judge has approved a settlement agreement that will provide drivers of defective BMW 6-series convertibles...

READ MORE »

Two Big Law Firms Shed Partners Ahead of Mergers

Australia's Henry Davis York and British firm Olswang both saw large groups of partners leave their ranks prior to combinations....

READ MORE »

DOJ Eyes Conflict in Blank Rome's 9/11 Victim Fund Work

A recent report has raised questions about a Blank Rome lawyer's work as deputy special master for the September 11th...

READ MORE »

'I Fully Expect to Be Sued': Buzbee Eyes Fallout Over Scrapped 'White Lives Matter' Rally

"If he thinks I'm scared. He should think again," Texas U&M regent Tony Buzbee said after squaring off with the organizer...

READ MORE »

NEW JOB OPENINGS

POWERED BY LAWJOBS.COM

Employee Benefits Department / Staff Attorney (Multiple Locations)
The Partners Group | Atlanta, Georgia

Associate Legal Counsel
Expereo USA | Reston, Virginia

Email Management Area

Please do not reply to the address you received this email from. Manage your email communications below.

Why you received this email message:

You are subscribed to the NLJ Daily Headlines as (b) (6) [redacted]. You may be subscribed to multiple publications as part of your relationship with us.

To stop receiving the NLJ Daily Headlines (unsubscribe) or to update your email marketing preferences, please click here. On this page, please update your subscription choices to this publication, and any others you may receive. You may also change your opt-in of email marketing promotions from ALM. It may take up to 10 days for your changes to take effect.

How to contact us should you have questions:

The National Law Journal®
120 Broadway, 5th Floor,
New York, NY 10271-1101
Customer Service Phone: 1-877-256-2472

About ALM | Customer Support | Privacy Policy | Terms & Conditions

© 2017 ALM Media Properties, LLC.

All rights reserved.

The Daily 202_ A dozen key lines from Trump™s A....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: The Daily 202: A dozen key lines from Trump's Afghanistan speech
Date: Tuesday, August 22, 2017 7:13:57 AM

If you're having trouble reading this, click here.

PowerPost
The Daily 202
Morning intelligence for leaders

Share:

Listen to The Big Idea

A dozen key lines from Trump's Afghanistan speech

Trump's speech on Afghanistan, in 3 minutes

BY JAMES HOHMANN

with Breanne Deppisch and Joanie Greve

THE BIG IDEA: President Trump gave an uncharacteristically introspective speech last night, acknowledging that he's changed his position on the war in Afghanistan as he escalated the military's involvement in America's longest war.

After seven months, Trump has finally settled on a policy that does not go as far as his generals wanted but also represents a clear break with the populists and isolationists who he catered to as a candidate.

Reading carefully from a teleprompter, in his first prime-time address to the nation, the president sought to explain why he's been persuaded that staying in Afghanistan is in America's national interest. Continuing to use a phrase he debuted in Saudi Arabia during his first foreign trip, Trump described his doctrine as "principled realism."

"Although Trump did not specify how many more troops will be sent to Afghanistan, congressional officials said the administration has told them it will be about 4,000 more than the 8,500 U.S. service members currently in the region," David Nakamura and Abby Phillip report.

-- If you missed the 27-minute speech, delivered from the Fort Myer military base in Arlington, Va., here are the 12 most important nuggets:

He opened with a nod to the division after Charlottesville: "The young men and women we send to fight our wars abroad deserve to return to a country that is not at war with itself at home. *We cannot remain a force for peace in the world if we are not at peace with each*

other. As we send our bravest to defeat our enemies overseas — and we will always win — let us find the courage to heal our divisions within." (Trump did not say how he plans to do this.)

He acknowledged war fatigue: "Nearly 16 years after the September 11th attacks, after the extraordinary sacrifice of blood and treasure, *the American people are weary of war without victory*. Nowhere is this more evident than with the war in Afghanistan, the longest war in American history — 17 years! [Actually, it is 16.] *I share the American people's frustration*. I also share their frustration over a foreign policy that has spent too much time, energy, money, and most importantly lives, trying to rebuild countries in our own image, instead of pursuing our security interests above all other considerations."

He acknowledged that he's flip-flopped on Afghanistan: "*My original instinct was to pull out* — and, historically, I like following my instincts. But all my life I've heard that decisions are much different when you sit behind the desk in the Oval Office; in other words, when you're President of the United States. So I studied Afghanistan in great detail and from every conceivable angle."

He gave three justifications for changing his position: "First, our nation must seek an honorable and enduring outcome worthy of the tremendous sacrifices that have been made … Second, the consequences of a rapid exit are both predictable and unacceptable. … A hasty withdrawal would create a vacuum that terrorists, including ISIS and al Qaeda, would instantly fill, just as happened before September 11th. … Third and finally, I concluded that the security threats we face in Afghanistan and the broader region are immense. Today, 20 U.S.-designated foreign terrorist organizations are active in

Afghanistan and Pakistan — the highest concentration in any region anywhere in the world."

He critiqued Barack Obama: "As we know, in 2011, America hastily and mistakenly withdrew from Iraq. … When I became President, I was given a bad and very complex hand. … We cannot repeat in Afghanistan the mistake our leaders made in Iraq."

He said there will never be a timetable for withdrawal: "A core pillar of our new strategy is a shift from a time-based approach to one based on conditions. I've said it many times how counterproductive it is for the United States to announce in advance the dates we intend to begin, or end, military options. We will not talk about numbers of troops or our plans for further military activities. Conditions on the ground — not arbitrary timetables — will guide our strategy from now on. America's enemies must never know our plans or believe they can wait us out. *I will not say when we are going to attack, but attack we will.*"

He said he is unshackling and empowering military commanders: "*Micromanagement from Washington, D.C. does not win battles.* They are won in the field drawing upon the judgment and expertise of wartime commanders and frontline soldiers acting in real time, with real authority, and with a clear mission to defeat the enemy. … Our troops will fight to win. From now on, victory will have a clear definition: attacking our enemies, obliterating ISIS, crushing al-Qaeda, preventing the Taliban from taking over the country, and stopping mass terror attacks against Americans before they emerge."

He preemptively pushed back on the idea he's committing to an

open-ended commitment: “Our commitment is not unlimited, and our support is not a blank check. The government of Afghanistan must carry their share of the military, political, and economic burden.”

He boldly promised victory: “One way or another, these problems will be solved. I’m a problem-solver. And in the end, we will win.”

He opened the door to negotiating directly with the Taliban: “After an effective military effort, perhaps it will be possible to have a political settlement that includes elements of the Taliban in Afghanistan, but nobody knows if or when that will ever happen.”

He played hardball with Pakistan: “We have been paying Pakistan billions and billions of dollars at the same time they are housing the very terrorists that we are fighting. But that will have to change, and that will change immediately. No partnership can survive a country’s harboring of militants and terrorists who target U.S. servicemembers and officials. It is time for Pakistan to demonstrate its commitment to civilization, order, and to peace.”

He insisted that he has not changed his mind about the United States promoting democracy abroad: “We are a partner and a friend, but we will not dictate to the Afghan people how to live, or how to govern their own complex society. We are not nation-building again. We are killing terrorists. … We want them to succeed. But we will no longer use American military might to construct democracies in faraway lands, or try to rebuild other countries in our own image. Those days are now over.”

-- Read the full transcript here.

Trump's full speech on Afghanistan

-- If you read one story about how Trump made his decision, make it [the ticktock by Philip Rucker and Robert Costa]:

"President Trump was frustrated and fuming. Again and again, in the windowless Situation Room at the White House, he lashed out at his national security team over the Afghanistan war, and the paucity of appealing options gnawed at him. Last month, as Trump mulled over a new strategy in a 16-year conflict that bedeviled his predecessors, he groused that sending additional U.S. troops to Afghanistan could have a negligible impact. He threatened to fire the current commander there. He flirted with privatizing the military effort. He even considered pulling out. Declaring victory seemed all but impossible. Five weeks later, at a Camp David summit, the commander in chief arrived at his decision. **A president obsessed with winning has now settled on simply trying not to lose. …**

"Trump's private deliberations — detailed in interviews with more than a dozen senior administration officials and outside

allies — revealed a president un-attached to any particular foreign-policy doctrine, but willing to be persuaded as long as he could be seen as a strong and decisive leader. Defense Secretary Mattis and national security adviser H.R. McMaster, both generals with extensive battlefield experience in Afghanistan, warned Trump about the consequences of withdrawal and cautioned that any move in Afghanistan would have ripple effects throughout the region. **One of the ways McMaster tried to persuade Trump to recommit to the effort was by convincing him that Afghanistan was not a hopeless place. He presented Trump with a black-and-white snapshot from 1972 of Afghan women in miniskirts walking through Kabul**, to show him that Western norms had existed there before and could return.

"Another key voice in Trump's deliberations — especially in guiding the president to make a decision in recent weeks — was John F. Kelly, the newly installed White House chief of staff. A retired four-star Marine general, Kelly had a deeply personal understanding of the stakes: His son, 2nd Lt. Robert M. Kelly, 29, was killed there in 2010 when he stepped on a land mine while leading a platoon of Marines. … While (Reince) Priebus was considered a passive voice on Afghanistan, Kelly all but forced a decision from the president with newfound urgency. One adviser called him 'the accelerator.'

"Trump's decisions were put off in part because of infighting in his ranks, chiefly between McMaster and chief strategist Stephen K. Bannon … When McMaster floated possibly sending tens of thousands of additional troops, Bannon shot back that such a

commitment would be a folly in a country where intervention had crippled foreign powers through the centuries … McMaster expressed alarm and irritation to confidants that Bannon was tempting the president to drift away from the military leadership with ideas that were not feasible. He was especially bothered by a proposal to hand over much of the military responsibility to private contractor Erik Prince, the founder of the controversial security company formerly known as Blackwater USA. Mattis heard out Bannon's pitch during a weekend meeting at the Pentagon in early July but quickly sided with McMaster."

Trump: 'Conditions on the ground,' rather than timelines will determine Afghan strategy

-- More from The Washington Post's team coverage:

Smart analysis by defense reporter Thomas Gibbons-Neff and diplomatic reporter Anne Gearan: "**Trump's decision … is an incremental shift in strategy that may help hold the line against a resurgent Taliban but isn't likely to change the course of the …**

war. … Trump's decision is a middle path that does not hew to either of the main foreign policy themes he articulated as a candidate: to stay out of expensive overseas quagmires, and to decisively win any conflict worth entering."

Debrief by White House reporter Jenna Johnson: "**In escalating America's longest war, Trump acts against his 'original instinct.'"**

Philip Bump: **"Trump tries again to win the Battle of Charlottesville."**

Natalie Jennings calls the speech "**muscular but vague.**"

Andrew deGrandpre and Alex Horton: "**Here are six costly failures from America's longest war. No. 1: cashmere goats.**"

Stephen Bannon is out as White House chief strategist

-- The reception across right-wing media is mixed:

The banner headline on Breitbart News, which is again being led by Bannon: "Trump reverses course, will send more troops to

Afghanistan. Defends flip-flop in somber speech." From the lead story, written by Breitbart's Pentagon correspondent Kristina Wong: "The speech was a disappointment to many who had supported his calls during the campaign to end expensive foreign intervention and nation-building."

Another story on Breitbart says Trump is following in Obama's footsteps: "His McMaster's Voice: Is Trump's Afghanistan Policy THAT Different from Obama's?"

A few other heretofore Trump loyalists expressed concern. Replying to a tweet from the chair of the RNC, radio host Laura Ingraham wondered:

But the post-speech commentary on Fox News was mostly positive:

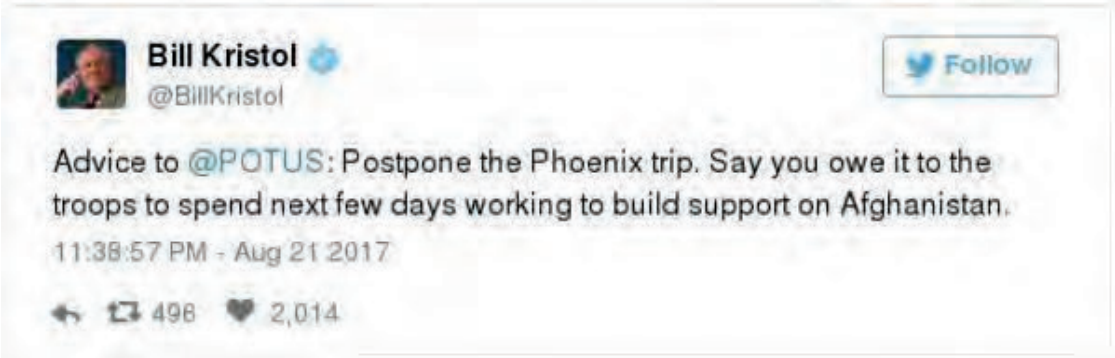
Fox host [Sean Hannity interviewed Afghanistan's ambassador] to the United States, Hamdullah Mohib, after the speech. The ambassador said he welcomes “a strong collaboration” between the two nations in the fight against terrorism. Hannity replied that "collaboration" includes Afghanistan and Pakistan stepping up. **The U.S. does not have "endless patience and money,” Hannity said.**

Former Fox host Bill O’Reilly:

“Trump Mugged By Reality” is [the lead story on the Weekly Standard], which has been critical of the president. Michael Warren makes an astute observation: “**What About Russia?—One player in the South Asia region Trump did not mention in his address was Russia.** The Vladimir Putin government has been supportive of the Taliban, both rhetorically and likely by providing

weapons and materiel."

From an editor at the magazine:



National Review Editor Rich Lowry, who has also been critical of Trump at times, calls the speech "quite good": "It's hard not to seem presidential when giving a speech like this. If Trump had done nothing but give teleprompter speeches since his inauguration, he'd be about ten points higher in the polls. … It seems a pretty conventionally hawkish policy tailored to Trump's predilections. He said we're not nation-building and mentioned the very Jacksonian word 'retribution.' On the nation-building piece, no one likes nation-building, but if we are waging a war where the performance of the indigenous government and military matters to us, we are inevitably going to engage in nation-building (although it doesn't have to be on the scale of what we attempted in Iraq). … **At the end of the day, this is Trump concluding that he doesn't want to lose a war on his watch, and if that means jettisoning some of his presuppositions, he's willing to do it."**

The lead story on The Blaze, Glenn Beck's web site, features Sen. Lindsey Graham (R-S.C.) saying there will be another 9/11 on U.S. soil if Congress doesn't appropriate the money to

support Trump's plan.

Trump: 'Let us find the courage to heal our divisions within'

-- After a week of criticizing the president over Charlottesville, Republican hawks in Congress were quick to praise Trump's speech:

John McCain, chairman of the Senate Armed Services Committee, said he will convene a hearing on next month on the new approach: "I commend President Trump for taking a big step in the right direction with the new strategy for Afghanistan. **The unfortunate truth is that this strategy is long overdue**, and in the interim, the Taliban have made dangerous inroads. Nevertheless, I believe the President is now moving us well beyond the prior administration's failed strategy of merely postponing defeat. … For the last 16 years we have faltered. Now we must keep up the right level of effort, in the right places, with the right authorities and resources, together with our allies and partners, and see this conflict through to success. To do this, **the President must conduct himself as a**

wartime commander-in-chief. He must speak regularly to the American people, and to those waging this war on their behalf, about why we are fighting, why the additional sacrifices are worth it, and how we will succeed. … The road ahead will not be easy, but America and the world cannot afford an Afghanistan that is under control of the Taliban and other terrorist organizations."

House Majority Leader Kevin McCarthy:

Sen. Marco Rubio (R-Fla.):

Sen. Tom Cotton (R-Ark.):

"The president gave a strong speech tonight, and I support his decision on Afghanistan. Al-Qaeda planned the 9/11 attacks in that country, and it's the one place where we've largely dislodged its network, though there's clearly more work to be done after several recent years of drift. We cannot allow it to fall back into the hands of Islamist terrorists-because they'll use it to launch even more attacks against us. The rise of ISIS in Iraq was a terrible lesson in the dangers of precipitous withdrawal.

"At the top of my mind tonight are the men and women of our armed forces. They've served long and nobly in this fight, and as many of them prepare for deployment, we owe them our thanks for seeing the mission through."

Tom Cotton
@SenTomCotton

Follow

The president gave a strong speech tonight, and I support his decision on Afghanistan. https://t.co/06RfPn7WeG pic.twitter.com/x3uSVMh6xu

10:34:21 PM - Aug 21 2017

217 591

Sen. Ron Johnson (R-Wis.):

Senator Ron Johnson
@SenRonJohnson

Follow

An excellent speech. @Potus laid out clarifying rationale and strategy. I hope our enemies and adversaries are listening. -rj

9:31:32 PM - Aug 21 2017

79 232

Sen. David Perdue (R-Ga.):

David Perdue
@sendavidperdue

Follow

When I met with Gen. Nicholson & our troops in #Afghanistan last month, this is exactly the type of plan & leadership they said they need. pic.twitter.com/BLiDLirpbN

10:29:49 PM - Aug 21 2017

28 61

-- Sen. Rand Paul (R-Ky.), a non-interventionist, broke with his colleagues: “The mission in Afghanistan has lost its purpose, and I think it is a terrible idea to send any more troops into that war,” he said in a statement. Other libertarian-minded Republicans struck a similar tone, such as this Kentucky congressman:

-- How the speech is playing in mainstream media outlets:

New York Times A1: “**Angry Trump Grilled His Generals About Troop Increase, Then Gave In.**”

From an NYT reporter:

Politico’s lead story: “**How Trump swallowed a bitter Afghanistan pill.** The president didn't want to send more troops … until his military men convinced him the risks were too great.”

Foreign Policy Magazine: **“Afghanistan Is Now Trump’s War.”**

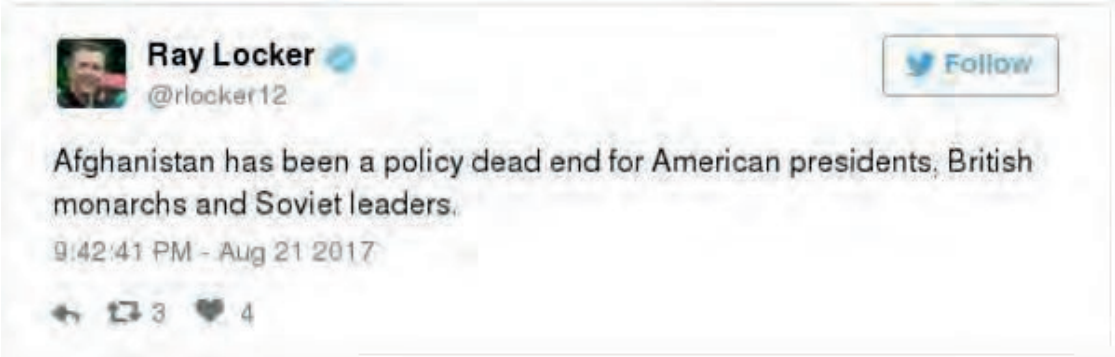
Wall Street Journal A1: “**Trump Takes New Tack** in Afghanistan Fight.”

Associated Press: “**Trump vows to win the seemingly unwinnable war.**”

Reuters: “Despite expected U.S. troop hike, **no end in sight** to Afghan war.”

USA Today: “Trump's new Afghanistan war strategy reflects **a lack of winning options.”**

An editor at the paper adds:



The Los Angeles Times Editorial Board says **“Trump's 'new' Afghanistan policy is more of the same.”** The editorial board of the Chicago Tribune, a sister paper of the LAT, goes a different route and makes the case for more engagement: “The U.S. cannot let this battered land fall to terrorists.”

NPR: **“‘We Are Not Nation-Building Again,' Trump Says While Unveiling Afghanistan Strategy.**”

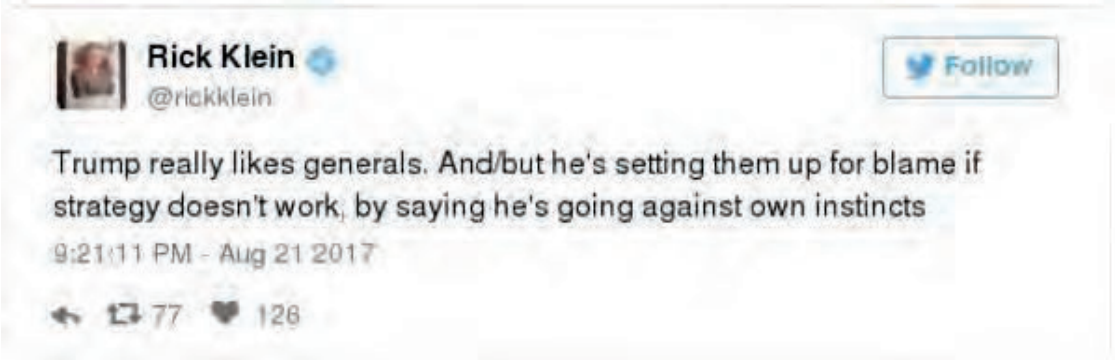
NBC News: “**Trump Vows Victory** in Afghanistan, Stays Silent on Troop Levels.”

CNBC: “**Trump just cranked up the rivalry between two nuclear giants.** ... Trump's Monday night comments on Pakistan and India could worsen ties between the two rivals. The leader should be seeking to unite the South Asian giants, not encouraging divides, experts said.”

CNN: “**In Afghanistan course correction, Trump learns winning is not so easy.**”

CNN’s senior White House correspondent adds:

ABC News: **“Trump avoids specifics** in Afghan strategy…” From ABC’s political director:



A Daily Beast political reporter:

A writer for The Economist:

-- Congressional Democrats predictably expressed concern: “The President’s announcement is low on details but raises serious questions,” said House Minority Leader Nancy Pelosi. “When President Trump says there will be no ceiling on the number of troops and no timeline for withdrawal, he is declaring an open-ended commitment of American lives with no accountability to the American people.”

Sen. Chris Murphy (D-Conn.):

Sen. Sherrod Brown (D-Ohio):

Rep. Robin Kelly (D-Ill.):

-- … As did the left-wing media:

HuffPost: "**Trump's Vague New Afghanistan Strategy Continues An Endless War.** The president says he will no longer disclose how many troops will be deployed."

Slate: "**Killing Terrorists Is Not a Strategy.** Trump's Afghanistan speech gave little indication of how he plans to end America's longest war."

Vice: **"More troops won't end the unwinnable war in Afghanistan."**

Plum Line: **"Trump's 'strategy' on Afghanistan: Let the next president figure it out."**

The Telegraph: "**If Donald Trump sounded presidential on Afghanistan it is because he is repeating his predecessors' mistakes.**"

Trump open to political settlement with 'elements of the Taliban'

-- How the world is responding:

Associated Press: **"Afghan reaction mixed on Trump's tough-talking speech."**

A Taliban spokesman dismissed Trump's remarks. "The whole speech was old," spokesman Zabiullah Mujahid told the AP. "He said the Taliban will come out with a more detailed response, but he is initially calling Trump's policy outline 'unclear.' Last week the Taliban issued a 1,600-word open letter to Trump warning against a troop surge… The Taliban have also said they aren't ready for any peace talks."

The Hindustan Times: "**What India risks if it gets on board Trump's Afghanistan project**."

The Khaleej Times: "**Trump puts Pakistan on notice**, warns it has much to lose."

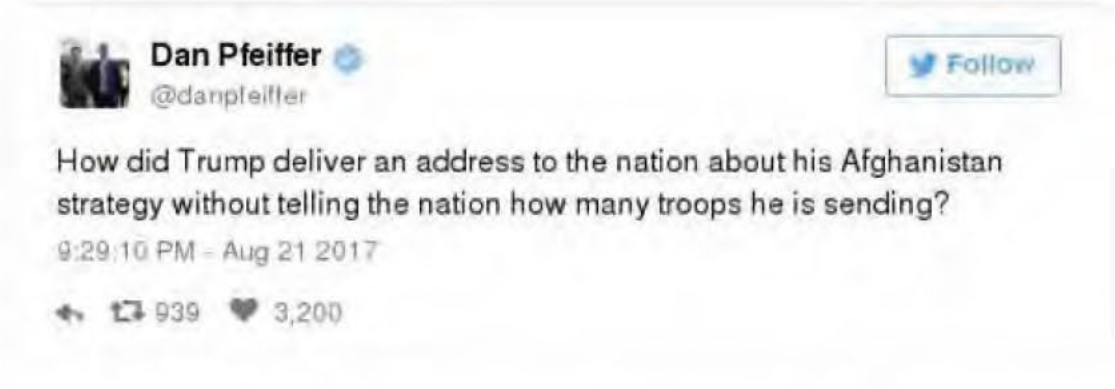
The Sun (of London): "**Trump calls on Theresa May to send more troops** to Afghanistan as US commits more boots on the ground."

The Australian: "Defence Minister Marise Payne said **Australia will 'consider' any request to further assist the United States in Afghanistan but emphasised the country's 'significant' current contribution.**"

-- The buzz on social media: A Harvard professor and former diplomat:

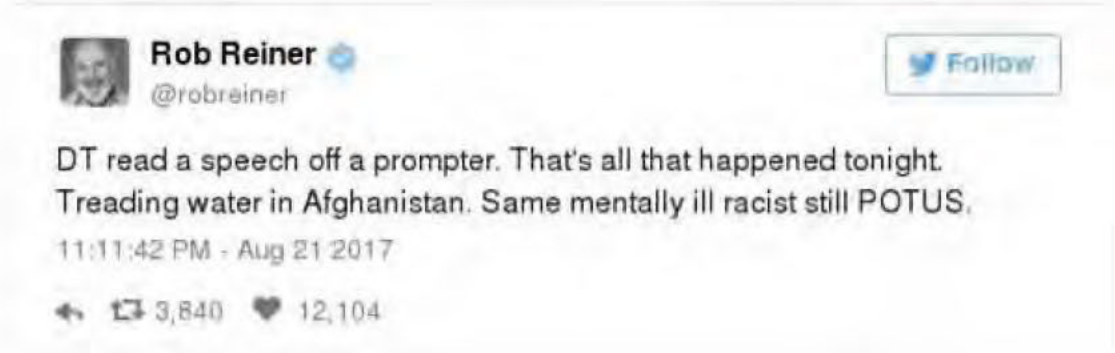
The president of the Eurasia Group:

A former senior adviser to Obama:



Actor Josh Charles (who played Will Gardner on “The Good Wife” and Dan Rydell on “Sports Night”):

The filmmaker and actor Rob Reiner:



A former Republican congressman from Florida:

A former Republican congressman from Illinois who now has a talk radio show:

A progressive writer for ShareBlue:

A Rolling Stone writer:

An editor for Task and Purpose:

From a WaPo columnist:

A Roll Call columnist:

A Boston Globe columnist:

The Stanford professor and former U.S. ambassador to Russia:

And the Onion:

-- Many people have been retweeting Trump's old tweets calling for Obama to pull out of Afghanistan, underscoring how much Trump has shifted his position:

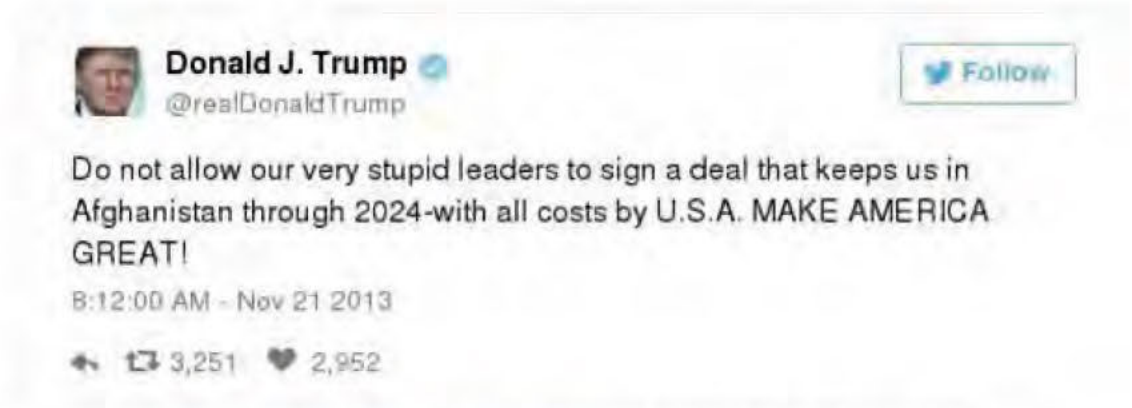
From 2011:

From 2012:

Donald J. Trump
@realDonaldTrump
Follow
It is time to get out of Afghanistan. We are building roads and schools for people that hate us. It is not in our national interests.
2:34:27 PM - Feb 27 2012
1,719
1,633
Donald J. Trump
@realDonaldTrump
Follow
84% of US troops wounded & 70% of our brave men & women killed in Afghanistan have all come under Obama. Time to get out of there.
2:40:14 PM - Sep 11 2012
822
552

From 2013:

Donald J. Trump
@realDonaldTrump
Follow
We have wasted an enormous amount of blood and treasure in Afghanistan. Their government has zero appreciation. Let's get out!
3:06:13 PM - Nov 21 2013
2,475
2,502
Donald J. Trump
@realDonaldTrump
Follow
I agree with Pres. Obama on Afghanistan. We should have a speedy withdrawal. Why should we keep wasting our money -- rebuild the U.S.!
3:59:43 PM - Jan 14 2013
2,422
2,304



Listen to James's quick summary of today's Big Idea and the headlines you need to know to start your day:

Play audio brief

Subscribe to **The Daily 202's Big Idea** on
Amazon Echo, Google Home, Apple Podcasts and other podcast players.

Welcome to the Daily 202, **PowerPost's** morning briefing for decision-makers.
Sign up to receive the newsletter.

WHILE YOU WERE SLEEPING:

-- North Korea threatened the U.S. with "absolute force" through their state-run media this morning. The Wall Street Journal's Jonathan Cheng reports: "North Korea threatened to turn the U.S. into 'huge heaps of ashes' and warned that military exercises involving American and South Korean forces this week had worsened the

standoff[.] … Pyongyang attacked President Donald Trump, branding his approach to the crisis on the Korean Peninsula 'unimaginably reckless.' The remarks came a day after the U.S. and South Korean militaries began annual drills, which the allies say are aimed at defending South Korea in the event of conflict but which Pyongyang says are rehearsals for an invasion."

-- An inbound train in suburban Philadelphia collided with a parked train, injuring 33. (AP)

-- Immediately after the president's speech, Paul Ryan held a televised town hall with his constituents in Racine, Wis., during which he said that he would not support a censure of Trump for his Charlottesville comments. But Ryan did criticize Trump for praising some rally participants as "fine people." "I do believe he messed up in his comments on Tuesday," the speaker said on CNN. "I do think he could have done better."

"Ryan said he found Trump's comments 'not only morally ambiguous but it was equivocating' and criticized the president for comparing the white supremacists and neo-Nazis who organized the 'Unite the Right' rally with the counterprotesters who rallied to oppose them. But **he said it would be a mistake to reduce the discussion over white supremacy to a partisan attack on Trump,"** Kelsey Snell reports.

-- Ryan's likely Democratic opponent next year purchased ads to run during the nationally televised town hall. David Weigel reports: "The first spot, designed like the sort of question-from-voters videos that are often used at town halls. [Democrat Randy] Bryce fires off three questions, starting with one on the Congressional Budget

Office's coverage estimates for the American Health Care Act. Bryce then says: 'Donald Trump is clearly a racist. When will you censure him in Congress?' The second ad starts — as Democrats expect many 2018 ads to start — with footage from the Rose Garden celebration of the AHCA's passage. And on the ground outside the town hall venue, progressive groups such as the Working Families Party and Ultraviolet were working to make as much noise as possible."

A woman lights a candle at a memorial tribute to the victims of the vehicle attacks on Barcelona's historic Las Ramblas promenade. (Santi Palacios/AP)

GET SMART FAST:

1. **Spanish police shot and killed the driver who plowed his van into a crowd of pedestrians last week in Barcelona,** capping a four-day manhunt for Younes Abouyaaquob, who was the last

believed member of a 12-person terrorist cell. Officials said he was discovered Monday in a small town west of Barcelona and was wearing a fake suicide vest. (William Booth and Souad Mekhennet)

2. **The Navy's top admiral on Monday ordered a fleetwide review of seamanship and training** after the USS John S. McCain collided with a merchant vessel off Singapore, leaving 10 sailors missing. The collision was the service's fourth major accident at sea this year. (Anna Fifield and Dan Lamothe)
3. **The Army suspended its search for the crew of a UH-60 Black Hawk helicopter that crashed last week in the ocean off Oahu.** Army officials identified the victims in a statement Monday and said the operations "have now shifted to recovery and salvage efforts." (Andrew deGrandpre)
4. **An Ohio judge was shot outside his courthouse in Steubenville in** an ambush that ended only when the judge and an officer returned fire and killed the attacker. In a strange twist, the shooter was identified as the father of a man convicted of rape in a high-profile 2013 case. (Mark Berman)
5. **The Air Force has narrowed its choice for who should replace a critical but aging part of the U.S. nuclear arsenal — the Minuteman ground-based inter-continental ballistic missile — down to Boeing and Northrop Grumman.** (Aaron Gregg)
6. **A group of more than 100 robotics and artificial intelligence experts signed a letter Monday urging the United Nations to ban autonomous weapons (or robots),** issuing a stark warning about what they called the "third revolution in warfare." Signatories included Tesla CEO Elon Musk, who has said

artificial intelligence is more of a risk to the world than North Korea. (Peter Holley)

7. **A judge has ruled that Rep. Greg Gianforte (R-Mont.) must be fingerprinted and photographed for his May assault of a Guardian reporter.** Gianforte's defense team had argued that was unnecessary because he pleaded guilty to a misdemeanor, but the judge overruled them. (Derek Hawkins)
8. **A Danish inventor charged with killing a journalist who accompanied him on his personal submarine before vanishing without a trace has admitted that she died onboard and that he subsequently "buried her at sea."** But Peter Madsen continues to insist Swedish journalist Kim Wall died in an "accident" before being tossed overboard. (Avi Selk and Samantha Schmidt)
9. **A U.S. soldier who defected to North Korea at age 21 — sprinting through the demilitarized zone as he fled both an unfaithful wife and a long-troubled childhood — has died**, according to his Pyongyang-born sons. He was one of four U.S. soldiers who defected to the north while serving in South Korea and ultimately spent five decades living under the hostile regime. (Cleve R. Wootson Jr.)
10. **A measles outbreak in Minnesota is encouraging anti-vaxxers.** Local activists have suggested on social media that they hold "measles parties" to expose unvaccinated children to the disease and allow them to develop immunity. (Lena H. Sun)
11. **London's Big Ben rang for the last time on Monday before falling silent for a four-year renovation period.** Officials said

the famous clock tower will still ring for special occasions, but some have complained about the lengthy repair time. (Karla Adam)

12. **NFL Commissioner Roger Goodell is on the verge of completing a five-year contract extension**, which would keep him in the job through 2024. Goodell's current deal has two years remaining on it. (Mark Maske)
13. **A gay couple who dined at Prime Rib in D.C. said their request to split dessert was denied by their waiter,** who told them that two men eating out of the same bowl "doesn't go with the ambiance" of the restaurant. "The waiter in question is Bulgarian, and he does speak four different languages," the general manager said, noting that English is not the server's first language. "I am not sure if he got confused as to what he was saying, or how he was saying it." (Maura Judkis
14. **Tucker Carlson called Trump's apparent decision to look at the solar eclipse without special glasses "perhaps the most impressive thing any president has ever done."** (Callum Borchers)

See the clip below:

Confederate statues removed at University of Texas

A DIVIDED AMERICA AFTER CHARLOTTESVILLE:

-- A fresh Washington Post-ABC News poll finds twice as many Americans — 56 percent to 28 percent — disapprove than approve of Trump's handling of the Charlottesville violence. A 62 percent majority of self-identified Republicans said they approve of Trump's response, and he maintains an 80 percent job approval rating within the GOP. Meanwhile, 84 percent of Democrats said they disapproved of Trump's remarks, as did a 55 percent majority of independent voters. Opinions among minority groups were much more negative, with more than 8 in 10 African Americans and nearly two-thirds of Hispanics saying they disapprove of Trump's response.

-- "A melee broke out at the Charlottesville City Council meeting on Monday night, as activists and residents angrily took over the Council chambers and criticized the city's response to a white supremacist [rally]," the New York Times's Frances Robles reports: "White and black residents alike were furious with the police response

to the demonstrations, and they faulted officers for not engaging during repeated scuffles ... When police officers forcibly removed three people from the Council meeting, the 100 or so people at the meeting broke out into furious chants, screaming 'Shame' and 'Shut it down!' Two people stood on the dais and unfurled a banner with the words 'Blood on your hands!' as council members and the mayor left the room."

-- The ACLU criticized Virginia Gov. Terry McAuliffe's (D) order to temporarily suspend protests at Richmond's Robert E. Lee statue as "constitutionally suspect." Jenna Portnoy reports: "The statement comes three days after McAuliffe issued an executive order barring public demonstrations at the monument, citing safety concerns ... He said no protests would be allowed at the Lee statue for three months to allow a task force to write regulations that would allow protests in a peaceful manner. … Claire Guthrie Gastañaga, executive director of the ACLU of Virginia, said fear or safety worries should not diminish the commitment to basic rights, including freedom of speech, guaranteed by the Constitution. … Still, the ACLU is not planning a legal challenge at this time, Gastañaga said."

-- The white supremacist prominently featured in Vice News's coverage of the Charlottesville rally could face criminal charges. The New York Times's Matt Stevens reports: "Since the rally in Charlottesville, the prospect of an arrest has loomed over [Chris] Cantwell, who posted a video on Aug. 12 in which he choked back tears. He gave a phone number that he said the authorities could use to contact him, and he said that since then, his voice mail has been 'recording death threats faster than I can listen to them.' Officials at

the Commonwealth's Attorney's Office of Albemarle County in Charlottesville said on Monday morning that four warrants had been issued for Mr. Cantwell's arrest. … The Boston Globe reported on Thursday that the warrants were related to the 'illegal use of gases, and injury by caustic agent or explosive.'"

-- A man in Houston was charged Monday for attempting to bomb a statue honoring Confederate military leader Richard Dowling. Mark Berman reports: "Authorities said Andrew Schneck, 25, was found [late Saturday] night with materials capable of creating 'a viable explosive device.' An attorney for Schneck said the same man had also been convicted in an earlier explosives case. The park ranger said that Schneck admitted to wanting to do harm to the Dowling statue because he did not 'like that guy.' Inside the box, Houston police officials said, were other things able to 'produce a viable explosive device,' including a timer, battery and wires connected to a homemade detonator."

-- After Duke University decided to remove a Robert E. Lee statue Saturday, the University of North Carolina seems prepared to follow suit. Rachel Chason reports: "Margaret Spellings, the president of UNC, sent a letter to Gov. Roy Cooper on Monday asking for his help addressing the 'significant safety and security threats' related to 'Silent Sam,' the Confederate memorial erected in 1913 to honor alumni who served in the Civil War. The recent toppling of a Confederate statue in downtown Durham and the damage to the statue of Lee at Duke have 'added to a climate that threatens to make similar statues a flash point for violence that could spiral out of control,' she wrote." UNC's status as a public university complicates

the matter, given a 2015 North Carolina law that requires permission from the state's historical commission before monuments are moved.

-- The White House still plans to move ahead with a conference next month for historically black colleges and universities. BuzzFeed News's Darren Sands reports: "Omarosa Manigault-Newman, assistant to the president and director of communications for the Office of Public Liaison, said in an email to BuzzFeed News that the conference was still on for its original date, and that the administration remained committed to the mission of HBCUs."

-- A Portland, Ore., emergency room doctor who graduated from Yale, and whose work has earned her dozens of awards and publications, said some white nationalist patients have refused her service because she's Asian. In a widely shared Twitter thread, she said patients often either choose to leave or request to be cared for by white interns, despite her efforts to reassure them. "Breathtaking, isn't it? To be so wedded in your theory of white superiority, that you will bet your life on it, even in the face of clear evidence to the contrary?" she wrote. "Sometimes I just look at them, my kin in 99.9% of our genetic code, and fail to believe they don't see our shared humanity." (Read the powerful thread here.)

-- "Why Lee Should Go, and Washington Should Stay," by presidential biographer Jon Meacham in the New York Times: "Those who took up arms against the Union were explicitly attempting to stop the American odyssey. While we should judge each individual on the totality of their lives (defenders of Lee, for instance, point to his attempts to be a figure of reconciliation after the war), the forces of hate and of exclusion long ago made Confederate imagery

their own. Monuments in public places of veneration to those who believed it their duty to fight the Union have no place in the Union of the 21st century[.]"

Former Maricopa County sheriff Joe Arpaio campaigns for President Trump in 2016. (Mary Altaffer/AP)

TONIGHT, IN PHOENIX:

-- As Arizona braces for Trump's rally, some Republican lawmakers fear he will use the appearance to expand on his searing criticism of Sen. Jeff Flake — or even make a formal endorsement of Flake's primary challenger Kelli Ward. Sean Sullivan and Ed O'Keefe report: "That possibility has unnerved Republicans inside and outside the White House. Some worry about straining the president's already tenuous relations with congressional Republicans at a time when they face several key challenges this fall … Others looking ahead to next year's midterm elections believe

Trump may even be putting the Senate GOP majority at risk ...

"Allies of Flake, including [Mitch McConnell], are vexed by Trump's posture. At a minimum, they believe he is needlessly creating a costly primary that will suck resources away from others targets on a map ripe for gains. 'There are 10 Senate Democrats up for reelection in states the President won in 2016 and that's where his political focus and energy ought to be … instead of harmful intraparty warfare,' [said former NRSC communications director Brian Walsh]. Instead, [Trump] is targeting an incumbent of his own party … and seemingly bolstering a challenger who lost resoundingly last year to Sen. John McCain, and whose bona fides have raised concerns even inside the White House."

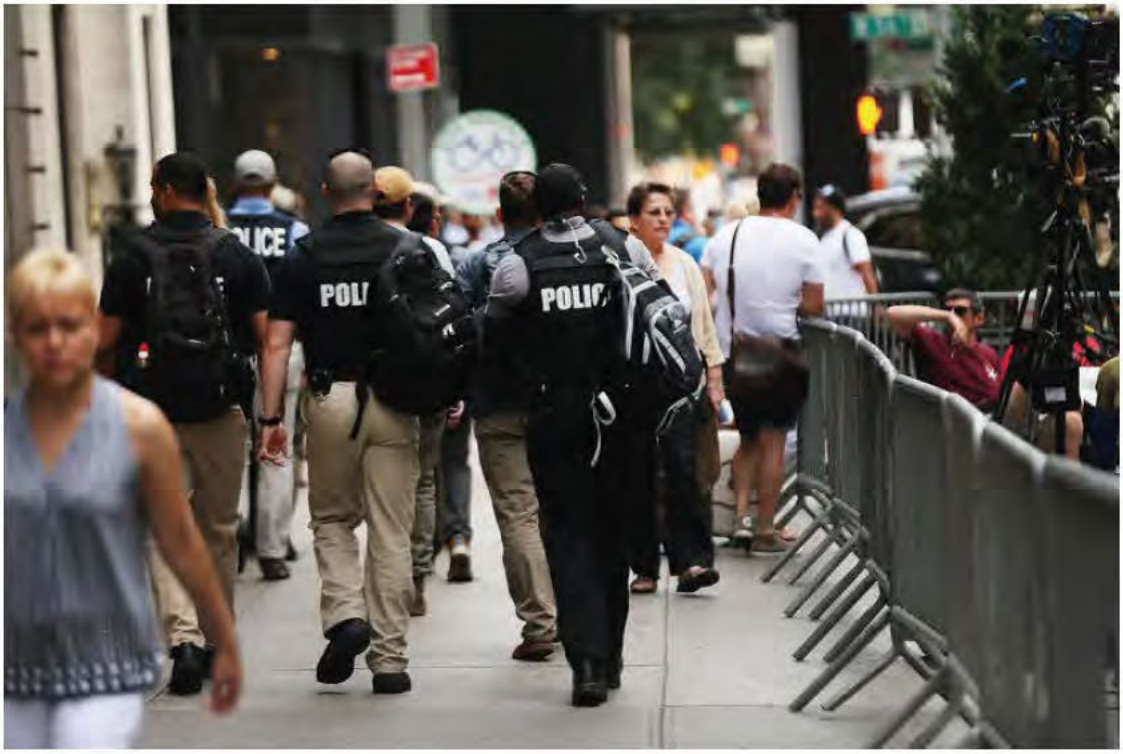
-- Will Trumo pardon Arpaio? "Half of Arizonans surveyed over the weekend believe that [Trump] should not announce a pardon for former Maricopa County Sheriff Joe Arpaio ... compared with 21 percent who said it would be a good move," the Arizona Republic reports. "Another 29 percent said they weren't sure or didn't know. The poll results, released Monday morning, come amid speculation that Trump will use his Phoenix visit as an occasion to pardon the controversial lawman after his recent criminal-contempt conviction. As of Monday evening, though, Trump's intentions on the matter remained unclear — at least to Arpaio. At 4 p.m., [Arpaio] told The Arizona Republic he'd yet to hear from Trump's people or receive an invitation to the rally."

-- But Arpaio said that he would be available to attend Trump's rally if his presence were requested. "I've been doing rallies with him many, many times, and sometimes things are done the last

minute," the sheriff said. (Politico's Ted Hesson)

-- Arizona Gov. Doug Ducey (R) will not attend the rally, however, joining a growing group of GOP officials who have sought to diplomatically distance themselves. "Gov. Ducey's focus has been working with law enforcement toward a safe event in downtown Phoenix for all those involved and in the area," a spokesman said Monday. "That will continue to be his priority during the event and afterwards." **The Democratic mayor of Phoenix has publicly urged Trump not to come.** (Arizona Republic)

-- Mike Pence will join Trump on stage.



Members of the Secret Service walk in front of Trump Tower in New York City last week. (Spencer Platt/Getty Images)

DISMANTLING WASHINGTON:

-- Congress may have to intervene once the Secret Service hits its spending cap — likely at the and of September — in its quest to protect Trump and his family. Lisa Rein reports: "If lawmakers don't lift the cap, about a third of the agency's agents would be working overtime without being paid ... The spending limits are supposed to last through December, but the cost of protecting the president and members of the extended first family, who have traveled extensively for business and vacations, has strained the Secret Service, local governments and at least one other federal agency, the Coast Guard."

Statistic du jour: The Secret Service now protects 42 people around the clock, 11 more than it did under President Barack Obama. The Trump protection number includes 18 members of the president's family.

-- "Anxious to remake the federal government, the Trump administration is cracking down on employees who break the rules" Lisa also reports. "The White House in April instructed agencies to 'remove poor performers' as they construct plans to shrink the workforce as part of a federal downsizing … But in its efforts to fulfill the president's campaign promise to 'drain the swamp' of entrenched federal workers, **the new political leadership in Washington is meeting resistance from powerful federal employee unions** and finding that maneuvering around long-guaranteed civil service protections is not easy."

-- Rep. Jim Bridenstine (R-Okla.) is slated to be nominated as NASA chief by early September. The Wall Street Journal reports: "[Bridenstine] is a strong proponent of commercial space ventures but

has scant management experience … A former active-duty U.S. Navy pilot who publicly sought the position and was widely reported to be the front-runner even weeks [Trump's] inauguration, Mr. Bridenstine has been a leader in fashioning legislation boosting manned exploration of the moon, including minerals mining. Such positions are in line with the views of senior White House officials … as is his desire to save money-and improve efficiency-by more closely coordinating NASA programs with those at other civilian agencies and the Defense Department."

-- More controversial comments from Trump's pick to be chief scientist at the Agriculture Department have come to light. CNN's Andrew Kaczynski and Paul LeBlanc report: "[Sam Clovis] has argued that homosexuality is a choice and that the sanctioning of same-sex marriage could lead to the legalization of pedophilia[.] … Clovis made the comments between 2012 and 2014 in his capacity as a talk radio host, political activist, and briefly as a candidate for US Senate in Iowa. … Clovis has repeatedly argued that the science on homosexuality is unsettled and that 'LGBT behavior' is a choice. … Asked for comment on Clovis' beliefs surrounding the science of homosexuality, a USDA spokeswoman told CNN: 'The Supreme Court settled the issue in 2015.' … [Clovis] made most of his remarks in the context of discussing his belief LGBT people should not be given protections under the 14th Amendment to the Constitution."

President Trump has made more than 1,000 false or misleading statements

THE TRUMP AGENDA:

-- The president's tally of false or misleading claims now stands at 1,057, official Post Fact Checkers Glenn Kessler, Michelle Ye Hee Lee and Meg Kelly report: "At the president's current pace, he averages nearly five claims a day. Many are repeats of claims that have been previously debunked. We also include statements that are unacknowledged flip-flops from previously held positions, such as touting new highs in a stock market that he previously derided as being a 'big, fat bubble.' **More than 30 of the president's misleading statements have been repeated three or more times.** Trump's most repeated claim, uttered 50 times, was some variation of the statement that the Affordable Care Act is dying and 'essentially dead.' … Trump repeatedly takes credit for events or business decisions that happened before he took the oath of office — or had even been elected."

-- "The Interior Department has ordered a halt to a scientific

study begun under President Obama of the public health risks of mountaintop-removal coal mining," the New York Times's Lisa Friedman and Brad Plumer report. "The National Academies of Sciences, Engineering and Medicine, which was conducting the study, said in a statement Monday that they were ordered to stop work because [Interior] is conducting an agencywide budgetary review. Last year, West Virginia officials asked the Obama administration to look into the health effects of mountaintop mining, a technique used to extract underlying coal. … Environmental groups and Democrats sharply criticized the Interior Department decision."

-- The Trump administration is trying to block publication of a U.N. "blacklist" of companies that conduct business in controversial Israeli settlements. Anne Gearan reports: "The U.N. Human Rights Council voted to approve the database of companies last year, over objections from the United States and Israel, which describe the list as a prelude to anti-Israel boycotts. American companies on the list drawn up by the Geneva-based council include Caterpillar, TripAdvisor, Priceline.com, Airbnb and others[.] … Zeid Ra'ad Al Hussein, the U.N. high commissioner for human rights, has told U.S. officials he plans to publish the list by the end of the year and has asked for comments by Sept. 1 from countries where affected firms are headquartered, diplomats said."

Treasury Secretary Steven Mnuchin and Louise Linton are joined by the president and vice president at their wedding earlier this year. (Kevin Mazur/Getty Images)

PALACE INTRIGUE:

-- "[Treasury Secretary Steven Mnuchin's] wife Louise Linton boasted of flying on a government plane with her husband to Kentucky on Monday and then named the numerous fashion brands she wore on the trip in an unusual social media post that only became more bizarre minutes later," Damian Paletta reports: "When someone posted a comment on Linton's Instagram picture that criticized the way Linton touted the trip, [Linton] swung back hard, mentioning the extreme wealth she and her husband control. 'Did you think this was a personal trip?!' Linton wrote [in her response to the critic, adding]: 'Adorable! Do you think the US govt paid for our honeymoon or personal travel?! Lolololol. Have you given more to the economy than me and my husband? Either as an individual earner in

taxes OR in self sacrifice to your country? I'm pretty sure we paid more taxes toward our day 'trip' than you did. Pretty sure the amount we sacrifice per year is a lot more than you'd be willing to sacrifice if the choice was yours.'" She continued: "'You're adorably out of touch…Thanks for the passive aggressive nasty comment. Your kids look very cute. Your life looks cute.' The fashion companies Linton 'tagged' in her Instagram post were Hermes, Roland Mouret, Tom Ford, and Valentino."

-- Presidential historian and former White House aide Tevi Troy argues that the White House needs an "intellectual wrangler" to replace Steve Bannon: "Ever since Richard Nixon, Republican presidents have installed a kind of resident intellectual who can help shape the president's vision, articulate that vision to conservative thinkers, and — importantly — warn the president of discontent from his key supporters in that conservative idea world," he writes in Politico Magazine. "Steve Bannon wasn't a traditional liaison to that world, but there's no question he served this function for the Trump administration, keeping it connected to at least a portion of a national ecosystem of conservative thinkers that has provided significant benefits for Republicans over the years. ... This is one area in which Trump really does need the help: He doesn't have the patience, the background, or the interest to be able to articulate a consistent conservative-friendly vision … Bannon's absence means the White House lacks someone who can attempt to create a coherent narrative for the administration's efforts."

-- With Bannon back at the helm, what's next for Breitbart? "Breitbart's support of Trump, manifest during the campaign, doesn't

seem likely to waver so long as Trump continues to press for the policies that attracted Breitbart (and then Bannon himself) to him in the first place, such as building a wall on the southern border," Paul Farhi reports. "Conversely, Trump faces some risk in alienating 'Bannon-bart,' which presumably speaks to and for a large segment of his base. **[But] with Bannon back in control on Monday, Breitbart's agenda seemed largely unchanged from when Bannon was advising Trump.** ...

"Kurt Bardella, who [formerly] directed public relations for Breitbart ... said Bannon and Breitbart's next move is into TV. His goal, according to Bardella, is to compete with Fox News for conservative viewers. 'There was a lot of speculation about Bannon and Trump starting Trump TV had they lost the election,' Bardella says. 'With Mercer money and a lot of talent available, and with Trump needing some kind of exit strategy down the line, it makes sense. Also, for Bannon to demonstrate that he has the strongest hold on Trump's base, he'll want to show that what he and Breitbart does is more consequential than Fox.'"

SOCIAL MEDIA SPEED READ:

The solar eclipse took over the Internet:

George Bush
@GeorgeHWBush

Follow

Four generations of family taking in the partial eclipse today. Already looking forward to the next one in Texas in 2024!
pic.twitter.com/3iSPh9iydA
2:57:17 PM - Aug 21 2017

4,970 31,641

Michelle Jaconi
@jaconi

Follow

From @TerenaBell, filing from Cerulean, Kentucky
pic.twitter.com/WQKI2rAGjA
11:35:45 AM - Aug 21 2017

2 6

Ricky Davila
@TheRickyDavila

Follow

Wow, someone caught the #SolarEclipse2017 mid flight! Breathtaking.
pic.twitter.com/gzNCNiaWVR

1:53:16 PM - Aug 21 2017

162,821 275,048

The Associated Press
@AP

Follow

This multiple exposure photo shows the eclipse as it passed over the St. Louis Arch. More eclipse coverage here: https://t.co/l9qn2U2Mh9
pic.twitter.com/ab2drhWgqC

3:36:15 PM - Aug 21 2017

5,912 11,154

NASA Sun & Space
@NASASun

Follow

Our Solar Dynamics Observatory saw #Eclipse2017, too! Keep an eye on this page for more satellite views: https://t.co/EuZjmnQ2pw
pic.twitter.com/vdilDYrDIK

6:01:18 PM - Aug 21 2017

1,344 3,057

The CEO of Goldman Sachs seemed to throw some "shade" at Trump:

The former secretary of state also chimed in:

Madeleine Albright
@madeleine

Follow

Enjoyed watching #Eclipse2017. A great reminder that all darkness is temporary. pic.twitter.com/NlK5wTaCtr

4:04:35 PM - Aug 21 2017

3,364 9,951

But it was nothing new for an astronaut:

From an Atlantic writer:

Sen. Lindsey Graham's home state of South Carolina was in the path of totality:

Lindsey Graham
@LindseyGrahamSC

Follow

I'm Ready! #EclipseDay pic.twitter.com/IlqbJebcww

1:29:45 PM - Aug 21 2017

420 3,165

Sen. Ben Sasse responded to his colleague's picture:

Ben Sasse
@BenSasse

Follow

don't stare at the upper arms https://t.co/CVF4tYkJPc

2:15:30 PM - Aug 21 2017

470 2,933

And Graham hit right back:

The president clearly missed the 10,000 news stories explaining why this is a bad idea:

kelly cohen
@politiCOHEN_

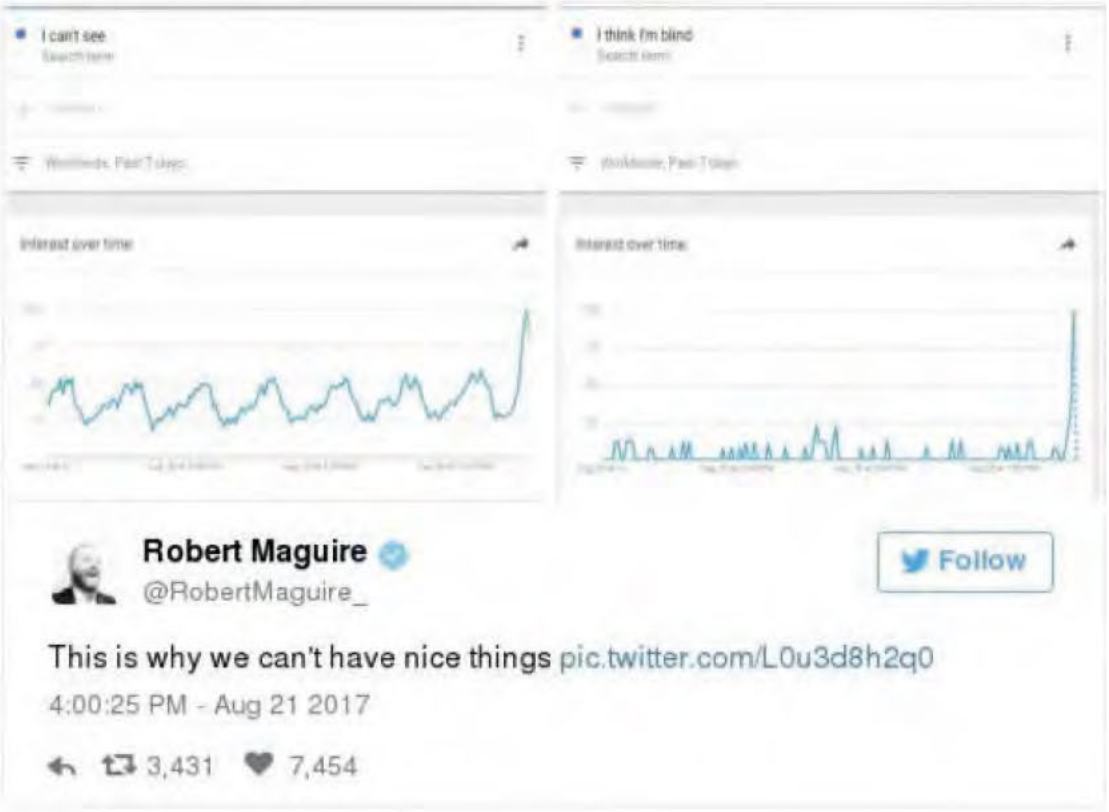
Follow

yep, trump looked without glasses #solareclipse
pic.twitter.com/PDzRNtXL4n

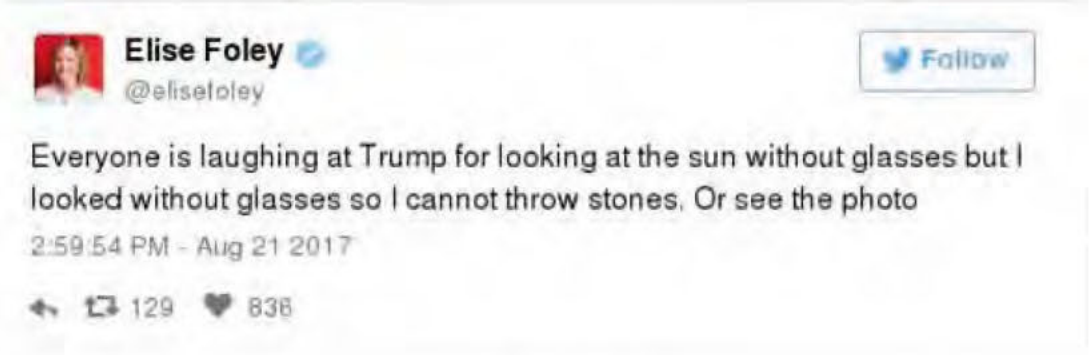
2:49:30 PM - Aug 21 2017

7,564 14,655

But he wasn't alone. There were huge upticks in searches related to people not being able to see after staring at the sun:



From a HuffPost political reporter:



Another HuffPost reporter offered this cruel idea:

The New York Times went way back into its archives, to the last solar eclipse:

A newscaster in the 1970's offered this hope for the world when it

experienced the next eclipse:

But others downplayed the event:

Blowback to Louise Lipton's Instagram post was interesting:

Betsy Woodruff
@woodruffbets
Follow

After I tweeted about the #hermesscarf hashtag, Louise Linton (Mnuchin's wife) edited her Instagram post: pic.twitter.com/XaQAtDkRwn

8:50:29 PM - Aug 21 2017

689 1,473

Maggie Haberman
@maggieNYT
Follow

Wife of Mnuchin, now a public servant: "I'm pretty sure we paid more taxes toward our day 'trip' than you did." https://t.co/hDOHriDRSc

12:42:42 AM - Aug 22 2017

488 887

Liam Stack
@liamstack
Follow

Mnuchin's wife mocked a "deplorable" on Instagram for being poor: "Have you given more to the economy than me and my husband?" https://t.co/X7oLkd4nzY

10:15:12 PM - Aug 21 2017

219 253

And Chelsea Clinton defended Barron Trump after the Daily Caller

published a piece entitled, "It's High Time Barron Trump Starts Dressing Like He's In the White House":

GOOD READS FROM ELSEWHERE:

-- GQ, "A Most American Terrorist: The Making of Dylann Roof," by Rachel Kaadzi Ghansah: "After Roof was found guilty, they went up to the podium, one by one, when it was time for the victim-impact testimony, and standing near the jury box, they screamed, wept, prayed, cursed. Some demanded that he acknowledge them. 'Look at me, boy!' one raged. He did not … Others professed love for him … He did not care. Some said they were working the Devil from his body. Feel it, they shouted. He did not appear to feel anything."

-- The New York Times, "All the Light Trump Was Not Supposed to See. But He Peeked," by Matt Flegenheimer: "The president looked. He half-smiled. He pointed. Looking was fun. And with that, Mr. Trump had done it once more, on as cosmic a scale as any. He has run afoul of party officials, historical precedent, political gravity, stately decorum. Why not the sun?"

-- Politico, "The new GOP primary litmus test: Loyalty to Trump," by Kevin Robillard: "Loyalty to Trump has quickly become the most potent issue for the Republican base[.] … It has already put Sens. Jeff

Flake and Dean Heller under pressure in their states, sparked bickering between GOP candidates in two of Republicans' top 2018 targets, Indiana and West Virginia, and sunk one candidate running for Alabama's open Senate seat. … Democrats are watching the Republican rush to embrace Trump with cautious optimism. While most competitive Senate races in 2018 are taking place in conservative states that Trump easily carried in 2016, upset primary wins by Tarkanian or Ward could give Democratic opponents an easier shot at winning those seats."

HOT ON THE LEFT:

"East Idaho rep. says it's 'plausible' Obama staged Charlottesville riots," from the Idaho Statesman: "Idaho Falls Rep. Bryan Zollinger took to Facebook on Friday, re-posting a conspiracy theory suggesting that last weekend's events in Charlottesville, Va., could have been an inside job orchestrated to smear [Trump]. The post … is replete with

HOT ON THE RIGHT:

"Survey: Plurality of Med Students Support Trigger Warnings," from the National Review: "According to a survey conducted by Ohio University medical-school professors, a plurality of med students think that using 'trigger warnings' in med-school classrooms is a good idea. According to the study … 31 percent of the 259 students surveyed said 'yes'

wild, unevidenced claims couched in what-ifs … [and] suggests, at various points, that the white supremacist demonstration … may have been plotted by former President Barack Obama, billionaire George Soros, Virginia Gov. Terry McAuliffe or Charlottesville Mayor Mike Signer — or by some shadowy cabal involving them all. In a comment, Zollinger called the blog post 'completely plausible.'"

when asked whether they supported the use of trigger warnings in medical education, with 39.2 percent saying 'maybe' and just 29.7 percent saying 'no.' According to an article in Campus Reform, many of the students who responded 'maybe' 'expressed generally favorable opinions of trigger warnings, including one student who said they should be used before discussing 'very deep issues that potentially could cause an emotional rise in someone.'"

DAYBOOK:

Trump is in Arizona today for a tour of Customs and Border Protection equipment in Yuma and a campaign rally in Phoenix.

Pence has interviews with NBC's Matt Lauer and Fox News's Ainsley Earhardt before he leaves for Phoenix. After the rally, he will fly to Miami.

QUOTE OF THE DAY:

Mitch McConnell on "fake news," hours after Trump once again attacked it on Twitter: **"My view is that most news is not fake, but I do try to look at a variety of sources."**

NEWS YOU CAN USE IF YOU LIVE IN D.C.:

-- It will be another hot day in D.C. today, with some relief later in the week. The Capital Weather Gang forecasts: "Partly to mostly sunny, hazy, hot and humid with highs in the low-to-mid 90s. Heat indexes as high as near 100 this afternoon mean you should take care with outside activities (stay hydrated and sun-protected). … Perhaps a stray late-afternoon shower or storm."

-- Maryland will receive $900 million in federal funding for its Purple Line. Robert McCartney and Faiz Siddiqui report: "The breakthrough came after 'very productive, high-level conversations' on Friday and Monday between Gov. Larry Hogan (R) and Transportation Secretary Elaine Chao, Hogan spokesman Doug Mayer said. … The announcement put to rest worries in Maryland that the Purple Line might fall victim to desires in the Trump administration and the Republican Party to trim federal transit spending. Hogan drew praise

for the deal from Maryland Democrats, who applauded him for ultimately backing the Purple Line despite having criticized it as too costly during his 2014 gubernatorial campaign."

-- D.C.'s workers flooded rooftops yesterday to watch the solar eclipse. (Justin Wm. Moyer)

VIDEOS OF THE DAY:

Trevor Noah explored the meaning of white supremacy:

The "Master Race" Needs to Play It Cool: The Daily Show

Andy Richter tested out his glasses for the eclipse:

Andy Richter's Eclipse Glasses - CONAN on TBS

The Post compiled eclipse highlights:

Watch highlights from the great American eclipse

In 30 seconds, this is what Oregon's total eclipse looked liked:

Timelapse: Watch Oregon's total solar eclipse in 30 seconds

A University of Maryland professor explained the science behind an eclipse:

The science behind a total eclipse

The Post's Angela Fritz researched how people viewed solar eclipses

over the course of history:

How did people view solar eclipses in the past?

And if you were too embarrassed to ask, a doctor described the damage that a simple glance at the eclipse without glasses can do:

What if I just glance at the solar eclipse without eclipse glasses? A doctor answers

A new North Korean propaganda video shows U.S. officials being

engulfed in flames:

New North Korean video threatens Guam, shows Trump in cemetery

In light of the violent events in Charlottesville, this JFK speech seems newly relevant:

President John F. Kennedy's remarks on civil rights

And Frontier Airlines kicked a father and daughter off a flight:

Frontier Airlines crew kicks father and daughter off flight

You received this email because you signed up for The Daily 202 or because it is included in your subscription. For additional free newsletters or to manage your newsletters, **click here**.

We respect your **privacy** . If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, **click here**. **Contact us** for help.

©2017 The Washington Post | 1301 K St NW, Washington DC 20071

The Daily 202_ DACA decision highlights chasm b....pdf

From: The Washington Post

To: Taylor, Will (OPATTY)

Subject: The Daily 202: DACA decision highlights chasm between Trump's compassionate rhetoric and reality
Date: Tuesday, September 5, 2017 6:58:29 AM

If you're having trouble reading this, click here.

PowerPost

The Daily 202

Morning intelligence for leaders

Share:

Listen to The Big Idea

DACA decision highlights chasm between Trump's compassionate rhetoric and reality

Trump expected to phase out DACA, with six month delay

BY JAMES HOHMANN
with Breanne Deppisch and Joanie Greve

THE BIG IDEA: By their fruits you will know them.

At the Republican National Convention last summer, Donald Trump said he'd "do everything in my power to protect our LGBT citizens." Then he rescinded protections for trans students in public schools and issued orders to bar transgender people from the armed forces.

Trump pronounced the House's health-care bill "mean," but that did not stop him from whipping votes for the measure and holding a rally in the Rose Garden to celebrate its passage.

At a February news conference, Trump was asked about fears in the Hispanic community that he might get rid of the Deferred Action for Childhood Arrivals program. "We're going to show great heart," the president promised. "DACA is a very, very difficult subject for me. … You have these incredible kids, in many cases … They were brought here … We are going to deal with DACA with heart … because, you know, I love these kids. I love kids! I have kids and grandkids."

Today the Trump administration is expected to announce plans to end the DACA program, which has allowed nearly 800,000 undocumented people who were brought to the United States as minors to live and work in the country without fear of deportation. The government will reportedly delay enforcement for six months to give Congress time to find a legislative solution that lets the "dreamers" remain in the country legally. "The president and his senior advisers continued to deliberate Monday afternoon, and aides

cautioned that Trump could still change his mind ahead of the announcement," David Nakamura reports.

-- During Richard Nixon's first year in the White House, his attorney general sought to reassure anxious African American activists by telling them that they should not worry too much about the president's rhetoric. "You will be better advised to watch what we do instead of what we say," John Mitchell said.

In the present administration, that's true now more than ever.

Trump has often talked about the need to be compassionate on social issues, but his rhetoric hasn't matched reality as he has repeatedly acceded to the wishes of his dwindling base since taking office.

-- Trump gets that the optics of ending DACA are bad. Administration officials are trying to spin the six-month delay as a compromise and accommodation. Jeff Sessions, an anti-immigration hawk who has pressed Trump to kill DACA, is scheduled to make an on-camera announcement at 11 a.m. today from the Justice Department, not the White House. The attorney general will not answer any questions.

The president often said before he became a candidate that it would be unrealistic to deport people who have spent decades in the United States, especially children. "You have people in this country for 20 years: They've done a great job, they've done wonderfully, they've gone to school, they've gotten good marks (and) they're productive," he said in a 2011 interview on Fox News. "Now we're supposed to send them out of the country? I don't believe in

that."

A batch of new stories quote aides saying that Trump has agonized over what to do. For example, this is on the front page of today's New York Times: "For months, an anxious and uncertain President Trump was caught between opposing camps in the West Wing … Last week, with a key court deadline looming … Mr. Trump, exasperated, asked his aides for 'a way out' of a dilemma he created by promising to roll back the program as a presidential candidate. … Mr. Trump's frenzied weekend search for an alternative to abruptly ending the program was a fitting finale to his anguished deliberations over DACA since he took office. Aides have portrayed it as a difficult emotional decision for the president."

-- Many commentators believe this is hooey. "Some in the media take seriously the notion that he is 'conflicted' or 'wrestling' with the decision, as though Trump were engaged in a great moral debate," writes conservative blogger Jennifer Rubin. "That would be a first for Trump, who counts only winners and losers, never bothering with moral principles or democratic norms. The debate, if there is one, is over whether to disappoint his rabid anti-immigrant base or to, as is his inclination, double down on a losing hand."

Of Trump's promise that he'd make the DACA decision with heart, liberal blogger Paul Waldman writes: **"If you believed that for a second, you were a fool.** … Trump began his presidential campaign saying, 'When Mexico sends its people, they're not sending their best. … They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people.' He alleged that the judge in the Trump University fraud trial couldn't do his job objectively because

'He's a Mexican' (the judge is in fact an American of Mexican heritage). He repeatedly told lurid stories of individual crimes committed by an undocumented immigrant, especially if the victim was a 'beautiful' white girl, even though immigrants actually commit fewer crimes than native-born Americans. As president he followed up by creating the Victims of Immigrant Crime Engagement Office, which exists in order to publicize crimes committed by immigrants. A month ago, he endorsed a bill in Congress that would slash legal immigration levels in half. He claimed, ludicrously, that he lost the popular vote to Hillary Clinton only because millions of undocumented immigrants voted for her. And the symbolic centerpiece of his campaign was a wall along our border with Mexico." (Trump also pardoned Joe Arpaio.)

-- Retiring GOP Rep. Ileana Ros-Lehtinen, a Cuban American who represents the Miami area, also seized on Trump's promise to "show great heart":

Immigration advocates speak to Harvey evacuees who are in the country illegally at a Houston shelter. (Elliot Spagat/AP)

WHY THIS MATTERS — THE HUMAN DIMENSION:

-- "Their lives were transformed by DACA. Here's what will happen if it disappears," by Maria Sacchetti: "A former waiter, born in El Salvador, now writes code for a U.S. Navy contractor. A young man from South Korea is using the money he makes selling pastries to help pay for community college. And a psychology major from Ecuador, who feared she'd be stuck babysitting all her life, now plans to earn a doctorate and move to New York. They are among nearly 800,000 undocumented immigrants whose lives were transformed by (DACA). … Some became high school valedictorians. Others are lawyers, engineers or medical professionals. Hundreds returned to

school, because [DACA] required it, and made it easier in some states to seek tuition assistance. ... If Trump phases out the program … those young people will become undocumented again — eventually losing their work permits, jobs and health insurance and, in many states, their driver's licenses. The job losses alone — about 30,000 a month — would cost the U.S. economy billions of dollars in taxes and retraining, according to estimates by the Center for American Progress and Fwd.us."

-- **Related**: "'If they deport all of us, who will rebuild?' **Undocumented workers could be key to Texas recovery**," by Arelis R. Hernández and Aaron C. Davis in Houston. "Leaders in the construction industry have begun sounding alarms that there will not be enough American-born workers to rebuild as quickly as needed. 'If they would relax the rules, honestly, that would be great, we could use it,' said Jeffrey Nielsen, executive vice president of the Houston Contractors Association."

Senate Majority Leader Mitch McConnell and House Speaker Paul Ryan speak to the media outside the White House this spring. (Pablo Martinez Monsivais/AP)

WILL CONGRESS ACT?

-- Once again, there is fear among top Republicans on Capitol Hill that Trump is setting them up to be the fall guys. If something doesn't get done, the president will blame them.

-- "The odds that a sharply polarized Congress could strike a deal — steep in the best of times — are considered especially difficult at a time when lawmakers face a busy fall agenda," David Nakamura reports. "House Speaker Paul D. Ryan (Wis.), Sen. Orrin G. Hatch (Utah) and several other GOP leaders have urged Trump not to end the program. ... **Moderate congressional Republicans, and even some conservatives, suggested that they are open to crafting a legislative deal** … (But) Ryan and other GOP leaders

have not laid out a new legislative path, including whether the dreamers' future would be addressed in isolation — which would appeal to Democrats and moderates — or be coupled with proposals to increase border security and tighten immigration controls, which could win greater support from conservatives. … Sen. Tom Cotton (R-Ark.), an immigration hard-liner, suggested that he would be open to giving the dreamers legal permanent residence provided that any deal also include his legislative proposal, called the Raise Act, which would slash legal immigration levels by half over a decade. … Others have suggested that Trump could attempt to use the dreamers to bargain for a down payment — an estimated $1.6 billion — on the U.S.-Mexico border wall he promised voters during the campaign."

-- "DACA to test Bannon's juice outside the White House," by Politico's Eliana Johnson, Josh Dawsey and Andrew Restuccia: "(Steve) Bannon, who has reclaimed his post at the helm of Breitbart News and believes the fight over immigration propelled Trump to the presidency, has told associates he's prepared to take on both Ryan and [Mitch McConnell] over immigration this fall. … **[A] senior White House aide said that if Republican lawmakers fail to agree on a plan, he didn't expect Trump to follow through on terminating DACA** — a prospect that would test Bannon's commitment to support his former boss from the outside."

-- This also adds another big-ticket and highly polarizing item to the congressional agenda, which will make it marginally harder to pass the president's highest priorities — including an overhaul of the tax code.

President Trump bows his head during prayer with faith leaders. (Andrew Harrer/Bloomberg News)

ELITE BACKLASH MOUNTS:

-- Members of Trump's evangelical advisory board, who stood by him even in the wake of his widely condemned Charlottesville response, have pleaded with the president to show more empathy. "I know these kids," Atlanta-area pastor Jentezen Franklin recalled telling Trump last week. "They are good kids?" Trump reportedly asked. "Yes, sir, they are." Franklin said he replied. He then noted Trump's love for his own kids. "I want to see that kind of heart toward these children," Franklin told Trump. (Frances Stead Sellers)

-- More than 400 chief executives — from many of the country's biggest companies — signed a petition urging Trump and Congress to protect Dreamers. A national business coalition,

founded by Michael Bloomberg to advocate for immigration changes, has more than 100 corporate and conservative leaders lined up in at least 15 states to call on Congress to act. The lobbying will take the form of private meetings both in Washington and in members' home districts, letters to member of Congress, newspaper op-eds and public events. (Tracy Jan)

-- The American Council on Education, which represents nearly 1,800 higher education officials, issued a statement criticizing Trump's decision. "To our students, and all those who are potentially affected, be assured that the nation's colleges and universities will actively, strongly and persistently urge Congress to swiftly approve legislation to enable you to maintain your current status," said Ted Mitchell, the council's president. (Nick Anderson)

-- An NBC-Survey Monkey poll released last week found that 64 percent of Americans back this program, including 41 percent of Republicans.

HOW THE STORY IS PLAYING ACROSS THE COUNTRY:

- AP: "Young immigrants prepare for worst if Trump ends protections."
- ABC News: "Dreamers head back to school facing fears about DACA's future."
- People Magazine (picking up a story in the Houston Chronicle): "Man Who Drowned Trying to Save Harvey Victims Benefited from the DACA Program Trump Wants to End."
- Fox News: "Republicans divided on Trump's expected DACA announcement."

- USA Today: “DACA fix could 'overwhelm' Congress that has failed to devise an immigration solution.”
- BuzzFeed: “How DACA Became An Orphan In Trump's White House.”
- Chicago Sun-Times: “Dreamers worry as they await Trump’s decision on DACA.”
- Denver Post: “Coloradans express concerns about Trump’s apparent decision to end DACA.”
- KFOR (NBC affiliate in Oklahoma City): “‘It’s a scary emotion at the same time,’ Oklahoma DACA participants await decision.”
- The Tampa Bay Times: Two of the Republican candidates for governor in Florida issued statements offering support for young immigrants and say Congress needs to act. “…The children of illegal immigrants should not be punished for their parents’ wrongdoings,” said Adam Putnam. “We must lead with a compassionate heart, not by punishing children,” said Jack Latvala.
- Boston TV stations and newspapers are covering Massachusetts Republican Gov. Charlie Baker saying he hopes Trump does not follow through on his plans to get rid of the program. (WBZ)
- The Pittsburgh Post-Gazette runs a story about Democratic Sen. Bob Casey, up for reelection next year in a state Trump carried, saying ending DACA is “not only wrong and immoral ... it's really bad for our economy.”
- Newsmax: “Trump a 'Liar' If He Doesn't Protect DACA: Hispanic Chamber Chief.”
- Breitbart: “Hillary Clinton Lobbies for DACA as Obama Plans Rebuke.”

Listen to James's quick summary of today's Big Idea and the headlines you need to know to start your day:

Play audio brief

Subscribe to **The Daily 202's Big Idea** on Amazon Echo, Google Home, Apple Podcasts and other podcast players.

-- HAPPENING FRIDAY — THE DAILY 202 LIVE WITH WILBUR ROSS: I will talk one-on-one with Commerce Secretary Wilbur Ross at The Washington Post's headquarters Sept. 8 from 9:30-10:30 a.m. We'll cover the Trump administration's efforts to reshape the playing field for international trade, the future of NAFTA, the push to overhaul the tax code and a host of other pressing issues. More information is here.

A MESSAGE FROM THE U.S. CHAMBER OF COMMERCE

Stop the looming health insurance tax

Congress is running out of time to protect families, seniors, and small

businesses

Welcome to the Daily 202, **PowerPost's** morning briefing for decision-makers. **Sign up to receive the newsletter.**

WHILE YOU WERE SLEEPING:

Satellite images show Hurricane Irma intensifying

-- Hurricane Irma has strengthened to a Category 4 storm and is threatening to make landfall on the U.S. mainland as early as Friday. Greg Porter and Angela Fritz report: "Florida and the Gulf Coast continue to be at risk. The East Coast, including the Carolinas and the Delmarva Peninsula, are also potential candidates for landfall — or, at the very least, heavy rain, strong winds and coastal flooding."

-- The Coast Guard began relocating helicopters over the

weekend from Harvey-ravaged Texas to Irma-threatened Puerto Rico, Florida and Georgia. Another natural disaster could further complicate congressional efforts to secure recovery aid for Harvey victims. (Dan Lamothe, Jessica Contrera and Sarah Larimer)

-- Florida Gov. Rick Scott (R) issued a state of emergency Monday for every county in the state as the forecast worsened.

-- Since Harvey struck last week, chemical companies across the Texas Gulf Coast have already released 1 million pounds of extra air pollutants. Steven Mufson reports: "While attention has zeroed in on the crisis at the Arkema chemical plant in Crosby, Tex., other facilities — oil refineries, chemical plants and shale drilling sites — have been reporting flaring, leaks and chemical discharges triggered by Harvey. Emissions have already exceeded permitted levels, after floating rooftops sank on oil storage tanks, chemical storage tanks overflowed with rainwater, and broken valves and shutdown procedures triggered flaring at refineries. … The chemicals released in the week after Harvey [are] toxic air pollutants documented to harm human health; several cause cancer."

Aaron Funk waters the hillside behind his parents' home as a plane drops water north of Los Angeles over the weekend to fight what's become the largest fire in the city's history. (Paul Rodriguez/Orange County Register/AP)

GET SMART FAST:

1. **Wildfires are threatening two national parks.** Parts of Glacier and Yosemite were under threat by fires burning across the West Coast and Canada. (AP)
2. **U.S.-backed forces seized Raqqa's Old City from the Islamic State, authorities said on Monday —** a significant victory that comes after a grinding, months-long battle for the neighborhood and asserts Syrian Democratic Forces control over 60 percent of Raqqa. (Liz Sly)
3. **Kenya's Supreme Court annulled the results of last month's presidential election,** which was marred by irregularities. There will be a new vote next month. (Wall Street Journal)

4. **After a spate of violence in the Bay Area, California legislators are debating whether extremist groups like antifa and white supremacists should be classified as street gangs.** The proposed designation would give authorities new power to combat the groups — but it has also raised serious concerns about political expression. (Los Angeles Times)
5. **The grandson of Maryland's House majority whip was killed in a Baltimore shooting.** Talmadge Branch implored the government to find a solution to the worsening violence just hours after his 22-year-old grandson Tyrone died. (Baltimore Sun)
6. **The head of the Consumer Financial Protection Bureau once again dodged questions over whether he would run for governor of Ohio.** Richard Cordray attended Cincinnati's AFL-CIO Labor Day picnic, but waved off questions about his political future. (Kevin Williams and Renae Merle)
7. **Cashing in, Sean Spicer has signed with the Worldwide Speakers Group.** His first paid speech will be next week at the investment bank Rodman & Renshaw's annual conference. (Politico)
8. **A Utah nurse is considering legal action after she was violently arrested for telling police — correctly — they were not allowed to take a blood sample from an unconscious patient.** Her arrest was captured by an officer's body camera, and has earned strong condemnation from national nursing organizations, Utah officials and even the local police department. (Amy B Wang and Derek Hawkins)
9. **The New York Daily News is close to announcing an agreement to be sold to Tronc,** the publisher of the Chicago

Tribune and the Los Angeles Times. The deal would be the end of an era for the nearly 100-year-old tabloid. (New York Times)

Drone footage shows west Houston area still severely flooded

THEY'RE BA-CK:

-- House lawmakers are slated to vote Wednesday on a $7.85 billion package of emergency aid for victims of Harvey. The storm has already claimed at least 60 lives, according to the latest estimates. Laurie McGinley and Mike DeBonis report: "The bill ... reflects the White House's requested total for assistance for Texas communities — including $7.4 billion for [FEMA's] disaster relief fund. The bill is to be considered as a stand-alone measure. It does not include a provision to raise the federal debt limit, something that [Treasury Secretary Steven Mnuchin said Sunday] that the Trump administration supported. But multiple congressional aides acknowledged that the debt-limit provision could be added later in the process[.]"

- **Texas Gov. Greg Abbott said Harvey recovery could ultimately cost the federal government $180 billion, which would be double the amount required after Hurricane Katrina.** "The geographic area and the population affected by this horrific hurricane and flooding ... is far larger," he said. (Texas Tribune)
- **The Narrative: "In Texas, Distrust of Washington Collides With Need for Federal Aid."** From the New York Times's Richard Fausset: "Despite state Republican leaders' anti-Washington rhetoric, the aftermath of the storm is prompting huge demands for federal relief."

-- While Treasury Secretary Steven Mnuchin has endorsed a "clean" debt ceiling hike, GOP leaders are looking for an explicit endorsement from Trump himself. Politico's Burgess Everett and Rachael Bade report: "Without [that], the GOP could plunge into a month of intra-party battles that could rattle financial markets and threaten the economy. And absent relative GOP unity on a crucial fiscal deal, Republican leaders could be forced to beg for Democratic votes to avert catastrophe … Trump's most direct comments on the issue came when he tweaked McConnell and Ryan on Twitter for creating a debt ceiling 'mess,' but there are plenty of signals that the president is falling in line — especially after Hurricane Harvey. Paradoxically, the storm, leadership sources believe, could actually smooth the entire process, making September a little easier."

-- The Senate Health, Education, Labor and Pensions Committee is aiming to pass an Obamacare stabilization package by the end of the month. Republican Sen. Lamar Alexander and Democrat Patty

Murray are looking at a narrow set of fixes, as states have largely stepped up to address the exchanges' most pressing concerns. But they hope to include funding for the ACA's cost-sharing reduction payments, although they disagree on how many years to provide the CSR funds. (Politico's Adam Cancryn)

-- Still, Congress's lengthy to-do list this month will put Trump's negotiating abilities to the test like never before. "The list of daunting challenges has only grown with little sense of how he plans to tackle them beyond Twitter storms and declarations of determination," Peter Baker writes in the New York Times.

-- The necessary cooperation between Trump and top Republicans has only been made more difficult by Trump's tense relationship with GOP leadership. The Wall Street Journal's Michael C. Bender and Kristina Peterson share this telling anecdote from Trump's calls with Mitch McConnell: "Mr. McConnell, a fastidious, 30-year veteran of the Senate, often prepared note cards with points he wanted to make during phone calls with the president. Mr. Trump was more casual, starting conversations with several minutes of chatter about the day's headlines or what he had seen on TV[.] … As it became clear Mr. McConnell couldn't summon enough Republican votes to repeal the Affordable Care Act, the Senate majority leader stopped responding to the president's chitchat, the people familiar said. 'Mitch?' the president said when Mr. McConnell fell silent in one call. 'Are you there?' Mr. McConnell waited a beat, then responded. 'Yes, Mr. President. Back to the bill[.]'"

-- Don't forget Russia. Both intelligence committees are expected to hold closed-door session with some of Trump's closest associates,

and there may even be public hearings in the fall. (Politico's Austin Wright and Ali Watkins)

South Korea flexes military muscle after North Korea's nuclear test

THE NEW WORLD ORDER:

-- Following North Korea's apparent test of a thermonuclear weapon Sunday, South Korea's defense minister suggested the return of tactical U.S. nuclear weapons to the Korean Peninsula — a strategy that experts warned would "sharply increase" risk of accidental conflict.

Anna Fifield reports: "[In] Seoul, the Defense Ministry warned that Pyongyang might be preparing to launch another missile into the Pacific Ocean, perhaps an intercontinental ballistic missile theoretically capable of reaching the mainland United States. [Meanwhile], Trump and his South Korean counterpart, Moon Jae-in, spoke on the phone for 40 minutes Monday night ... They agreed as well to work together to punish North Korea for Sunday's nuclear test,

pledging 'to strengthen joint military capabilities,' a White House statement said, and to 'maximize pressure on North Korea using all means at their disposal.'"

-- U.S. ambassador to the United Nations Nikki Haley said during a U.N. Security Council meeting Monday that North Korea is "begging for war" through its provocative actions, and pushed for the "strongest possible" sanctions against the Kim Jong Un regime. "When a rogue regime has a nuclear weapon and an ICBM pointed at you, you do not take steps to lower your guard. No one would do that. We certainly won't," Haley said, ruling out the "freeze for freeze" proposal backed by China and Russia.

Haley also echoed Trump's threat to cut off trade with countries that deal with the North: "The United States will look at every country that does business with North Korea as a country that is giving aid to their reckless and dangerous nuclear intentions," she said. **Her remarks appeared to be unpersuasive.** "China will never allow chaos and war" in Korea, said Chinese ambassador to the United Nations Liu Jieyi. Russia's U.N. ambassador echoed this sentiment, saying sanctions alone will "not solve the crisis."

President Trump, flanked by Senate Majority Leader Mitch McConnell and House Speaker Paul Ryan, speaks in the Roosevelt Room in March. (Evan Vucci/AP)

TRUMP'S AGENDA:

-- The Environmental Protection Agency has tasked a former Trump campaign aide with vetting hundreds of millions of dollars in agency awards and grant applications. Juliet Eilperin reports: "**According to both career and political employees, [John] Konkus has told staff that he is on the lookout for 'the double C-word' — climate change —** and repeatedly has instructed grant officers to eliminate references to the subject in solicitations. Konkus, who officially works in the EPA's public affairs office, has canceled close to $2 million competitively awarded to universities and nonprofit organizations. **EPA spokeswoman Liz Bowman said that grant decisions 'are to ensure funding is in line with the Agency's mission and policy priorities.'"**

-- Trump seems okay with gifts from Saudi Arabia — as long as they're to his administration. The Daily Beast's Ken Klippenstein reports: "That was, of course, before he made his first foreign visit as president to Saudi Arabia — and accepted dozens of gifts from the kingdom. **In fact, during Trump's visit, the White House accepted at least 83 separate gifts from Saudi Arabia[.]** … The gifts range from the regal ('Artwork featuring picture of President Trump') to the martial (multiple swords, daggers, leather ammo holders and holsters), to the baroque (tiger and cheetah fur robes, and a dagger made of pure silver with a mother of pearl sheath). … Amusing as the gifts may be, they are emblematic of a more serious issue: Trump's embrace of the Saudi regime, a stark reversal from his campaign rhetoric."

SOCIAL MEDIA SPEED READ:

Twitter was abuzz about the DACA news. From the head of Apple:

From the chef Trump sued after he canceled plans to open a resturaunt in Trump's D.C. hotel:

From a contributor to The Week:

From a Vox writer:

The organizers of the Women's March called on its participants to support DACA:

California's attorney general, former congressman Xavier Becerra, vowed to fight for the program:

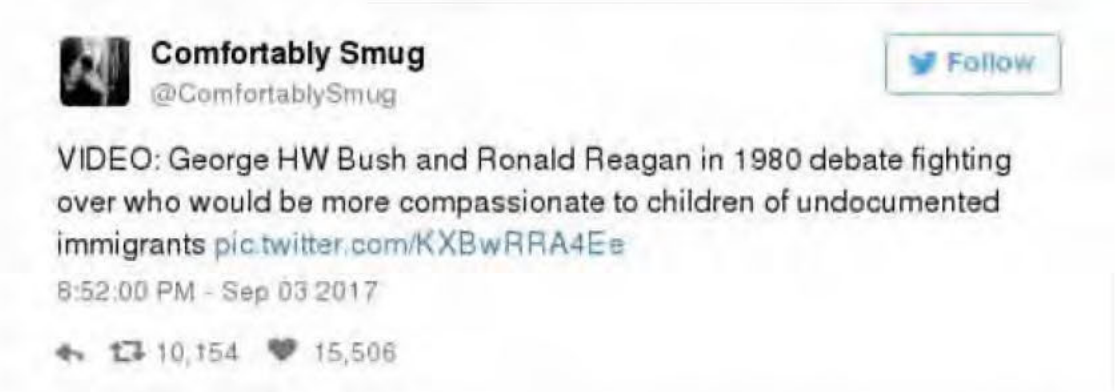
Other blue states, like New York, also threatened litigation:

From House Democrats:

The staunchly conservative Rep. Steve King (R-Iowa) argued that ending DACA will bring about a return to the “Rule of Law”:

A Daily Beast reporter laid out why dreamers could be particularly susceptible to deportation:

Trump's stance represented a complete reversal from the GOP's position on such immigrants during the Reagan era:



A former deputy press secretary to George W. Bush responded to the 1980 clip:

A Senate Democrat dismissed Trump's proposal of ending trade with any country that does business with North Korea:

Rep. Steve Scalise (R-La.) paid tribute to another one of the Alexandria shooting victims:

The New Yorker depicted victims and first responders of Hurricane Harvey on its latest cover:

Members of Congress celebrated Labor Day:

Senator Joe Donnelly
@SenDonnelly

Follow

Happy #LaborDay to all the hardworking Hoosiers in every corner of our state. pic.twitter.com/V4YCBsDL2b

9:40:00 AM - Sep 04 2017

52 263

And the former prime minister of Sweden took a shot at Trump:

Melissa McCarthy as White House Press Secretary Sean Spicer, left, and Alec Baldwin as President Donald Trump perform on "Saturday Night Live." (Will Heath/NBC via AP)

-- Politico Magazine, "The Politico 50": This year's list of the "50 ideas blowing up American politics (and the people behind them)" includes appearances from Steve Bannon, Sally Yates and Melissa McCarthy.

-- The Atlantic, "The Merkel Effect," by Emily Schultheis: "After expectations that this year's campaign would be Germany's most contentious one in years, the final weeks of the election have felt decidedly devoid of drama—enough so that the Wall Street Journal's headline in a recent story about the campaign declared succinctly: 'Wow, it's Boring.'"

-- NM Fishbowl, "The Petty Politics of Loboland," by Daniel Libit: "The unique alliance between poll-plummeting governor (Susana

Martinez) and win-starved basketball coach provides a keyhole into a much larger phenomenon that has played out at UNM. The state's largest institution of higher education has steadily become, in today's jargon, a political swamp — one that has fostered an inbred and invasive specie of self-preserving creature."

-- New York Magazine, "In Conversation: Bill de Blasio," by Chris Smith: "The mayor thinks New Yorkers appreciate real talk, even if some of it is bad news. But also, he says, a lot of it isn't."

HOT ON THE LEFT

"Michelle Obama dresses as Beyonce for singer's birthday," from The Hill: "Beyonce posted a photo spread featuring Obama, tennis star Serena Williams, her eldest daughter Blue Ivy Carter and other friends and family members on her website. All the girls and women are seen mimicking Beyonce's look in her 2016 music video 'Formation,'

HOT ON THE RIGHT

"School district apologizes after students told 'Make America Great Again' shirts not allowed in class," from Amy B Wang: "A Georgia school district has apologized after one of its teachers asked two high school students wearing 'Make America Great Again' T-shirts to leave her classroom. The incident took place at River Ridge High

sporting a hat covering their eyes, an ornate necklace and braids in the black and white photographs. The performer, a Houston native, posted a link to Hurricane Harvey relief efforts on the same webpage as the snapshots."

School on Aug. 31.'"

DAYBOOK:

Trump has afternoon meetings with the National Economic Council and members of Congress to address the overhaul of the tax code. He will also have a phone call with Australian Prime Minister Malcolm Turnbull in the evening.

Pence will oversee two swearing-in ceremonies today: for OPIC CEO Ray Washburne and Surgeon General Dr. Jerome Adams.

QUOTE OF THE DAY:

Vladimir Putin on whether he is disappointed in Trump for being "naïve": **"[Trump is] not my bride, and I'm not his groom."**

NEWS YOU CAN USE IF YOU LIVE IN D.C.:

-- It will feel like summer in D.C. today, but the rest of the week should kick off fall weather. The Capital Weather Gang forecasts: "Mostly sunny and warm with moderate humidity (dew points in the 60s) as temperatures aim for afternoon highs in the middle to even upper 80s. Clouds increase middle to late afternoon with scattered showers and storms. Some of these storms could be strong or even severe with gusty winds and heavy downpours."

-- The Nationals beat the Marlins 7-2 in Miami. (Chelsea Janes)

-- The son of former U-Md. football coach Mike Locksley died in a shooting on Sunday. Meiko Anthony Locksley was 25. (Lori Aratani and Roman Stubbs)

VIDEOS OF THE DAY:

Stephen Colbert's latest edition of "Alter Egos" focused on characters from the Washington swamp:

Late Show's Alter Egos IV: The Swamp

The Post's fact-checking team awarded three Pinocchios to the Senate Leadership Fund's claims about Kelli Ward and chemtrail conspiracy theories:

Fact Check: The Senate Leadership Fund's assertions about Kelli Ward and chemtrails

Award-winning chefs in Houston are providing meals to 20,000 Harvey victims and first responders a day:

Top Houston chefs band together to feed thousands of hurricane victims

Animal shelters outside of Texas are taking some of the pets who faced the hurricane:

Pets driven out by Harvey find shelter out-of-state

And explosive experts defused a massive World War II-era bomb in Frankfurt:

Massive WWII bomb defused in Frankfurt

You received this email because you signed up for The Daily 202 or because it is included in your subscription. For additional free newsletters or to manage your newsletters, **click here**.

We respect your **privacy** . If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, **click here**. **Contact us** for help.

©2017 The Washington Post | 1301 K St NW, Washington DC 20071

The Daily 202_ Europe trip shows how the Trump ....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: The Daily 202: Europe trip shows how the Trump Doctrine is situational and always in flux
Date: Friday, July 7, 2017 7:52:13 AM

If you're having trouble reading this, click here.

PowerPost

The Daily 202

Morning intelligence for leaders

Share on Twitter Share on Facebook

Europe trip shows how the Trump Doctrine is situational and always in flux

Donald Trump clenches his fist yesterday in front of the Warsaw Uprising Monument on Krasinski Square. (Saul Loeb/AFP/Getty Images)

BY JAMES HOHMANN
with Breanne Deppisch and Joanie Greve

THE BIG IDEA: Just seven weeks ago, in Saudi Arabia, President Trump assiduously avoided using the term "radical Islamic terrorism." Not long ago, he vociferously attacked Barack Obama for *not* uttering those very words. But pragmatists in the administration, such as National Security Adviser H.R. McMaster, warned the commander-in-chief that this rhetoric is counterproductive.

The term made a comeback in Poland on Thursday. "We are fighting hard against radical Islamic terrorism, and we will prevail," Trump said in Warsaw.

Comparing the president's two major foreign policy speeches reveals the extent to which the Trump Doctrine is forever in flux and offers a window into the internal maneuvering to define it.

"This is not a battle between different faiths, different sects, or different civilizations," Trump told Arab leaders in Riyadh. "This is a battle between barbaric criminals who seek to obliterate human life and decent people."

In Warsaw, though, Trump referred 10 separate times to a clash of civilizations. "The fundamental question of our time is whether the West has the will to survive," he told a crowd that included people who had been bused in by the ruling party to cheer for him. "Do we have the confidence in our values to defend them at any cost? Do we have enough respect for our citizens to protect our borders? Do we have the desire and the courage to preserve our civilization in the

face of those who would subvert and destroy it?" The president concluded by confidently declaring that "the West will never, ever be broken": "Our values will prevail, our people will thrive and our civilization will triumph."

Compare that to his message in Riyadh: "America will not seek to impose our way of life on others, but to outstretch our hands in the spirit of cooperation and trust. … We are not here to lecture. We are not here to tell other people how to live, what to do, who to be, or how to worship."

Trump has often used the phrase 'radical Islamic terrorism.' But not in Saudi Arabia.

-- Trump has also changed his tune on NATO since the last trip. In May, he caught McMaster and Defense Secretary Jim Mattis off guard by nixing language from a carefully prepared speech that reaffirmed the United States commitment to mutual defense obligations under Article 5 of the NATO charter. Ahead of the speech at the alliance's headquarters in Brussels, senior administration officials told reporters that Trump would deliver the lines. His decision

to cut them was seen as a win for White House Chief Strategist Stephen Bannon and senior adviser Stephen Miller.

Yesterday, the president delivered the line that these aides had wanted him to say in May: "The United States has demonstrated not merely with words but with its actions that we stand firmly behind Article 5."

-- Boiling it down, McMaster got what he wanted from Trump on NATO this time but not on "radical Islamic terrorism." And vice versa for Bannon and Miller.

This reflects the messiness of the ongoing war for the soul of Trumpism that rages on inside the administration, pitting the nationalists against the globalists. Neither faction is likely to ever decisively win out over the other. Trump, who puts a premium on keeping his options open, seems determined to never let himself get defined as one or the other for very long. Just as we saw throughout his campaign, he enjoys not just being unpredictable and improvisational but having competing power centers underneath him. Because he lacks many core convictions, he's ideologically flexible.

That means that proximity to power matters far more in this White House than normal ones. Fairly or not, Trump has earned a reputation for doing whatever the last person he talks with suggests when trying to make up his mind. That makes facetime especially valuable.

H.R. McMaster arrives in the Rose Garden last Friday to watch a joint statement by Donald Trump and Moon Jae-in, South Korea's president. (Andrew Harrer/Bloomberg)

-- Trump's top aides are divided on a host of big questions, including whether to consider scaling back sanctions on Russia. Mattis and McMaster have hawkish views while Secretary of State Rex Tillerson has seemed more open to it. **Two fresh news stories reflect other battle lines:**

The military's ability to determine troop levels in Afghanistan has secretly been curtailed. The Wall Street Journal's Dion Nissenbaum reports: "A few days after (Trump) gave his Pentagon chief the unilateral authority last month to send thousands of American troops to Afghanistan at his own discretion, the White House sent classified guidance that effectively limits the number of forces. The memo, sent by (McMaster) to a small group of administration officials, said that **the president would let (Mattis) send no more than 3,900 troops**

to Afghanistan without coming back to confer with the White House. … The conflicting messages reflect divisions that have surfaced in the Trump administration as it tries to develop a comprehensive new strategy for Afghanistan."

Tera Dahl, deputy chief of staff at the National Security Council and a former columnist for Breitbart, is leaving the White House. BuzzFeed's John Hudson reports: "Dahl entered the White House with strong ties to members of the nationalist wing … including Bannon, whose website she wrote for, and NSC aide Sebastian Gorka, whose wife worked with Dahl at the Council on Global Security, a now-defunct counterterrorism think tank that warned about the dangers of Islam. During her time at the White House, Dahl became a key ally of Keith Kellogg, the NSC's chief of staff who maintains a strong personal relationship with the president. White House aides said tensions between Kellogg and McMaster have created an uncomfortable working environment at the NSC … One source said (Dahl) is likely to be nominated to a position at the US Agency for International Development."

Trump chats with French President Emmanuel Macron before a family photo at the G-20 summit this morning. (Carlos Barria/Reuters)

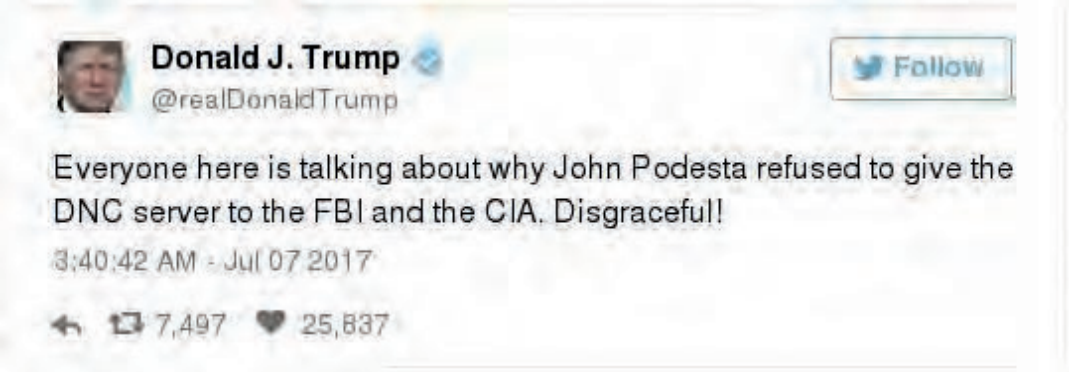
-- All of this contributes to the mixed messages that Trump sometimes sends. Consider his posture on Russia:

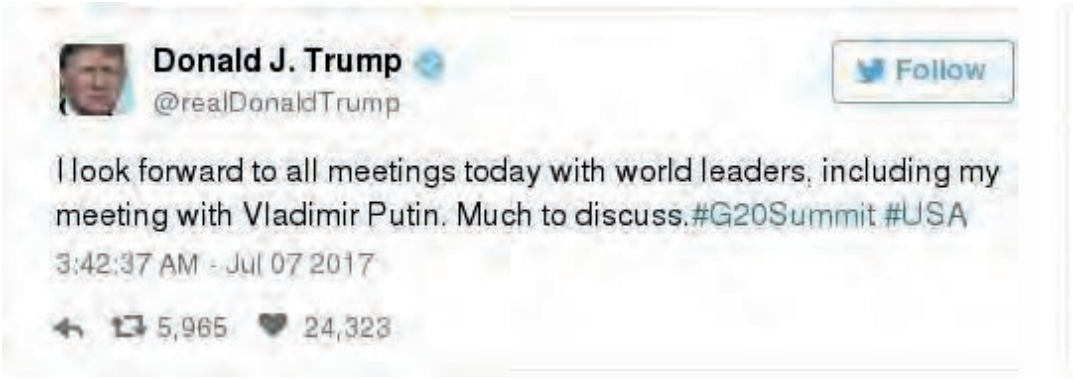
In his scripted speech, which went through the traditional vetting process of the national security apparatus, Trump was firm: "We urge Russia to cease its destabilizing activities in the Ukraine and elsewhere and its support for hostile regimes, including Syria and Iran, and instead join the community of responsible nations in our fight against common enemies and defense of civilization itself."

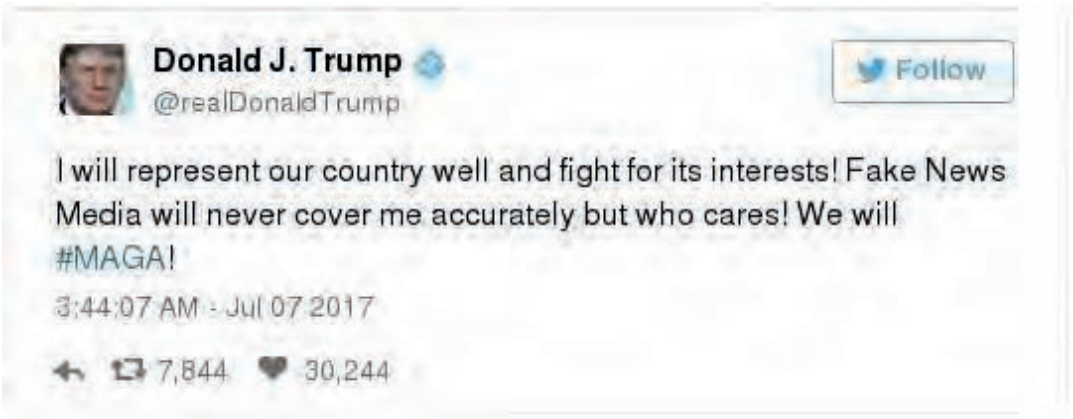
In his unscripted press conference, however, Trump refused to endorse the assessment of the U.S. intelligence community that Russia interfered in last year's election. "Nobody really knows for

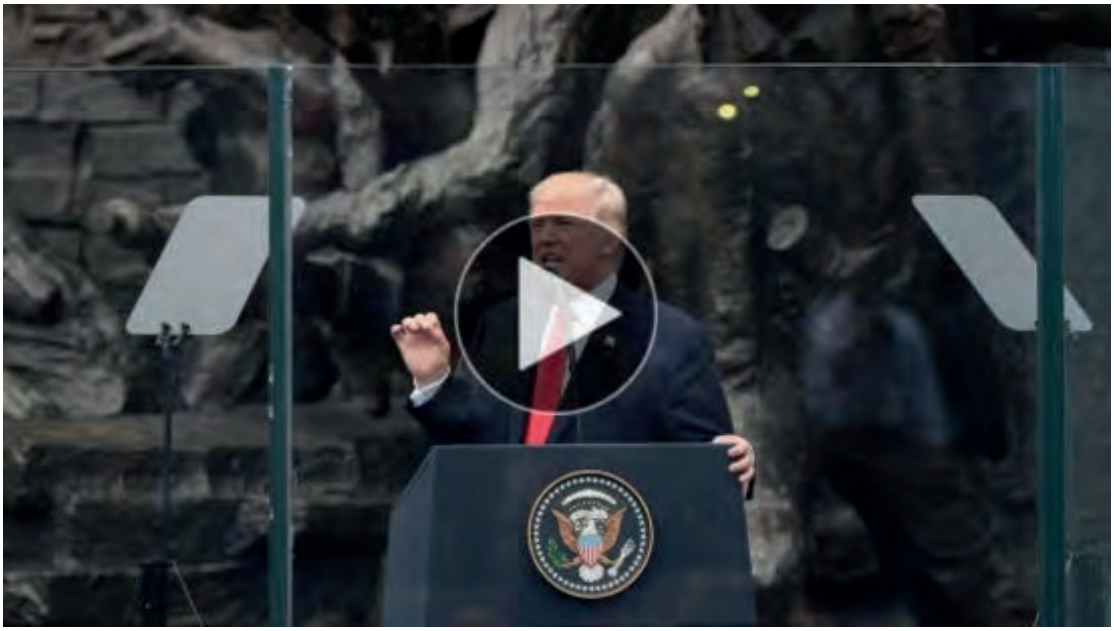
sure," he insisted, noting that the same agencies also thought Iraq had weapons of mass destruction. "They were wrong and it led to a mess," he said.

-- When presidential pronouncements appear to be all over the place, they pack less of a punch. That's why everyone pays so much attention to Trump's Twitter feed. It is the clearest window into what he truly thinks. Ahead of his meeting with Vladimir Putin on the sidelines of the G-20 meeting in Hamburg, the president posted a stream of tweets this morning that were clearly not written by staff:









Trumps asks 'whether the West has the will to survive'

TWELVE TAKES ON TRUMP'S WARSAW SPEECH:

- **Post columnist Eugene Robinson:** "Viewing the fight against terrorism as some kind of civilizational Armageddon is wrong.

Trump seems to view himself as the West's defender against 1.6 billion Muslims, almost all of whom want only to live in peace. We need a capable president, not a crusader in chief."

- **The Post's Editorial Board:** "Trump wants us to defend 'our values.' Which ones?"
- **Walter Shapiro for The Guardian:** "Trump's warning about 'western civilisation' evokes holy war. About all that was missing from Trump's Warsaw war cry was a rousing chorus of 'Onward Christian Soldiers.'"
- **Bloomberg's Marc Champion:** "Trump Just Redefined Western Values Around Faith, Not Democracy."
- **The Atlantic's Peter Beinart:** "When the president says being Western is the essence of America's identity, he's in part defining America in opposition to some of its own people."
- **WorldViews's Ishaan Tharoor:** "Trump appealed to the blood-and-soil nationalism and Christian triumphalism that has defined his political brand and that of the far right in Europe. … The most glaring omission in Trump's speech — *though no longer surprising* — was of any discussion of democracy or human rights."
- **The Wall Street Journal Editorial Board calls it "Trump's defining speech":** "Six months into his first term of office, Mr. Trump finally offered the core of what could become a governing philosophy. It is a determined and affirmative defense of the Western tradition."
- **Politico's Annie Karni:** "Trump hands a victory to Polish nationalists. Historians and observers say the president's decision to break with tradition by skipping a trip to Warsaw's Holocaust memorial plays into the ruling party's message."

- **The Associated Press's Ken Thomas:** "Trump's Poland visit a study in breaking norms."
- **The libertarian Reason Magazine's Matt Welch:** "The president's Warsaw speech takes a paranoid view of internal threats while downplaying the central role that international exchange has played in the rise of the West."
- **Breitbart's story about the speech, meanwhile, compares Trump to "another Western leader of indomitable resolve: Winston Churchill."**
- **Conservative columnist Charles Krauthammer said it was Trump's best speech and called it Reaganesque on Fox News.**

Welcome to the Daily 202, **PowerPost's** morning newsletter.
Sign up to receive the newsletter.

WHILE YOU WERE SLEEPING:

Russian President Vladimir Putin arrives for the opening day of the G-20 summit in Hamburg. (Lukas Barth/European Pressphoto Agency)

-- Russia has ramped up its intelligence-gathering efforts inside the United States, according to current and former U.S. intelligence officials, who believe Moscow feels "emboldened" by the lack of retaliation for interfering in last year's election. CNN's Pamela Brown, Shimon Prokupecz and Evan Perez report: "Since the November election, US intelligence and law enforcement agencies have detected an increase in suspected Russian intelligence officers entering the US under the guise of other business … Russia is believed to now have nearly 150 suspected intelligence operatives in the US, these sources said. [Officials] say the Russians are replenishing their ranks after the US in December expelled 35 Russian diplomats suspected of spying … Fueling law

enforcement officials' concern is that the Russians are targeting people in the US who can provide access to classified information ... In some cases, Russian spies have tried to gain employment at places with sensitive information as part of their intelligence-gathering efforts, the sources say. But that hasn't stopped the State Department from issuing the temporary duty visas — also known as TDY — to the suspected Russian intelligence officers."

-- Hackers are targeting the computer networks of companies operating nuclear facilities in the United States and other countries, according to a new joint report from the DHS and the FBI, which was given an urgent "amber alert" classification. The New York Times' Nicole Perlroth reports: "Among the companies targeted was the Wolf Creek Nuclear Operating Corporation, which operates a nuclear power plant near Burlington, Kan. … The report did not indicate whether the cyberattacks were an attempt at espionage — such as stealing industrial secrets — or part of a plan to cause destruction. There is no indication that hackers had been able to jump from their victims' computers into the control systems of the facilities, nor is it clear how many facilities had been successfully targeted. … The hackers appeared determined to map out computers networks for future attacks ... But investigators have not been able to analyze the malicious 'payload' of the hackers' code, which would offer more detail into what they were after. In most cases, the attacks targeted people — industrial control engineers who have direct access to systems that, if damaged, could lead to an explosion, fire or a spill of dangerous material."

-- A federal judge ruled that grandparents are not exempt from

the Trump administration's amended travel ban following the Supreme Court's decision on the order. Matt Zapotosky reports: "U.S. District Judge Derrick K. Watson wrote that he would not 'usurp the prerogative of the Supreme Court,' and if those suing over the ban wanted relief, they should take their claims there. … Neal Katyal, a lawyer for those challenging the ban, noted on Twitter the ruling offered no decision on the 'merits of dispute,' but simply said it was the Supreme Court's place to decide. … The matter is likely bound for higher courts."

Scalise readmitted to intensive care

-- House Majority Whip Steve Scalise underwent another surgery to manage an infection in his wounds, his medical team said last night. The Louisiana Republican "remains in serious condition" one day after being readmitted to the ICU. His doctors declined to give additional details but said Scalise "tolerated the procedure well." (Clarence Williams)

- **A man was arrested for threatening a staffer at Sen. Jeff**

Flake's office in Tucson. Referencing last month's shooting at the Republican congressional baseball practice where Scalise was wounded, the suspect reportedly said: "You know how liberals are going to solve the Republican problem? They are going to get better aim. That last guy tried, but he needed better aim." (Tucson News Now)

- **A federal judge ordered a Pennsylvania man accused of bringing a military-style rifle to the Trump International Hotel in May to undergo a psychiatric examination.** (Spencer S. Hsu)
- **A Connecticut man admitted to spray-painting an elementary school with anti-Trump graffiti in an attempt to frame Democrats.** Steven Marks told police that he wrote the at-times profane messages out of "anger towards liberals and they are breaking major laws everyday and being disrespectful towards our government." (Hartford Courant)

Protesters gather for the Women's March on Washington on Jan. 21. (Amanda Voisard For The Washington Post)

GET SMART FAST:

1. **A Post poll found that around one in three Washingtonians has marched in protest against Trump at least once since January, including more than half of white residents.** High-income residents are among the most likely Trump protesters this year. (Paul Schwartzman and Emily Guskin)
2. **Trump is slated to appoint Georgia Public Health Commissioner Brenda Fitzgerald as CDC director.** Fitzgerald, 70, an obstetrician-gynecologist who has led that state's public health department since 2011, will succeed Tom Frieden. "Within CDC, Fitzgerald's actions will be watched closely to discern whether she will allow politics to overrule science," Lena H. Sun reports. "She condemned graphic antiabortion ads aired by her GOP opponent in her first bid for elected office, saying the government had no business dictating abortion policy."
3. **A new CDC report found the number of opioid prescriptions written by health-care providers has dropped for the very first time since the start of the modern drug crisis,** falling more than 13 percent between 2012 and 2015. Still, researchers are expressing tempered optimism about the results, noting that prescription rates still triple levels from the late '90s and quadruple the numbers of some European countries. (Lenny Bernstein)
4. **Hobby Lobby's $3 million fine for smuggling Iraqi artifacts is casting a shadow over the Museum of the Bible.** Hobby Lobby President Steve Green chairs the board of the museum,

which is set to open near the Mall in November. (Julie Zauzmer and Sarah Pulliam Bailey)

5. **Research by Scottish scientists indicates that Mars's surface is covered with a "toxic cocktail" of chemicals capable of destroying living organisms.** In related news, Mike Pence pledged yesterday that the United States would send astronauts to Mars. (The Guardian/CNN)
6. **Overriding the Republican governor's veto, Illinois lawmakers passed their first budget in two years.** The state had fallen $15 billion behind on bills and its credit rating teetered on the brink of junk status. (Chicago Tribune)
7. **Prosecutors and defense attorneys delivered closing arguments yesterday in Joe Arpaio's trial for contempt.** The former Phoenix-area sheriff is accused of purposely flouting a court injunction on conducting immigration-enforcement operations. A judge will now decide. (The Arizona Republic)
8. **Fox Business Network host Charles Payne has been suspended due to sexual harassment allegations.** A political analyst for the network claims that she was coerced into a sexual relationship with him. Corporate is investigating. (LA Times)
9. **A New York hospital offered to admit Charlie Gard.** New York Presbyterian Hospital and Columbia University Irving Medical Center said that they could accommodate the terminally ill child if safe transportation methods from Britain could be secured. (Lindsey Bever and Alex Horton)
10. **The Paris prosecutor's office has opened an investigation into a Vegas trip that French President Emmanuel Macron took as economy minister last year.** The prosecutor is investigating possible "favoritism" for the trip that Macron used to

boost French tech startups. (AP)

11. **A Delta Airlines flight from Seattle to Beijing was forced to turn back after a passenger attacked a flight attendant.** The passenger was subdued, and a Delta spokesperson said that there was no indication the incident represented a national security threat. (Travis M. Andrews)
12. **The family of a former NFL player accused of killing his mother blames football for making him violent.** De'von Hall's uncle said of his increasingly erratic behavior over the years, "He turned into something that became vicious, and that was the sport he was in. The more vicious, the more accolades you get." (Des Bieler)
13. **Microsoft began its latest round of layoffs.** The company said that thousands of jobs will be cut, mostly in the sales department, but it declined to confirm reports that put the exact figure around 3,000 jobs. (Hayley Tsukayama)
14. **QVC and Home Shopping Network have agreed to a merger.** The parent firm of QVC will buy the remaining 62 percent of HSN that it does not already own. (Sintia Radu)

Senate Majority Leader Mitch McConnell laughs during a ribbon-cutting ceremony yesterday for Exit 30 on Interstate 65 in Bowling Green, Ky. (Austin Anthony/Daily News via AP)

HEALTH-CARE LATEST:

-- Mitch McConnell suggested that he would work with Senate Democrats to shore up ACA insurance markets if a repeal bill does not pass. Juliet Eilperin and Amy Goldstein report: "The remarks, made at a Rotary Club lunch in Glasgow, Ky., represent a significant shift for the veteran legislator. While he had raised the idea last week that Republicans may have to turn to Democrats if they cannot pass their own bill, his words mark the first time he has explicitly raised the prospect of shoring up the ACA. … McConnell on Thursday acknowledged how difficult it is proving to craft an alternative that can satisfy the GOP's conservative and centrist camps … **His suggestion that he and his colleagues might instead try to bolster the insurance exchanges created under the ACA is at**

odds with Republican talking points that they are beyond repair."

-- The timetable for a possible vote on a new Senate health-care bill is getting pushed back again: McConnell now hopes for a vote in *two weeks*. Politico's Burgess Everett and Josh Dawsey report: "There is unlikely to be a consensus new draft of the bill next week until there's tentative buy-in from the vast majority of the 52-member caucus."

-- The same day that McConnell opened the door to bipartisan collaboration, Ted Cruz expressed support for "repeal, then replace." (Everyone, including the Texas senator, knows there are not the votes to do this.) Sean Sullivan reports: "[Cruz] said Thursday that he agrees with President Trump: If Republican senators are unable to pass a bill to repeal and replace key parts of the Affordable Care Act, the Senate should vote on a narrower bill to simply repeal the law and work on a replacement later … Cruz said such a repeal should be delayed 'either a year or two years' to give lawmakers time to work on a replacement … Cruz, who has advocated for a 'clean repeal' in the past, said he still believes the Senate can pass some version of the sweeping bill to repeal and replace the ACA … 'I believe we can get to yes," said Cruz. 'I don't know if we will.'"

-- In his first town hall since coming out against McConnell's original health-care bill, Sen. Jerry Moran (R-Kan.) clarified that he would "not necessarily" vote against the final proposal. David Weigel reports: "Moran, the only Republican senator holding unscreened town halls on health care this week, revealed just how much his party is struggling to pass a bill — and even how to talk

about it … Moran announced the Palco event with a full week's notice, and Kansas's pro-ACA groups mobilized to fill it … The result was a polite but heated round of questions that Moran occasionally chose not to answer … **He did not describe the task facing Republicans as repeal; it was 'repair, replace, whatever language people are using.'** Pressed by activists and voters, Moran said that he did not want to cut back Medicaid."

-- Sen. Mike Lee (R-Utah) has become more adamant about the inclusion of an amendment, crafted by Cruz, that would expand insurance options by allowing plans to skirt certain ACA requirements. Lee's spokesperson said: "The entire bill is unacceptable without the Consumer Freedom Option." (Axios' Caitlin Owens)

-- Amid the squabbling, Sen. Patrick Toomey offered a simple reason for why Republicans have struggled so significantly to reach a consensus on health care: no one thought Trump would win. Paul Kane has a really smart column: "'Look, I didn't expect Donald Trump to win. I think most of my colleagues didn't, so we didn't expect to be in this situation,' the Pennsylvania Republican said … Every important Republican leader expected Democrat Hillary Clinton to win, and that left Republicans confused and paralyzed about how to proceed when she didn't. That in turn led to a rushed initial decision, made in consultation with House Speaker Paul D. Ryan (R-Wis.) and ... McConnell during the presidential transition, to push for a full repeal of the 2010 health law and then set up a two- to three-year window in which Republicans would pass bills to replace it. We all know how that has gone so far."

-- The Ohio House decided not to override Gov. John Kasich's veto of a bill that would have frozen expanded Medicaid enrollment. The bill, if enacted, would have paused the state's expanded enrollment beginning in July 2018, which Kasich estimated would cost 500,000 low-income residents their insurance within 18 months. (The Columbus Dispatch)

-- As the GOP legislation remains in limbo, Democrats are wrestling with a more radical idea: universal coverage. Weigel reports: "Democrats, who are largely using the week-long recess to rally opposition to the Republicans' deeply unpopular attempt to repeal parts of the Affordable Care Act, are now facing a political challenge of their own: increasing pressure from their liberal base to embrace universal, government-funded health-care coverage … Republicans have noticed — and have begun to attack. Facing a widespread voter backlash over the House and Senate repeal bills, they're trying to make universal coverage a political anchor for Democrats by asking whether they can seriously defend trillions of dollars in new taxes and spending."

A souvenir kiosk in Moscow depicts Putin holding a baby-faced Trump. (Mladen Antonov/Getty Images)

MORE ON THE BEAR IN THE WOODS:

-- There might not be an American note-taker when Trump and Putin hold their first bilateral meeting today on the sidelines of the G-20 summit. Axios' Jonathan Swan says there will likely only be six people in the room: the two leaders, Rex Tillerson, Russian foreign minister Sergey Lavrov, and translators.

-- This means Fiona Hill, a strong Putin critic and senior National Security Council official for Russia, would not be in the meeting. "It would be very unusual for someone in Hill's position not to participate in such a meeting," Elizabeth Saunders and Joshua Tucker write on Monkey Cage. (They outline several key items that could — or should — be touched upon during the session.)

-- Congressional Democrats demanded Trump confront Putin on the subject of Russian meddling in U.S. elections, saying in a letter yesterday that failure to do so would be a "severe dereliction" of the duties of the presidency. Lawmakers stressed that it is "critical that you set the agenda from the start and make absolutely clear that Russian interference in our democracy will in no way be tolerated. President Putin must understand this can never happen again." (Karoun Demirjian)

-- "Whatever the outcome of the encounter on Friday … the Kremlin is betting that Mr. Putin can stage-manage the event so that he comes out looking like the stronger party," the New York Times' Neil MacFarquhar reports. "If nothing much emerges from the meeting, analysts said, the Kremlin can repeat the standard Russian line that Mr. Trump is weak, hamstrung by domestic politics. But if Mr. Trump agrees to work with Mr. Putin … he will also look weak while Mr. Putin can claim that he reconstructed the relationship. 'It is a win-win situation for Putin,' said [political analyst] Andrei V. Kolesnikov."

-- Fred Kaplan warns on Slate that the risk in today's meeting is that Putin has a goal and a policy, while Trump doesn't but seems eager to come home with something: "That's when diplomacy can be most risky. Risk sometimes pays off, but only if the leader taking the risk knows the dimension of the risk—the range of possible costs and benefits—and even more, knows where he'd like the conversation and the subsequent actions to go. Trump hasn't thought this through."

-- "You can regard the relationship of Putin and [Trump] as purely odd and possibly corrupt, or you can see in it and in them

a classic tale of affections strangled and at times set free," writes Times columnist Frank Bruni. "It's irrepressible, international — **part 'Clueless,' part 'Casablanca.'** They have gone through all the usual phases of courtship. They have plumbed all the customary emotions. At least Trump has. To be brutally honest and risk bruising his quivering heart, this has been **a lopsided affair**, unless you count Putin's meddling in the 2016 election as the purest possible expression of ardor and fidelity, which I suppose you can. … Now, at long last, they come face to face, and while it's uncertain what Trump will say, it's clear what Trump has done: fashioned himself in the swaggering, blustering image of his beloved. It's 'Grease.' And it's gross."

-- The meeting will be a "testosterone-fueled face-off" between two leaders who have staked their appeal on projecting masculinity, the Times' Susan Chira explains. Putin — much like Trump — tapped into a long-held Russian preoccupation with being perceived as strong, said Soviet history expert William Taubman. "When they get drunk, Russians will often say, 'You respect me, don't you?'" he added.

"Meetings between world leaders have often been seen through the lens of masculinity, [and] that holds particularly true for encounters between Russian and American leaders," Susan explains. Before John F. Kennedy's first meeting with [Nikita] Khrushchev, [he was warned]: 'Your job, Mr. President, is to make sure Khrushchev believes you are a man who will fight' ... But Kennedy was rattled by their encounter; Khrushchev dismissed him as such a weakling that he went on to miscalculate Kennedy's resolve

in the Cuban missile crisis … Even with the long history of swagger, this Russian-American meeting stands out. 'It's as old as American politics and yet it feels new in this iteration,' said [professor Michael Kimmel]. 'To me, that's the metaphor, the WWE. It's two hyper-idealized versions of masculinity getting into the ring.'"

Police, protesters clash at site of G-20 summit

MASKED PROTESTERS, RIOT POLICE CLASH IN HAMBURG:

-- German police in riot gear clashed Thursday with thousands of anti-capitalist protesters in Hamburg, using water cannons and pepper spray to drive away activists who massed near the site of the G-20 summit – some of whom wore face masks and chanted "Welcome to hell." Isaac Stanley-Becker reports: "The skirmish followed an hour-long standoff adjacent to Hamburg's harbor, where protesters were attempting to move from a public square toward the downtown conference center … When police attempted to separate a group of 'black bloc' activists from the roughly 12,000 people who had assembled to protest inequality and economic greed, authorities met

a hail of rocks and bottles. As police rushed the group, some of the protesters fled. But a phalanx of [activists] held their ground. Armored vehicles spewing powerful volleys of water rolled toward the protesters. Smoke bombs detonated in the crowd." Authorities said they made some arrests — though they did not have a final tally — and said **15 officers were injured in the skirmish.** They expect an estimated 100,000 protesters to converge in the city — and have deployed 20,000 officers in the largest police operation in Hamburg's history. In some parts of the city, a no-fly zone is in effect.

-- White House officials reportedly waited too long to book Trump's accommodations for the summit, which was scheduled in early 2016. BuzzFeed reports that by the time his aides began calling for reservations, every luxury hotel in the surrounding area was booked — forcing Hamburg to open its Senate guesthouse to the U.S. president. (If you think this story sounds familiar, you're not wrong — in February, Tillerson suffered a similar housing hiccup before a G-20 session with foreign ministers, and was forced to stay in a sanitarium.)

One of Trump's most persistent ethics critics just resigned

CONFLICTS OF INTEREST WATCH:

-- Federal ethics chief Walter Shaub Jr., an outspoken Trump critic who has frequently sparred with the new administration, announced Thursday that he is resigning from his position as the director of the Office of Government Ethics. Rosalind S. Helderman and Matea Gold report: "[Shaub] made no reference to those clashes in a resignation letter ... Instead, he praised the work of federal ethics officials, pointedly noting their commitment to 'protecting the principle that public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.' In an interview, Shaub said he was not leaving under pressure, adding that no one in the White House or the administration pushed him to leave. But the ethics chief said he felt that he had reached the limit of what he could achieve in this administration, within the current ethics framework. 'It's clear that there isn't more I could accomplish,' he said." Shaub's term was scheduled to end in six months. He is slated to take a new job as senior director of ethics at the Campaign Legal Center, where he said he hopes to find bipartisan solutions to strengthening government ethics programs at both federal and state levels.

Education Secretary Betsy DeVos tours an elementary school in Prince William County. (Sarah L. Voisin/The Washington Post)

TRUMP'S AGENDA:

-- Attorneys general for 19 states are filing a lawsuit against Education Secretary Betsy DeVos for delaying an overhaul of rules to erase the debt of student borrowers who have been defrauded by colleges. Danielle Douglas-Gabriel reports: "The complaint, filed in U.S. District Court on Thursday, accuses the Education Department … of violating federal law by halting updates to a regulation known as the borrower defense to repayment. The rule, which dates to the 1990s, wipes away federal loans for students whose colleges used illegal or deceptive tactics to get them to borrow money to attend. The Obama administration revised it last year to simplify the claims process and shift more of the cost of discharging loans onto schools. Before the changes could take effect July 1, DeVos suspended them last month and said she would convene a

new rulemaking committee to rewrite the borrower defense regulation … Proponents of the revised rule were livid that DeVos made a unilateral decision without soliciting or receiving input from stakeholders or the public."

-- "The Interior Department, intent on boosting oil and gas production on federal lands, issued an order on Thursday designed to speed up the permitting process for drilling," Dino Gradoni and Juliet Eilperin report. "Zinke said the aim of his order is to untangle the bureaucratic knot so the [Bureau of Land Management] can review permit applications within 30 days, as mandated by statute. He also ordered oil and gas lease sales be held in each state every quarter … Still, Zinke cautioned Thursday that working out the kinks of such a speedy approval system would take time. 'This is not going to be done overnight,' he told reporters on a call. Environmental groups criticized the move as yet another unnecessary handout to oil and gas companies, which already have considerable access to federal lands."

-- "The United States and other major economies are nearing a compromise on climate change, one of the thorniest issues facing world leaders at the G-20 summit in Germany," Politico's Andrew Restuccia reports. "After days of preliminary talks, G-20 negotiators are increasingly hopeful they can settle on a joint communique in which the United States underscores its intent to withdraw from the Paris climate agreement while the other nations emphasize their support for the pact, according to a senior diplomat involved in the discussions."

-- Some sanctuary cities have "boldly asserted" that they will not

comply with the DOJ's request that local authorities provide federal agents with information on residents' immigration status. Maria Sacchetti reports: "Attorney General Jeff Sessions had given 10 state and local governments until June 30 to prove that they share information with federal immigration officials — or risk losing some Department of Justice grant money this year. Federal law bars localities from creating policies that restrict the sharing of immigration-related information. But some local officials say the law does not require them to collect details such as a person's immigration status … Sessions said the department is reviewing the jurisdictions' letters. 'It is not enough to assert compliance, the jurisdictions must actually be in compliance,' he said in the statement."

-- The Trump administration told a federal judge that it plans to store information collected by the voter fraud panel on White House computers monitored by one of the vice president's staffers. Spencer S. Hsu reports: "The executive order in May creating the Presidential Advisory Commission on Election Integrity stated that the panel would be funded and staffed through the General Services Administration — a federal agency subject to privacy requirements. But that arrangement has shifted, according to [Kansas Secretary of State Kris] Kobach's [court] filing. 'At this time, there are no plans for the General Services Administration to collect or store any voter registration or other elections-related data for the Commission,' Kobach said in response to questions from the court."

-- ProPublica, "Election Experts See Flaws in Trump Voter Commission's Plan to Smoke Out Fraud," by Jessica Huseman: "[Vice President's Pence's] office has confirmed the White House

commission on voter fraud intends to run the state voter rolls it has requested against federal databases to check for potential fraudulent registration. Experts say the plan is certain to produce thousands of false positives that could distort the understanding of the potential for fraud … 'This just demonstrates remarkable naivety on how this voter data can be used,' said David Becker, [of the] Center for Election Innovation & Research. 'There's absolutely no way that incomplete data from some states … can be used to determine anything.' While [a Pence spokesman] would not say specifically which databases the rolls would be run against, [a recent report said] the commission may seek to check the names against the federal government's database of non-citizens. A 2012 attempt by Florida to do that resulted in many legitimate voters being falsely flagged because they had the same names as people in the federal database. Gov. Rick Scott scrapped the effort and eventually apologized. Comparing names nationwide could result in far more false positives."

-- Politico, "CNN parent's $85B deal at little risk from Trump," by Steven Overly and Margaret Harding McGill: "Trump has only limited tools for venting his often-expressed fury at CNN, even as his administration weighs whether to approve AT&T's bid to purchase the network's parent company, Time Warner. … **Bannon has pushed the idea of blocking the merger** … But ... many industry observers say Trump's Justice Department has no obvious antitrust arguments for blocking AT&T's $85 billion deal."

-- National security officials fear that the Trump administration is placing new restrictions on who can access sensitive information to smoke out leakers. Politico's Ali Watkins and Josh

Dawsey report: "Officials at various national security agencies also say they are becoming more concerned that the administration is carefully tracking what they're doing and who they're talking to — then plotting to use them as a scapegoat or accuse them of leaks. One U.S. official voiced concern over even talking to their superiors about a benign call from a reporter. The agency this official works for had started limiting staff's access to information, they said, and it would make it far easier to figure out who was talking to people in the media. There was suspicion, the official said, that the agency was even tracking what they printed, to keep tabs on what information they were accessing."

-- A left-leaning nonprofit in Indiana is suing to learn details of then-President-elect Trump's deal with furnace and air-conditioning manufacturer Carrier. Danielle Paquette reports: "[Kerwin] Olson, director of the Citizens Action Coalition, … filed a public records request in December for communications between President Trump's team and former Indiana governor Mike Pence's office regarding Carrier … But six months have passed, and state officials still haven't given the group any emails, letters or minutes of their meetings. So now, Olson said, CAC is suing Pence's successor, Indiana Gov. Eric Holcomb (R), for what he described as an effort to keep residents in the dark."

Sen. Claire McCaskill (D-Mo.) speaks at a recent hearing. (Alex Brandon/AP)

MIDTERM WATCH:

-- The Atlantic, "Will the 'Trump 10' Pay a Price in 2018?" by Ronald Brownstein: "Apparently, no one has informed Bob Casey and Claire McCaskill that they should be running scared. Casey and McCaskill are among the 10 Democratic senators facing reelection next year in states that [Trump] carried in 2016, often by commanding margins. After that performance, many in both parties assumed they would be the Senate Democrats most vulnerable to White House pressure. [But] instead of being tugged toward Trump, both Casey and McCaskill have been propelled toward resolute resistance of his agenda. In that, they are the rule, not the exception, for the Trump 10. It's also framing what could be the pivotal question in next year's Senate midterm elections: Will these Democrats pay a price for consistently opposing Trump in states that voted for him only last

year?"

-- Republicans are struggling to recruit good candidates. Politico's Kevin Robillard and Burgess Everett report: "Rep. Ann Wagner's decision not to challenge (McCaskill) … is the latest in a string of thanks-but-no-thanks moves from candidates Washington Republicans thought were locks to run for Senate next year. [The] red-tinged Senate map means there are few races where Republicans believe they need a single exceptional, heaven-and-earth-moving recruit to win in 2018 … Yet top Republican strategists privately admit they are intensely focused on two people: Missouri Attorney General Josh Hawley, as an alternative challenger to McCaskill whom many Republicans now insist they prefer, and Florida Gov. Rick Scott … If those two men pass, Republicans concede their 2018 recruiting class could quickly go from solid to disappointing."

-- "Democratic Rep. Jacky Rosen announced today she is officially running for U.S. Senate, culminating weeks of deliberations that — once again — began with a phone call from Nevada's political godfather Harry Reid." The Nevada Independent's Megan Messerly reports: "[Rosen] will not seek re-election to her seat in Nevada's 3rd Congressional District but will instead pursue a bid against Republican Sen. Dean Heller, considered the most vulnerable Republican in the Senate … Rosen, 59, said that Reid reached out to her at the end of May and asked her to consider running for Senate … **Rosen said that Heller was the reason she decided to run for Senate instead of seeking a second term**, criticizing his votes to repeal the Affordable Care Act, allow states to cut off funding to Planned Parenthood and confirm

Betsy DeVos as Education Secretary."

Sen. Kamala Harris (D-Calif.) heads from her Capitol office to a lunch with other senators. (Chip Somodevilla/Getty Images)

THE FUTURE OF THE DEMOCRATIC PARTY:

-- The New York Times, "Senator Kamala Harris's Voice Is Amplified by Interruptions," by Matt Flegenheimer: "The casting call came early — the first of many unwelcome interruptions for Kamala Harris since November — consuming the Los Angeles nightclub where she was supposed to be celebrating an uncomplicated Senate victory. With the polls closed in nearly every other corner of the country, the giant TV above the dance floor left little doubt: [Trump] was almost certainly going to be president. A vacancy — standard-bearer of the Democratic Party, or at least one of them — had come open four to eight years ahead of schedule. And people had questions. 'Literally everyone was essentially turning to

her and asking … 'What does this mean? What do we do?' [recalled her campaign manager, Juan Rodriguez]. The sensation has perhaps grown familiar for Ms. Harris. **Less than eight months later, California's very junior senator has emerged as the latest iteration of a bipartisan archetype: the Great Freshman Hope,** a telegenic object of daydreaming projection — justified or not — for a party adrift and removed from executive power."

-- Sen. Elizabeth Warren (Mass.), fresh off a trip to Afghanistan, questioned the Pentagon's broader strategy in the region, saying that she is "not there on a troop increase." Ed'O'Keefe reports: Warren "warned that the Trump administration is creating a "diplomatic vacuum" in Afghanistan by leaving key State Department posts unfilled at a time when a 'whole-of-government strategy' is needed to end the 16-year-old conflict. … 'No one on the ground believes there is a military-only solution in Afghanistan. No one,' she said … 'The Trump administration needs to define what winning in Afghanistan is and how we get to that,' the senator added."

-- Politico Magazine, "Andrew Cuomo Could Beat Trump … If He Can Win Over the Left First," by David Freedlander: "Cuomo is a big-name politician who has long seemed an extremely unlikely national candidate — until now, when suddenly he's seeming like a very likely one … Suddenly it seems that Americans are willing to pull the lever for a muscular, messy, rough-edged leader shouting for the common man, and suddenly the governor of New York is starting to show up on a lot of people's lists … But if he runs, he's got one big roadblock in his way first: **The energy in the Democratic Party right now comes from a newly energized left. And the energized left,**

not to put too fine a point on it, hates Andrew Cuomo."

-- Mark Penn, who managed Hillary Clinton's failed campaign for the 2008 Democratic nomination, wrote a buzzy New York Times op-ed with Andrew Stein yesterday calling on Democrats to go "Back to the Center": "The path back to power for the Democratic Party today, as it was in the 1990s, is unquestionably to move to the center and reject the siren calls of the left, whose policies and ideas have weakened the party … The last few years of the Obama administration and the 2016 primary season once again created a rush to the left. Identity politics, class warfare and big government all made comebacks. Candidates inspired by Senator Bernie Sanders, Senator Elizabeth Warren and a host of well-funded groups have embraced sharply leftist ideas. But the results at the voting booth have been anything but positive."

-- The piece inspired furious pushback from the left:

- **For HuffPost, Daniel Marans wrote a piece entitled "It's 2017. Democrats Should Really Just Stop Taking Mark Penn's Advice":** "Taking advice from Penn about how to win elections is a little like turning to Phil Jackson for wisdom on how to win an NBA title. It was a decent idea in 1996, now, not so much."
- **Former Bernie Sanders campaign operative Symone Sanders said on Twitter:** "There are so many things wrong with this op-ed. **First of all, the party never really left the center. That is part of the problem.**"
- **Sen. Brian Schatz (D-Hawaii) quipped in a tweet: "Hey, what does Mark Penn think the Democrats should do? Just**

kidding that guy is always wrong."

-- The Fix's Philip Bump notes that the Democratic Party looks quite different now than it did in 1995, when Bill Clinton's embrace of the center proved successful: "The Democratic Party that nominated Hillary Clinton is not the Democratic Party that nominated John Kerry in 2004. At that time, former Vermont governor Howard Dean's embrace of single-payer health care was unusual and only 40 percent of Democrats supported same-sex marriage. Those things changed."

A TV screen displays pictures of Kim Jong Un and Kim Jong Nam. (Ahn Young-joon/AP)

WAPO HIGHLIGHTS:

-- "The message behind the murder: North Korea's assassination sheds light on chemical weapons arsenal," by Joby Warrick: "In

a case with a thousand plot twists, there has been but one constant in the murder investigation of [Kim Jong Un's half brother], Kim Jong Nam: Nothing is ever what it seems. The victim himself … was traveling under false papers when he died and had to be identified using DNA. The two women accused of killing him turned out to be hired dupes, paid a few dollars to perform what they thought was a reality-TV stunt. Stranger still was the murder weapon, liquid VX, a toxin so powerful that a few drops rubbed onto the skin killed the victim in minutes, yet it failed to harm the two women who applied the poison with their bare hands. [For prosecutors], some of the mysteries behind [Nam's death] will likely never be resolved. [But] in carrying out history's first state-sponsored VX assassination in a country 3,000 miles from its borders, North Korea has demonstrated a new willingness to use its formidable arsenal of deadly toxins and poisons to kill or intimidate enemies on foreign soil."

-- "North Korea: The Rubicon is crossed," column by Charles Krauthammer: "Across 25 years and five administrations, we have kicked the North Korean can down the road. We are now out of road … How many times must we be taught that Beijing does not share our view of denuclearizing North Korea? It prefers a divided peninsula, i.e., sustaining its client state as a guarantee against a unified Korea (possibly nuclear) allied with the West and sitting on its border. Nukes assure regime survival. That's why the Kims have so single-mindedly pursued them … What are our choices? Trump has threatened that if China doesn't help we'll have to go it alone. If so, the choice is binary: acquiescence or war."

Airmen working in the Joint Space Operations Center at Vandenberg Air Force Base in California.

-- "The watchers: Airmen who surveil the Islamic State never get to look away," by Greg Jaffe: "While her partner stares at the video feed from an armed Air Force drone [in western Iraq], Courtney, [29], is sitting in a chilly cubicle, where purplish-pink overhead lights, designed to make the video stand out, give the room a feeling of perpetual dusk. It's the start of another shift at this base outside Hampton, Va. … **For more than three years, this has been Courtney's war — 10 hours a day, four days a week, thousands upon thousands of hours of live video footage from Iraq and Syria. It is an existence characterized by long stretches of boredom and grim flashes of action as she helps guide pilots' decisions on when to shoot and watches the last seconds of another person's life.** In some instances, the demands of urban combat … have meant taking shots even when analysts determine

civilians are present. 'Our suicide and suicidal ideation rates were way higher than the Air Force average; they were even higher than for those people who had deployed,' said [one commander]. Air Force officials are just beginning to grapple with the long-term effects of this life. [But] for now, they mostly have questions …"

SOCIAL MEDIA SPEED READ:

After Trump attacked the press during his news conference with the Polish president:

From the president of the Council on Foreign Relations:

Trump also blamed Obama for Russia's interference in last year's election:

The White House chose to emphasize the praise Trump received in Poland:

Trump and Merkel met again:

Bradd Jaffy
@BraddJaffy

Follow

Their faces in this photo are amazing. via @AP_Images
pic.twitter.com/KyEEQfvxQp

1:20:23 PM - Jul 06 2017

797 2,137

Jesse Rodriguez
@JesseRodriguez

Follow

Merkel extended her hand first and then Trump shook it
https://t.co/Wh8zv7ssmt

1:15:12 PM - Jul 06 2017

113 293

Members of the press were treated to a surprising musical selection before Trump's speech:

A Democratic House member offered the president some "killer graphics" before his Putin meeting:

Russia refused to formally condemn North Korea's missile launch in a U.N. resolution:

Arizona Sen. Jeff Flake responded to threats made at his state office:

Sen. Marco Rubio stated his disapproval of single-payer health care:

Wisconsin Gov. Scott Walker responded to a Wired story mocking his

Instagram account:

From a New York Times reporter:

George W. Bush celebrated his 71st birthday:

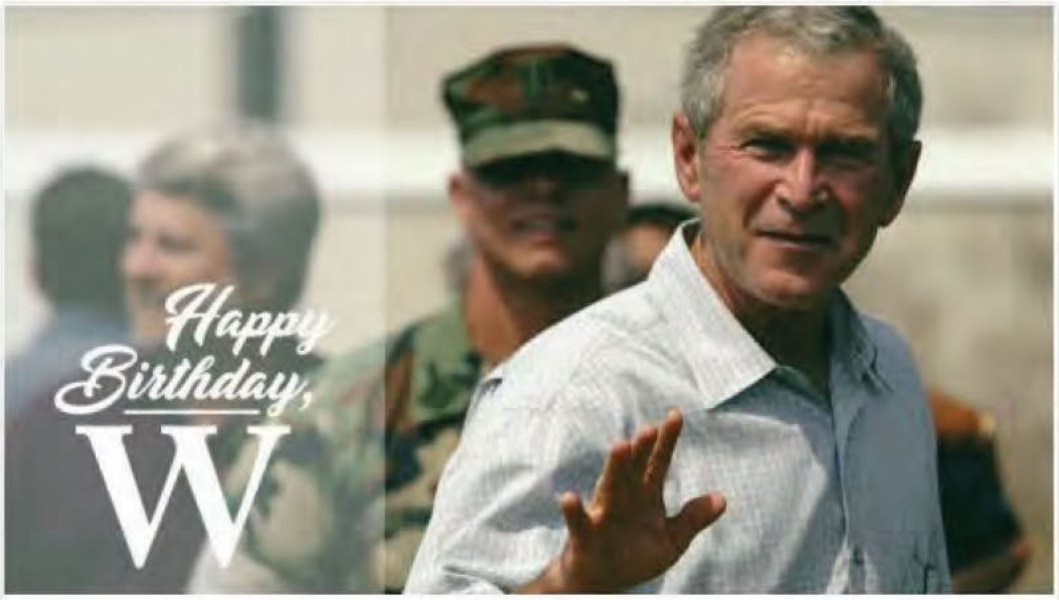
George P. Bush
@georgepbush

Follow

Happy birthday to a great leader and a great man, George W. Bush. Wishing you the best from Austin. pic.twitter.com/6JCL62CXV5

10:00:23 AM - Jul 06 2017

65 320



Rep. Paul Gosar, DDS
@RepGosar

Follow

Happy birthday, Mr. President. pic.twitter.com/uCYTB3b509

10:36:44 AM - Jul 06 2017

178 1,000

Jay Caruso
@JayCaruso

Follow

Happy 71st birthday, GWB! pic.twitter.com/o7HLyxHLAt

10:13:23 AM - Jul 06 2017

527 2,002

Paul Ryan
@SpeakerRyan

Follow

Retweet to join me in wishing our 43rd President, George W. Bush, a happy birthday! pic.twitter.com/j4lFBLFNQx

10:18:13 AM - Jul 06 2017

1,786 3,586

GOOD READS FROM ELSEWHERE:

-- The New Yorker, "The U.S. Media's Murky Coverage of Putin and Trump," by Joshua Yaffa: "The Russian media is under nearly omnipresent pressure from numerous entities: political operatives in the Kremlin … media owners [who neuter coverage], and financial constraints … The result is that the space for independent, muckraking journalism has shrunk further. Yet, even given these many constraints, Russia is nevertheless home to a coterie of talented and self-motivated journalists, who produce work that is

courageous and illuminating. I spoke to more than a half-dozen of them, all of whom found themselves in some way bemused, frustrated, or disappointed in the way that the U.S. press has covered Putin and Russia … On the whole, said [journalist] Mikhail Zygar[:] … 'Putin seem to look much smarter than he is, as if he operates from some master plan.' The truth, Zygar told me, 'is that there is no plan—it's chaos.'"

HOT ON THE LEFT:

"Maine's governor suggests he lies to journalists 'so they'll write these stupid stories,'" from Amber Phillips: "It looks like Maine's governor just admitted to doing something that the Russians are being investigated for: making up news to confuse reporters. And then he took it a step further by wishing news never existed. 'I just love to sit in my office and make up ways so they'll write these stupid stories because they are just so stupid, it's awful,' Gov. Paul LePage (R) told local radio WGAN-AM on Thursday … If that wasn't shocking enough, he also said this: 'The

HOT ON THE RIGHT:

"Muslim activist Linda Sarsour's reference to 'jihad' draws conservative wrath," from Samantha Schmidt: "A lead organizer of the Woman's March on Washington and one of the most high-profile Muslim activists in the country gave an impassioned speech last weekend that at first gained little attention ... In her speech, Sarsour told a story from Islamic scripture about a man who once asked Muhammad, the founder of Islam, 'What is the best form of jihad, or struggle? And our beloved prophet … said to him, 'A word of truth in front of a tyrant ruler or leader, that is the best form of jihad." …

sooner the print press goes away, the better society will be.'"

Sarsour [later] said she was advocating solely for peaceful, nonviolent dissent. But conservative media outlets accused the activist of urging Muslims to wage a holy war against the Trump administration."

DAYBOOK:

Trump's marquee event in Germany today, his meeting with Vladimir Putin, will take place at 3:45 p.m. local time. The rest of his day is filled with G-20 summit events, including a meeting with the Mexican president and a concert at Elbphilharmonie hall.

QUOTE OF THE DAY:

Visiting a coal plant yesterday in West Virginia, Energy Secretary Rick Perry offered an "alternative" interpretation of the most basic law of economics. "Here's a little economics lesson: supply and demand," he said. "You put the supply out there and the demand will follow."

NEWS YOU CAN USE IF YOU LIVE IN D.C.:

-- Showers are possible in D.C. today, but they shouldn't stick around too long. The Capital Weather Gang forecasts: "Clouds are on the decrease, and we could see decent amounts of sun during the afternoon as high temperatures top out in the upper 80s to lower 90s.

It's perhaps the muggiest day of this forecast. We profusely sweat one last day (for now)."

-- After a three-hour rain delay that did not include much actual rain, the Nationals lost to the Braves 5-2. Chelsea Janes reports: "[The Washington Nationals, Atlanta Braves, fans and assorted media] waited through what was officially called a rain delay, a misnomer of biblical proportions for what could best be described as an antediluvian rain delay — one endured long before any signs of flooding, or even heavy rain. It did drizzle for a few minutes, though."

-- William C. Morva was executed by the state of Virginia last night, after Gov. Terry McAuliffe denied last-minute requests for clemency. Ann E. Marimow reports: "McAuliffe, who is personally opposed to the death penalty, said he would not stop the execution because he is convinced Morva received a fair trial. The governor also dismissed claims Morva was experiencing delusions at the time of the [2006 murders of a sheriff's deputy and an unarmed hospital security guard]."

-- **Peter Hermann writes on the tragic story Malachi Yisrael, who became a construction engineer after years of convictions. Yisrael was shot and killed this week at the age of 43.**

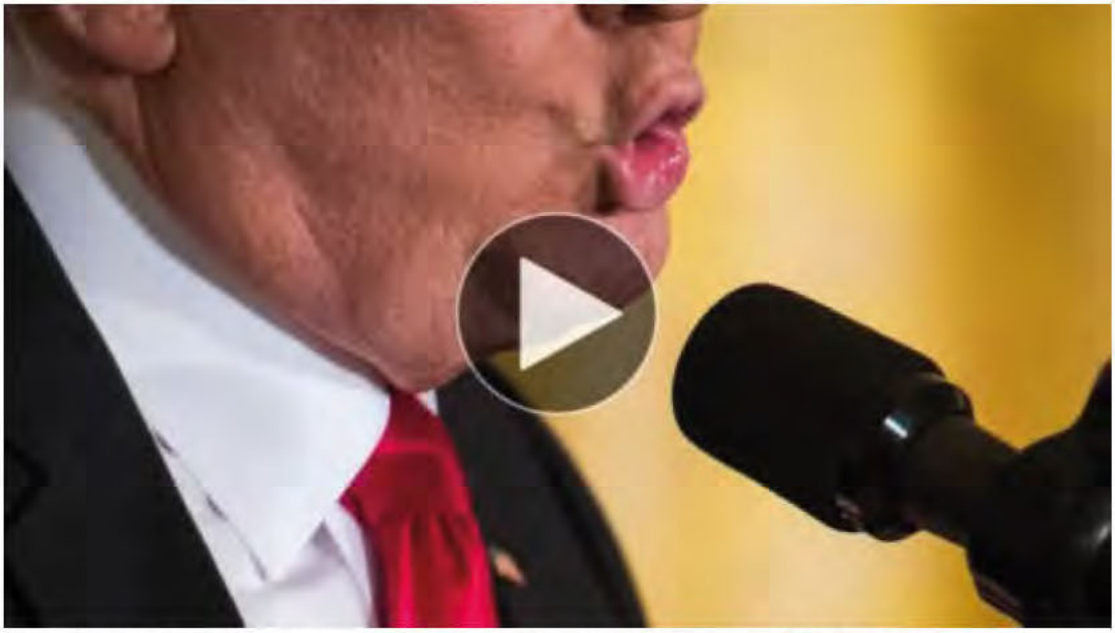
-- Maryland Gov. Larry Hogan appointed 10 new members to the state's medical marijuana regulating agency. Ovetta Wiggins reports: "The commission has been criticized by state lawmakers, businesses and medical marijuana advocates for struggling to get the medical marijuana program off the ground and for potential missteps in awarding licenses to grow the drug."

-- "A generic-drug trade group is suing Maryland over a price-gouging law that is set to go into effect in October," Ovetta Wiggins reports. "Maryland is the first state to give its attorney general the power to take legal action against drug companies that dramatically increase the price of off-patent or generic drugs."

-- "Two Democrats vying for their party's nomination to challenge Rep. Barbara Comstock (R-Va.) in 2018 have raised a combined $700,000 this quarter, their campaigns said, an early indication that the race could be among the nation's most expensive," Jenna Portnoy reports.

VIDEOS OF THE DAY:

Jennifer Sclafani, a linguist at Georgetown University, has studied Trump for two years and says he's a "unique" politician because he doesn't speak like one:



This linguist studied the way Trump speaks for two years. Here's what she found.

Ahead of the president's meeting with Putin, MSNBC reviewed Trump's contradictory statements about his relationship with the Russian leader:

Bradd Jaffy
@BraddJaffy

Follow

Trump will meet with Putin on Friday. Does he have a relationship with Putin? Allow him to tell you. Watch this.
pic.twitter.com/xyvYbg7jEO

10:23:17 AM - Jul 04 2017

6,426 7,701

Even during his press conference with the Polish president yesterday, Trump still took time to beat up on the "fake news" media:

Trump rails on CNN, MSNBC and 'fake news' in Poland

He also thanked Polish Americans for their support in last year's election:

Trump boasts support from Polish Americans

And he described the Nazi occupation as "tough":

Trump on Nazi occupation in Poland: 'That was tough'

Introducing her husband in Poland, the first lady said, “People should be able to live their lives without fear”:

Melania Trump: 'People should be able to live their lives without fear'

Awkward: the Polish first lady (briefly) passed over a handshake with Trump:

Polish first lady passes over Trump's handshake

And that is only the latest in a series of uncomfortable interactions between Trump and foreign leaders:

Trump's awkward greetings with foreign leaders

The Post team explains "Kate's Law," a bill seeking to more harshly punish undocumented immigrants who reenter the country:

What is 'Kate's Law?'

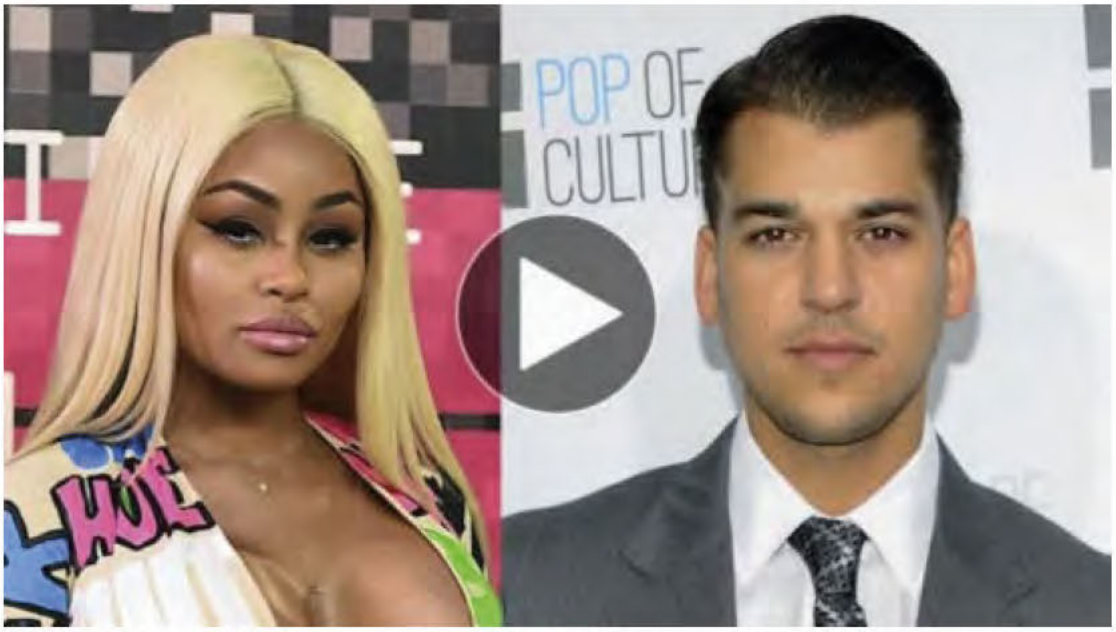
Taiwan's giant panda celebrated her fourth birthday -- with a cake and everything:

Taiwan's giant panda turns 4

A Milwaukee police officer jumped into a lagoon to rescue a dog:

Milwaukee police officer jumps into lagoon to rescue dog

And, because it's Friday, The Post offers an explanation on the Rob Kardashian-Blac Chyna saga:



The Rob Kardashian-Blac Chyna saga, explained

You are receiving this email because you signed up for the The Daily 202 newsletter or were registered on **washingtonpost.com**. For additional free newsletters or to manage your newsletters, click **here**.

We respect your **privacy**. If you believe that this email has been sent to you in error, or you no longer wish to receive email from The Washington Post, **click here**. **Contact us** for help.

©2017 The Washington Post | 1301 K St NW, Washington DC 20071

The Daily 202_ Gillespie keeps the door open to....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: The Daily 202: Gillespie keeps the door open to campaigning with Trump. Would it help or hurt in Virginia?
Date: Thursday, September 21, 2017 7:09:11 AM

If you're having trouble reading this, click here.

PowerPost
The Daily 202
Morning intelligence for leaders

Share:

Listen to The Big Idea

Gillespie keeps the door open to campaigning with Trump. Would it help or hurt in Virginia?

The Virginia governor's debate in 90 seconds

BY JAMES HOHMANN
with Breanne Deppisch and Joanie Greve

THE BIG IDEA: With the Virginia governor's race neck-and-neck, whether Republican Ed Gillespie chooses to campaign with President Trump could be determinative.

The perennially cautious Gillespie, a former chairman of the Republican National Committee and top official in George W. Bush's White House, has carefully kept his distance from Trump, avoiding clean breaks but never fully embracing him either.

In a state like Alabama, where Trump is flying tomorrow for a rally, it's a no-brainer to appear with the president. In Virginia, despite the president's relatively low approval ratings, it's not black and white. Gillespie was expected to romp in the Republican primary this June, but he barely beat back a challenge from Corey Stewart, who was Trump's campaign chairman in Virginia last year. He wants to appeal to independents, but he also needs the GOP base to turn out for him.

-- Moderator Chuck Todd twice pressed Gillespie during a televised debate Tuesday night on whether he wants Trump to campaign for him. The GOP nominee always gets visibly uncomfortable

whenever he's asked about the president. "Look, Chuck, what I have said and will continue to say is: I'll take help from anybody, anywhere," he replied. "This is gonna be a very close race. And the fact is, you know, I'm putting myself out there to solve the problems that face the people of Virginia. And I think they wanna hear from me."

Pointing at his Democratic opponent, Lt. Gov. Ralph Northam, Gillespie added: **"Look, I could stand up here and I could say, 'He's Nancy Pelosi!' And he could say I'm Donald Trump, and we could have that debate. That's not gonna get one more job created in the Commonwealth of Virginia.** It is not gonna get one more addict into recovery. It is not going to ease traffic congestion. It is not going to make college more affordable. This race is about the future of Virginia and who has the plans to get us growing again."

During a post-debate gaggle, the tersest Gillespie got was when a reporter tried to get clarity on whether he plans to invite Trump to the state. "I gave an answer. I'm comfortable with the answer I gave in the debate, but thank you for that," he said, per Fenit Nirappil.

Ed Gillespie and Ralph Northam joke around during a commercial break during a debate. (Bonnie Jo Mount/The Washington Post)

-- Five separate polls have been released this week, and all but one shows that the Virginia governor's race is within the margin of error. The outlier was Quinnipiac University, which found Northam ahead by 10 points (51 percent to 41 percent) among likely voters and Trump's approval rating at 39 percent. Operatives on both sides told me yesterday that it is *not* a 10-point race.

- **Mason-Dixon Polling found Northam and Gillespie are essentially tied, 44 percent to 43 percent.** Northam dominates in Northern Virginia, but he's getting blown out by similar margins across the state's three rural regions: Shenandoah/Central

Virginia, Lynchburg/Southside and Roanoke/Southwest. The race remains close in Hampton Roads, Northam's home base, and the Richmond metro area.

- **Fox News puts Northam ahead 42 percent to 38 percent among registered voters, with a margin of error of plus or minus four percent.** That survey pegged Trump's approval rating at 42 percent, but three in four voters said Trump is not a factor as they decide who to vote for. Meanwhile, 22 percent of Gillespie supporters said they are voting for him to express support for the president and 26 percent of Northam voters said they're backing him to express opposition.
- **Suffolk University's poll places Trump's approval rating at 42 percent, which is the same percentage of respondents who back Gillespie.** Only 5 percent of people in the survey who said they voted for Trump last November expressed regret about that decision.
- **A University of Mary Washington survey, which also showed a neck-and-neck race, put Trump's approval rating at 37 percent**, with 55 percent disapproving.

-- With Trump underwater, Gillespie is going to have to make inroads with people who disapprove of the president. The fact that the race is close suggests Gillespie is already doing this to some degree,

though perhaps not quite enough. The director of our in-house polling unit, Scott Clement, flags two recent precedents for this. In the exit polling for the 2013 governor's race, Barack Obama's approval rating was 46 percent (with 53 percent disapproving). But Democratic Gov. Terry McAuliffe still prevailed, narrowly, by receiving 10 points more support among Obama approvers than Republican Ken Cuccinelli did among Obama disapprovers (91 percent vs. 81 percent). In 2014, Sen. Mark Warner (D-Va.) overcame an even worse Obama approval margin (40 percent approved and 58 percent disapproved of the president in Election Day exits) by garnering 15 percent support among Obama disapprovers. He narrowly beat Gillespie.

Donald Trump campaigns in November 2016 at a rally in Leesburg, Va. (Michael

Reynolds/European Pressphoto Agency)

-- I posed the question of whether a Trump visit would help or hurt Gillespie to three respected observers of Virginia politics:

Bob Holsworth, a former dean at Virginia Commonwealth University in Richmond, said the question reminds him of when Doug Wilder had to decide in 1989 whether to stump with Jesse Jackson. Wilder, who became the first African American governor since Reconstruction, resisted pressure from his base to invite another black trailblazer because he feared that Jackson would nationalize the race. “A visit by Trump could help Gillespie mobilize the Corey Stewart voters who are skeptical of Gillespie's establishment affiliations,” Holsworth said. “But it could come with a heavy price, one that might undermine the rationale for his campaign. Gillespie is laboring to denationalize the campaign by focusing almost exclusively on Virginia issues, especially jobs and the economy. A visit from the president could also mobilize Virginia's ‘federal Democrats,’ who vote in presidential elections but often sit out next year's gubernatorial contest.”

Stephen J. Farnsworth, a political scientist at the University of Mary Washington, does not believe a Trump rally would do Gillespie much good: “Northam

probably gains at least as much as Gillespie does should Trump campaign shoulder to shoulder with Gillespie," he said. "The University of Mary Washington poll out this week shows that **Gillespie already has the support of nearly all Trump voters.** There's no real evidence in the UMW survey that Corey Stewart voters are nursing a grudge and plan to punish Gillespie. My guess is the fact that Stewart is running for Senate in 2018 has taken the string out of the gubernatorial primary defeat for most of his backers. … **Gillespie and Northam would both be wise to focus on street level issues**, things like transportation, education, health care, economic development and crime, to win over the voters who are not reflexively Democratic or Republican and therefore not likely to be moved by pro-Trump or anti-Trump campaigning."

Kyle Kondik from the University of Virginia's Center for Politics believes Trump could help Gillespie if he comes to the right part of the state at the right time: "Republican statewide candidates in Virginia now have to run up tremendous margins west of the so-called Urban Crescent, the three major urban areas: Northern Virginia, Greater Richmond, and Hampton Roads. Trump did extremely well in western Virginia, as Republicans now often do. That was not always the case. Mark Warner did quite well in that part of the state when he won the governorship in 2001. So what if Gillespie had an event with Trump in, say, Roanoke, or somewhere west of

there? It would be a huge deal in that region, which loves Trump, and might help with turnout in an area where Gillespie already will win but will need to run up the score.

“Maybe it could be the last weekend before the election so the Democrats couldn't really use the inevitable clips of Trump with Gillespie in ads? … Although I can also see the downside of nationalizing the race right at the end with an unpopular president,” Kondik added. “So maybe this is just flat out a bad idea for a gubernatorial candidate who wants to localize as oppose to nationalize this race, but I think it's something for the Gillespie campaign to consider even if, at first blush, it may seem like a bad idea.”

-- Another option would be to deploy Vice President Pence. He’s not as divisive as Trump, and he could certainly help galvanize some fans of the president who supported Stewart in the primary to turn out for Gillespie. (Pence plans to campaign for Strange in Alabama next Monday.)

-- History lesson: Trump could become the first president since Richard Nixon, beset by the Watergate scandal, to not campaign for his party’s nominee in the off-year gubernatorial elections. Virginia and New Jersey elect their governors the year after the presidential election. The result is that these

contests are always studied closely for any national implications. Historically, in Virginia, the party that loses the presidency benefits from backlash and wins the governorship the following year. I found clips in the archives of every sitting president campaigning in either Virginia or New Jersey in the off-year cycle going back to 1973. It seems very unlikely Trump will stump in the Garden State, so if Trump doesn't wade into Virginia, the president could break that 44-year streak.

Ed Gillespie: Ralph Northam's Policies Are Dangerous | Campaign 2018

-- Virginia was supposed to be the marquee election of 2017, but until now it has been overshadowed by the daily drama in Washington. The special elections to replace HHS Secretary Tom Price in Georgia and Attorney General Jeff Sessions in Alabama wound up assuming larger national significance than expected.

In the homestretch, the Old Dominion is about to get

much more national attention and the race is already starting to turn nastier. **Both campaigns released new attack ads yesterday that signaled what's to come: Gillespie's blames Northam for "increasing the threat of MS-13" by voting against a bill that would have banned the establishment of "sanctuary cities," and Northam's highlights Gillespie's work as a lobbyist for Enron.**

Virginia does not even have any sanctuary cities. Laura Vozzella and Fenit Nirappil also figured out that the tattooed gang members featured in the spot were actually photographed at a prison in El Salvador. They also note that, **as chairman of the RNC, Gillespie pushed for a more diverse, "big tent" party.** He has advocated for bipartisan immigration reform and for six years was a lobbyist for Tyson Foods, registered to handle issues that included "amnesty proposals."

Enron Ed

Northam's ad criticizes Gillespie for lobbying on behalf of "the worst of the worst," including "lenders trying to keep student loan rates high" and "corporations sending jobs overseas." "Now, **Enron Ed is lobbying for Donald Trump's agenda**, like cuts to Virginia's school funding, and taking away health care from thousands of Virginians," a narrator says. But Gillespie has not actually called for cutting school funding. "Northam's campaign cites Gillespie's proposal to cut taxes as evidence he would do so," per Laura and Fenit.

Sen. Luther Strange (R-Ala.) walks to the Senate floor on Tuesday. (Aaron P. Bernstein/Reuters)

-- In Alabama, meanwhile, the Republican establishment is desperate for Trump to be as involved and hands-on as possible. Robert Costa and Philip Rucker have some great inside reporting in today's paper on how Senate leaders convinced Trump to visit Alabama to campaign for incumbent Sen. Luther Strange ahead of next week's GOP runoff. Trump formally endorsed him at Mitch McConnell's request earlier this year, but his advisers were deeply divided as recently as last week about whether it made sense for the president to visit. Strange is trailing in the polls, and his opponent Roy Moore is adored by many of the president's strongest supporters, including former White House chief

strategist Stephen K. Bannon.

A chorus of GOP grandees told Trump that he alone can carry Strange across the finish line: "Private polls were circulated in the West Wing showing a more favorable race for Strange than public surveys — including one the U.S. Chamber of Commerce commissioned from Trump campaign pollster Tony Fabrizio, whose imprimatur Republicans thought could sway the president. A close ally of [McConnell] briefed Trump and [Pence] on the contest. Jeff Roe, Strange's top consultant, fed regular updates to Jared Kushner, the president's son-in-law and senior adviser. And Sen. Bob Corker — whose own relationship with Trump was frayed by a summer of curt criticism — paid a visit last Friday to the Oval Office, where he delivered a blunt request at the end of a broader conversation. 'You've got to go,' the Tennessee Republican told Trump … 'We need you there.'

"White House Chief of Staff John F. Kelly, who has tried to control what information Trump receives about the Alabama race, was initially wary of the president appearing with a senator who might lose. He preferred Trump spend his time on policy initiatives such as tax reform rather than rousing crowds at political rallies. Likewise, Bill Stepien, the White House political director, urged caution and at first recommended that Trump stay out of the state. … (But) **Kelly, who came**

around to backing the rally, was also told by several senators that Republicans might be hesitant to fully back Trump's agenda if they were uncertain about his support for them. … As Trump mulled his options last week, McConnell spoke with Trump."

-- Gillespie's strategists will surely pay close attention to what happens in the Alabama runoff. Trump's stop tomorrow night is in Huntsville, which is the base of support for Rep. Mo Brooks, who finished third in the first-round primary and last weekend endorsed Moore over Strange. "There are hypothetically a lot of Brooks voters available up there," Kondik notes. "If we see a big swing in that region that helps Strange win (from the first round to the second), I think Trump could theoretically merit some credit for that. And, if so, it might provide a model for someone like Gillespie if he wanted to try to deploy the president in the Virginia race."

President Trump addresses the United Nations General Assembly on Tuesday. (Richard Drew/AP)

-- Thinking ahead: If Strange pulls out a win in Alabama because of Trump's late intervention and then Senate Republicans find the votes to pass the Cassidy-Graham health-care bill, the media narrative next week will probably be about a Trump "comeback." If Strange loses and Cassidy-Graham goes down in flames, however, the narrative will cement that Trump is ineffective as a party leaders and congressional Republicans are incapable of governing.

-- One interesting indicator: A fresh NBC/Wall Street Journal survey, which posted this morning, shows that Trump's numbers are inching up nationally.

"Trump's overall job-approval rating in the poll stands at 43 percent, which is up three points since August, although that's within the survey's margin of error," per NBC's Mark Murray. "... 83 percent of Republicans approve of Trump's performance (up from 80 percent in August), compared with 41 percent of independents (up from 32 percent in August)."

- **Bipartisanship is playing well**: Seven in 10 Americans support the president's recent deal with Democratic leaders Nancy Pelosi and Chuck Schumer to raise the debt ceiling. (The personal ratings for Mitch McConnell and Paul Ryan have hit new all-time lows.)
- **The poll asked respondents to evaluate Trump's handling of 11 different issues and actions:** 41 percent give him a thumbs-up for his handling of the economy, 39 percent approve of his handling of border security and immigration, 36 percent back his handling of North Korea, 27 percent support his handling of health care, and 25 percent approve of his handling of race relations and his recent pardon of former Arizona sheriff Joe Arpaio. Just 23 percent approve of how he uses Twitter to communicate, while only 20 percent support his handling of the events in Charlottesville.
- **But two in three Americans believe that Trump has accomplished "only some" or "very little" as president:** "Even only a third of self-described Trump

voters — 34 percent — say the president has accomplished a 'great deal,'" Mark notes.

Listen to James's quick summary of today's Big Idea and the headlines you need to know to start your day:

Play audio brief

Subscribe to **The Daily 202's Big Idea** on Amazon Echo, Google Home, Apple Podcasts and other podcast players.

A MESSAGE FROM THE MILTON HERSHEY SCHOOL

A family's income should not determine a child's outcome

Milton Hershey School has been using a whole child approach to break the cycle of poverty for 108 years.

Welcome to the Daily 202, **PowerPost's** morning briefing for decision-makers.

Sign up to receive the newsletter.

Hurricane Maria passed through Puerto Rico, leaving a path of destruction in its wake. (Dennis M. Rivera Pichardo/The Washington Post)

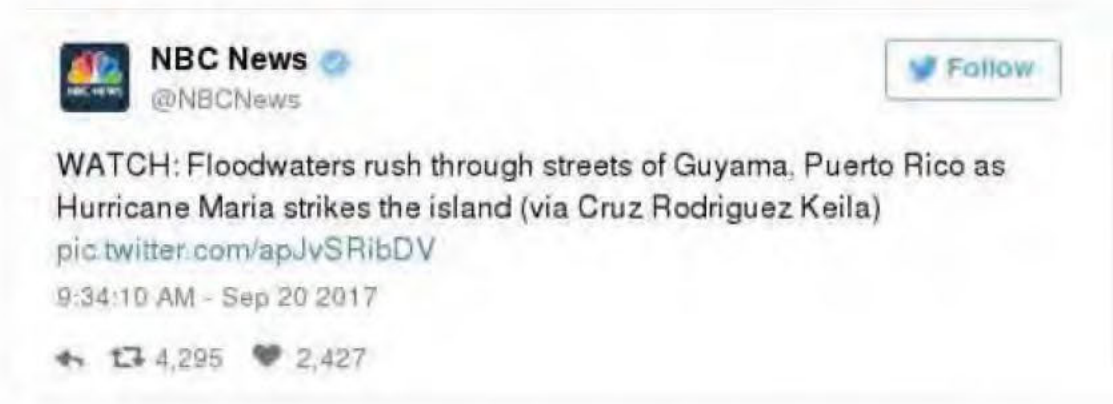
WHILE YOU WERE SLEEPING:

-- Hurricane Maria slammed into Puerto Rico as a strong Category 4 storm on Wednesday, decimating some communities and knocking out the island's entire electrical grid. It was the most powerful storm to strike the island in more than 80 years. “Definitely Puerto Rico — when we can get outside — we will find our island destroyed,” said Puerto Rico's emergency

management director, Abner Gomez. “The information we have received is not encouraging. It's a system that has destroyed everything it has had in its path.”

“With sustained winds of 155 mph at landfall ... Maria was so powerful that it disabled radar, weather stations and cell towers across Puerto Rico, leaving an information vacuum in which officials could only speculate about property damage, injuries or deaths,” Samantha Schmidt, Joel Achenbach and Sandhya Somashekhar report. “The entire island experienced hurricane conditions, with 20 inches or more of rain falling, often at torrential rates of up to seven inches per hour, leading to reports of raging floodwaters and people seeking help to escape them. … Winds snapped palm trees, shredded homes and sent debris skidding across beaches and roads. Recreational boats sank in San Juan's marinas. … Far inland, floodwaters inundated homes that had never before flooded. In San Juan, the capital, Maria shook buildings and blew out windows. Residents of high-rise apartments sought refuge in bathrooms.”

“The island’s governor, Ricardo Rosselló, tweeted early Wednesday morning that already 11,229 people had been admitted to shelters, along with 580 pets,” Vice reports.



-- The storm is expected to regain some strength at Category 3 and "is next set to scrape across the northern coast of the Dominican Republic as a Category 3 hurricane Thursday before arriving in the Turks and Caicos and Southeast Bahamas on Friday," writes Jason Samenow. "This weekend, it is expected to turn north parallel to the East Coast. But just how close it tracks to the coast next week, while enormously consequential, is not yet clear."

Federal Reserve Board Chair Janet Yellen. (Brennan Linsley/AP)

GET SMART FAST:

1. **Signaling the strength of the U.S. economy, the Fed announced it would begin reducing its $4.5 trillion balance sheet.** The move unwinds the central bank's post-recession strategy of taking on unprecedented levels of mortgage-related securities and government bonds. (Heather Long)
2. **Thousands of Mexicans mobilized Wednesday for a massive rescue operation,** frantically clearing rubble and racing to find survivors in the aftermath of a powerful 7.1-magnitude earthquake that struck the

capital city one day earlier. Meanwhile, the death toll has continued to climb, and officials said at least 25 people — most of them children — were found dead at an elementary school in Mexico City. (Joshua Partlow)

3. **The U.S. government will provide a humanitarian aid package worth nearly $32 million to Rohingya refugees,** who have fled Myanmar by the hundreds of thousands in recent weeks to escape what the United Nations has called a "textbook case of ethnic cleansing." (CNN)
4. **Kenya's Supreme Court nullified last month's presidential election because, it said, the voting may have been hacked.** Two paper forms that could have validated the election of Uhuru Kenyatta over Raila Odinga were never transmitted because the computer system failed. A new election was called for October. (New York Times)
5. **California is suing the Trump administration to prevent construction of a border wall.** California Attorney General Xavier Becerra argued the proposal impedes on states' rights guaranteed by the Constitution. (Politico)
6. **The Securities and Exchange Commission disclosed that its system had been breached by hackers.** The security failure may have allowed hackers access to data useful for lucrative stock buys. (Renae Merle)

7. **A U.S. court has dismissed two lawsuits over an OPM data breach**, denying compensation to some 22 million employees, retirees and others whose personal information was stolen from two government databases. (Eric Yoder)
8. **Facebook announced it would change how ads on its platform target to certain users.** The announcement follows a ProPublica report that found advertisers could use Facebook's ad tools to target self-described "Jew haters." (The New York Times)
9. **A Virginia Episcopal church named after Gen. Robert E. Lee has voted to change its name**, citing an effort to "move on" and seek racial healing in the aftermath of deadly riots in nearby Charlottesville. (Michelle Boorstein)
10. **Hillary Clinton's new memoir about the 2016 campaign has sold more than 300,000 copies,** Simon & Schuster said Wednesday. Hardcover sales have also topped 168,000, giving "What Happened" the highest debut of any nonfiction release in five years. (AP)

Paul Manafort listens during a round table discussion on security at Trump Tower. (Carlo Allegri/Reuters)

THERE'S A BEAR IN THE WOODS:

-- Less than two weeks before Trump accepted the Republican presidential nomination, then-campaign chairman Paul Manafort offered to give a Kremlin-aligned Russian billionaire "private briefings" on the 2016 campaign. Tom Hamburger, Rosalind S. Helderman, Carol D. Leonnig and Adam Entous report: "[Manafort] made the offer in an email to an overseas intermediary, asking that a message be sent to Oleg Deripaska, an aluminum magnate with whom Manafort had done business in the past … 'If he needs private briefings we can accommodate,' Manafort wrote … There

is no evidence in the documents showing that Deripaska received Manafort's offer or that any briefings took place. Nonetheless, investigators believe that the exchanges, which reflect Manafort's willingness to profit from his prominent role alongside Trump, created a potential opening for Russian interests at the highest level of a U.S. presidential campaign[.]"

- **"Several of the exchanges, which took place between Manafort and a Kiev-based employee of his international political consulting practice, focused on money that Manafort believed he was owed** by Eastern European clients. The notes appear to be written in deliberately vague terms … But investigators believe that key passages refer to Deripaska, who is referenced in some places by his initials, 'OVD' … One email uses 'black caviar,' a Russian delicacy, in what investigators believe is a veiled reference to payments Manafort hoped to receive from former clients."
- **"Deripaska, one of Russia's richest men, is widely seen as an important ally of President Vladimir Putin.** A U.S. diplomatic cable from 2006, published by WikiLeaks, referred to Deripaska as 'among the 2-3 oligarchs Putin turns to on a regular basis.' The billionaire has struggled to get visas to travel to the United States because of concerns he might have ties to organized crime in Russia, according to the Wall Street Journal."

-- Even as his past international work has become a focus of Mueller's probe, Manafort has continued soliciting foreign clients — and is quietly working on a Kurdish independence referendum opposed by the United States. The New York Times's Kenneth P. Vogel and Jo Becker report: "While the Kurdish referendum, scheduled for Monday, is nonbinding, the American government and the international community have expressed serious concerns about it. They fear that, if it passes overwhelmingly, as expected, it could further destabilize Iraq, damage the coalition fighting the Islamic State, and potentially spark violence in disputed areas. Mr. Manafort agreed to assist with the referendum, including a planned push for Western recognition, after he was approached several months ago by an intermediary for the [Iraqi Kurdish leader's] son, Masrour Barzani[.] … Mr. Manafort has traveled to the region since then to advise the Barzanis' allies on the referendum … [and] may return to the region in the coming days for the vote, according to the advocates.

"Asked if Mr. Manafort was hired because of his ties to Mr. Trump, the spokesman said he had been chosen because of his experience in referendums and global affairs. The spokesman would not provide information about who is paying Mr. Manafort or how much he is being paid."

-- Mueller's office has requested "extensive" records and email correspondence from the White House, covering "everything from [Trump's] private discussions about firing his FBI director to his White House's handling of a warning that the Trump national security adviser was under investigation," Carol D. Leonnig and Rosalind S. Helderman report: "White House lawyers are now working to turn over internal documents that span 13 different categories ... The requests broadly ask for any document or email related to ... [the] firing of [Michael Flynn] and [Jim] Comey, the people said. The list demonstrates Mueller's focus on key moments and actions by the president and close advisers which can address whether Trump sought to block the FBI investigations of Flynn and of Russian interference. His team is also eyeing whether the president sought to obstruct the earlier Russia probe."

- **QUOTE DU JOUR:** "'I am convinced that no matter where they end up, this investigation will run to completion even if they fire Mueller,' the official said. 'There is a feeling of inevitability now that we didn't have before — not of the outcome of the investigation, but that there will be an outcome. **There is no escaping this thing, whatever the conclusions.'"**

-- Suspected Russia propagandists appeared to use Facebook to push Trump rallies in 17 U.S. cities

during the election. The Daily Beast's Ben Collins, Gideon Resnick, Kevin Poulsen and Spencer Ackerman report: "The demonstrations — at least one of which was promoted online by local pro-Trump activists — brought dozens of supporters together in real life [and] appear to be the first case of Russian provocateurs successfully mobilizing Americans over Facebook in direct support of [Trump]. The Aug. 20, 2016, events were collectively called 'Florida Goes Trump!' and they were billed as a 'patriotic state-wide flash mob,' unfolding simultaneously in 17 different cities and towns in the battleground state."

Trump says the latest GOP health-care bill has a 'very good chance' of passing

OBAMACARE REPEAL LIVES ON:

-- Mitch McConnell plans to bring Cassidy-Graham to a vote on the Senate floor next week, a move he had committed to only if Republicans had enough votes to pass it. But it's still unclear if the

measure can cross the finish line (and spokesman Don Stewart used the word "intention" regarding bringing the measure to the floor). Sean Sullivan reports: "The announcement came as Republican leaders and the White House were trying to rally support for the measure. [Sens. Bill] Cassidy [R-La.] and [Lindsey] Graham [R-S.C.] met Wednesday with Alaska Republican Sens. Lisa Murkowski and Dan Sullivan, who have not yet said whether they support the plan."

-- All eyes are on Murkowski, who opposed the last failed attempt to rollback the Affordable Care Act and could be the critical vote this time around, too. Also from Sean: "After leaving the meeting with Cassidy and Graham, Murkowski said she needed to review more information on how the plan would affect her state before she decides whether to endorse it. … Graham said he and his co-sponsors would not make any changes to the legislation for Alaska. But he also sought to project sensitivity to the state's distinctive needs, perhaps opening the door to some provisions that accomplish that. … Murkowski and her team insisted that she is interested in seeing more numbers crunched to make a responsible decision. **But some Republicans with a close eye on the process are under the impression that she is more interested in gaining political cover.**"

- Kim Soffen, Amber Phillips and Kevin Schaul have the latest whip count.

- The Plum Line's Sarah Posner and Greg Sargent also compiled a list of vulnerable House Republicans whose states stand to lose money if the Cassidy-Graham bill is passed.

-- Sen. Chuck Grassley (R-Iowa) admitted in a candid interview with the Des Moines Register that the majority is still two votes short and that optics were a good enough reason to pass the measure. "'No, I think we're one or two votes short and I don't see those other one or two votes coming," Grassley said when asked if McConnell had the necessary votes. 'I hope I'm wrong.'" **He added that, although the bill, it was more important for Republicans to keep their promise of repealing Obamacare than to tank it:** "'You know, I could maybe give you 10 reasons why this bill shouldn't be considered,' he said. "'But Republicans campaigned on this so often that you have a responsibility to carry out what you said in the campaign. **That's pretty much as much of a reason as the substance of the bill.'"**

-- The two major trade groups for health insurers came out against the bill yesterday, becoming the latest in a long line of powerful interest groups to oppose the measure. "The legislation reduces funding for many states significantly and would increase uncertainty in the marketplace, making coverage more expensive and jeopardizing Americans' choice of health plans," the CEO of the Blue Cross Blue Shield

Association said. The president of America's Health Insurance Plans added that the legislation may allow "government-controlled single payer health care to grow." (The New York Times's Robert Pear)

-- A new analysis also reveals that Cassidy-Graham would cut federal funds for 34 states. Amy Goldstein, David Weigel and Juliet Eilperin report: "The analysis by Avalere Health, a Washington-based health-policy consulting firm, forecasts that the amount of federal money devoted to Medicaid and private insurance subsidies would shrink by $215 billion between 2020, when the plan would begin, and 2026, the last year money is provided in the bill. More than half of the overall cuts in the legislation … would come from Medicaid, the analysis shows. … The divisions between winners and losers trace political fault lines. **Of the 16 states that Avalere predicts would gain money under the plan, all but one have Republican governors.**"

Graham positions his health-care plan as a choice between 'socialism or federalism'

-- OOPS: The Associated Press reported last night that a reporter overheard Graham at Reagan National Airport telling a fellow senator he should support his health-care bill despite "all its imperfections." It turned out that Graham was giving an interview to Fox News's Sean Hannity. The wire service corrected the item. "We're going to vote," Graham told Hannity. "Everybody will be held accountable." The AP's decision to run with what turned out to be an inaccurate story comes after the New York Times reported on an overheard conversation at a downtown Washington restaurant earlier this week between two of Trump's lawyers.

Obama: Ending Obamacare would cause 'real human suffering'

-- During a speech yesterday, Barack Obama said that repealing the ACA would inflict "real human suffering." "It wasn't perfect, but it was better," Obama said at an event for the Bill & Melinda Gates Foundation. "And so when I see people trying to undo that hard-won progress, for the 50th or 60th time, with bills that would raise costs or reduce coverage, or roll back protections for older Americans, people with preexisting conditions, the cancer survivor, the expectant mom, or the child with autism, or asthma, for whom coverage will once again will be unattainable, it is aggravating." (Juliet Eilperin)

-- "Chuck and Nancy" are waiting in the wings if Cassidy-Graham fails. The New York Times's Sheryl Gay Stolberg: "[I]f the [Cassidy-Graham] bill can be stopped, the Democratic leaders have already begun nudging the president toward another about-face: setting

aside the mantra of 'repeal and replace' and adopting modest measures to make his predecessor's signature domestic achievement work better. During a recent White House dinner, the pair pushed Mr. Trump to make permanent the subsidies … paid to insurers under the health law to help low-income customers pay for out-of-pocket health expenses[.] … In separate interviews, both leaders said that the president was noncommittal and that their future dealings with him would depend on whether he followed through on his pledge to protect [the dreamers]."

-- A handful of Democrats wonder if Bernie Sanders — and the introduction of his "Medicare for all" plan last week — bear some of the blame for Republicans' last-minute push. David Weigel reports: "Sanders ... was particularly tight-lipped at Tuesday's lunches, saying only that single-payer was 'where the American people want to go.' He had, after all, delayed the release of his bill several times, partially to get more input from Democrats, but largely to avoid confusing the Democratic caucus's united stance against repeal. But did he crack the door open for Republicans this time? Most of his colleagues say no; those who don't reject the idea outright acknowledge that the GOP was never going to let the Sept. 30 reconciliation deadline pass without another run at health care."

Kim Jong Un celebrates what was said to be the test launch of an intermediate range Hwasong-12 missile. (KCNA/Korea News Service/AP)

THE NEW WORLD ORDER:

-- Big vacancy: "[Trump] and his top aides say they're doing everything in their power to pursue a diplomatic and peaceful resolution to the North Korea nuclear threat," David Nakamura reports. "But eight months into Trump's tenure, he has yet to nominate a U.S. ambassador to South Korea[.] … [And behind] the scenes, Korea watchers in Washington say they are perplexed about the lengthy delay in filling the State Department's top Seoul post. Since the spring, the leading — and perhaps only — candidate said to be in consideration has been Victor D. Cha, a former George W. Bush administration Asia policy aide[.] … In the meantime, some in Washington fear the

lengthy vacancy in Seoul has sent a message that will be difficult to overcome: that Trump's White House doesn't really care about what an ambassador on the ground 35 miles from the North Korean border has to say about policy."

-- On the ground: In North Korea, Kim Jong Un's regime tells people every day the United States "wants to destroy them and their country." By echoing that rhetoric nearly verbatim at the United Nations this week, experts say Trump's speech could encourage the rogue nation to fire even more missiles. Anna Fifield reports: "North Korea's streets and airwaves are filled with calls to resist the American imperialists, and from a young age, children watch cartoons showing squirrels and hedgehogs (North Koreans) fighting off evil wolves (the United States). The 'threat' from the United States is the whole reason North Korea needs nuclear weapons, the regime tells the people … [and] Trump's words feed right into that narrative, analysts say."

-- China rebuked Trump on Wednesday for threatening to "totally destroy" North Korea if necessary, a warning that "may have undermined the chances of peace but also gave Beijing an easy opportunity to seize the moral high ground," **Simon Denyer reports.** "Beijing has consistently blamed not just Pyongyang but also Washington for what it sees as its hostile policies toward the regime … [and] argues that U.S. hostility has

helped to push North Korea's rulers into a corner and talk of total destruction only reinforces that narrative."

- **"Trump threatens DPRK with 'total destruction,' while China calls for peaceful settlement,** the online English-language edition of the People's Daily newspaper headlined an op-ed … 'Trump's political chest-thumping is unhelpful, and it will only push the DPRK to pursue even riskier policies, because the survival of the regime is at stake,' it wrote."

Trump says he has made a decision on the Iran nuclear deal

AND ABOUT IRAN:

-- Trump said Wednesday he has decided whether to recertify the nuclear deal with Iran nuclear deal -- but won't say what that decision will be. Abby Phillip reports: "'I have decided,' Trump said, three times. Pressed by reporters to reveal his decision, Trump smiled and said, 'I'll let

you know what the decision is.' The comments come a day after Trump said in a speech to the United Nations that the deal was 'one of the worst and most one-sided transactions the United States has ever entered into.'"

-- White House sources tell NBC News that Trump is leaning towards decertifying the deal. If he did, Congress would have 60 days to determine whether to reimpose sanctions on Iran, giving Trump time to attempt to renegotiate pieces of the pact and bring Iran back to the bargaining table.

-- The secretary of state appeared caught off-guard when reporters informed him that Trump had said his mind was made up. "I didn't know he was going to say today he made a decision," Rex Tillerson said. He went on to add, "I knew he had, but I didn't know he was going to say he had." (David Nakamura and Anne Gearan)

-- Iranian President Hassan Rouhani blasted Trump for his "ignorant, absurd and hateful" U.N. speech on Wednesday, vowing that Iran would not be the first to walk away from the 2015 nuclear deal. "'Everyone will clearly see that Iran has lived up to its agreements and that the United States is therefore a country that cannot be trusted,' he said. 'We will be the winners,' while the United States 'will certainly sustain losses.' And in a series of tweets on Wednesday morning, Rouhani doubled down, sharply criticizing Trump for his UN

speech and his insistence on undermining the Iran deal."

-- THE BIGGER PICTURE: "[Trump] is now fully engaged in two nuclear confrontations, one with Iran over a nuclear accord he finds an 'embarrassment' and the other with North Korea that is forcing the Pentagon to contemplate for the first time in decades what a resumption of the Korean War might look like," the New York Times's David Sanger writes. "The dynamics of those cases are entirely different, but they are also oddly interdependent. If Mr. Trump makes good on his threat to pull out of the 2015 nuclear agreement with Iran, how will he then convince [Kim Jong-un] that America will honor the commitment to integrate North Korea into the world community if only it disarms — the demand Mr. Trump made from the podium of the United Nations. Presumably, the United States would have to make some concessions to North Korea in return for limits on its nuclear program. **But why negotiate with the United States if this president or the next one can just throw out any agreement?**

"'If the president pulls back on the Iran deal, given Iranian compliance' with its terms, said Wendy R. Sherman, the chief negotiator of the accord, '**it will make diplomacy on North Korea almost impossible because U.S. credibility will be shot.'"**

-- Meanwhile, one of the American prisoners in Iran's

custody was hospitalized and received a pacemaker Tuesday. Trump demanded in his U.N. speech that all such prisoners be released. Carol Morello reports: "The health of Baquer Namazi, 81, who had undergone triple bypass surgery before being imprisoned 18 months ago and convicted of espionage in a secret trial, has raised concerns that the former UNICEF official might die in custody. At least three other Americans are imprisoned in Iran, and a fourth has been missing for a decade, but Namazi's health is considered particularly fragile."

Scott Pruitt speaks at the 2017 Concordia Annual Summit in New York City. (Riccardo Savi/Getty Images for Concordia Summit)

PERSONNEL IS POLICY:

-- Scott Pruitt is getting round-the-clock Secret

Service protection with "triple the manpower" of his predecessors, scoop Juliet Eilperin and Brady Dennis. The extra security has "prompted officials to rotate in special agents from around the country who otherwise would be investigating environmental crimes,"Juliet and Brady report. "The EPA's Office of Enforcement and Compliance Assurance has summoned agents from various cities to serve two-week stints helping guard Pruitt in recent months. And while hiring in many departments is frozen, the agency has sought an exception to hire additional full-time staff to protect Pruitt. **'This never happened with prior administrators,' said Michael Hubbard, a former special agent who led the EPA's Criminal Investigation Division office in Boston ...** The practice has rankled some employees … who note that the EPA's criminal enforcement efforts already are understaffed and that the Trump administration has proposed further cuts to the division.

"These guys signed on to work on complex environmental cases, not to be an executive protection detail," Hubbard said. "It's not only not what they want to do, it's not what they were trained and paid to do."

-- "In a pair of 2015 speeches, [Trump's] nominee for a federal judgeship in Texas described transgender children as evidence of 'Satan's plan,' lamented that states were banning conversion therapy and argued that

sanctioning same-sex marriage would lead to polygamy and bestiality," CNN's Chris Massie and Andrew Kaczynski report: "Jeff Mateer, the current first assistant attorney general of Texas, was serving at the time as general counsel of the First Liberty Institute[.] 'In Colorado, a public school has been sued because a first grader and I forget the sex, she's a girl who thinks she's a boy or a boy who thinks she's a girl, it's probably that, a boy who thinks she's a girl,' Mateer said [in the 2015 speech] … 'And so she has now sued to have a right to go in [the girl's bathroom]. **Now, I submit to you, a parent of three children who are now young adults, a first grader really knows what their sexual identity? I mean it just really shows you how Satan's plan is working and the destruction that's going on.'"**

-- Jeffrey Gerrish, Trump's nominee to be deputy U.S. trade representative, cast a questionable ballot in last year's election, a revelation that comes as the president's voter fraud commission attempts to crack down on such behavior. John Wagner reports: "Gerrish, whose nomination is pending in the Senate, sold a home in Fairfax County, Va., in July 2016 and bought a home in North Bethesda, Md., the same month[.] … **Yet Gerrish, a Washington lawyer, voted four months later in Virginia[.] …** Under Virginia law, voting in the state is limited to residents, with some exceptions, including those who move out of the jurisdiction within 30 days of a presidential election. Voting by nonresidents is a

misdemeanor."

Health and Human Services Secretary Tom Price speaks to the press after a meeting on the opioid addiction crisis. (Nicholas Kamm/AFP/Getty Images)

-- The Department of Health and Human Services defended Tom Price's reported use of private jets to travel for official business.: "Within an incredibly demanding schedule full of 13+ hour days, every effort is being made to maximize Secretary Price's ability to travel outside Washington to meet with the American people and carry out HHS's missions," HHS spokeswoman Charmaine Yoest said. "The travel department continues to check every possible source for travel needs, including

commercial, but commercial travel is not always feasible." (The Wall Street Journal)

-- But congressional Democrats zeroed in on the allegations, asking the HHS inspector general to look into Price's recent travel. Politico's Rachana Pradhan reports: "Five Democrats asked the inspector general to review Price's adherence to federal regulations on traveling by government employees[.] … The request — sent by Reps. Frank Pallone and Richard Neal and Sens. Patty Murray, Ron Wyden and Gary Peters — asks the office to probe how many times Price used government or charter aircraft, the costs of the trips and whether HHS personnel raised internal concerns about Price's use of private planes."

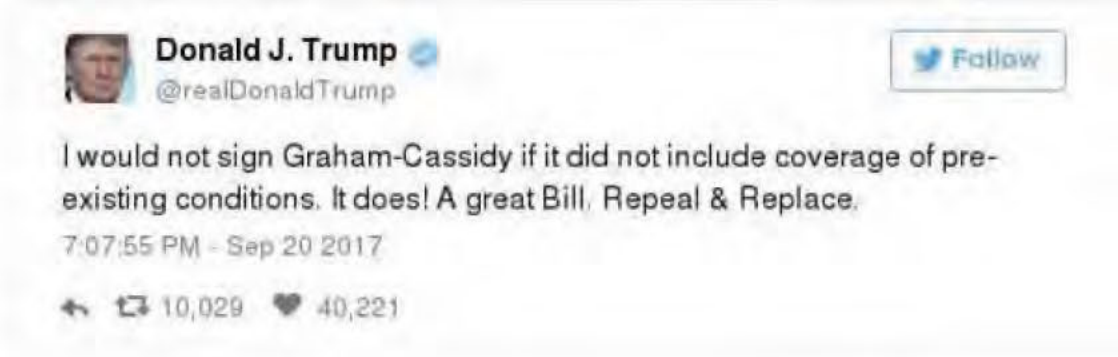
-- A review of Trump's hiring picks to fill the Agriculture Department reveals little government or agricultural experience – and excessive experience with Trump's campaign. Politico's Jenny Hopkinson reports: "Of the 42 résumés POLITICO reviewed, 22 cited Trump campaign experience. And based on their résumés, some of those appointees appear to lack credentials, such as a college degree, required to qualify for higher government salaries. It's typical for presidents to reward loyalists with jobs once a campaign is over. But what's different under Trump, sources familiar with the department's inner workings say, is the number of campaign staffers who have gotten positions and the jobs

and salaries they have been hired for, despite not having solid agricultural credentials in certain cases. … 'There is a clear prioritization of one attribute, and that is loyalty,' said Austin Evers, American Oversight's executive director[.]"

SOCIAL MEDIA SPEED READ:

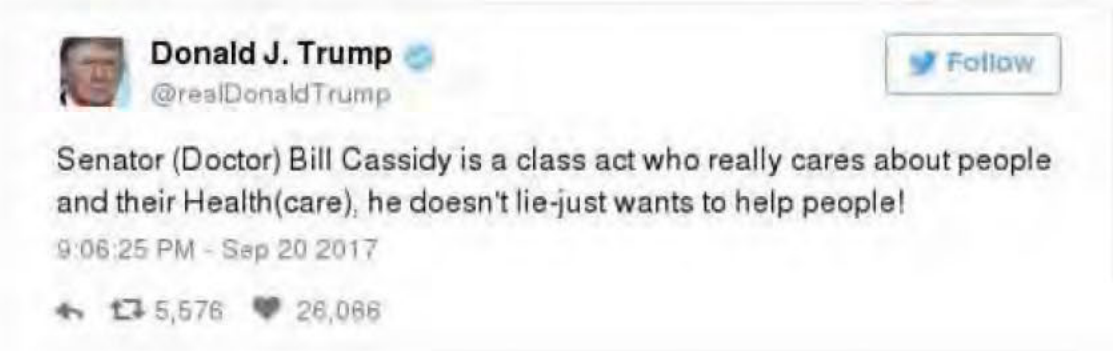
Trump defended the Cassidy-Graham bill and went after one of its opponents:

He also weighed in on the criticism that it would allow states to waive coverage of the sickest people:



Lindsey Graham backed up the president's claim:

He later gave a more personal endorsement of Sen. Bill Cassidy, who was criticized by Jimmy Kimmel for breaking his promise on protecting children with preexisting conditions:



Trump also promoted Sen. Luther Strange's campaign in Alabama (former top aide Steve Bannon, now with Breitbart, is backing Roy Moore in Tuesday's special primary for Jeff Sessions's old seat. More on the race here):

Some criticized this May tweet from Lindsey Graham, written during the first round of health-care negotiations, as a flip-flop (the CBO says it can't score his new measure in time for the vote):

Sen. Jeanne Shaheen (D-N.H.) cited Jimmy Kimmel to explain her displeasure with Cassidy-Graham:

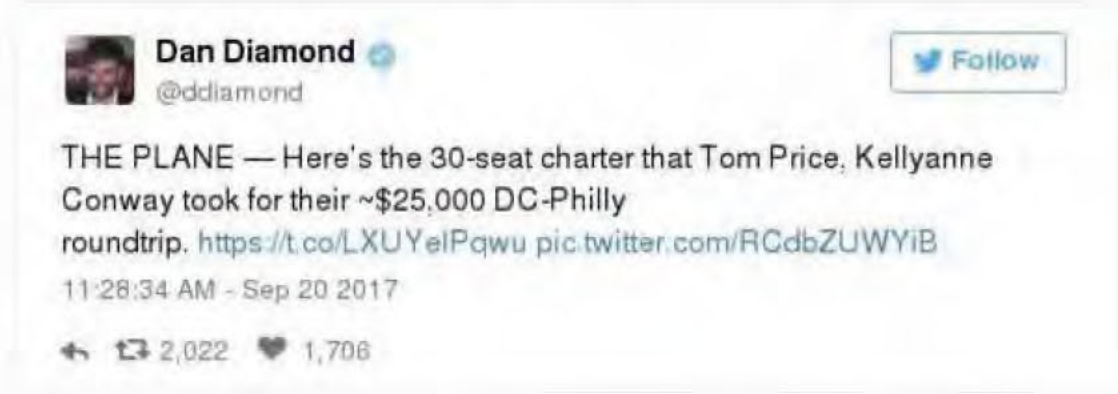
From a New York Times reporter:

Sen. Bernie Sanders (I-Vt.) highlighted the abortion restrictions contained in the Cassidy-Graham bill:

Hillary Clinton defended Obamacare:

As HHS Secretary Tom Price caught flak for his habit of flying private jets on official business, this 2009 tweet recirculated:

One of the Politico reporters that broke the Price story found one of the chartered planes that Price used:



Rep. Brendan Boyle (D-Pa.) recommended an alternative means of transportation for Price:

One of The Post's opinion writers offered this insight on the story that Manafort offered "private briefings" to a Russian billionaire during the campaign:

A Black Lives Matter activist questioned late-night hosts' chummy interactions with Trump and his associates:

deray mckesson
@deray

Follow

when racism, bigotry, and sexism are jokes because they don't quite affect you. pic.twitter.com/cn9nostuUE

7:28:25 AM - Sep 20 2017

14,459 33,400

The editor-in-chief of FiveThirtyEight commented on the record-setting sales of Hlilary Clinton's newest book:

Nate Silver
@NateSilver538

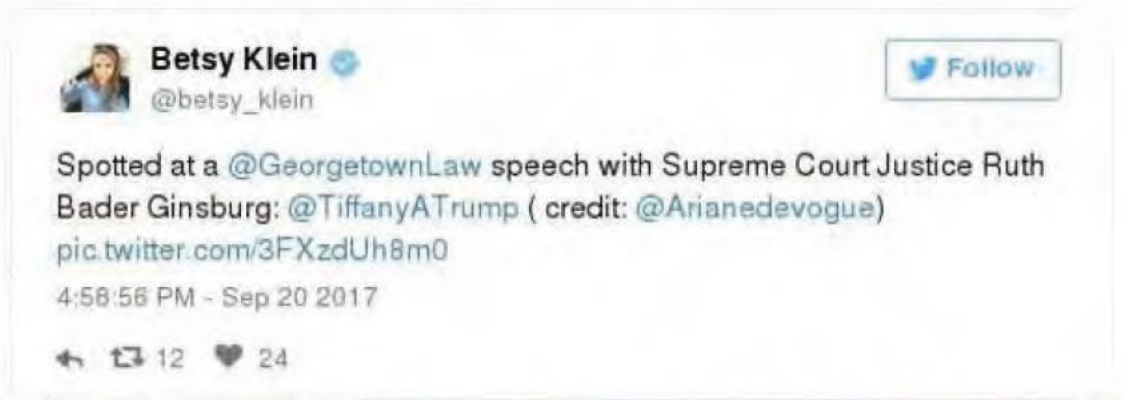
Follow

The notion that "nobody wants to re-litigate 2016" is sort of a myth... https://t.co/emA3fuZQz6

10:54:27 AM - Sep 20 2017

3,004 10,306

And first daughter Tiffany Trump heard Ruth Bader Ginsburg's speech at Georgetown Law:



Luther Strange takes the stage before Trump during a thank you rally in Mobile, Alabama. (Mark Wallheiser/Getty)

GOOD READS FROM ELSEWHERE:

-- Bloomberg Businessweek, "Mark Zuckerberg's Political Awakening," by Max Chafkin and Sarah Frier: "By his own telling, Zuckerberg's political awakening began a little more than a year ago. 'I guess it was while the primaries were going on,' he says. Trump

was on the ascent, thanks to a nationalist message Zuckerberg saw as an attack on the global connectivity Facebook has long promoted[.] … 'I mean, for most of the existence of the company, this idea of connecting the world has not been a controversial thing,' he continues. 'Something changed.'"

-- The New York Times, "Undercover With the Alt-Right," by Jesse Singal: "Last September, Patrik Hermansson, a 25-year-old graduate student from Sweden, went undercover in the world of the extreme right. Posing as a student writing a thesis about the suppression of right-wing speech, he traveled from London to New York to Charlottesville, Va. — and into the heart of a dangerous movement that is experiencing a profound rejuvenation. And while 'globalist' may be one of the alt-right's favorite slurs, [his experience] conclusively shows that the alt-right is itself now a global movement with regular interaction among far-right figures from Scotland to Sweden to Seattle."

-- New York Magazine, "Can Our Democracy Survive Tribalism?" by Andrew Sullivan: "The project of American democracy — to live beyond such tribal identities, to construct a society based on the individual, to see ourselves as citizens of a people's republic, to place religion off-limits, and even in recent years to embrace a multiracial and post-religious society — was always an extremely precarious endeavor. **It rested,**

from the beginning, on an 18th-century hope that deep divides can be bridged by a culture of compromise, and that emotion can be defeated by reason. It failed once, spectacularly, in the most brutal civil war any Western democracy has experienced in modern times. And here we are, in an equally tribal era, with a deeply divisive president who is suddenly scrambling Washington's political alignments, about to find out if we can prevent it from failing again."

-- Politico Magazine, "The Electoral College Is a National Security Threat," by Matthew Olsen and Benjamin Haas: "[Alexander] Hamilton and his colleagues never could have envisioned a year like 2016, when an enemy state—Russia—was able to manipulate America's election process with stunning effectiveness. But it's clear the national security rationale for the Electoral College is outdated and therefore it should be retired. Simply put, it enables foreign powers to more easily pierce the very shield Hamilton imagined it would be."

-- The Wall Street Journal, "There's Actual War, and Then There's @Ukraine vs. @Russia," by Drew Hinshaw and James Marson: "The @Ukraine versus @Russia battle pits one of the world's cyberwarfare superpowers against the three nerdy Twitter comedians behind @Ukraine. … Thousands of tweeters have taken @Ukraine's side in its spats with accounts run by

Russian foreign affairs staff. @Ukraine is generally funnier than @Russia, Twitter users say, and better at digging up obscure moments from American cartoons[.]"

HOT ON THE LEFT:

"A university president held a dinner for black students — and set the table with cotton stalks and collard greens," from Lindsey Bever: "A Tennessee university president has apologized for offending African American students with a table centerpiece that included stalks of cotton — a piece of Southern-style decor that is raising questions about cultural and racial sensitivity. [An

HOT ON THE RIGHT

"Lawrence O'Donnell apologizes for profanity-laced rant caught on tape," from New York Post: "O'Donnell was not on air, but cameras were still rolling as he went ballistic during a break on Aug. 29, complaining about an earpiece malfunction that piped in unwanted noise. 'Call f–king [MSNBC president] Phil Griffin!' O'Donnell yells in footage posted by Mediaite. 'I don't care who the f–k you have to call!' … 'The Last

Instagram user] wrote last week that African American students had been invited to the [home of Lipscomb University President Randy Lowry] to share a meal. ‘As we arrived to the president’s home and proceeded to go in we seen cotton as the center pieces,’ she wrote. ‘We were very offended, and also the meals that were provided resembled many ‘black meals’ they had mac n cheese, collard greens, corn bread etc. **The night before Latinos also had dinner at his house and they had tacos.** They also DIDN’T have the center piece

Word’ host said he was totally at fault and tweeted, ‘A better anchorman and a better person would’ve had a better reaction to technical difficulties. I’m sorry.’”

that we HAD tonight.'"

DAYBOOK:

Trump is still in New York today for meetings with world leaders, including a working lunch with Japanese Prime Minister Shinzo Abe and South Korean President Moon Jae-in. He will later sit down with Turkey's Recep Tayyip Erdogan before departing for New Jersey.

Pence has morning media interviews before joining the president's meetings with the leaders of Afghanistan, Ukraine, South Korea and Japan. He returns to D.C. tonight.

QUOTE OF THE DAY:

When Sen. John McCain (R-Ariz.) was asked about Cassidy-Graham, after he torpedoed the last Obamacare repeal effort, he said, "Nothing has changed. If McConnell wants to put it on the floor, that's up to McConnell. I am the same as I was before. I want the regular order." When asked if that meant he would vote "no," McCain replied, "That means I want the regular order. It means I want the regular order!"

NEWS YOU CAN USE IF YOU LIVE IN D.C.:

-- Summer-like weather persists in D.C. today. The Capital Weather Gang forecasts: "Bright sunshine gets the day started and is tempered only by a few afternoon pop up clouds. Winds are light from the north and humidity, while noticeable, is far from oppressive. Standing in the sun may not be so pleasant in the afternoon as highs top out in the mid-to upper 80s."

-- The Nationals beat the Braves 7-3. (Chelsea Janes)

-- Black employees of the Trump International Hotel's BLT Prime steakhouse have filed a civil complaint over alleged racial discrimination. Jonathan O'Connell reports: "[Dominique] Hill, a former BLT employee, and [Irving] Smith [Jr.], a current one, allege that the Trump Organization and hotel managing director Mickael Damelincourt saw to it that the restaurant routinely steered black employees to less lucrative shifts and subjected them to discriminatory behavior by other staff and by guests. … [Hill] claims only four black employees still work at BLT after the hotel opened with 15 or more."

-- Incoming U-Va. President James E. Ryan will earn

an annual base salary of $750,000, almost $200,000 more than his predecessor, Teresa Sullivan. (Sarah Larimer)

VIDEOS OF THE DAY:

Jimmy Kimmel's took a second, and even more heated swing, at Bill Cassidy last night:

Jimmy Kimmel Fights Back Against Bill Cassidy, Lindsey Graham & Chris Christie

Late-night hosts had some cutting words on Trump's U.N. speech:

Late-night laughs: Trump's speech at the U.N.

The first lady denounced bullying in a speech at the U.N.:

Melania Trump discusses bullying at U.N. luncheon

Morning Joe host Mika Brzezinski, who has been bullied by the president, responded to the first lady's speech:

Trump mispronounced the name of the African nation Namibia during a lunch with African leaders:

Trump mispronounces 'Namibia' in speech to African leaders

Obama added in his Gates Foundation speech yesterday that "the rise of nationalism and xenophobia" rank among the world's "extraordinary challenges":

Obama says global challenges include ‘nationalism and xenophobia’

The Post's Glenn Kessler awarded four Pinocchios to Scott Pruitt's claim that 50,000 new coal jobs have been created this past year:

Fact Check: Are there 50,000 new coal jobs as EPA Administrator Scott Pruitt claimed?

And a hospital in San Diego unveiled remote controlled

mini cars, allowing child patients to "drive" to their operating rooms:

San Diego hospital allows kids to 'drive' to the operating room

You received this email because you signed up for The Daily 202 or because it is included in your subscription. For additional free newsletters or to manage your newsletters, **click here**.

We respect your **privacy** . If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, **click here**. **Contact us** for help.

©2017 The Washington Post | 1301 K St NW, Washington DC 20071

The Daily 202_ John Kelly proves he can manage ....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: The Daily 202: John Kelly proves he can manage up on his first day as chief of staff
Date: Tuesday, August 1, 2017 7:02:53 AM

If you're having trouble reading this, click here.

PowerPost
The Daily 202
Morning intelligence for leaders

Share:

Listen to The Big Idea

John Kelly proves he can manage up on his first day as chief of staff

Anthony Scaramucci talks on his cell phone in the rain as he boards Air Force One at Andrews Air Force Base last Friday. He got forced out as White House communications director after just 10 days. (Nicholas Kamm/AFP/Getty Images)

BY JAMES HOHMANN
with Breanne Deppisch and Joanie Greve

THE BIG IDEA: John F. Kelly's first move as White House chief of staff — firing communications director Anthony Scaramucci — validated President Trump's decision to elevate him. The 67-year-old retired Marine general showed that he's no nonsense, and the alpha male in the Oval Office surely appreciated the early show of strength.

"Trump's willingness to dismiss Scaramucci — whom he hired just 10 days ago — was viewed by many in the West Wing as an indication that he is eager to impose order and is giving Kelly the tools to do so," Abby Phillip, John Wagner and Damian Paletta report. "Removing him from the communications post is part of an effort to change the culture of the White House."

It makes sense that Kelly axing someone as colorful as The Mooch would get the lion's share of attention, but three other stories that came out in the past 24 hours also foreshadow what kind of chief he'll be:

1. "A hint of Kelly's potential influence on Trump emerged two weeks ago, in Aspen, Colorado, when Kelly made a startling revelation," writes the New Yorker's Ryan Lizza, the reporter who found himself on the receiving end of one of Scaramucci's profanity-

laced tirades last week: “According to several sources who attended a private briefing that included some of the nation’s most senior current and former national-security officials, Kelly sought to ease their minds about one of the most controversial and famous Trump proposals: the border wall with Mexico. Kelly explained that he had spent a great deal of time talking through the issue with Trump, and **he believed he had convinced the President that he didn’t actually need to build a physical wall** … To the officials in the room, it was a fascinating admission. **Kelly seemed to be suggesting that he was one of the few people who might be able to tame Trump and get him to back off some of his most cartoonish policy ideas, even** the ones that were core campaign promises.”

2. Kelly was so upset with how Trump handled the firing of FBI Director James Comey that he called Comey to say he was considering resigning, CNN reports: “Comey, who took Kelly's call while traveling back from Los Angeles to Washington, responded to Kelly by telling him not to resign … (Two) sources said Comey and Kelly are not close friends but that they had a professional relationship and a deep mutual respect for each other. … ‘John was angry and hurt by what he saw and the way (Comey) was treated,’ one of the sources said.”

3. Kelly is already making overtures to Democrats, per the Daily Beast: “Even before he formally started the job, Kelly was reaching out to top Capitol Hill Democrats in hopes of regaining political capital ahead of what is expected to be a bruising fight over tax reform and other administration priorities. ‘Tax reform is gonna be a heavy lift,’ a senior White House official [said]. **‘No reason to write off/alienate**

[Democrats] any more than we already have.' A spokeswoman for … Nancy Pelosi [said] that Kelly reached out her over the weekend with the two holding a phone conversation on Sunday. A spokesman for … Chuck Schumer … confirmed that Kelly reached out to him as well."

Trump says White House has 'tremendous' support and 'fantastic leader' in Kelly

UNDERSTANDING KELLY'S WORLD VIEW:

-- The new chief of staff gave a fascinating 90-minute interview last July to Foreign Policy's Molly O'Toole, in which he decried "the cesspool of domestic politics." At a moment when Michael Flynn was being mentioned as a possible running mate for Trump, the recently retired general warned former brass to avoid wading into the 2016 campaign. "To join in the political fray, I don't think it convinces anyone," he said. "It just becomes a talking point on CNN."

"He said Clinton and Trump 'are not serious yet about the issues' and speak only in generalities when it comes to complex topics

ranging from combating the Islamic State to handling the Syrian refugee crisis. The campaigns ‘don’t reflect reality.’ **Kelly said he’d be willing to serve in either a Trump or Clinton White House but didn’t endorse either.** Whomever wins, he added, ‘will be in desperate need — and I mean desperate need — of military and foreign policy advice, because the world out there is just getting crazier and crazier.’ …

“The retired general said the anti-Islamic State fight will continue long after Obama — and probably his successor — leaves office, a grim reality that neither Clinton nor Trump seems eager to openly discuss. **‘You’re not going to win this thing by dropping bombs on these people,’ he said**, adding that neither presidential candidate was willing to acknowledge that the sustained ‘victory’ they promise would likely require a large number of U.S. and coalition troops deployed to Iraq for decades to come.”

John Kelly listens as Trump speaks during a cabinet meeting yesterday. (Jabin Botsford/The Washington Post)

SPEAKING TRUTH TO POWER:

-- Republican consultant Blain Rethmeier recalls a quote from Kelly during his confirmation hearing to run DHS: "I have never had a problem speaking truth to power, and I firmly believe that those in power deserve full candor and my honest assessment and recommendations."

"One reason the general's success can be expected to be repeated at the White House is his understanding of Sun Tzu's observation that 'a leader leads by example — not by force,'" Rethmeier, who helped prepare Kelly for his hearing as a so-called sherpa, writes in an op-ed for the Washington Examiner. "He didn't mince words at his confirmation hearings in questioning the viability of the border wall or the wisdom of a complete Muslim ban, or in stressing the important role good relationships with Muslim clerics played in Iraq. I am convinced that Kelly will patiently explain to the president that he cannot go on undermining his own most loyal supporters in tweets (a la Attorney General Jeff Sessions), leaving the heavy lifting to others in achieving policy goals (Obamacare repeal), or allow open feuding among members of his leadership team. And he will insist on the power to ensure appropriate procedures are put in place to rein in the madness."

-- "As a former White House chief of staff, the best advice I could have given [Kelly] has been overtaken by events: Don't take the job," quips John Podesta, who held top positions in the Bill Clinton

and Barack Obama administrations, in an op-ed for today's paper. "Kelly, who has rendered extraordinary service and sacrifice to the nation, just signed up for what may truly be an impossible mission … To have any chance of succeeding, he will have to accomplish three extraordinary tasks, all at odds with President Trump's instincts. First, discipline. … Kelly's second task will be to restore strategic direction to Trump's haphazard policy-making process. … Kelly's third task might be the hardest. He has to protect the integrity and independence of the Justice Department and special counsel Robert S. Mueller III's investigation from constant interference by the president and the White House …

"The truth is that the president needs Kelly more than Kelly needs him," argues Podesta, who was chairman of Hillary Clinton's 2016 campaign. "Trump simply cannot afford to have Kelly walk without disastrous consequences. The new chief of staff should use that power to restore discipline and dignity to a White House sorely in need of both."

-- "In his 40 years in the military, Kelly developed a reputation for bluntness that won him the respect of his fellow Marines and sometimes grated on senior officials in the Obama administration," Greg Jaffe and Andrew deGrandpre wrote in a profile over the weekend. "He is best known in Washington as an experienced battlefield commander who led U.S. troops in Iraq and lost a son in Afghanistan in 2010 to a Taliban bomb. But **the most relevant experience he will bring to the chief of staff job is a tour as senior military adviser to Defense Secretaries Robert M. Gates and Leon E. Panetta in the Pentagon.** The job demanded Kelly act

as a disciplinarian, pressing to make sure the military service chiefs and the sprawling Pentagon bureaucracy were executing the defense secretary's agenda …

"As a four-star general, Kelly was frequently at odds with the Obama White House. He spoke out forcefully on issues including Obama's plan to shutter the prison complex in Guantanamo Bay, Cuba, and the perceived vulnerability of America's borders. At a time when the Obama administration was trying to wind down America's wars and calm fears of a terrorist attack, Kelly often spoke of the threat posed by groups like the Taliban in dire terms. … In charge of U.S. Southern Command, Kelly oversaw the military detention center at (Gitmo). His weekly updates on the prison, which were blasted out to dozens of White House and Pentagon officials, became well known for their candor. 'His vernacular wasn't the typical government prose,' said one former White House official. 'He would call out some of the military commission judges, saying that they had no idea what they were doing.'"

-- At DHS, Kelly has demonstrated that he can be combative with lawmakers: Speaking in April at George Washington University, he said that congressional critics of the Department of Homeland Security should "shut up" and assume the agency is acting appropriately and following the law. "If lawmakers do not like the laws they've passed and we are charged to enforce, then they should have the courage and skill to change the laws," Kelly said. "Otherwise they should shut up and support the men and women on the front lines." Watch:

Kelly tells DHS critics to change the laws or 'shut up'

HOW LONG WILL KELLY'S HONEYMOON LAST?

-- "General Kelly has the full authority to operate within the White House, and all staff will report to him," said White House spokeswoman Sarah Huckabee Sanders.

-- It seems inevitable, though, that palace intrigue will continue, and that Trump's kids will balk sooner than later at going through an intermediary to get to their dad. From Abby Phillip, John Wagner and Damian Paletta: "In one of the strongest indications that Kelly will have greater authority than his predecessor, Trump's daughter Ivanka Trump and son-in-law and senior adviser Jared Kushner — both of whom advocated for Kelly to be hired — have expressed their willingness to support any structural changes Kelly might make … Sanders confirmed that they, too, will report to Kelly, as will all other officials. But Kelly is planning to bring at least one senior adviser from the Department of Homeland Security with him to the White House. There are signs that these new hires may be met

with a chilly reception, two people familiar with the matter said, raising questions about who will hold influence in a White House overloaded with aides competing for influence. … Ivanka Trump and Kushner were instrumental in bringing Scaramucci into the White House in large part to oust (Reince) Priebus, who led the establishment wing. After Scaramucci's explosive interview with the New Yorker … they soured on him and were supportive of Kelly's efforts to oust him."

-- "The president gave Mr. Priebus many of the same assurances of control, and then proceeded to undercut and ignore him — to the point where Mr. Priebus often positioned himself at the door of the Oval Office to find out whom the president was talking to," Michael Shear, Glenn Thrush and Maggie Haberman note on the front page of today's New York Times. "Mr. Scaramucci's fall and Mr. Kelly's rise highlighted the diminished but still important role in shaping the West Wing played by (Ivanka and Jared) … Ms. Trump and Mr. Kushner had hoped to persuade Mr. Trump to appoint Dina Powell, the deputy national security adviser, as chief of staff. Mr. Trump, who likes Ms. Powell, considered doing so…

"For the time being, the White House may leave the communications director post open … though Mr. Kelly has the latitude from Mr. Trump to fill the post with someone from the Department of Homeland Security. Two perennial candidates to fill the post are Kellyanne Conway, a White House senior adviser and the president's former campaign manager, and Jason Miller, who held the communications post during the campaign. Mr. Trump has long wanted to bring Mr. Miller, who serves as an informal adviser, into the administration."

-- Given the origins of the role under Dwight D. Eisenhower, does a military background make one more likely to be a successful chief of staff? Chris Whipple spent five years interviewing 17 former White House chiefs of staff for his book about the history of the position ("The Gatekeepers"): "I've spoken to a few former White House chiefs who have not heard from him, interestingly, which is not a good sign," he told Amy B Wang. "Most incoming White House chiefs would be working the phones to their predecessors and it doesn't sound like he's doing that. The last time we had a general as chief of staff, it didn't end well. **Al Haig [who served as chief of staff under presidents Richard Nixon and Gerald Ford] lasted little more than a month under Ford.** The history here of generals as White House chiefs is not very encouraging." (Read an extended Q&A with Whipple here.)

Listen to James's quick summary of today's Big Idea and the headlines you need to know to start your day:

Play audio brief

Subscribe to **The Daily 202's Big Idea** on Amazon Echo, Google Home, Apple Podcasts and other podcast players.

Anthony Scaramucci walks down the steps of Air Force One after arriving in Long Island on Friday. (Evan Vucci/AP)

MORE ON THE FALL OF THE MOOCH:

-- Post columnist Dana Milbank describes Scaramucci's termination as a "fall of biblical proportions." He said the day he was hired that Priebus was like a brother to him. Then he clarified that they might be more like the brothers Cain and Abel. "Scaramucci's **retelling of Genesis had a twist: It was a murder-suicide," Dana writes.** "Priebus's Abel was indeed slain by Scaramucci's Cain … But Cain met the same fate Monday afternoon. … He wasn't officially supposed to start until Aug. 15, so his tenure, technically, was minus 16 days. … The Mooch's tenure was such a whirlwind that it's tempting to describe them as Ten Days That Changed the World. But the Mooch didn't really change anything. He just made everything wildly entertaining."

-- **"With the benefit of a few more days, it's now clear that the better analogy comes not from the Bible but from Sophocles' Antigone, and the cases of Eteocles and Polyneices**—mutual fratricides, killed on the battlefield of a civil war," the Atlantic's David A. Graham writes.

-- Fun fact: Scaramucci is actually not the shortest serving White House communications director ever. In 1987, Ronald Reagan's communications director John O. Koehler offered his resignation six days after beginning in the role due to revelations that he had been a member of a Nazi youth group as a child. (Alex Horton on Retropolis)

-- Insult to injury: Scaramucci is listed as deceased in a new Harvard Law School alumni directory, which arrived in mailboxes last week. "An asterisk by the 1989 graduate's name indicates that he was reported dead since the last directory, which was published in 2011," the Reliable Source's Emily Heil reports.

Welcome to the Daily 202, **PowerPost's** morning briefing for decision-makers.
Sign up to receive the newsletter.

WHILE YOU WERE SLEEPING:

President Trump personally intervened to write Donald Trump Jr. statement

-- President Trump personally dictated his son's misleading statement about his meeting with a Russian lawyer during the campaign. Ashley Parker, Carol D. Leonnig, Philip Rucker and Tom Hamburger scoop: "On the sidelines of the Group of 20 summit in Germany last month, President Trump's advisers discussed how to respond to a new revelation that Trump's oldest son had met with a Russian lawyer during the 2016 campaign — a disclosure the advisers knew carried political and potentially legal peril. The strategy, the advisers agreed, should be for Donald Trump Jr. to release a statement to get ahead of the story. They wanted to be truthful, so their account couldn't be repudiated later if the full details emerged. But within hours, at the president's direction, the plan changed. **Flying home from Germany on July 8 aboard Air Force One, Trump personally dictated a statement in which Trump Jr. said that he and the Russian lawyer had 'primarily discussed a program about the adoption of Russian children' when they met in June 2016, according to multiple people with knowledge of the**

deliberations. ...

"Air Force One took off from Germany shortly after 6 p.m. — about noon in Washington. In a forward cabin, Trump was busy working on his son's statement, according to people with knowledge of events. **The president dictated the statement to (Hope) Hicks, who served as a go-between with Trump Jr.,** who was not on the plane, sharing edits between the two men, according to people with knowledge of the discussions …

"As special counsel Robert S. Mueller III looks into potential obstruction of justice as part of his broader investigation of Russian interference in the 2016 election, these advisers worry that the president's direct involvement leaves him needlessly vulnerable to allegations of a coverup. 'This was … unnecessary,' said one of the president's advisers. 'Now someone can claim he's the one who attempted to mislead. Somebody can argue the president is saying he doesn't want you to say the whole truth.'

"Trump, they say, is increasingly acting as his own lawyer, strategist and publicist, often disregarding the recommendations of the professionals he has hired. 'He refuses to sit still,' the presidential adviser said. 'He doesn't think he's in any legal jeopardy, so he really views this as a political problem he is going to solve by himself.'"

"Peter Zeidenberg, the deputy special prosecutor who investigated the George W. Bush administration's leak of [Valerie Plame's] identity, said Mueller will have to dig into the crafting of Trump Jr.'s statement aboard Air Force One. Prosecutors typically

assume that any misleading statement is an effort to throw investigators off the track, Zeidenberg said. 'The thing that really strikes me about this is the stupidity of involving the president,' Zeidenberg said. '**They are still treating this like a family-run business and they have a PR problem. … What they don't seem to understand is this is a criminal investigation involving all of them.'"** (Read the full story.)

-- The news presents a major problem for Trump's lawyer Jay Sekulow, who repeatedly denied that the president played any role in crafting the statement. (Aaron Blake)

Jared Kushner arrives yesterday to address congressional interns at the Capitol Visitors Center. (Chip Somodevilla/Getty Images)

-- Jared Kushner told a group of congressional interns Monday that Trump's team could not have colluded with Russia because

they were too disorganized to do so. "They thought we colluded, but we couldn't even collude with our local offices," the president's son-in-law and senior adviser said during a private talk. He also downplayed his failure to report more than 100 instances of foreign travel and contacts with foreign officials on his security clearance forms. "Make sure you guys keep track of where you travel," he advised the interns. (Foreign Policy)

-- **Kushner may have a point: "A self-described 'email prankster' in the UK fooled a number of White House officials into thinking he was other officials,** including an episode where he convinced the White House official tasked with cyber security that he was [Kushner] and received that official's private email address unsolicited," reports CNN's Jake Tapper. "White House officials acknowledged the incidents and said they were taking the matter seriously. 'We take all cyber related issues very seriously and are looking into these incidents further,' White House press secretary Sarah Huckabee Sanders told CNN."

-- "Another conservative House lawmaker is calling for special counsel Robert S. Mueller III to resign," Karoun Demirjian reports. "Rep. Trent Franks (R-Ariz.), a staunch conservative and one of the more senior members of the House Judiciary Committee, argued that Mueller and former FBI director James Comey have 'a close friendship' and that thus, Mueller 'appears to be a partisan arbiter of justice.' Franks also criticized Mueller for bringing individuals to his team who donated to Hillary Clinton's presidential campaign, which he called 'obviously deliberate partisan hirings' that 'do not help convey impartiality.' 'Until Mueller resigns, he will be in clear violation of the

law,' Franks concluded."

-- RNC employees have been instructed to preserve all documents related to the 2016 campaign. A memo delivered to employees said the committee "has not been contacted regarding any of the ongoing investigations, and there is no specific reason to believe we will be:" "Nonetheless, we have an obligation to keep potentially relevant documents … Serious consequences will result for anyone who fails to comply with this obligation." (BuzzFeed)

Former sheriff Joe Arpaio convicted of criminal contempt

GET SMART FAST:

1. **Joe Arpaio, the former sheriff of Maricopa County, was convicted of criminal contempt.** U.S. District Judge Susan Bolton ruled that the 85-year-old had shown "flagrant disregard" for a judge who ordered him to halt his signature immigration roundups. Arpaio's sentencing is scheduled for Oct. 5, and he could face up to six months in prison. (The Arizona Republic)

2. **Corey Lewandowski has been fired from the pro-Trump cable channel One America News Network.** Trump's former campaign manager reportedly angered OANN's management by frequently appearing on other networks. (The Daily Beast)

3. **U.S. Capitol Police are investigating why their elite tactical team responded to the wrong location last month after a gunman opened fire at Republicans' congressional baseball practice.** Rather than being directed to Alexandria, Va., the team was first sent to Nancy Pelosi's house in Georgetown. (Bloomberg)
4. **Trump awarded his first Medal of Honor to former combat medic James McCloughan for his service during the Vietnam War.** McCloughan was credited with saving the lives of 10 fellow soldiers during a vicious 48-hour battle in Tam Ky -- running repeatedly into kill zones during close combat fighting, and refusing medical evacuation after suffering wounds from shrapnel and small-arms fire. (Andrew deGrandpre)

5. **Los Angeles reached a deal to host the 2028 Summer Olympics.** The deal also paves the way for Paris to host the 2024 Games. (LA Times)

6. **Venezuelan President Nicolás Maduro mocked Trump after the administration placed sanctions on Maduro** for his questionable election. "I don't take orders from the empire," the Venezuelan leader said. "Keep up your sanctions, Donald Trump!" He also criticized Trump for not winning the popular vote in November. (Reuters)

7. **WikiLeaks released over 70,000 emails related to French President Emmanuel Macron's recent campaign.** Although the emails contained no immediate bombshells, they once again raised fears of cyberattacks in upcoming European elections. (James McAuley)

8. **The mayor of Nashville's son has died of an apparent overdose.** Megan Barry announced that her 22-year-old son, Max, died while in Denver. (Fred Barbash)
9. **A U.S. appeals court in Washington ordered the FAA to investigate shrinking airline seats,** upbraiding the agency for dismissing complaints that smaller seat sizes could pose a problem — or even a danger — to passengers. (Avi Selk)
10. **The airline easyJet is in damage control mode,** after an infant-carrying man went to complain about a 13-hour flight delay — and was punched in the face by an airport employee. (Cleve R. Wootson Jr.)
11. **Amazon said it is under federal investigation for possibly violating U.S. sanctions on Iran.** In an SEC filing, the online giant said it delivered products to an Iranian embassy, as well as to others with links to the Iranian government, between 2012 and 2017. Amazon said it has "voluntarily reported" those transactions, and that the review could lead to "the imposition of penalties." (Abha Bhattarai)
12. **A manhunt is underway in Alabama for an inmate who escaped with 12 other men in a mass jailbreak this weekend**. Authorities said the 24-year-old and his fellow detainees escaped the facility using *peanut butter*. (Kristine Phillips)
13. **Sam Shepherd died at age 73.** Shepherd wrote nearly 50 plays

and starred in a wide range of films over the course of his prolific career. (Peter Marks)

Senate Majority Leader Mitch McConnell talks about working through part of the recess as Republican Sens. John Barrasso, John Thune and John Cornyn wait to speak. (Katherine Frey/The Washington Post)

OBAMACARE OVERHAUL = STILL DEAD:

-- Despite the president's public insistence that Senate Republicans pass a health-care revamp, Mitch McConnell (R-Ky.) is eager to move on to other things. Sean Sullivan reports: "One after another on Monday, top GOP senators said that with no evidence of a plan that could get 50 votes, they were looking for other victories. **'We've had our vote, and we're moving on to tax reform,' said Sen. John Thune (S.D.), one of [McConnell's] top lieutenants** … McConnell did not address health care in his remarks

opening Senate business on Monday afternoon. … Some rank-and-file Republican lawmakers have used the collapse of repeal-and-replace to offer new fixes and improvements to health care, but there was no sign their leaders were engaged. A growing number of Republican lawmakers have raised the prospect of working with Democrats on health care."

A bipartisan group of House centrists released a plan Monday that they argued would help to stabilize the insurance markets: "[But] House Speaker Paul D. Ryan (R-Wis.) did not champion the plan. … After Friday's vote, some Democrats have felt more empowered to talk about changes to the Affordable Care Act. … Getting health-care legislation backed only by Republicans to Trump's desk by the end of August is all but impossible, even if they suddenly put aside their disagreements."

-- Meanwhile, the Senate's top Democrat Chuck Schumer (N.Y.) said yesterday that he has heard from ten of his Republican colleagues interested in a bipartisan solution. Politico's Jimmy Vielkind reports: "Schumer said he was 'all for' the concept of [the bill proposed by House centrists] that would mandate roughly $7 billion in federal cost-sharing subsidies that reduce out-of-pocket costs for poor consumers. Schumer, the Senate's minority leader, said he wasn't sure whether legislation would emerge in a big bill or take several steps."

-- One of the Senate's top Republicans publicly doubted the party is capable of revisiting an overhaul. Susan Cornwell, of Reuters, reports: "Finance Committee Chairman Orrin Hatch said on Monday that senators for now are too divided to keep working on

healthcare overhaul legislation and that he and other senior Republicans will take that message to the White House. … **'There's just too much animosity and we're too divided on healthcare,' Hatch said[.]** … The senator said he saw no real desire on the part of Democrats to work together on the healthcare issue 'and I have to say some Republicans are at fault there, too.' … Hatch said lawmakers would need to appropriate the cost-sharing subsidy payments that the administration has been making."

-- "Rand Paul said he spoke to [Trump] by phone about healthcare reform on Monday and told the president he thought Trump had the authority to create associations that would allow organizations to offer group health insurance plans," Reuters adds. Paul "told reporters that Trump was considering taking some form of executive action to address problems with the healthcare system[.] … Allowing groups like AARP, which represents retirees, to form health associations could enable individuals and small businesses to form larger groups to negotiate with health insurance companies for lower rates."

-- Despite Trump's warnings that Obamacare is collapsing, the system seems to be showing signs of improvement. The Toledo Blade's Lauren Lindstrom reports: "**Five health-insurance companies have stepped in to offer plans on the federal exchange in 19 of the 20 Ohio counties that otherwise would have had no marketplace options for 2018**, state officials announced Monday. Paulding County in northwest Ohio is now the only county in the state without at least one insurer offering plans through the insurance marketplace created by the Affordable Care

Act[.] … The move by the insurance companies affects an estimated 11,000 Ohioans in the 19 counties who purchase a plan through the exchange ... "

-- A leading pro-Trump super PACs has been eerily silent on health care. Henry J. Gomez, of BuzzFeed, reports: "**Making America Great, the political nonprofit formed by Republican mega-donor Rebekah Mercer to promote [Trump's] agenda, isn't making any noise**. … The group has been absent from television airwaves and Twitter. … [Earlier this year,] [t]he new Mercer-backed group quickly spent more than $1 million on ads, including a digital spot that urged senators to back Neil Gorsuch's Supreme Court confirmation, which nearly four months later stands as Trump's biggest achievement. Since then, the group hasn't provided noticeable backup to Trump."

Pence condemns Russia for trying to 'divide the free nations of Europe'

THERE IS A BEAR IN THE WOODS:

-- Mike Pence twice delivered a stern rebuke of Russia during his first full day in Eastern Europe, warning in a speech and a news conference alongside Baltic leaders that the United States will not tolerate Russian force or intimidation. Ashley Parker reports: "Under [Trump], the United States of America rejects any attempt to use force, threats, intimidation, or malign influence in the Baltic States or against any of our treaty allies," Pence said. "To be clear, we hope for better days, for better relations with Russia, but recent diplomatic action taken by Moscow will not deter the commitment of the United States of America to our security, the security of our allies, and the security of freedom loving nations around the world."

"Though Pence said he was delivering a message directly from Trump, his stern remarks at times were far more forceful than those of his [boss]," Parker notes. "The vice president also — and perhaps optimistically, in the face of Russia's retaliatory gesture — held out the prospect of what he called 'a constructive relationship with Russia, based on cooperation on common interests.' 'Trump has made it clear: America is open to a better relationship,' Pence said. 'But the president and our Congress are unified in our message to Russia — a better relationship, and the lifting of sanctions, will require Russia to reverse the actions that caused the sanctions to be imposed in the first place.'"

-- "President Trump said nothing Monday in response to Russia's planned expulsion of hundreds of American diplomats," Karen DeYoung reports. "'Right now we're reviewing our options, and when we have something to say on it, we'll let you know,' White House spokeswoman Sarah Huckabee Sanders said Monday

... Whatever Trump decides to do in response, **the fast-moving series of events appeared to leave the administration with no substantive Russia policy and without a clear idea of what direction to take.** … Putin's spokesman indicated that Trump was irrelevant to the Kremlin's decision to retaliate before the new sanctions bill took effect."

-- NYT's Neil MacFarquhar explains how the U.S. Embassy in Moscow will be affected: "Given the continuing deterioration in relations between the two countries, core functions like political and military analysis will be preserved, along with espionage, experts said, while programs that involve cooperation on everything from trade to culture to science are likely to be reduced or eliminated. … The other area expected to take a heavy hit will be public services, like issuing visas to Russian travelers to the United States, which is likely to slow to a glacial pace."

-- PUTIN RAMPING UP IN BELARUS: "Russia is preparing to send as many as 100,000 troops to the eastern edge of NATO territory at the end of the summer, one of the biggest steps yet in the military buildup undertaken by [Vladimir Putin], and an exercise in intimidation that recalls the most ominous days of the Cold War," the NYT's Michael R. Gordon and Eric Schmitt report: "The troops are conducting military maneuvers known as Zapad, [in] Belarus, the Baltic Sea, western Russia and the Russian enclave of Kaliningrad. The military exercise, planned for many months … is part of a larger effort by Mr. Putin to shore up Russia's military prowess, and comes against the backdrop of an increasingly assertive Russia. Even more worrying, top American military officers say, is that the

maneuvers could be used as a pretext to increase Russia's military presence in Belarus, a central European nation that borders three critical NATO allies: Poland, Lithuania and Latvia."

-- As Ukraine faces off against Russia-backed separatists, "[the] Pentagon and State Department have devised plans to supply it with antitank missiles and other weaponry and are seeking White House approval," the Wall Street Journal's Julian E. Barnes, Laurence Norman and Felicia Schwartz report. "American military officials and diplomats say the arms, which they characterized as defensive, are meant to deter aggressive actions by Moscow, which the U.S. and others say has provided tanks and other sophisticated armaments as well as military advisers to rebels fighting the Kiev government. … Some U.S. and Ukrainian officials said they expect it could be months before the White House makes a final determination."

Trump stands with Kris Kobach in Bedminster, N.J. (Mike Segar/Reuters)

TRUMP'S AGENDA:

-- The State Department may be moving away from the promotion of democracy as a part of its mission. Josh Rogin writes: "Rex Tillerson has ordered his department to redefine its mission and issue a new statement of purpose to the world. … The State Department's draft statement on its mission is: 'Lead America's foreign policy through global advocacy, action and assistance to shape a safer, more prosperous world.' … Compare that to the State Department Mission Statement that is currently on the books[:] 'The Department's mission is to shape and sustain a peaceful, prosperous, just, and democratic world and foster conditions for stability and progress for the benefit of the American people and people everywhere.' … **Former senior State Department officials from both parties told**

me that eliminating 'just' and 'democratic' from the State Department's list of desired outcomes is neither accidental nor inconsequential."

-- White House officials are counting on an aggressive timetable to enact tax reform. Politico's Aaron Lorenzo reports: "The White House expects tax reform legislation to move quickly through Congress this fall, advancing through the House in October and clearing the Senate in November, legislative director Marc Short said Monday. Markups will begin in September, Short said at an event hosted by a pair of conservative political groups backed by the billionaire Koch brothers[.] … Republicans are planning to use special instructions in the budget to pass tax reform with a simple majority in the Senate to short circuit a Democratic filibuster. But Short also suggested a Republican-only pathway isn't completely necessary. Some Democrats might get on board, particularly those up for reelection next year in states Trump carried, he said."

-- A U.S. judge is slated to hear a challenge to Trump's voter commission today to determine whether a Watergate-era law bars the group from accessing voter records. The court could ask for a temporary restraining order as early as Tuesday. Spencer S. Hsu reports: "The action marks the latest attempt by opponents to block the commission's request for the voting information of more than 150 million registered voters. State leaders from both parties have voiced objections to the effort's potential to reveal personal information, suppress voter participation and encroach on states' oversight of voting laws."

- **But the commission continues to hit roadblocks, even**

> **among its own members.** Portland Press Herald's Scott Thistle reports: "**Maine Secretary of State Matt Dunlap said Monday that he is unlikely to release any state voter registration data to the federal voter fraud commission to which he was appointed by President Trump.** Dunlap said he will reject a second request for the data from the commission's vice chairman ... "

-- An inaugural report from the White House opioid commission is urging Trump to "declare a national emergency" on drug overdoses in the United States. Christopher Ingraham reports: "'With approximately 142 Americans dying every day,' the report notes, 'America is enduring a death toll equal to September 11th every three weeks.' The commission, led by New Jersey Gov. Chris Christie, states that the goals of such a declaration would be to 'force Congress to focus on funding' and to 'awaken every American to this simple fact: if this scourge has not found you or your family yet, without bold action by everyone, it soon will.'" **The commission's report also includes a number of recommendations to deal with the ballooning opioid epidemic,** such as expanding capacity for drug treatment under Medicaid, increasing use of medication-assisted treatments for opioid disorders, and mandating that local law enforcement officers carry naloxone.

-- The Trump administration is now reportedly considering a decrease in Afghanistan troop levels even as Pentagon officials push for a surge. The Wall Street Journal's Dion Nissenbaum reports: "Unable to agree on a plan to send up to 3,900 more American forces to help turn back Taliban advances in Afghanistan,

the White House is taking a new look at what would happen if the U.S. decided to scale back its military presence instead, according to current and former Trump administration officials. … The exploration is an outgrowth of a deep divide at the White House, where the president and his top advisers are reluctant to send more American troops to Afghanistan without a clear strategy. … But the idea is anathema to American military leaders who have argued that the U.S. needs to send more troops to halt Taliban gains on the battlefield."

-- "Law enforcement officials continue to sharply criticize President Trump for his comments last week suggesting that officers should not 'be too nice' with suspects in police custody," reports Mark Berman. "The sustained criticism ballooned over the weekend as major department after major department weighed in against Trump's remarks, a remarkable expression of disapproval for a president who has repeatedly proclaimed himself to be a champion of law enforcement. Even as the White House has argued that Trump was not being serious, police officials publicly and privately expressed dismay about his comments, saying that his remarks were dangerous, given the current climate of distrust between communities and the officers patrolling them."

Sen. Jeff Flake stands in an elevator in the basement of the Capitol. (Andrew Harrer/Bloomberg)

THE ROAD TO 2018:

-- Politico Magazine, "My Party Is in Denial About Donald Trump," by Arizona GOP Sen. Jeff Flake: "It was we conservatives who were largely silent when the most egregious and sustained attacks on Obama's legitimacy were leveled by marginal figures who would later be embraced and legitimized by far too many of us. … To carry on in the spring of 2017 as if what was happening was anything approaching normalcy required a determined suspension of critical faculties. And tremendous powers of denial. … **If this was our Faustian bargain, then it was not worth it.** If ultimately our principles were so malleable as to no longer be principles, then what was the point of political victories in the first place? … So, where should Republicans go from here? **First, we shouldn't hesitate to**

speak out if the president 'plays to the base' in ways that damage the Republican Party's ability to grow and speak to a larger audience."

-- The Democrats' House campaign chair said the party would not withhold funds from candidates who oppose abortion rights. The Hill's Ben Kamisar and Reid Wilson report: "Rep. Ben Ray Luján (D-N.M.) said there will be no litmus tests for candidates as Democrats seek to find a winning roster to regain the House majority in 2018 ... 'As we look at candidates across the country, you need to make sure you have candidates that fit the district, that can win in these districts across America.' … 'Throwing weight behind anti-choice candidates is bad politics that will lead to worse policy,' said Mitchell Stille, who oversees campaigns for NARAL Pro-Choice America. 'The idea that jettisoning this issue wins elections for Democrats is folly contradicted by all available data.'"

-- "Rep. Lou Barletta (R-Pa.) plans to challenge Democratic Sen. Bob Casey in 2018," Politico's Kevin Robillard reports. "Barletta, the former mayor of Hazelton and an early supporter of President Donald Trump, is an immigration hard-liner serving his fourth term in the House. Trump has publicly suggested that Barletta challenge either Casey or Democratic Gov. Tom Wolf. … With this move, he becomes the biggest name in a large Republican field that has formed to challenge Casey."

-- The ACLU is backing a campaign to end felon disenfranchisement in Florida by changing its state constitution through a 2018 ballot measure. David Weigel reports: "The voter restoration campaign is one of the most ambitious outgrowths of the

ACLU's 'people power' project, announced four months ago with a rally in Florida. … Florida's felon disenfranchisement law, which first gained national attention after the 2000 presidential election, has remained in place under a series of Republican governors and state legislatures. **Florida, Kentucky and Iowa are the only states where felony convictions permanently strip the offender of voting rights pending special clemency hearings."**

-- Maine Gov. Paul LePage (R) appears to be trying to kill Sen. Susan Collins's (R-Me.) possible 2018 gubernatorial bid before she's even announced if she's running. Bangor Daily News's Michael Shepherd reports: "The governor railed against the moderate Republican senator at a Saturday pig roast … in Canaan, where an attendee said LePage repeatedly mentioned working to defeat Collins if she runs for governor next year. … [Collins] has said she'd make a decision on running by the fall. Few in Maine politics are certain she'll declare one besides LePage, who said in a Thursday radio interview that he thinks she's planning on it. 'If the Republican base — which is the 290,000 people that voted for me (in his 2014 re-election) — tell her, "We don't want you; you're not winning the primary," she'll back down,' he said."

-- Democratic Sen. Jon Tester of Montana now has a formidable opponent in his reelection bid next year. The Hill's Ben Kamisar reports: "**Montana state Auditor Matt Rosendale said Monday he would challenge [Tester]**, giving Republicans a top recruit in their effort to win a red-state Senate seat. Rosendale will enter a crowded GOP primary field but will be the only Republican in the race to hold a statewide office. … Rosendale announced his bid on Monday with a

short video blasting Washington Democrats and touting his conservative chops. **The video specifically touts Rosendale as a would-be ally to President Trump and Vice President Pence, making clear he would support the administration in a state Trump won by about 20 points in November."**

Interior Secretary Ryan Zinke speaks during a May press conference with Sen. Lisa Murkowski (R-Alaska) in Anchorage. (Mark Thiessen/AP)

PERSONNEL IS POLICY:

-- "Ryan Zinke, Trump's Cowboy Enforcer, Is Ready for His Closeup," by Elaina Plott in GQ: "After the election, Zinke (a Republican congressman from Montana) was hosting his office Christmas party in Washington when he got the call [that Trump] wanted to see him in New York. [But when] Zinke and his wife, Lola, passed through the gilded doors of Trump Tower, **he actually had no**

clue what position he was interviewing for ... **And by the end of a rambling conversation with the president-elect, Zinke still wasn't entirely sure**. 'The conversation went a hundred seconds. It went from women in combat to Syria policy to the Chinese to energy independence, a little about public lands, a little about hunting access,' Zinke [said] ... **At one point, Trump proposed the Veterans Affairs post, to which Zinke quipped, 'I don't think you hate me that much.'** He was flying back to Montana when Mike Pence called him. 'The vice president says, 'Well, congratulations!' Zinke recalls, sharing the moment he was asked to join the Trump Cabinet, 'and I asked him, 'What job?'"

-- Zinke pushed back on allegations that he tried to strong-arm Sen. Lisa Murkowski (R-Alaska) into voting for the health-care bill. From the Associated Press: "Zinke said Sunday in Nevada that he often speaks with Republican Sens. Lisa Murkowski and Dan Sullivan and they get along well. 'Ah, you know, the moon has been characterized as other things, too,' Zinke said when asked by reporters about the calls and their characterization as threatening. 'So, I think it's laughable.'"

SOCIAL MEDIA SPEED READ:

The New York Post updated its "Survivor" cover:

New York Post
@nypost

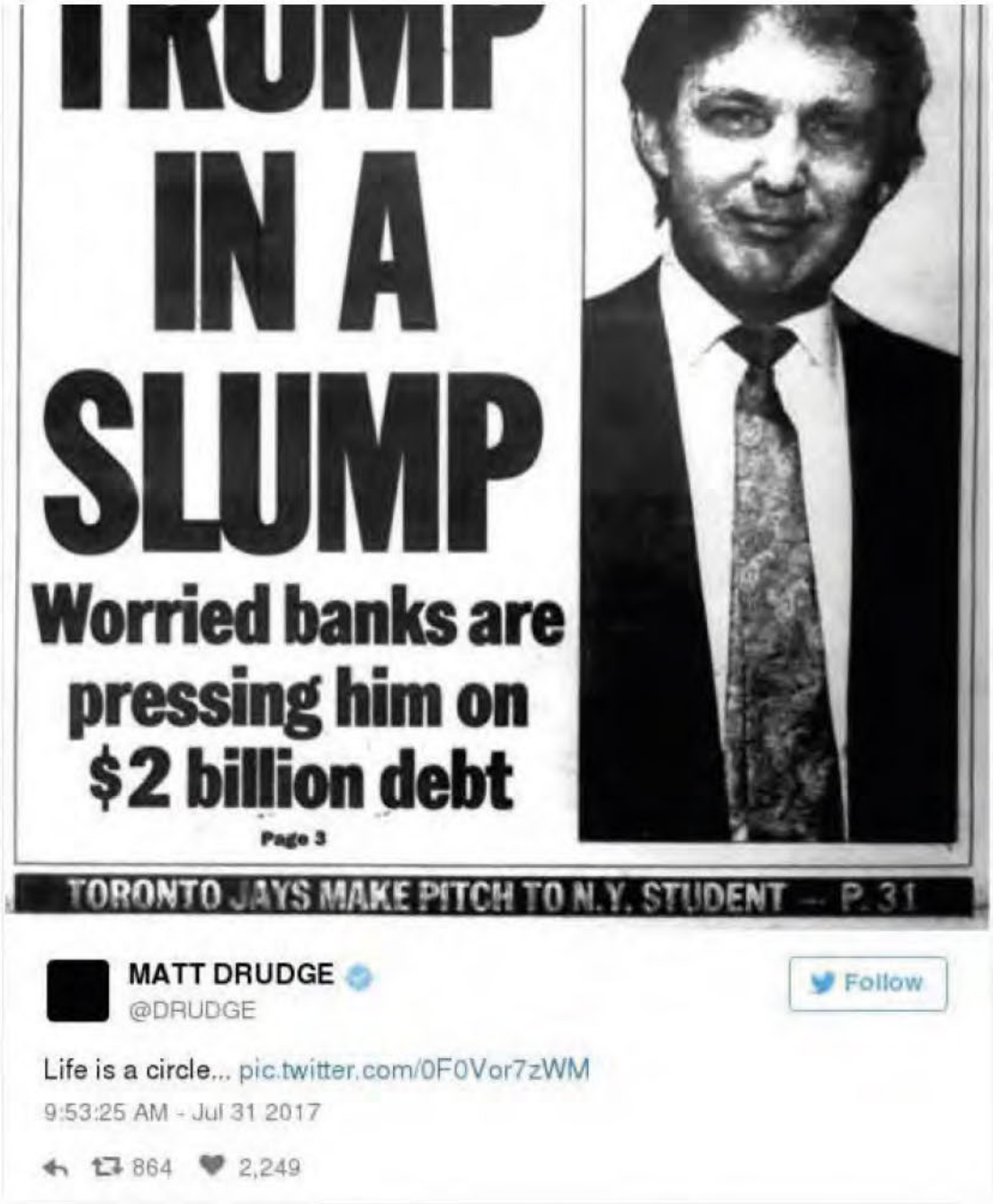
Follow

The tribe has spoken again https://t.co/GheipiituQ
pic.twitter.com/qwSUOrtDbB

2:52:59 PM - Jul 31 2017

1,424 1,863

Matt Drudge's opinion of Trump seems to keep souring:



A National Journal editor noticed last night that White House aide Sebastian Gorka has vanity plates:

Josh Kraushaar
@HotlineJosh

Follow

Just passed Seb Gorka on the Hill. His license plate is "ART WAR"
pic.twitter.com/CFG471373A

6:46:49 PM - Jul 31 2017

792 1,720

The ouster of Anthony Scaramucci inspired shock and satire:

darth:™
@darth

Follow

"is this the line for nachos" pic.twitter.com/4unqk4doRF

3:45:49 PM - Jul 31 2017

4,867 12,591

From a Bravo host:

From an Atlantic writer:

From a CNBC Washington correspondent:

From a Bloomberg reporter:

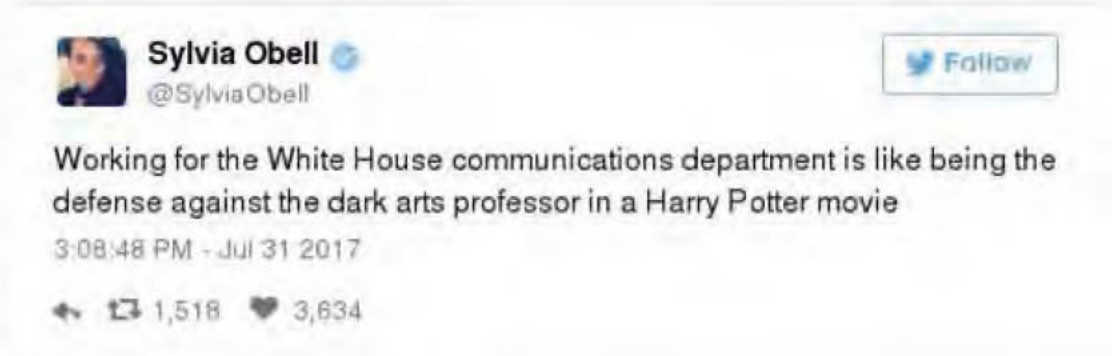
From a New York magazine writer:

From a Mother Jones writer:

From a politics editor at the Daily Beast:

Comedian Seth Rogen responded to Stein's tweet:

From a Buzzfeed News entertainment reporter:



From The Post's media reporter:

From a House Democrat:

There is truly an old Trump tweet for everything. This one is from last year's primary campaign:

But, overall, present-day Trump took a positive approach to the

turnover. He posted this last night:

A former Democratic congressman replied to Trump's observation:

Some unexpected faces were on hand to greet the new chief of staff:

Jennifer Jacobs
@JenniferJJacobs

Follow

Trump's private lawyer John Dowd among big crowd in Oval to greet new Chief of Staff John Kelly. pic.twitter.com/iG6DdfFMFP

10:04:44 AM - Jul 31 2017

99 140

Republican strategist Rory Cooper reflected on this tidbit from Reince Priebus's time as chief of staff:

Obama's former senior adviser took on a new venture:

Then-Massachusetts Gov. Deval Patrick (D) speaks during an interview at his statehouse office in Boston. (AP Photo/Elise Amendola, File)

GOOD READS FROM ELSEWHERE:

-- Politico Magazine, "Obama's Inner Circle Is Urging Deval Patrick to Run," by Edward Isaac-Dovere: "Barack Obama is nudging him to run. His inner circle is actively encouraging it. Obamaworld's clear and away 2020 favorite is sitting right here, on the 38th floor of the John Hancock Building, in a nicely decorated

office at Bain Capital. And Deval Patrick has many thoughts on what he says is Donald Trump's governing by fear and a dishonest pitch to economic nostalgia, while encouraging a rise in casual racism and ditching any real commitment to civil rights."

-- The New Yorker, "Bernie Sanders's Campaign Isn't Over," by Benjamin Wallace-Wells: "The central illusion of a Presidential campaign is that a candidate can, through constant motion and boundless energy, meet countless people and, in the end, give voice to the experience of the country. After the election, Sanders seemed to adopt the illusion as an ethos."

-- The Atlantic, "What Steve Bannon Wants to Do to Google," by Robinson Meyer: "Over the past year, the old idea of enforcing market competition has gained renewed life in American politics. … The loudest supporters of this idea, so far, have been from the left. But this week, a newer and more secretive voice endorsed a stronger antitrust policy. Steve Bannon, the chief strategist to President Donald Trump, believes Facebook and Google should be regulated as public utilities[.]"

HOT ON THE LEFT:

"'Hurry up and die': Threats, racism intensify against California officials," from the Sacramento Bee: "The letter [sent to

HOT ON THE RIGHT:

"Watchdog group asks Congress to probe Rep. Wasserman Schultz over fired IT aide," from David Weigel: "A conservative

Senate President Pro Tem Kevin de León] begins with 'Dear Corrupt Mexican' and ends with 'hurry up and die.' It's signed 'White Power.' The Senate leader says backlash comes with the territory as an elected official. Since November, however, he and other politicians say it's been more frequent and hostile. ... Sen. Holly Mitchell's Los Angeles district office representatives report getting a call once a month from someone who uses the n-word … something they said didn't happen before the election. A fervent group of Trump supporters … called de León an 'anchor baby' and 'illegal alien scumbag' at a Latino summit … 'In my

anti-corruption watchdog group is asking for an ethics investigation of Rep. Debbie Wasserman Schultz (D-Fla.) after former House IT aide Imran Awan was apprehended trying the flee the country. In a complaint that will be filed Monday, the Foundation for Accountability and Civic Trust (FACT) asks if Wasserman Schultz violated the House's rules by continuing to pay Awan after he was cut off from the House computer system. … The complaint grew out of the ongoing investigation of Awan and four other House staffers who in February came under investigation after allegedly stealing equipment from their

mind there's no doubt that Donald Trump has opened up this Pandora's box,' de León said."

employers."

DAYBOOK:

Trump has an afternoon event with small businesses.

Pence begins the day in Georgia. He and the second lady will meet with U.S. embassy staff before Pence later meets with Georgian opposition party leaders. He then has a meeting and joint press conference with Prime Minister Giorgi Kvrikashvili. He will visit the Sioni Cathedral of the Dormition and give a speech before departing for Montenegro.

QUOTE OF THE DAY:

Trump during his Cabinet meeting yesterday: **"We'll handle North Korea...it will be handled. We handle everything."**

NEWS YOU CAN USE IF YOU LIVE IN D.C.:

-- It's still sunny in D.C. today, but a bit hotter. The Capital

Weather Gang forecasts: "Mostly sunny this morning and partly to mostly sunny this afternoon, with temperatures reaching highs near to slightly hotter than yesterday (upper 80s to low 90s). Humidity is higher than yesterday, too."

-- The Nationals beat the Marlins 1-0. (Jorge Castillo)

-- A Florida man wearing a "Make America Great Again" hat was arrested near Dupont Circe over the weekend for beating three people amid a heated political debate. Peter Hermann reports: "Police said that the 32-year-old suspect 'straddled' one man 'and pounded' him in the face 20 times with a closed fist and left and right forearms. Two others were also struck in the face when they intervened, police said."

VIDEOS OF THE DAY:

The Daily Show commemorated the highs and lows of Anthony Scaramucci's 10-day tenure:

The Daily Show
@TheDailyShow

Follow

R.I.P. Anthony Scaramucci, White House Communications Director
Late July 2017 - Slightly Later July 2017 pic.twitter.com/SeJzYkxT7c

4:24:51 PM - Jul 31 2017

8,324 21,804

Late-night hosts pulled no punches when it came to Scaramucci's exit:

Late-night laughs: Scaramucci ousted

Veep's Brian Huskey and the Post's video department reenacted Scaramucci's interview with the New Yorker:

The Insane New Yorker Interview: A dramatic reënactment

Sarah Huckabee Sanders brushed off claims that the White House is in chaos by comparing it to her own home:

Sanders jokes, 'If you want to see chaos, come to my house'

The Post's fact-checking team awarded Trump four Pinocchios for his claim that border crossings are down 78 percent because of his presidency:

Fact Check: Are border crossings down 78 percent because of the Trump administration?

A speedboater helped to put out a wildfire in British Columbia:

A Canadian speedboater created waves to help put out fire

And Santas from around the world celebrated Christmas (very) early in Copenhagen:

Santas celebrate Christmas in July

You received this email because you signed up for The Daily 202 or because it is included in your subscription. For additional free newsletters or to manage your newsletters, **click here**.

We respect your **privacy** . If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, **click here**. **Contact us** for help.

©2017 The Washington Post | 1301 K St NW, Washington DC 20071

The Daily 202_ The elites strike back Š getting....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: The Daily 202: The elites strike back — getting under Trump's skin
Date: Monday, August 21, 2017 7:13:07 AM

If you're having trouble reading this, click here.

PowerPost

The Daily 202

Morning intelligence for leaders

Share:

Listen to The Big Idea

The elites strike back — getting under Trump's skin

President Trump claps as he walks across the South Lawn on his return to the White House from New Jersey last night. (J. David Ake/AP)

BY JAMES HOHMANN
with Breanne Deppisch and Joanie Greve

THE BIG IDEA: The 2016 election represented, as much as anything else, a repudiation of America's elites and everything they believe in. By running on the hollow promises of populism, nativism and isolationism, an angry outsider challenged many of the bipartisan shibboleths that have long united most of the highly educated and affluent leaders of our country and culture.

Seven months into President Trump's reign, the elites are striking back. From Wall Street to West Palm Beach and West Hollywood, the past week has been a turning point, perhaps even a *tipping* point. Since Trump abdicated his moral leadership after Charlottesville, the well-connected have used their leverage — like checkbooks and celebrity — to send a message about what truly makes America great.

The growing number of groups canceling galas, stars boycotting ceremonies and chief executives resigning from advisory boards is further isolating Trump.

People in his orbit say the president has been in a sour mood about all of this. He stormed the barricades, but now he's the one under siege. Unlike most of the criticism he's engendered since taking office, the past week has actually impacted his bottom line. The value of the Trump "brand," which he once said is worth billions, has taken a

bath since he declared that some “fine people” were protesting alongside the neo-Nazis and white supremacists at the University of Virginia.

The Mar-a-Lago Club continues to lose business. (Don Emmert/AFP/Getty Images)

-- Afraid of losing major contributors, a stampede of charities has canceled planned fundraising events at Trump’s Mar-a-Lago Club in Florida:

On Thursday, the Cleveland Clinic, American Cancer Society and American Friends of Magen David Adom pulled out.

On Friday, the Salvation Army, American Red Cross and Susan G. Komen joined them.

On Saturday, the Preservation Foundation of Palm Beach canceled its

dinner dance that had been scheduled for next March. This alone probably represents a quarter-million in lost revenue.

On Sunday, the Palm Beach Zoo and an elder care organization called MorseLife both announced that they will not hold their annual fundraisers at Mar-a-Lago.

Both the Palm Beach Habilitation Center and the Kravis Center are calling emergency board meetings for early this week to discuss whether to keep their events at the club, per today's Palm Beach Post.

"If he returns to the club for weekends next winter, the president could often find its grand ballrooms quiet and empty," Drew Harwell and David Fahrenthold report. "One of the cancellations cut close to home for the Trumps. Big Dog Ranch Rescue said Friday it would no longer hold an upcoming event at the club and would instead move it to the group's facility nearby. Trump's daughter-in-law, Lara Trump, was scheduled to co-chair the event."

Trump, first lady will not attend Kennedy Center Honors

-- The White House announced on Saturday that neither the president nor first lady Melania Trump will attend the annual Kennedy Center Honors in December. For the first time since the award was created in 1978, they also will not invite the honorees over for a reception beforehand.

That came after three of the five honorees — television producer Norman Lear, singer Lionel Richie and dancer Carmen de Lavallade — said they would or may boycott the traditional reception. "As for the other two, rapper LL Cool J had not said whether he would attend, and Cuban American singer Gloria Estefan said she would go to try to influence the president on immigration issues," per David Nakamura, Amy B Wang and Peter Marks.

On Friday, the members of the President's Committee on the Arts and the Humanities announced their resignation en masse. "Ignoring your hateful rhetoric would have made us complicit in your words and actions," they wrote in an open letter. "Supremacy,

discrimination, and vitriol are not American values. Your values are not American values. We must be better than this. We are better than this. If this is not clear to you, then we call on you to resign your office, too."

With so many consequential stories in the news, it can be easy to dismiss the intrigue swirling around a ceremony for Hollywood stars. After all, we've got Afghanistan, North Korea and Russia to worry about. But Trump's decision to pull out of the Kennedy Center honors more than three months ahead of time is significant.

The 2017 Kennedy Center honorees: Carmen de Lavallade, Gloria Estefan, LL Cool J, Lionel Richie and Norman Lear. (File Photos/Reuters)

Make no mistake, Trump cares deeply about these snubs. He has spent his entire life trying to get onto the A-list. He's a Queens kid who has tried hard to win acceptance in Manhattan. The pomp and circumstance of the presidency were big draws when he chose to run. He was genuinely excited about the ceremonial duties of the office after he unexpectedly won the election. More than most presidents, whatever he may say to the contrary, he has shown a love

for ceremonies like the one at the Kennedy Center.

What he does not like, and goes to great lengths to avoid, is public humiliation. After his experience at the 2011 White House Correspondent's Dinner, when Barack Obama and Seth Meyers ridiculed him from the stage, he announced that he'd skip this year's. He didn't throw the ceremonial first pitch at the Nationals home opener, as past presidents have, because he was afraid of getting booed.

As an alpha male, Trump seems to take special satisfaction when people who are richer, cooler and better looking than him kowtow. It seems silly to have to write this, but it's true: Having his ring kissed seems to be one of Trump's favorite parts of the job. But there's not been very much ring-kissing lately.

Two of Trump's business advisory councils disband

-- Trump fancies himself a great businessman, but most truly elite business executives have never seen him as in their league.

He's a former reality television star and a developer who ran a family real estate business, failing spectacularly in Atlantic City and driving companies into bankruptcy. The true titans of industry, so-called masters of the universe, have said privately that they see him as a wannabe. But most tried to make nice after the election to advance their interests and get access.

Risking their stock prices, many chief executives spoke out last week. It started with Merck's Kenneth C. Frazier, who quit the president's American Manufacturing Council as "a matter of personal conscience." Citing "a responsibility to take a stand against intolerance and extremism," Frazier made it harder for others to justify staying in the tent. Many other chief executives then received heavy pressure from their employees and predecessors to follow suit.

By the end of the week, the manufacturing council, the president's Strategy & Policy Forum and an infrastructure council had all disbanded. Trump attacked Frazier on Twitter, then ripped the other chief executives as "grandstanders" and finally – bizarrely and falsely -- claimed that he had chosen to disband the councils, not the other way around. The net effect was to undercut Trump's image as a leading figure in the business world who commanded the respect of fellow chief executives.

Trump's 'working vacation' was quite a trip

Steven Pearlstein, a Washington Post business writer, believes that last week's resignations from the advisory councils are "likely to be looked back upon as a turning point *in the evolution of American capitalism* — an acknowledgment from some of the nation's top corporate executives that the single-minded focus on maximizing profits and share prices that has been their mantra for the past three decades is no longer politically viable or morally acceptable."

"It is unlikely that any of smiling executives who posed for photographs with the president this spring at the first meeting of the White House Strategic and Policy Forum and the Manufacturing Jobs Initiative had been enthusiastic supporters of candidate Trump," Pearlstein wrote in Sunday's paper. "Publicly, most had opposed the president's positions on immigration, trade, climate change and gay rights. Privately, many thought him unsuited for the job. Nonetheless, the president's economic advisers had convinced the executives that

they would be able to help shape the administration's economic program. And the executives were eager to lend their support and legitimacy to administration efforts to boost their profits by lowering taxes and reducing regulation. …

"Now, **after decades of preaching that what was good for General Motors is good for America, corporate leaders have acknowledged that it might actually be the other way around — that what's good for America is good for General Motors**," he concludes. "However belated the conversion, their action this past week was courageous and impactful. We owe them our gratitude."

Trump's remarks on Charlottesville, in less than three minutes

-- It's not just Trump. The elites who tied their fortunes to Trump are on the defensive like never before – under pressure from fellow elites.

On Friday, more than 300 people who also graduated from Yale University in the class of 1985 urged Treasury Secretary Steve

Mnuchin to resign. "We understand that graduates of Yale College have served the United States proudly … and that rarely, if ever, have any of us made such a request of a classmate, whatever our differences in political opinion have been," they wrote in a letter. "We do so today because President Trump has declared himself a sympathizer with groups whose values are antithetical to those values we consider fundamental to our sacred honor as Americans, as men and women of Yale, and as decent human beings. … We can disagree on the means of promoting the general welfare of the country, on the size and role of government, on the nature of freedom and security, but we cannot take the side of what we know to be evil. … We know you are better than this, and we are counting on you to do the right thing."

On Saturday, the Treasury Department issued a 582-word response from Mnuchin. In it, he strongly condemned the racism and hatred that was on display in Charlottesville. "As someone who is Jewish, I believe I understand the long history of violence and hatred against the Jews (and other minorities) and circumstances that give rise to these sentiments and actions," Mnuchin wrote. "While I find it hard to believe I should have to defend myself on this, or the President, I feel compelled to let you know that the President in no way, shape or form, believes that neo-Nazi and other hate groups who endorse violence are equivalent to groups that demonstrate in peaceful and lawful ways …

"I don't believe the allegations against the President are accurate," the secretary concluded, "and I believe that having highly talented men and women in our country surrounding the

President in his administration should be reassuring to you and all the American people."

-- The Mnuchin letter generated a great deal of additional pushback from elites over the rest of the weekend, including this from former treasury secretary and ex-Harvard president Larry Summers last night:

Listen to James's quick summary of today's Big Idea and the headlines you need to know to start your day:

Play audio brief

Subscribe to **The Daily 202's Big Idea** on
Amazon Echo, Google Home, Apple Podcasts and other podcast

players.

Welcome to the Daily 202, **PowerPost's** morning briefing for decision-makers.
Sign up to receive the newsletter.

WHILE YOU WERE SLEEPING:

U.S. Navy destroyer collides with a merchant ship

-- Ten U.S. Navy sailors were missing and five were injured after the USS John S. McCain guided missile destroyer and an oil tanker more than three times its size collided near Singapore early Monday. From Anna Fifield: "American and Singaporean ships and helicopters launched a search-and-rescue mission after the pre-dawn collision at the entrance to one of the world's busiest shipping lanes. This was the second time in two months that a Navy destroyer based at the 7th Fleet's home port of Yokosuka, Japan, has been involved in a collision at sea. Seven sailors were killed when the USS Fitzgerald collided with a container ship south of Japan in June.

"The McCain, an Arleigh Burke-class destroyer equipped with an Aegis system, had been on its way to a routine port visit in Singapore after patrolling in the South China Sea. Shipping data showed that the Liberian-flagged merchant vessel Alnic MC was also on its way to Singapore when the ships collided east of the Strait of Malacca at 5:24 a.m. local time, while it was still dark. … **The Alnic is more than three times the size of the McCain**, with a gross tonnage of 30,000, compared with the destroyer's 8,300.

-- Trump, returning to the White House last night, responded to a reporter's questions about the collision by saying: "That's too

bad." Later, he tweeted this:

Donald J. Trump
@realDonaldTrump
Follow

Thoughts & prayers are w/ our @USNavy sailors aboard the #USSJohnSMcCain where search & rescue efforts are underway. https://t.co/DQU0zTRXNU

11:01:01 PM - Aug 20 2017

9,682 31,944

Maggie Haberman
@maggieNYT
Follow

Imagine the reaction if Obama, Bush, Clinton said "that's too bad" in response to missing soldiers on a military vessel.

10:02:48 PM - Aug 20 2017

7,312 16,980

John McCain
@SenJohnMcCain
Follow

Cindy & I are keeping America's sailors aboard the USS John S McCain in our prayers tonight - appreciate the work of search & rescue crews https://t.co/jzk9giXbfg

8:02:57 PM - Aug 20 2017

8,739 32,750

Spanish town of Ripoll left in shock

GET SMART FAST:

1. **Spanish police erected 800 checkpoints across the region of Catalonia on Sunday as part of a manhunt for the Moroccan-born man believed to have driven the vehicle in last week's terrorist attack.** Authorities said they believe that same terrorist cell had planned a "much more serious attack," which was likely thwarted by an accidental house explosion on Wednesday. (Souad Mekhennet, James McAuley and William Booth)
2. **Authorities also identified three more victims in the Barcelona attack.** Among them are Julian Cadman, a 7-year-old from Sydney who was attending a wedding with his mother, and Jared Tucker, an American and father of three, who was on his honeymoon. (Souad Mekhennet, James McAuley and William Booth)
3. **The U.S. Embassy in Russia announced it has suspended the issuing of non-immigrant visas in Moscow until Sept.**

1, and has stopped issuing visas at its consulates in St. Petersburg, Yekaterinburg and Vladivostok. The change comes in response to Russia's recent decision to drastically reduce the number of U.S. embassy personnel in the country. (The Associated Press)

4. **The Trump administration and some sympathetic local sheriffs are working to transfer jailed illegal immigrants into federal custody.** The move regarding "detainers" is designed to allow local law enforcements to hold prisoners who would otherwise be released because of their immigration status, and is under legal review (The New York Times)
5. **A Missouri Democratic state senator who posted a Facebook comment expressing hope that Trump would be assassinated has apologized but refuses to resign.** "I made a mistake, and I'm owning up to it," said Sen. Maria Chappelle-Nadal. (Jim Suhr)
6. **South Africa granted diplomatic immunity to Zimbabwean first lady Grace Mugabe**, following allegations that she viciously assaulted a 20-year-old model with an extension cord at a luxury hotel. (Max Bearak)
7. **Nearly 100 Gazan children visited Jerusalem for the very first time,** traveling to the Al-Aqsa mosque as part of a program run by the U.N. agency for Palestinian refugees. The journey was just 50 miles long, but for many young attendees — most of whom have never traveled outside Gaza — it may as well have been a completely distant world. (Loveday Morris)
8. **A father and daughter said they were booted from their Frontier Airlines flight after staff heard them privately discussing their "miserable" travel experience,** which

included an eight-hour flight delay — and then confronted them. "It was aggressive," the father said, explaining the employees' behavior. "They would lean over the back of the chair in front of us, get their face right up to here, and they would simply ask, 'Do we have a problem?'" (Amy B Wang)

President Trump is introduced by Defense Secretary James Mattis at the Naval Station Norfolk in Norfolk. (Jonathan Ernst/Reuters)

BIG SPEECH TONIGHT:

-- Trump will announce a "path forward" on the U.S. military strategy in Afghanistan tonight, settling on a strategy after what Defense Secretary Jim Mattis characterized as a "sufficiently rigorous" review. Carol Morello and John Wagner report: "Trump is scheduled to address the military and American people from Fort Myer in Arlington, Va. ... The nationally televised prime-time address

offers Trump an opportunity to seize the mantle as commander in chief on a key foreign policy issue at a time when his standing at home has been undercut ...

"Various options have been under consideration for Afghanistan, including sending about 3,800 more troops to augment the 8,400 already there to train and assist local forces. Another option Mattis has mentioned is to replace U.S. troops with private contractors. But any proposal to reinforce the U.S. presence there is certain to meet resistance. ... **Trump's reluctance to commit to a new strategy to this point has reflected the paucity of good options.** It also highlights a contradiction at the core of Trump's foreign policy. On the campaign trail and in conversations with advisers, Trump has said he wants to win and project strength. But he also has called for ending costly commitments in places such as Afghanistan and the Middle East."

-- The speech will generate a new debate about the U.S. role in Afghanistan.

- **Sen. Benjamin Cardin, the top Democrat on the Senate Foreign Relations Committee, said that he would oppose sending more troops:** "I don't believe putting more American soldiers in Afghanistan is the answer," he said on "Fox News Sunday."
- **Sen. Tim Kaine (D-Va.) said many lawmakers have withheld judgment on troop levels until they heard a strategy from Trump.** "The troop strength question is sort of the cart before the horse," he said on CBS's "Face the Nation." "The real question is what is our strategy? And then when you lay out the strategy, the

troop strength question can kind of answer itself."

Dusk outside the Trump International Hotel in Washington, D.C. (Evelyn Hockstein for The Washington Post)

CONFLICTS OF INTEREST:

-- So far this year, Republican committees have paid nearly $1.3 million to Trump-owned properties — helping boost Trump's company even at a time when he has lost business at some of his other core properties. Matea Gold and Anu Narayanswamy report. "The Republican National Committee paid the Trump International Hotel in Washington $122,000 last month after the party held a lavish fundraiser at the venue in June, the latest example of how GOP political committees are generating a steady income stream for Trump's private businesses ... At least 25 congressional campaigns, state parties and the Republican Governors Association

have together spent more than $473,000 at Trump hotels or golf resorts this year[.] Trump's companies collected an additional $793,000 from the RNC and the president's campaign committee, some of which included payments for rent and legal consulting.

- **"In late June, an estimated 300 Trump supporters attended a $35,000-a-person RNC fundraiser at [Trump's D.C. hotel]**, raising a reported $10 million for the party and Trump's reelection committee …"
- **"The RNC is among 19 federal political committees that have patronized the Pennsylvania Avenue establishment this year.** One of the biggest spenders has been Trump's reelection committee, which has shelled out nearly $15,000 for lodging there, filings show."
- **"The Washington hotel also hosted events for Rep. Dana Rohrabacher (Calif.)**, whose campaign committee spent more than $11,000 on event space and catering in late May and mid-June, as well as **Rep. Jodey Arrington (Tex.)**, whose committee paid nearly $9,700 in early January for facility usage, food and beverages. The campaign of **Rep. Bill Shuster** (Pa.) spent more than $6,000 for 'event facility rental' in early April. And the committee of **Rep. David Valadao** (Calif.) paid $1,744 on March 9 for a fundraiser at the BLT restaurant in the hotel."

-- "The Secret Service can no longer afford to pay hundreds of agents it needs to carry out an expanded protective mission – in large part due to the sheer size of [Trump's] family and efforts necessary to secure their multiple residences up and down the East Coast," USA Today's Kevin Johnson reports: "Secret Service

Director Randolph 'Tex' Alles … said more than 1,000 agents have already hit the federally mandated caps for salary and overtime allowances that were meant to last the entire year. The agency has faced a crushing workload … and it has not relented in the first seven months of the administration. Agents must protect Trump – who has traveled almost every weekend to his properties … and his adult children whose business trips and vacations have taken them across the country and overseas. 'The president has a large family, and our responsibility is required in law,' Alles said. 'I can't change that. I have no flexibility.'

Donald Trump Jr. listens as his father speaks. (Jabin Botsford/The Washington Post)

THERE'S A BEAR IN THE WOODS:

-- Rinat Akhmetshin, a Russian immigrant and lobbyist who

attended a meeting a meeting last summer with top Trup campaign officials, has a "web" of Russian government connections. The New York Times's Sharon LaFraniere, David D. Kirkpatrick and Kenneth P. Vogel report: "Akhmetshin ... has often struck colleagues as a classic Washington mercenary — loyal to his wife, his daughter and his bank account. **But interviews with his associates and documents … indicate that Mr. Akhmetshin, who is under scrutiny by [special counsel Robert] Mueller, has much deeper ties to the Russian government and Kremlin-backed oligarchs than previously known.** He has an association with a former deputy head of a Russian spy service ... and a history of working for close allies of [Putin]. Twice, he has worked on legal battles for Russian tycoons whose opponents suffered sophisticated hacking attacks ... He helped federal prosecutors bring corruption charges against an American businessman in the former Soviet Union who turned out to be working for the C.I.A. He also helped expose possible corruption in government contracting that complicated American efforts to keep troops at an air base in Kyrgyzstan — an American presence that the Russians fiercely opposed.

"In short, Mr. Akhmetshin's projects over two decades in Washington routinely advanced the Kremlin's interests, especially after he became an American citizen in 2009 …"

President Trump talks to Steve Bannon at the White House. (Carlos Barria/Reuters)

PALACE INTRIGUE:

-- Gabriel Sherman in Vanity Fair,

"Steve Bannon readies his revenge:" "On the morning he was being ousted as [Trump's] chief strategist last Friday, ... Bannon had already turned the page. "Why do you sound unfazed?' a friend asked Bannon as news of his demise ricocheted across the web**. 'Because,' Bannon replied, 'we're going to war.'** … 'He wants to beat their ideas into submission,' Breitbart News Editor-in-Chief Alex Marlow told me. 'Steve has a lot of things up his sleeve.'

"Meanwhile, the next phase has already begun. On Sunday, the website's lead story was based on a Daily Mail report that said Ivanka was behind Bannon's removal. 'Trump's daughter Ivanka pushed out Bannon because of his 'far-right views' clashing with her Jewish faith,'

the article noted. In his feud with Kushner, Bannon may have a powerful ally: Reince Priebus, also recently departed from the White House with a quiver of grudges. **[Recently], Bannon has told friends he wants Priebus to give his account of the James Comey firing to special prosecutor Robert Mueller.** According to a source close to Priebus, the former chief of staff believes that the decision was made during an early May weekend in Bedminster, where Kushner, Ivanka Trump, and Stephen Miller were with the president. **Trump returned to the Oval Office on Monday, May 8 and told other aides he intended to fire Comey …"**

-- The story behind Bannon's ouster, from the New York Times's Jeremy W. Peters and Maggie Haberman: "[New Chief of Staff John] Kelly told [Steve] Bannon in late July that he needed to go: No need for it to get messy, Mr. Kelly told Mr. Bannon … The two worked out a mutually amicable departure date for mid-August, with President Trump's blessing. But as Mr. Trump struggled last week to contain a growing public furor over his [Charlottesville response], Mr. Bannon clashed with Mr. Kelly over how the president should respond. Give no ground to your critics, Mr. Bannon urged the president, with characteristic truculence. At the same time, New York real estate investor friends told Mr. Trump that the situation with Mr. Bannon was untenable ... By Thursday, after Mr. Bannon undercut American policy toward North Korea ... Trump himself had concluded that Mr. Bannon was too much of a liability.

- **"[In] the end, [Bannon] had lost the war against a list of enemies that included nearly everyone in the West Wing**. Mr. Bannon made little secret of the fact that he believed 'Javanka'

… had naïve political instincts and were going to alienate Mr. Trump's core coalition of white working-class voters. … In this sense, he was relieved when Mr. Kelly took over and put in place a structure that kept other aides from freelancing**. 'Those days are over when Ivanka can run in and lay her head on the desk and cry,'** he told multiple people."

- **"Mr. Bannon was notorious for maintaining his own, shadowy presence within the White House.** He would frequently skip meetings where policy was discussed, injecting his views into the process in other ways … He did not use a computer, preferring to have paper printed and handed to his assistant to stay outside the formal decision-making process. Mr. Bannon favored a culture similar to the one Mr. Trump brought with him from the business world to the White House — a flat structure with blurred lines of responsibility and competing power centers. And early on Mr. Bannon benefited from that structure, sitting at the top, free to slip unvetted materials to the president without a gatekeeper to get past."

Politicians question Trump's 'moral authority' in wake of Charlottesville

CHARLOTTESVILLE FALLOUT CONTINUES:

-- Rep. Adam Schiff (D-Calif.) questioned Trump's "capability" on CNN's "State of the Union," echoing a handful of lawmakers from both parties who have expressed concerns with Trump's stability and competence after his response to the Charlottesville violence. "I certainly think that there's an issue with the president's capability," said Schiff. **"There's some attribute of his character that makes him seemingly incapable of introspection and a broad understanding of what the country really needs, and I think it's a question that people are asking, you know, 'What is going on with this president? What can explain this kind of behavior?'"** And while Schiff said he thinks it is premature to consider invoking the 25th Amendment as a means of forcing Trump from office, he called for the departure of several White House staffers, Stephen Miller and Sebastian Gorka. "I there's more cleaning house that ought to take place," Schiff said. (John Wagner)

-- Other Democratic lawmakers also appeared on Sunday news shows to defend the removal of Confederate statues. Steven Mufson, John Wagner and Paige Winfield Cunningham report:

- **On ABC's "This Week**," former DHS secretary Jeh Johnson called the statues "rallying points" for white supremacist groups, adding that he "[salutes] people taking down these monuments as a matter of public safety."
- **Richmond Mayor Levar Stoney (D) agreed,** saying on the same program that he once thought the monuments could be

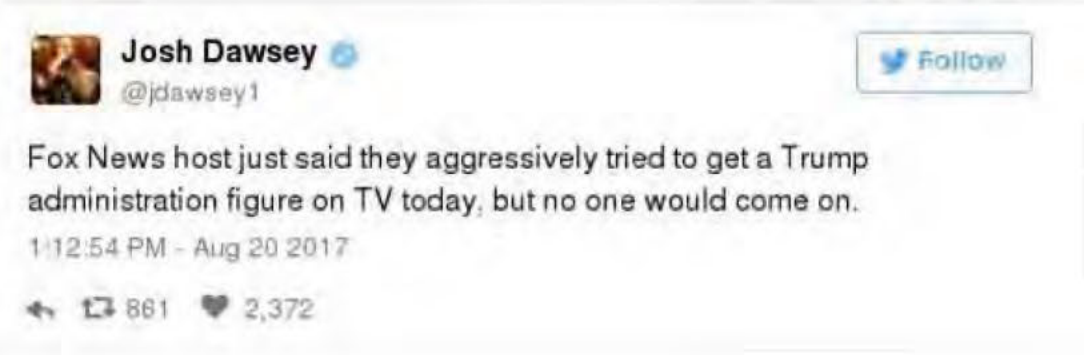
"tools to teach and enlighten" people – but that he now considers them to be "rallying points."

-- Republicans also expressed varying degrees of criticism to Trump's Charlottesville response:

- **On NBC's "Meet the Press," former Republican congressman J.C. Watts (Okla.) urged lawmakers to speal up if they disagreed with Trump's remarks.** "This is not a time for us to be afraid of being tweeted," Watts said. "This is not a time for us to suppress our convictions." He added: **"If they're silent, they wear the cap … saying we agree with that."**
- **On CBS's "Face the Nation," Sen. Tim Scott (S.C.) -- the Senate's only African-American Republican -- again condemned Trump's remarks:** "His comments on Tuesday started to compromise that moral authority we need the president to have for this nation to be the beacon of light to all mankind," Scott said. "We need the president to sit down with folks who have a personal experience if the president wants to have a better understanding and appreciation for what he should do next … Without that personal connection to the painful past, it will be hard for him to regain that authority …"
- **And Ohio Gov. John Kasich sidestepped questions over whether Trump should apologize for his remarks, saying on CNN's "State of the Union" that "in some ways we're looking backward."** "Where I want to look now is what are we going to do to deal with the fundamental issues we have in the country? The issue of race. The issue of police and community coming together and developing policing methods that can unify," he

said. Kasich also played down reports that he is considering mounting a primary challenge to Trump in 2020, telling Jake Tapper that he is "rooting for [Trump] to get it together." "I mean, we're only, like, seven months into his presidency."

-- Noticeably, Trump administration officials stayed off the air:



DIVIDED AMERICA:

-- A KKK leader in North Carolina who agreed to participate in a Univision interview last month threatened a Colombian news anchor who showed up on his property – calling Ilia Calderon the n-word and telling her that the KKK would "burn her out" of the country. When Calderon asked Christopher Barker how he would "burn out" the 11 million unauthorized immigrants in the country, he said: **"Don't matter … We killed six million Jews the last time. Eleven million is nothing."** Following the interview, the Barkers confirmed they had attended the Charlottesville rally, and praised the man who drove his vehicle into a crowd of counterprotesters, killing 32-year-old Heather Heyer and injuring 19 others. (Samantha Schmidt)

-- "Officials in the White House and in Arizona are bracing for a

furious reception to [Trump's] campaign rally in Phoenix this week, amid the fallout from his comments faulting 'both [sides],'" the New York Time's Noah Weiland and Maggie Haberman report: "Of particular concern for some officials is the prospect that Mr. Trump may be planning to announce a pardon for [former sheriff] Joe Arpaio … **Reached by phone at home on Sunday, Mr. Arpaio said that he was not sure why Mr. Trump was thinking of the pardon, and that he had not talked to the president since around Thanksgiving, when Mr. Trump called to ask about the health of Mr. Arpaio's wife.** But Mr. Arpaio would not say whether he had talked to the Trump campaign or White House about the visit Tuesday, or whether he had made formal plans with them to make an appearance." Trump told Fox News reporters last Sunday – one day after the Charlottesville violence -- that he was "seriously considering" pardoning Arpaio.

-- The president of the University of Texas at Austin said Sunday night that the school will be removing four statues tied to the Confederacy from campus, including one of Robert E. Lee. In a statement, president Greg Fenves said the events in Charlottesville "make it clear … that Confederate monuments have become symbols of modern white supremacy and neo-Nazism." (Reuters)

-- And Duke University has decided to remove its statue of Robert E. Lee from the campus's chapel entrance after it was vandalized. In a statement Saturday morning, Duke President Vincent E. Price said the statue's removal "represents an opportunity for us to learn and heal. The statue will be preserved so that students can study Duke's complex past and take part in a more inclusive

future." (Kristine Phillips and Susan Svrluga)

-- A group of Liberty University graduates are sending back their diplomas after their president, Jerry Falwell Jr., praised Trump for his Charlottesville response – saying on Twitter that he was "so proud" of Trump for his "bold truthful" statement on the tragedy. Outraged graduates are also writing letters to the board of trustees – and to Falwell himself – calling for his removal. (Samantha Schmidt)

-- "A 121-year-old Confederate monument was coming down. This Kentucky town put it back up," by Chico Harlan, an insightful read on a statue to Confederate soldiers removed from Louisville and placed in the town of Brandenburg 45 minutes away: "The monument had stood in Louisville for 121 years — 70 feet tall, more than 100 tons of granite. But Louisville wanted it removed and called a public meeting to help determine its relocation. One speaker said the structure should be 'obliterated.' Another said he would gladly help drop it into the river. And then, one by one, up to the microphone came the people from Brandenburg. 'I think it would be well-received by the county and the residents,' the county judge executive said. 'Brandenburg has a rich Civil War history,' the local historian said.

-- If you read one thing today on the emergence of the alt-right: "The road to hate: For six young men, Charlottesville is only the beginning," by Terrence McCoy: "For all that he did in Charlottesville, chanting anti-Semitic slogans, carrying a torch through the college town, [William Fears, 29], wasn't even aware that the alt-right existed one year ago. It wasn't until Hillary Clinton condemned the movement … last August that he first learned of it, and from there,

[radicalization] moved quickly. **'It's probably been about a year,' he said, 'but my evolution has been faster and faster.'** Last weekend's [rally] was a collection of virtually every kind of white nationalist the country has ever known. There were members of the Ku Klux Klan, skinheads and neo-Nazis. But it was this group, the group of William Fears, that was not so familiar. The torch-lit images of Friday night's march revealed scores like him: clean-cut, unashamed and young — very young. They almost looked as though they were students of the university they marched through.

"Neither the day's events … nor the [widespread condemnation] that followed, has persuaded those interviewed that their beliefs are wrong. For some, it only confirmed their sense of victimhood. … They felt as if the death of [Heather] Heyer had changed everything, and that uncontrollable forces had been unleashed. 'It was like a war... it was an eerie feeling,' Fears said. **'Things are life and death now, and that was the first time that had happened.'"**

State police officers block Essex St as they protected the cars transporting the Free Speech in Boston. (Salwan Georges/The Washington Post)

-- Tens of thousands of counter-protesters massed in Boston Common on Saturday morning in an effort to drive out a planned "free speech" rally that many feared would draw white supremacist groups. Police said 27 people were arrested, primarily for disorderly conduct**.** Wesley Lowery and Christina Pazzanese report: "By 1 p.m., the handful of rally attendees had left the Boston Common pavillion, concluding their event without planned speeches. A victorious cheer went up among the counterprotesters, as many began to leave. Hundreds of others danced in circles and sang, 'Hey hey, ho ho. White supremacy has got to go.' **City officials said that at least 40,000 people participated in the counter protest, 20,000 of whom participated in a march across town."** The Boston police commissioner, William Evans, said no officers or protesters were

injured and there was no property damage. “I think it’s clear today that Boston stood for peace and love, not bigotry and hate,” he said.

TRUMP’S AGENDA:

-- The Trump administration has disbanded a federal advisory committee on climate change, which was aimed at helping lawmakers and those in the private sector factor the government’s climate analysis into long-term planning. Juliet Eilperin reports: “The charter for the 15-person Advisory Committee for the Sustained National Climate Assessment — which includes academics as well as local officials and corporate representatives — [expired] Sunday. On Friday, the National Oceanic and Atmospheric Administration’s acting administrator, Ben Friedman, informed the committee’s chair that the agency would not renew the panel. [And] administration officials are currently reviewing a scientific report that is key to the final document. Known as the Climate Science Special Report ... "

-- “Trump’s job approval rating in three key states that helped propel him to the White House — Michigan, Pennsylvania and Wisconsin — stands below 40 percent, according to a trio of NBC News/Marist polls.” NBC News's Mark Murray reports: “In all three states, more than six in 10 voters say Trump’s conduct as president has embarrassed them, compared to just a quarter who have said it’s made them proud. In addition, **Democrats enjoy double-digit leads in Michigan and Pennsylvania on the question of which party voters prefer to control Congress after the 2018 midterms, and they hold an 8-point advantage in Wisconsin.”**

- “In Michigan, 36 percent of voters approve of Trump’s job

performance (including 19 percent who strongly approve), while 55 percent disapprove (including 40 percent who strongly do).

- In Pennsylvania, 35 percent give the president's job a thumbs up (17 percent strongly), versus 54 percent who disapprove (41 percent strongly).
- And in Wisconsin, 34 percent of voters approve of Trump (17 percent strongly), compared with 56 percent who disapprove (42 percent strongly)."

NASCAR driver Kyle Busch celebrates his victory Saturday night in Bristol, Tenn. (Matt Sullivan/Getty Images)

-- Boston Globe A1, "NASCAR fans feeling the Trump divide," by Annie Linskey in Bristol, Tenn.: "Walk around the sprawling campsites at the Bristol Motor Speedway here in the green hills of Tennessee, and you know you're deep in Trump country. …. National

Rifle Association signs are omnipresent … A pop-up city of RVs sprawls outside the speedway, with many displaying spreads of barbecue and booze. And Confederate flags flap in the wind from the encampments. ... So for the most part, if you mention Trump, faces light up with some mixture of joy and aggrievement. … One man explained that he doesn't talk politics with his wife because she's 'uninformed.' **'The white people are starting to stand up, 'said Miller "Bud" Fulton, 56 [of Ohio], who sat out near his camper sipping beer one evening last week with his son. 'You've got a movement going on.'**

"Many in this crowd said they feel more permission to be outspoken on issues once viewed as sensitive, like race. And in interviews with more than 50 fans here, nearly all have seen divisions in their lives growing wider, with sharper lines between those who support Trump and those who don't. … One camper flying a Confederate flag was owned by Paul and Cathy Peary, a couple from Addison, Pa., who drove out for the races and met up with a boisterous group of friends. The flag is brand new. Paul Peary, 52, bought it after the Charlottesville demonstrations to support keeping Confederate monuments in place. 'With what's going on with the statues, that is a part of American history that is being snuffed out,' said Paul Peary … Though NASCAR tried to discourage flying the Confederate flag in 2015, fans rebelled, and this week T-shirts with the flag were for sale along with the banner on the racetrack grounds."

Randall Woodfin is a candidate for mayor of Birmingham, Ala. (Handout)

DEMS LOOK AHEAD:

-- "Even in red states, liberal candidates are climbing into power in the nation's cities," by David Weigel: "Randall Woodfin is not going to talk about 'change.' The 36-year old Democrat, a candidate for mayor of Birmingham (Alabama), is running to unseat a two-term incumbent — and he is selling a vision of how his city, which had lost one-third of its population since the 1960s, could be economically transformed. It just feels dangerous to boil that down to 'change.' 'That word will trip you up,' said Woodfin … **'This is not about that. Change for change's sake is what got us Trump. This is about progress for everybody.'** Woodfin, a soft-spoken attorney … has spent a whole year on his bid for mayor. In that time, Democrats have been locked out of national power, further diminished in state

legislatures and wiped out in rural America. That has left the increasingly blue cities and suburbs as the obvious places for Democrats to attempt to rebuild. [Now], Birmingham's August 22 primary is one of dozens of 2017 races where progressive candidates are trying to climb into power, knitting together community organizers, new activists and the remnants of [Bernie Sanders's] presidential bid to form new left-wing majorities."

-- "Labor leaders, once courted by [Trump], are stepping up their campaign to turn workers against the White House if it does not deliver more on jobs and trade — and if it does not stop undoing Obama-era regulations," Weigel reports: "The most visible effort, which starts in Indianapolis on Monday afternoon, is a two-week tour organized by the coalition Good Jobs Nation that ropes in labor-friendly politicians … The Indianapolis rally, which will feature [Sanders], is designed to highlight the complicated aftermath of an early Trump coup for workers — a deal that delayed layoffs at a Carrier plant in nearby Huntington. In December, Trump came to Indiana to announce that Carrier would lay off only a few hundred of its 1,400-odd workers … Nine months later, Carrier is well into cutting 632 jobs — more cuts than the president had promised."

SOCIAL MEDIA SPEED READ:

John McCain spent time with Lindsey Graham and Joe Lieberman in Arizona this weekend:

And kicked back at a family reunion:

John McCain
@SenJohnMcCain

Follow

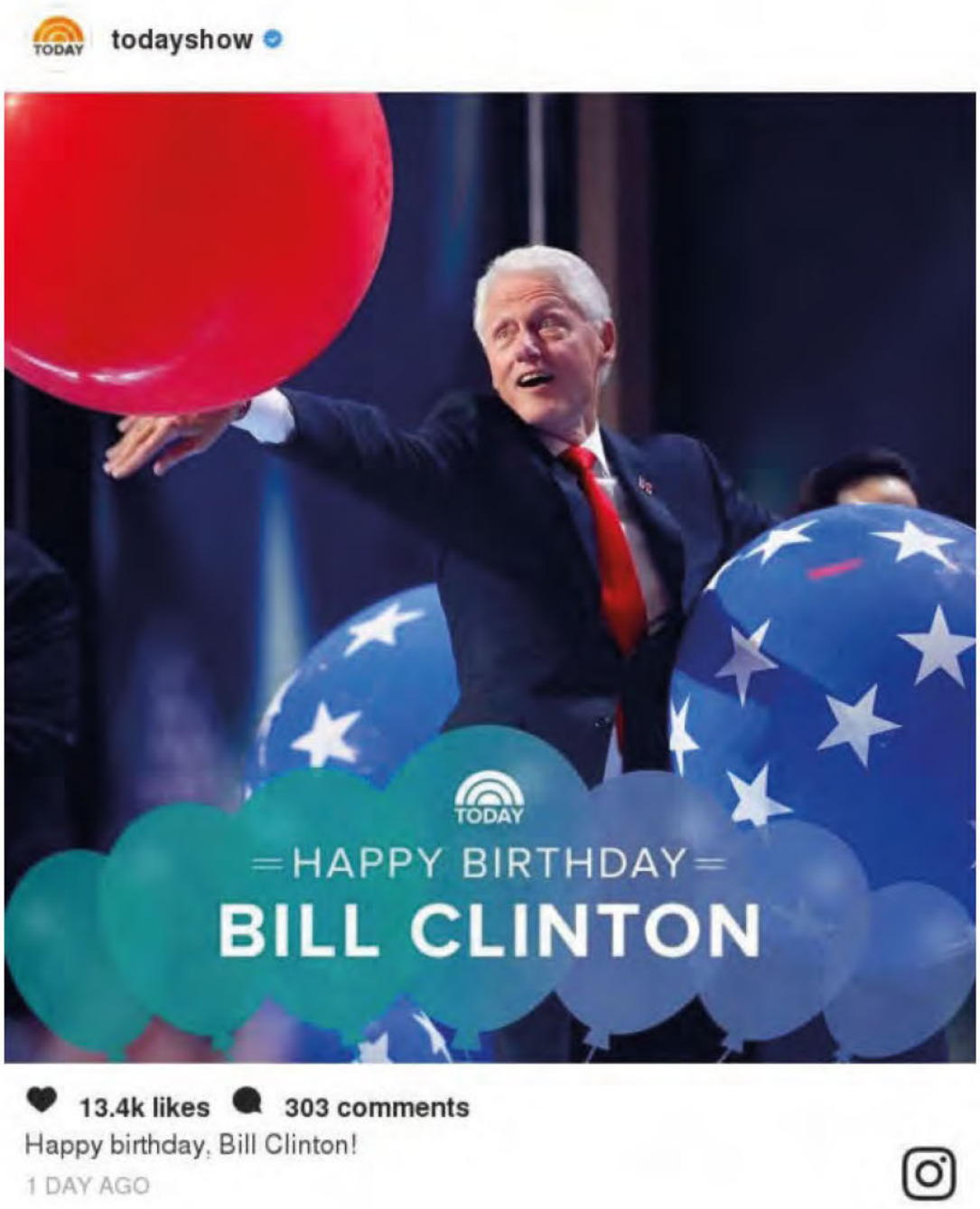
Family reunion in #Arizona! pic.twitter.com/lXvYm8XKmH

12:14:49 PM - Aug 20 2017

140 2,266

Kevin McCarthy's wife parachuted with World War II vets:

Bill Clinton celebrated a birthday:



After a week spent stoking outrage and division following Charlottesville, it took Trump three tries to correctly spell the word “heal:"

Naturally, the Internet had lots to say about it...

Glen Weldon
@ghweldon

Follow

And we will heel pic.twitter.com/EzQtCNELaN

4:40:47 PM - Aug 19 2017

150 511

Merriam-Webster
@MerriamWebster

Follow

heal (to become healthy again)
heel (a contemptible person)
he'll (he will)

4:58:53 PM - Aug 19 2017

22,635 63,052

Here were some memorable signs from the counterprotest in Boston:

Kristi Winters
@KWintie

Follow

Props to the woman who carried this in Boston. Wanted to give it a signal boost on Twitter. pic.twitter.com/IxliNL0dEo

2:36:15 PM - Aug 19 2017

44,268 122,775

Amanda Y.
@amandarosewhy

Follow

Ctrl-AltRight-Delete #BostonResist #FightSupremacy #BlackLivesMatter pic.twitter.com/1HBoitiXPM

2:30:34 PM - Aug 19 2017

112 242

type_of_resistance

186 likes 3 comments

#fightsupremacy #bostonresist #resist

1 DAY AGO

Kathy Griffin weighed in:

Kathy Griffin
@kathygriffin

Follow

Awww, them there 100 nazis seem a lil scurred of 40 thousand actual Patriots! Well done Boston! pic.twitter.com/640qOWxOUi

4:09:30 PM - Aug 20 2017

469 2,841

More on Boston:

Jonathan Martin
@jmartNYT

Follow

Aug. 1975: Pres Ford at Arlington, restoring Lee's citizenship.

Also there: Gov. Holton, Tim Kaine's father in law
pic.twitter.com/AxZGVhoK0p

7:17:00 PM - Aug 19 2017

40 54

David Tanenhaus
@david_tanenhaus

Follow

My favorite Civil War era monuments are the 13th, 14th, and 15th Amendments.

9:32:50 AM - Aug 18 2017

37,391 111,458

GOOD READS FROM ELSEWHERE:

-- Politico Magazine, "Why There Are No Nazi Statues in Germany," by Joshua Zeitz: "In Germany, you won't see neo-Nazis converging on a monument to Reinhard Heydrich or Adolf Hitler, because no such statues exist … The generation of Germans that

came of age in the 1970s and 1980s confronted the country's Nazi past and forcefully repudiated it. **It took several decades of hard self-reflection, but a reunified Germany emerged from the Cold War as one of the great mainstays of democracy and human rights.**"

-- The New Yorker, "Carl Icahn's Failed Raid on Washington," by Patrick Radden Keefe: "One recurring feature of the Trump Presidency has been an acute collective sensation … of helpless witness. Dismayed Americans wait, like spectators at a game that has turned suddenly dangerous, for a referee to step in and cry foul. But one reason that Trumpism is so transfixing to watch is that it is about the upending of norms, the defiance of taboos, the destabilization of institutions. School's out forever. What this means in practice is a serious deficit of accountability. Whom can you call when the authorities are the ones breaking the rules?"

HOT ON THE LEFT:

"House Dem introduces measure urging Trump undergo mental exam," from The Hill: "A House Democrat introduced a resolution … suggesting that [Trump] undergo a physical and mental health exam to help

HOT ON THE RIGHT:

"Man stabbed after haircut gets him mistaken for a neo-Nazi," from the New York Post: "[A Colorado man who is avowedly not a neo-Nazi] believes his long-on-top, buzzed-on-the-sides haircut got him mistaken for one —

determine whether he is fit for office. Rep. Zoe Lofgren's (D-Calif.) resolution specifically calls on [Pence] and Trump's Cabinet members to 'quickly secure the services of medical and psychiatric professionals' to 'assist in their deliberations' invoking the 25th Amendment … It posits that such an examination by doctors would 'determine whether the president suffers from mental disorder or other injury that impairs his abilities and prevents him from discharging his Constitutional duties.'"

and nearly stabbed to death by a confused anti-fascist. Joshua Witt, 26, escaped his brush with hairdo-doom with a defensive slice to the hand and three stitches. Witt says he'd just pulled in to the parking lot of the Steak 'n Shake in Sheridan, Colo., and was opening his car door.'All I hear is, 'Are you one of them neo-Nazis?' as this dude is swinging a knife up over my car door at me. ...The dude was actually aiming for my head,' he added. 'I was more in shock ...' Witt says he has no tattoos or regalia that would finger him for a fascist."

DAYBOOK:

At the White House: Trump will have lunch with Mike Pence and meet with Rex Tillerson. Then, he will participate in a swearing-in ceremony of Robert Wood "Woody" Johnson, IV as United States Ambassador to the United Kingdom of Great Britain and Northern Ireland. Following, he will depart for Fort Myer, where he will give a televised speech. He will then return to the White House.

After joining Trump for lunch, Pence host students from Cornerstone Schools for a "Great American Solar Eclipse" viewing event at the United States Naval Observatory. He will then join Trump to participate in the swearing-in ceremony of Robert Wood "Woody" Johnson, IV, and participate in a swearing-in ceremony for U.S. Ambassador to Portugal George Glass. Later, Pence will attend Trump's speech.

NEWS YOU CAN USE IF YOU LIVE IN D.C.:

-- Get your eclipse on: "Pop-up clouds may hide the sun at times for the partial solar eclipse this afternoon, but windows of opportunity should open up to see it (with your eclipse glasses, of course)." The Capital Weather Gang forecasts: "We expect a mix of clouds and sun; not enough clouds to ruin eclipse-viewing prospects but some occasional interference is possible. **The partial eclipse begins in the Washington region just after 1:17 p.m. and peaks just after 2:42 p.m. at 81 percent coverage. Just after 4:01 p.m., it ends**. Humidity levels are high … and afternoon temperatures climb to near 90 degrees. A few storms could start to pop during the mid-to-late afternoon hours — especially in our western areas."

-- Here's how to go old school if you forgot to buy eclipse glasses.

-- U.S. Park Police are investigating a report of a stabbing Sunday in Franklin Square Park. Authorities said the incident occurred shortly after 3 p.m. on the block of 13th and K streets NW, where church festivities had been taking place. Police said they have made no arrest in the case. (Faiz Siddiqui)

-- The Nationals beat the San Diego Padres, 4-1.

VIDEOS OF THE DAY:

Watch John Oliver discuss nuclear waste:

Nuclear Waste: Last Week Tonight with John Oliver (HBO)

Stephen Colbert says the "businessman president" can't get along with businessmen:

The Businessman President Can't Even Get Along With CEOs

And talks about the sun going away:

The Sun Is Going Away

You received this email because you signed up for The Daily 202 or because it is included in your subscription. For additional free newsletters or to manage your newsletters, **click here**.

We respect your **privacy** . If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, **click here**. **Contact us** for help.

©2017 The Washington Post | 1301 K St NW, Washington DC 20071

The Daily 202_ Trump acts like the president of....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: The Daily 202: Trump acts like the president of the Red States of America
Date: Tuesday, August 15, 2017 7:26:18 AM

If you're having trouble reading this, click here.

PowerPost
The Daily 202
Morning intelligence for leaders

Share:

Listen to The Big Idea

Trump acts like the president of the Red States of America

Trump defends his comments on hate groups: 'They have been condemned'

BY JAMES HOHMANN
with Breanne Deppisch and Joanie Greve

THE BIG IDEA: Donald Trump often behaves as if he's first and foremost the president of the states and the people who voted for him.

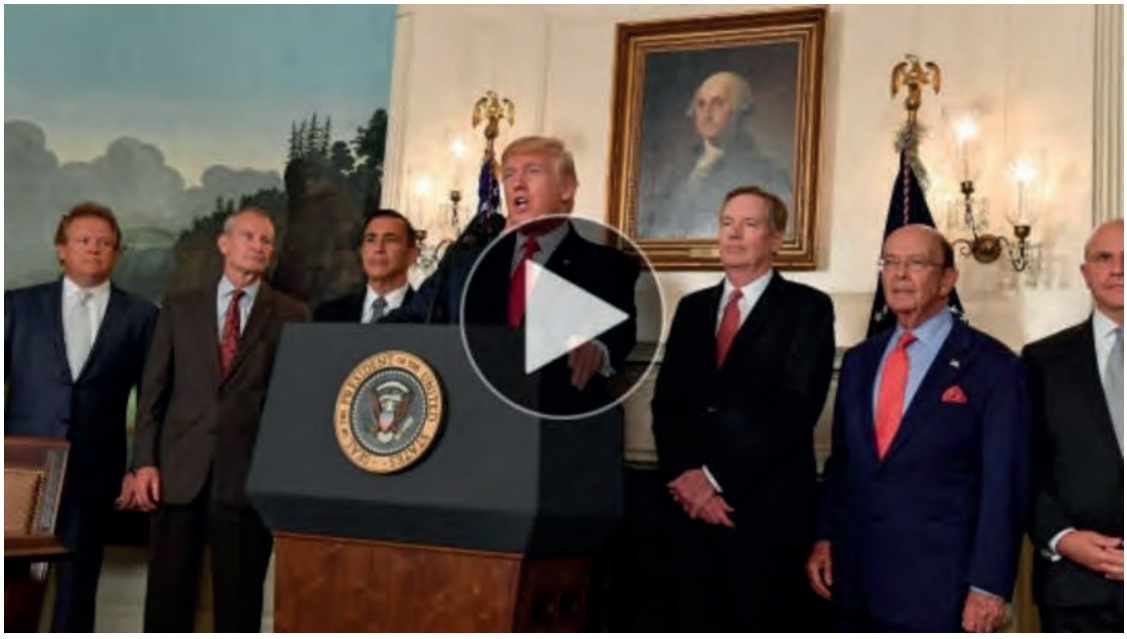
That's at odds with the American tradition, and it's problematic as a governing philosophy – especially in a moment of crisis. Trump's initially tone-deaf response to Charlottesville underscores why.

Animated by grievance and congenitally disinclined to extend olive branches, Trump lashes out at his "enemies" – his 2020 reelection campaign even used that word in a commercial released on Sunday -- while remaining reticent to explicitly call out his fans – no matter how odious, extreme or violent.

Channeling his inner-Richard Nixon, who kept an enemies list of his own, candidate Trump often claimed to speak for "a silent majority." After failing to win the popular vote, President Trump has instead governed on behalf of an increasingly vocal but diminishing minority.

The president has held campaign-style rallies in places like West Virginia, Kentucky and Tennessee. Indeed, almost all his political travel has been to places he carried last November. He keeps stacks of 2016 electoral maps to hand out to people visiting the Oval Office so he can point out the sea of red. He speaks often about his "base," preferring to preach to the choir rather than evangelize for his policies. "The Trump base is far bigger & stronger than ever before," Trump wrote on Twitter last week.

-- Apparently the president sees "the Trump base" as distinct from the GOP base: "Trump's job approval rating in Gallup Daily tracking is at 34% for the three-day period from Friday through Sunday -- by one point the lowest of his administration so far," Frank Newport wrote yesterday. "**Republicans' latest weekly approval rating of 79% was the lowest from his own partisans so far**, dropping from the previous week's 82%. Democrats gave Trump a 7% job approval rating last week, while the reading for independents was at 29%. This is the first time independents' weekly approval rating for Trump has dropped below 30%." In the latest Gallup polling, 46 percent of whites approve of Trump's job performance. That's the same share Barack Obama had at this point in 2009. But while only 15 percent of nonwhites support Trump, 73 percent backed Obama.



Trump: Racism 'has no place in America'

-- Trump appeared reluctant to make his brief remarks yesterday, in which he explicitly condemned the KKK, neo-Nazis and white supremacists. He tacked them on to a hastily arranged speech after

praising his own stewardship of the economy, two days after he did not specifically condemn the “Unite the Right” rally and only after an outpouring of criticism from Republican leaders for that omission. Reading from a teleprompter, Trump said that the displays of hatred and bigotry in Charlottesville have “no place in America.” (Read a transcript of the president’s comments here.)

-- The president was still more tepid than members of his own Cabinet. “Though Trump has regularly employed the phrase ‘radical Islamic terrorism’ to describe other attacks in the United States and the Middle East, he chose not to echo Attorney General Jeff Sessions’s conclusion that the violence in Charlottesville met the Justice Department’s definition of ‘domestic terrorism,’” David Nakamura and Sari Horwitz note.

-- Conservative blogger Jennifer Rubin describes Trump’s performance as “classic narcissistic behavior”: “The sole determination of whether Trump likes someone (Saudi royalty, thuggish leaders, etc.) is whether they praise him. It’s always and only about him. He has been far more antagonistic toward Senate Majority Leader Mitch McConnell (R-Ky.) and his own attorney general … than he has been toward white nationalists because the former were disloyal in his mind, the only unforgivable sin in the Trump White House. …

“The white nationalists in Charlottesville did not hide their intentions. They were there to revel in the Trump presidency, which explicitly told them it was time to ‘take their country back,’” Rubin notes. “Former KKK grand wizard David Duke left no confusion as to his followers’ admiration for the president: ‘This represents a

turning point for the people of this country. We are determined to take our country back. We're going to fulfill the promises of Donald Trump. That's what we believed in, that's why we voted for Donald Trump, because he said he's going to take our country back, and that's what we've got to do.'"

-- Meanwhile, alt-right leader Richard Spencer dismissed Trump's statement as "nonsense," telling reporters at a news conference yesterday that "[only] a dumb person would take those lines seriously." Spencer also said he did not consider the president's words to be a condemnation of the white nationalist movement. "I don't think he condemned it, no," said Spencer, whose group advocates for a form of American apartheid, per Business Insider. "Did he say 'white nationalist?' 'Racist' means an irrational hatred of people. … I don't think he meant any of us." Asked whether he considers Trump an ally, Spencer replied that while he didn't think of Trump as "alt-right," he considers the president to be "the first true authentic nationalist in my lifetime."

-- In this context, Trump's announcement that he is mulling a pardon for Joe Arpaio can be viewed as a strategic sop to mollify some of the most xenophobic elements of his nativist base. The president told Fox News in an interview published yesterday that he is "seriously considering" a full pardon to the former Arizona sheriff, who was convicted last month of criminal contempt for ignoring a federal judge's order that he stop racially profiling Hispanics.

"I might do it right away, maybe early this week. I am seriously thinking about it," the president told Gregg Jarrett. He called Arpaio a "great American patriot" who has "done a lot in the fight against illegal immigration": "Is there anyone in local law enforcement who has done more to crack down on illegal immigration than Sheriff Joe? … He doesn't deserve to be treated this way."

Arpaio, who remains a "birther" and has insisted he has proof that Obama was not born in Hawaii, lost reelection last year. He was an early Trump endorser – going to Iowa for the announcement – and linked himself closely with the GOP nominee – speaking in primetime during the Republican National Convention in Cleveland.

Radley Balko, the author of the book " Rise of the Warrior Cop," argues that Trump is giving racists "a reassuring wink" by floating the Arpaio pardon. "I very seriously doubt Arpaio would ever get jail time. Federal judges aren't known for sending octogenarian ex-cops to prison. But his name and reputation ought to be stained. If any cop deserves that, it's Arpaio," he writes on The Watch.

"In 2011, the Justice Department concluded that Arpaio's

deputies had engaged in the worst pattern of racial profiling that the DOJ had ever investigated," Balko recounts. "That report found that Arpaio's deputies routinely put Spanish-speaking prisoners in solitary confinement as punishment for their inability to speak English. … 1 in 5 traffic stops during Arpaio's immigration sweep's involved Fourth Amendment violations. … Latinos were four to nine times more likely to be pulled over than non-Latinos. … Accusations that Arpaio's deputies continued to harass Latinos were affirmed by another federal judge in 2013. Arpaio then launched an investigation of that judge. That report also found that Arpaio was spending so much time harassing Latinos that his department was neglecting violent crime.

"On multiple occasions, federal judges have found that Arpaio's jails are unconstitutionally inhumane, most notably when it comes to diet, health care and mental health. The vast, vast majority of the people in Arpaio's jails are being held on suspected immigration violations. … Arpaio in fact once boasted that his jails were akin to a 'concentration camp.'"

"He faces up to six months in prison at his sentencing, which is scheduled for Oct. 5," Matt Zapotosky reports. "Jack Wilenchik, Arpaio's attorney, said after Arpaio was convicted that the former sheriff would appeal to get a jury trial. … A Justice Department spokeswoman said she was not aware of the president's remarks but would wait until action was taken before commenting."

"I would accept the pardon," Arpaio told Fox News, "because I am 100 percent not guilty."

-- Bottom line: If Trump pardoned Arpaio, it would add another

data point to the cementing narrative that the president lacks respect for the rule of law.

Trump speaks to business leaders, including Merck CEO Kenneth Frazier, at the White House. (Evan Vucci/AP)

-- In stark contrast to his caution after Charlottesville, it took Trump just 54 minutes to attack the chief executive of Merck by name on Monday morning after he resigned from the president's manufacturing council. Kenneth C. Frazier, one of the few African American chief executives in the Fortune 500, touted the virtues of diversity in a statement. "I feel a responsibility to take a stand against intolerance and extremism," he said. "America's leaders must honor our fundamental values by clearly rejecting expressions of hatred, bigotry and group supremacy, which run counter to the American ideal that all people are created equal."

POTUS continued to use his social media bully pulpit to go after him last night:

4 CEOs who have distanced themselves from Trump

-- Trump's fixation on his populist right flank, rather than the center, has made it easier for other corporate chieftains to

distance themselves.

Kevin Plank, chief executive of Under Armour, joined Merck's Frazier last night in announcing that he, too, is stepping down from Trump's manufacturing council. "I love our country and our company and will continue to focus my efforts on inspiring every person that they can do anything through the power of sport which promotes unity, diversity and inclusion," he wrote on Twitter.

A few hours later, Intel CEO Brian Krzanich announced in a blog post that he will also resign from the council – "to call attention to the serious harm our divided political climate is causing to critical issues."

Yesterday's defections will further intensify pressure on executives at companies that continue to collaborate with the administration – including General Electric, Dell and Dow – to follow their lead.

Sen. Al Franken (D-Minn.) shakes hands with Sa'ad Musse Roble, center, with the World Peace Organization, and Omer Andi Nur, visiting from Michigan, after Franken spoke at a rally at Dar Al-Farooq Islamic Center in Bloomington, Minn. The suburban Minneapolis mosque was bombed Aug. 5 as worshippers were about to start their morning prayers. No one was hurt. (Aaron Lavinsky/Star Tribune via AP)

-- Meanwhile, even after his speech yesterday, Trump still has not reacted publicly to a bomb that was detonated at a Minnesota mosque on Aug. 5. Sebastian Gorka, a far-right nationalist on Trump's National Security Council, defended his silence last week. "There's a great rule: all initial reports are false," Gorka said on MSNBC from the White House briefing room. "You have to check them. You have to find out who the perpetrators are. … **We've had a series of crimes committed—alleged hate crimes—by right-wing individuals in the last six months that turned out to actually have been propagated by the left.** So let's wait and see." (The governor of Minnesota had already declared the mosque attack as "an act of

terrorism" when Gorka said this.)

The president, of course, showed no such caution after attacks this spring in Paris and London. And don't forget when he falsely described a casino robbery in Manila as a terrorist attack. Or his attacks on Mexican immigrants.

Trump prepares to board Marine One at The White House for a trip to New York yesterday. (Ricky Carioti/The Washington Post)

-- Finally, Trump's botched response to Charlottesville should be viewed as another consequence of electing the first president in American history with no prior governing experience. "Say what you will about politicians as a group, but it is striking how all of them, from Bernie Sanders to Ted Cruz, knew the right thing to say in response to Charlottesville," writes Daniel W. Drezner, a professor of international politics at Tufts University. "Running for office repeatedly

tends to hone one's rhetorical instincts. At a minimum, most professional politicians learn the do's and don'ts of political rhetoric. Trump's political education has different roots. He has learned the art of political rhetoric from three sources: reality television, Twitter and 'the shows.' His miscues this past week can be traced to the pathologies inherent in each of these arenas."

-- "**One of the difficult but primary duties of the modern presidency is to speak for the nation in times of tragedy**," **Michael Gerson, a speechwriter for George W. Bush, wrote in a column this weekend.** "It falls to the president to express something of the nation's soul — grief for the lost, sympathy for the suffering, moral clarity in the midst of confusion, confidence in the unknowable purposes of God. **Not every president does this equally well. But none have been incapable. Until Donald Trump.**

"The president is confident that his lazy musings are equal to history. They are not," Gerson continues. "Trump could offer no context for this latest conflict. No inspiring ideals from the author of the Declaration of Independence, who called Charlottesville home. No healing words from the president who was killed by a white supremacist. By his flat, foolish utterance, Trump proved once again that he has no place in the company of these leaders."

Listen to James's quick summary of today's Big Idea and the headlines you need to know to start your day:

Play audio brief

Subscribe to **The Daily 202's Big Idea** on
Amazon Echo, Google Home, Apple Podcasts and other podcast players.

Welcome to the Daily 202, **PowerPost's** morning briefing for decision-makers.
Sign up to receive the newsletter.

WHILE YOU WERE SLEEPING:

A Trump campaign aide tried to arrange a meeting with Putin. Here's what you need to know.

THERE IS A BEAR IN THE WOODS:

-- A low-level foreign policy adviser to Trump "repeatedly" attempted to set up a meeting with Russian officials during the presidential campaign — passing along multiple requests for Trump to meet with Russian leadership, including Vladimir Putin. Tom Hamburger, Carol D. Leonnig and Rosalind S. Helderman scoop: "The adviser, George Papadopoulos, offered to set up 'a meeting between us and the Russian leadership to discuss US-Russia ties under [Trump],' telling them his Russian contacts welcomed the opportunity …

"The proposal sent a ripple of concern through campaign headquarters in Trump Tower. Campaign co-chairman Sam Clovis wrote that he thought NATO allies should be consulted ... Another [Trump adviser] cited legal concerns … But Papadopoulos, a campaign volunteer with scant foreign policy experience, persisted. Between March and September, the self-described energy consultant sent at least a half-dozen requests for Trump, as he turned from primary candidate to party nominee, or for members of his team to meet with Russian officials. **Among those to express concern about the effort was [Paul Manafort],** who rejected in May 2016 a proposal from Papadopoulos for Trump to do so.

"Less than a decade out of college, Papadopoulos appeared to hold little sway within the campaign, and it is unclear whether he was acting as an intermediary for the Russian government ... [But] to experts in Russian intelligence gathering, the Papadopoulos chain offers further evidence that Russians were looking for entry points and playing upon connections with lower-level aides to penetrate the 2016 campaign …"

North Korean leader Kim Jong Un reviews the plan for landing missiles near the U.S. territory of Guam. (KRT/Reuters).

WILL NORTH KOREA BLINK?

-- Kim Jong Un appeared to slightly ease his rhetoric against the United States on Tuesday, with state media reporting he will "watch a little more the foolish and stupid conduct of the Yankees" following a week of bluster. Anna Fifield and Dan Lamothe report: "But, as is often the case with North Korea, the message was mixed: Kim was inspecting the missile unit tasked with preparing to strike near Guam, and photos released by state media showed a large satellite image of Andersen Air Force base on Guam on the screen beside the leader. 'The U.S. should stop at once arrogant provocations against the DPRK and unilateral demands and not provoke it any longer,' the North Korean leader [said]. … If 'the

Yankees persist in their extremely dangerous reckless actions on the Korean Peninsula and in its vicinity,' Kim continued, North Korea would 'make an important decision as it already declared,' he said. Kim was visiting [the] elite missile unit that — according to state media — is finalizing preparations to launch ballistic missiles into the Pacific Ocean near [Guam]. A decision was due this week, a week during which the Kim regime is celebrating [with huge propaganda displays]."

South Korean President Moon Jae-in, elected in May on a pledge to adopt a more conciliatory approach to North Korea, urged the United States to give diplomacy a chance: "Peace will not come to the Korean Peninsula by force. Although peace and negotiation are painful and slow, we must pursue this path," said Moon, adding that he is "confident that the U.S. will respond calmly and responsibly to the current situation." He met yesterday in Seoul with Joseph F. Dunford Jr., the chairman of the Joint Chiefs of Staff.

Moon went a step further in a speech delivered in the last few hours, declaring that allied military action could only be taken with the consent of the South Korean government. The Wall Street Journal calls it "an implicit signal that Mr. Moon wouldn't tolerate any unilateral action by the U.S. to strike North Korea."

Hassan Rouhani speaks to the Iran parliament in Tehran today. (Vahid Salemi/AP)

-- Iran's president, meanwhile, threatened to revitalize the country's nuclear program. The AP's Nasser Karimi reports:
"Hassan Rouhani's remarks to lawmakers follow the Iranian parliament's move earlier this week to increase spending on the country's ballistic missile program and the foreign operations of its paramilitary Revolutionary Guard. The bill — and Rouhani's comments — are seen as a direct response to the new U.S. legislation earlier this month that imposed mandatory penalties on people involved in Iran's ballistic missile program and anyone who does business with them. … If Washington continues with 'threats and sanctions' against Iran, Rouhani said in parliament on Tuesday, Tehran could easily restart the nuclear program. **'In an hour and a day, Iran could return to a more advanced (nuclear) level than at the beginning of the negotiations' that preceded the 2015 deal, Rouhani said.**"

Kellyanne Conway and Steve Bannon wait for Donald Trump to speak about immigration in the Roosevelt Room earlier this month. (Jabin Botsford/The Washington Post)

PALACE INTRIGUE:

-- During a recent dinner at the White House, Rupert Murdoch — who controls the Wall Street Journal and Fox News — told Trump that chief strategist Stephen K. Bannon needs to go. "Mr. Trump offered little pushback … and vented his frustrations about Mr. Bannon," the New York Times's Maggie Haberman and Glenn Thrush report. Son-in-law Jared Kushner and chief of staff John Kelly were also at the meal. "Mr. Murdoch is close to Mr. Kushner, who has been in open warfare with Mr. Bannon since the spring. But Mr. Trump has expressed similar sentiments in the past, then backed off. Just a week earlier, as Mr. Trump ruminated on whether to dismiss [Reince Priebus], he was pushed by Mr. Kushner and others to dismiss Mr.

Bannon as well. Mr. Trump signaled to allies that he was pretty much there ... So far, Mr. Trump has not been able to follow through — a product of his dislike of confrontation, the bonds of a foxhole friendship forged during the 2016 presidential campaign and concerns about what mischief Mr. Bannon might do once he leaves the [West Wing] … From the start, Mr. Bannon, 63, has told people in his orbit that he never expected to last in his current position longer than eight months to a year, and hoped to ram through as much of his agenda as he could while he stood in the president's favor. More recently he has told friends that he … constantly asks himself whether he could better pursue his to-do list … on the outside. ... But the choice might not be his."

-- CBS News's Major Garrett reports that Trump could dismiss Bannon as soon as the end of this week.

Four takeaways from Anthony Scaramucci's interview with Stephen Colbert

-- Ousted White House communications director Anthony Scaramucci appeared on Stephen Colbert's show. Bethonie Butler reports: "Colbert said he had one 'gotcha' question for Scaramucci. 'Nazis: good or bad?' he asked. 'Super bad,' Scaramucci said." **Scaramucci also addressed his feud with Reince Priebus**, saying, "The weird thing about my relationship with Reince is we were actually pretty good friends when I was a political donor writing checks to the RNC, but once I became part of the administration … it was a little more adversarial."

Deadly mudslides fill streets of Sierra Leone

GET SMART FAST:

1. **Hundreds of people were confirmed dead in Sierra Leone after a torrent of fast-moving floods and mudslides swept through neighborhoods, burying dozens of unsuspecting residents alive.** At least 312 people have been confirmed dead so far, and authorities expect the death toll to

soar as the body count continues. (Max Bearak)

2. **The FBI arrested an Oklahoma man on charges that he tried to detonate what he thought was a 1,000-pound bomb in front of a bank**, acting out of a hatred for the U.S. government and an admiration for Oklahoma City bomber Timothy McVeigh. (Devlin Barrett)
3. **Defense Secretary Jim Mattis said that some transgender members of the military may still be able to serve.** Despite the president's remarks to the contrary, Mattis reported that the Pentagon is still looking at the issue. (Dan Lamothe)
4. **The federal government has requested over a million IP addresses from Internet users who visited a website coordinating Inauguration Day protests.** DreamHost, which houses the site in question, DisruptJ20.org, is fighting the request. (Ellen Nakashima)
5. **A Denver jury ruled in favor of Taylor Swift,** awarding the pop star a symbolic $1 in damages after she accused radio DJ David Mueller of groping her before a concert in 2013. He had sued her for lost income. (Emily Yahr)
6. **Hillary Clinton's spiritual adviser admitted to having plagiarized portions of his messages to the presidential candidate.** Rev. Bill Shillady has compiled his prayers to Clinton in a new book released today, and one from the day after the election incorporates the exact words of Indiana pastor Matt Deuel. (Julie Zauzmer)
7. **Laura Ingraham is reportedly in line to get her own show at Fox.** The potential Ingraham program could become a ratings rival of Rachel Maddow's 9 p.m. show. (CNN)

8. **The Women's March is reconvening.** The Women's Convention will be held in Detroit in October to address next year's midterms. (USA Today)
9. **Medical experts are reconsidering the persistent advice from doctors to always finish your antibiotics, even if you're feeling better.** Some researchers worry that the advice is worsening antibiotic resistance. (Wall Street Journal)
10. **Roughly 1 in 9 Americans hold a job that could be affected by self-driving cars.** But while some, such as taxi drivers, could be pushed out of their jobs, those who work in sectors like real estate or plumbing could be aided by the advanced technology. (Wall Street Journal)
11. **A D.C. firefighter was beaten by a crowd for allegedly responding to an emergency call for an injured child while intoxicated.** The firefighter suffered a broken jaw and is now the subject of an internal review. (Peter Hermann and Ellie Silverman)
12. **A Chinese teenager died less than 48 hours after checking into an Internet-addiction treatment center.** 18-year-old Li Ao's body was covered in scars and bruises, causing Chinese authorities to shut down the center and launch an investigation. (Amy B Wang)
13. **New York City transit employees are expressing distress and disgust after coming into repeated contact with human corpses —** hastily stored throughout the station; sometimes even in the *same place where they eat lunch*. The bodies belong to people who have been struck and killed by MTA trains, officials said — but the effort to quickly remove them from public view has left some station employees traumatized. (New York Daily News)

In this courtroom sketch, James Alex Fields Jr. is seen via video link from jail yesterday as he appears for his bail hearing at the Charlottesville City Court. (William Hennessy Jr./Reuters)

CHARLOTTESVILLE FALLOUT:

-- Years before James Alex Fields was accused of driving his car into a crowd of counterprotesters in Charlottesville "at a high rate of speed," his disabled mother had twice called 911 to report violent behavior and threats from her son. Jack Gillum, Michael E. Miller, Arelis R. Hernández and Steve Hendrix report: "[In 2010, Samantha Bloom] — who uses a wheelchair — locked herself in a bathroom, called 911 and said her son had struck her head and put his hands over her mouth when she told him to stop playing a video game … On another occasion, records show, he brandished a 12-inch knife.

Once, he spit in her face. 'Mom is scared he is going to become violent here,' a dispatcher wrote in a log of the November 2011 call in which [Bloom] requested police help in getting her son to a hospital for assessment. The portrait of a violent teen emerged as Fields was denied bail Monday during his first court appearance in connection with the Charlottesville attack."

Fields is charged with second-degree murder, hit and run, and three counts of malicious wounding: "Prosecutors did not detail the evidence against Fields, who appeared via a [video link]. At his [court appearance], Fields said he could not afford an attorney and was appointed one by the court. Fields, who served a four-month stint in the Army in 2015, worked for about two years as a security guard in Ohio, earning $10.50 an hour and taking home about $650 every two weeks … But the judge informed Fields that he could not be defended by the Charlottesville public defender's office because a relative of someone who works for the office was involved in Saturday's incident. [The] judge did not specify whether that meant the protests or the crash." **His next court date has been set for Aug. 25**, date to consider scheduling of a preliminary hearing.

Protesters tear down Confederate statue in North Carolina

A TURNING POINT IN THE DEBATE OVER CONFEDERATE MEMORIALS:

-- Unintended consequences: James Fields may do for the debate over Confederate statues what Dylann Roof did to the debate over the Confederate flag with his June 2015 massacre at an African American church in Charleston. It has become more politically untenable for ambitious elected officials to defend the memorials because they don't want to get lumped in with the extremists who descended on Charlottesville to keep the Robert E. Lee statue.

-- Protesters in Durham, N.C., last night toppled a Confederate statue that stood in front of a county administrative building. Alex Horton reports: "With a strap tied around the neck of the statue, protesters spat, kicked and gestured at the mangled figure after its base was ripped from the granite block. The statue, which depicts a uniformed and armed Confederate soldier, stood atop an engraved

pedestal that read, 'In memory of 'the boys who wore the gray.' … 'The racism and deadly violence in Charlottesville is unacceptable but there is a better way to remove these monuments,' Gov. Roy Cooper (D) said via Twitter on Monday evening. … Groups at the rally included members of the Triangle People's Assembly, Workers World Party, Industrial Workers of the World, Democratic Socialists of America and the anti-fascist movement[.]"

-- Maryland gubernatorial candidates Ben Jealous, the former president of the NAACP, is calling for the removal of a controversial statue from the State House. Josh Hicks and Ovetta Wiggins report: "[Jealous] called on (Republican Gov. Larry) Hogan to scrap the statue of former U.S. Supreme Court Chief Justice Roger B. Taney, who wrote an 1857 majority opinion that upheld slavery and said blacks born in the country were not U.S. citizens. Jealous criticized Hogan for once describing efforts to eliminate such memorials as 'political correctness run amok,' and he vowed to work for 'complete removal' of Confederate monuments in Maryland if he wins the governorship. **He delivered his remarks in Baltimore, where Mayor Catherine E. Pugh (D) earlier that day announced plans to remove four Confederate statues in that city.**"

-- A Confederate heritage organization has already requested permission to hold a rally next month at Richmond's Robert E. Lee statue. (Richmond Times-Dispatch)

-- The Gainesville Sun's Andrew Caplan tweeted a video of the Florida city removing its "Old Joe" Confederate statue yesterday.

-- "Removing Confederate monuments is complicated in

Tennessee, where lawmakers enacted a law last year that made any push to remove historical markers harder," the AP's Bruce Schreiner and Erik Schelzig report from Nashville. "That didn't stop dozens of protesters from gathering in the Tennessee Capitol on Monday to renew calls to remove a bust of Nathan Bedford Forrest, a Confederate cavalry general and an early leader of the Ku Klux Klan."

-- Thought leader: Chris Long of the Philadelphia Eagles, who is originally from Charlottesville, defended his hometown's decision to remove the Confederate statues: "Look, Charlottesville is taking the right steps to accommodate the sensitivities of people who might feel offended by statues and parks named after Confederate generals. I think that is very reasonable. I don't know what it's like to walk past a statue like that, as a minority. We're doing the right thing." (The Philadelphia Inquirer's Marcus Hayes)

-- For a second consecutive evening, a crowd gathered in front of the White House to protest the Charlottesville marchers. Perry Stein reports: "Protesters trickled in after work on Monday, carrying signs that read 'Black Lives Matter' and 'Make Racists Afraid Again.' The young organizers invited anyone to 'vent or rant,' particularly encouraging people of color and those with disabilities to speak. People discussed their experiences with racism and discrimination, as well as how they want to counter it."

-- Trump returned to Trump Tower last night for the first time since his inauguration, and he received a contentious welcome from New Yorkers. Kayla Epstein reports: "Protesters gathered in the shadow of Trump Tower on Monday evening, filling the sidewalk for several blocks and forming a gauntlet of signs and chants that ran

several blocks down Fifth Avenue. Various organizers and a popular Facebook event had called for people to gather at Trump Tower starting at 5:30 p.m., and law enforcement was ready. Protesters were kept to the sidewalks with metal barricades, and the numbers gradually swelled as the evening progressed. **For hours, protesters chanted 'New York hates you!' and 'Shame, shame, shame!'**… In the end, Trump declined to give New Yorkers a show. Though several blacked-out sport utility vehicles and police on motorcycles drove down Fifth Avenue, drawing jeers from the crowd, the president was nowhere in sight. According to the White House pool report, Trump's motorcade avoided Fifth Avenue and the protesters, whisking the president into his residence without being seen by the crowd."

Israeli Prime Minister Benjamin Netanyahu leads his weekly cabinet meeting in his office in Jerusalem on Sunday. (Dan Balilty/AFP/Getty Images)

A TEST OF CHARACTER:

-- "While Jewish leaders in the United States expressed shock at the events in Charlottesville and criticized President Trump's response to the violence as halfhearted, Israeli Prime Minister Benjamin Netanyahu, a close ally of Trump's, *remained notably silent*," Isaac Stanley-Becker and James McAuley report. "Meanwhile, Yad Vashem, Israel's Holocaust memorial in Jerusalem, warned in a statement, "The anti-Jewish ideology of the Nazis was a precursor to the eventual murderous policy and extermination of six million Jews."

-- The Web registration service GoDaddy's decision to delist the neo-Nazi site Daily Stormer could have far-reaching implications on how the tech industry treats similar groups. Elizabeth Dwoskin and Tracy Jan report: "Although Silicon Valley companies have long resisted calls to police the content they host, in the current political climate they are under more pressure than ever to take a stand — and appear to be bowing at least to some of it. … **The Daily Stormer then transferred its registration to Google, prompting an immediate outcry and a swift response from the Silicon Valley giant, which cut off the white supremacy site, citing policy violations.** … Liberal activists and even some conservatives praised GoDaddy's decision in the wake of Saturday's attack, saying the move represented a shift by tech corporations to take more responsibility. … Other experts said the move to regulate speech puts Silicon Valley in an even deeper bind that is far from resolved. Technology companies are becoming the reluctant gatekeepers and facilitators of political expression for much of the world."

White nationalist Richard Spencer and his supporters clash with Virginia State Police in Lee Park after the "United the Right" rally was declared an unlawful gathering on Saturday in Charlottesville. (Chip Somodevilla/Getty Images)

FINGER POINTING:

-- Organizers of Saturday's rally are now blaming Charlottesville authorities for the violence that played out. Politico Magazine's Ben Schreckinger writes: "Before this weekend's events, the alt-right had been a bastion of pro-police sentiment — especially when it came to police shootings of unarmed black victims and clashes with the Black Lives Matter movement. Now, the alt-right's leaders are grappling with the realities of being identifiable members of an unpopular minority group in public. 'I have never felt like the government or police were against me,' said white nationalist leader Richard Spencer[.] … [Rally organizer Jason] Kessler claimed the city's police failed to follow through on plans for protecting the rally that they had discussed with

him. He also said that during planning for the rally, one police captain divulged to him that authorities were communicating about the event using their personal emails to avoid Freedom of Information Act requests."

-- The Charlottesville police chief took issue with Kessler's account. Arelis R. Hernández reports: "[Police Chief Al S. Thomas Jr.] said organizers of the Unite the Right rally did not follow what the chief said had been an agreed-upon plan that involved controlling the demonstrators' access to Emancipation Park through a rear entrance. When rally attendees started coming in from all sides Saturday morning, the chief said, his officers had to alter their plans and transition into protective gear from the street uniforms they were wearing. Protesters and counterprotesters converged in some pitched battles in the streets before Charlottesville police, backed by Virginia State Police, quelled the fighting. … Thomas dismissed reports that officers were discouraged from making arrests. 'That is simply not true,' he said. … Thomas said more than 250 calls for service came in, including from people injured when a driver rammed into a crowd of antiracism protesters[.]"

-- Joe Heim compiled a detailed timeline of the violence in Charlottesville, beginning the night before the rally: "A little after 8 p.m., Richard Spencer … texted a reporter. 'I'd be near campus tonight, if I were you,' he wrote. 'After 9 p.m. Nameless field.' The rumor was true. The torchlight parade was on. It would prove to be the catalyst for a horrific 24 hours in this usually quiet college town that would come to be seen by the nation and world as a day of racial rage, hate, violence and death."

A photograph of Charlottesville victim Heather Heyer is seen among flowers left at the scene of the car attack that killed her. (Justin Ide/Reuters)

A COMMUNITY TRIES TO HEAL:

-- The University of Virginia is scheduled to begin classes next week, but students are concerned about their return to campus after Saturday's events. Susan Svrluga, T. Rees Shapiro and Sarah Larimer report: "[S]ome students are scared to go back. Some, like Wes Gobar, president of the Black Student Alliance, are determined to reclaim the campus as a place welcoming to all. … U-Va. has a complicated history with race. … Its founder, Thomas Jefferson, envisioned U-Va. as a school of the Enlightenment, believing the nascent American democracy would fail without an educated citizenry. But Jefferson owned slaves. … Two years ago, after a black student was bloodied by police, students demanded change. The university addressed many of their concerns, Gobar said. But ugly incidents

continued last year, such as a racial slur found written on a door."

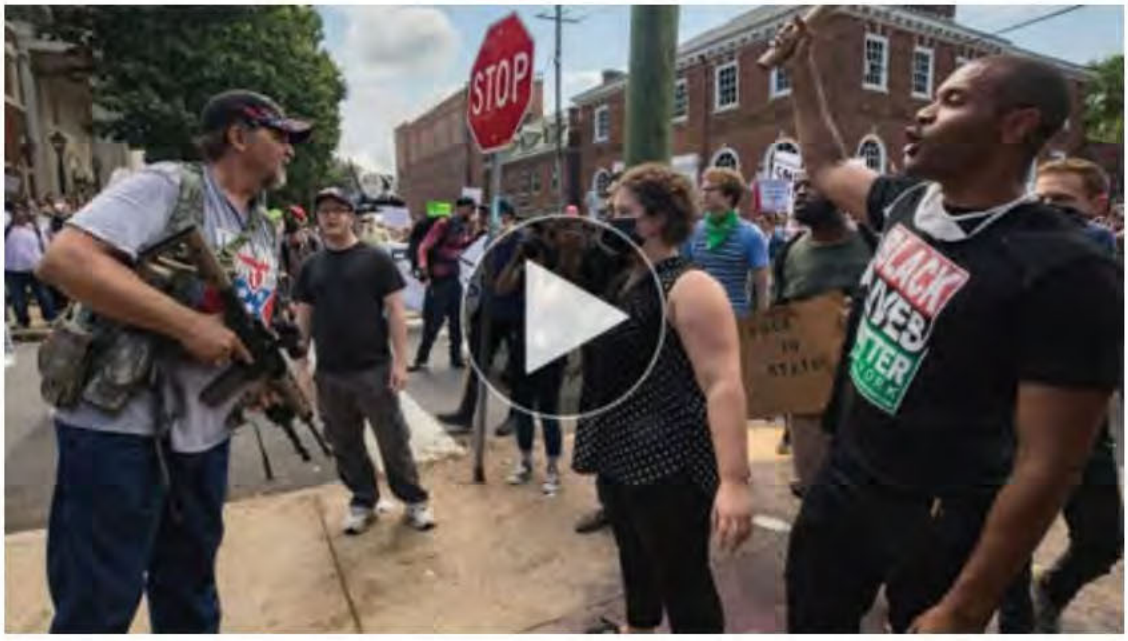
White supremacists rally in Charlottesville on Friday. (Evelyn Hockstein for The Washington Post)

A WINDOW INTO RESURGENT RACISM:

-- Bigger picture: "Why are people still racist? What science says about America's race problem," by William Wan and Sarah Kaplan: "Many Americans responded to this weekend's violence in Charlottesville with disbelieving horror. How could this happen in America, in 2017? "This is not who we are," said Virginia Sen. Tim Kaine (D). And yet, this *is* who we are. Amid our modern clashes, researchers in psychology, sociology and neurology have been studying the roots of racism. … 'In some ways, it's super simple. People learn to be whatever their society and culture teaches them. We often assume that it takes parents actively teaching their kids, for

them to be racist. The truth is that unless parents actively teach kids not to be racists, they will be,' said Jennifer Richeson, a Yale University social psychologist."

-- The national attention that Charlottesville attracted appears to have energized white supremacist groups. The New York Times's Alan Feuer reports: "Some were making arrangements to appear at future marches. Some were planning to run for public office. Others, taking a cue from the Charlottesville event — a protest, nominally, of the removal of a Confederate-era statue — were organizing efforts to preserve white heritage symbols in their home regions. … The far right, which has returned to prominence in the past year or so, has always been an amalgam of factions and causes, some with pro-Confederate or neo-Nazi leanings, some opposed to political correctness or feminism. But the Charlottesville event, the largest of its kind in recent years, exposed the pre-existing fault lines in the movement."



Why white supremacists chose liberal Charlottesville to protest

-- A Twitter campaign to name attendees of the Unite the Right rally has already forced two universities to come out with condemnations of white supremacy. Avi Selk reports: "[T]he Twitter user @YesYoureRacist asked for help identifying 'Nazis marching in Charlottesville.' The anonymous user linked to copious photos and videos of the rally — swastikas and crowds of shouting white men. Within minutes, names began to pour in, and consequences began to unfurl in home towns across the country. The first target was a man spotted in a crowd of tiki-torch-wielding marchers, whom Twitter users identified as Cole White, a cook at a hot dog restaurant in Berkeley, Calif. By Saturday evening, the restaurant had posted signs in its windows and sent a statement to The Washington Post — the cook was no longer employed."

-- But, but, but: There have been instances of Twitter users misidentifying rally attendees. The New York Times's Daniel Victor reports: "A man at the rally had been photographed wearing an 'Arkansas Engineering' shirt, and the amateur investigators found a photo of [Kyle] Quinn that looked somewhat similar. They were both bearded and had similar builds. By internet frenzy standards, that was proof enough. … Countless people [Mr. Quinn] had never met demanded he lose his job, accused him of racism and posted his home address on social networks. … For someone whose only sin was a passing resemblance to someone else … Mr. Quinn bore the direct consequences of the reckless spread of misinformation in breaking news, a common ritual in modern news events."

In this photo taken Saturday, James Alex Fields Jr., second from left, holds a black shield in Charlottesville during a white supremacist rally. (Alan Goffinski/AP)

WHY WERE THE WARNINGS OF LAW ENFORCEMENT IGNORED?

-- "House Democrats are calling on their GOP colleagues to hold congressional hearings on the rise of white supremacy and domestic terrorism," Politico's Rachael Bade reports: "Democrats on the House Homeland Security Committee are asking panel Chairman Michael McCaul (R-Texas) to examine racist fringe groups, including those that organized Saturday's violent protest ... Homeland Democrats have already called for such hearings twice this year to no avail. … Democrats are starting to grow impatient with their GOP counterparts after Saturday. One Democratic source on the Homeland panel said Republicans for some time have been receiving law enforcement notices saying white supremacist extremism pose serious

threats of lethal violence."

-- Foreign Policy's Jana Winter first reported on one of these notices: "**The FBI and the Department of Homeland Security in May warned that white supremacist groups had already carried out more attacks than any other domestic extremist group over the past 16 years and were likely to carry out more attacks over the next year[.]** … The report, dated May 10, says the FBI and DHS believe that members of the white supremacist movement 'likely will continue to pose a threat of lethal violence over the next year.' … The FBI … has already concluded that white supremacists, including neo-Nazi supporters and members of the Ku Klux Klan, are in fact responsible for the lion's share of violent attacks among domestic extremist groups. White supremacists 'were responsible for 49 homicides in 26 attacks from 2000 to 2016 … more than any other domestic extremist movement,' reads the joint intelligence bulletin."

Senate candidate Roy Moore holds a press conference in Montgomery, Ala. (Mickey Welsh/Montgomery Advertiser/AP)

THE REPUBLICAN CIVIL WAR:

-- As Trump received widespread criticism for his initial response to the Charlottesville violence, the three top GOP contenders in today's Alabama Senate primary went after Trump's critics

instead. David Weigel reports: "In interviews over the race's final hours ahead of Tuesday's vote, Sen. Luther Strange (R-Ala.) and Rep. Mo Brooks (R-Ala.) said Trump's controversial Saturday reaction to the white nationalist rally had been sufficient. … There was no evidence that the events out of Charlottesville would affect the primary, with polls showing Strange and Brooks fighting Roy Moore, a former state Supreme Court justice, for two runoff berths. … In a Monday night speech to gun owners in Birmingham, Moore criticized the protests of Confederate monuments that followed the attack, and asked whether protesters would one day take down statues of George Washington because he owned slaves. … In interviews at several low-key Republican events, primary voters said they were horrified by what happened in Charlottesville but differed on what else Trump could have said."

-- Although all three Republican candidates have embraced the president, Trump has tweeted his endorsement of Strange multiple times and recorded a robo-call for him that went out yesterday. (Politico's Daniel Strauss)

-- The president even promoted a Strange TV hit this morning:

-- If Strange can't make it to the runoff, it could have implications

for the effectiveness of a Trump endorsement. Politico's Strauss and Seung Min Kim report: "Strange is struggling even with the support of the president and the GOP establishment. Assuming he makes it to the runoff, though, the strength of his second-place finish will set expectations for how winnable the election is — or not. If Strange barely makes it into the runoff — or comes in third — it will call into question the influence of Trump's support in a reliably Republican state. If Strange exceeds the low 20-percent support he's gotten in recent polls, he'll still face a tough battle against Moore but won't have to field a wave of questions about his ultimate viability or the power of Trump's endorsement."

-- Trump's endorsement of Strange, the establishment candidate, struck many Republicans as odd and many die-hard Trump supporters as hypocritical. The Atlantic's Molly Ball writes: "Strange himself was surprised—he nearly drove off the road when Trump called him from the White House on Tuesday afternoon, he said. … The usual slavishly pro-Trump conservative media were enraged. Mark Levin, the conservative radio host, called Trump's tweet 'a stab in the back to every conservative in this country[.]' … In Alabama, the feud is playing out as a test of conservative voters' loyalties in the Trump era—one of the first referendums on Trump's ability to command his own partisans, and by extension to shape the GOP that he leads. But it's a test complicated by the mixed messages Trump himself has sent to his supporters."

-- In another sign of how hard it is for Republican incumbents to distance themselves from Trump, Nevada Sen. Dean Heller — who is up for reelection next year — said yesterday for the first

time that he voted for the president last November. The Nevada Independent's Riley Snyder reports: "The acknowledgment follows nearly a year and a half of criticism and cautious public statements made by Heller about Trump throughout the 2016 election. Most notably, **he told reporters in October 2016 that he was 99 percent certain he would oppose the Republican nominee for president. Heller also donated campaign donations from Trump to charity in 2015**, and said during the campaign he was 'vehemently opposed' to Trump, whom he described as a man that 'denigrates human beings.' But unlike several of his Senate colleagues, Heller never fully closed the door on supporting Trump, and had kept his presidential vote a secret until now."

-- The Indiana Senate primary fight between GOP Reps. Todd Rokita and Luke Messer is already getting ugly. Politico's Maggie Severns and Kevin Robillard report: "Their campaign didn't officially get underway until last week, but Messer, 48, has already accused Rokita of attacking his wife and 'spreading lies' about his record. Rokita, 47, has questioned his rival's mental health, calling Messer 'unhinged' and a 'ticking time bomb.' With 10 Democratic senators from states that President Donald Trump carried up for reelection in 2018, the scale of opportunity for Republican gains has already spawned several no-holds-barred primaries. But few states are as ripe for a Republican challenge as Indiana — where Democratic Sen. Joe Donnelly is unusually vulnerable, running in a state Trump carried by 19 points — and no primary has gotten so nasty, so quickly."

-- Today's special election in Utah to fill Jason Chaffetz's House seat has attracted hundreds of thousands of dollars in

fundraising, but it's received little national attention. Mike DeBonis reports: "That's largely because the seat is of limited utility as a bellwether for President Trump. Unlike other House races decided this year, Democrats are not seriously contesting the heavily GOP district, and unlike in Tuesday's Senate primary in Alabama, the Republican candidates' postures toward Trump have not been a crucial factor. Instead, Tuesday's GOP primary in Utah is set to be decided along more familiar lines of ideology and sensibility in a state whose Republican voters have long had an uneasy relationship with Trump. … The front-runner for the Republican nomination, according to published polls, is Provo Mayor John Curtis, who has built a pro-business record during 6½ years in office[.]"

SOCIAL MEDIA SPEED READ:

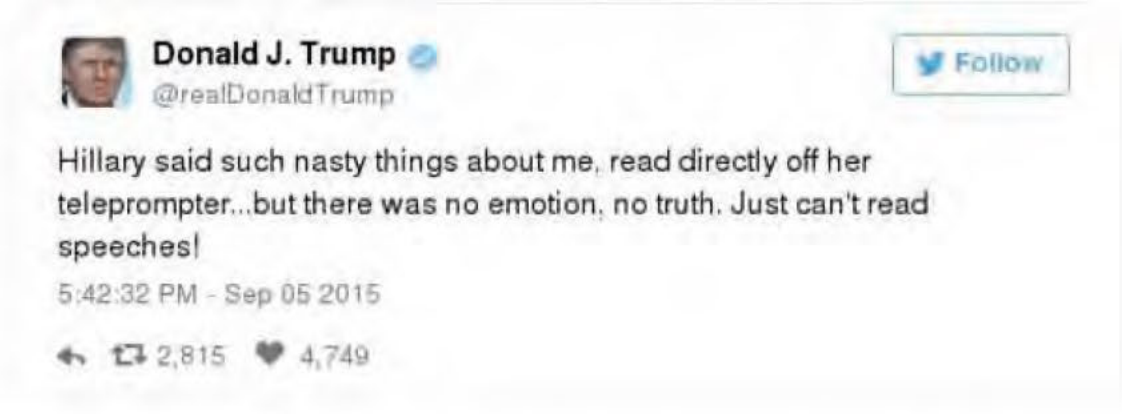
Some viewers questioned the sincerity of the president's remarks. From the former director of the Office of Government Ethics:

From a House Democrat:

From the former secretary of state:

From the MSNBC host:

It reminded some of this Trump tweet from 2015:



But Trump claimed that he had not been properly credited for his Monday statement:

Trump's son also defended his statement:

From a writer for the New Yorker:

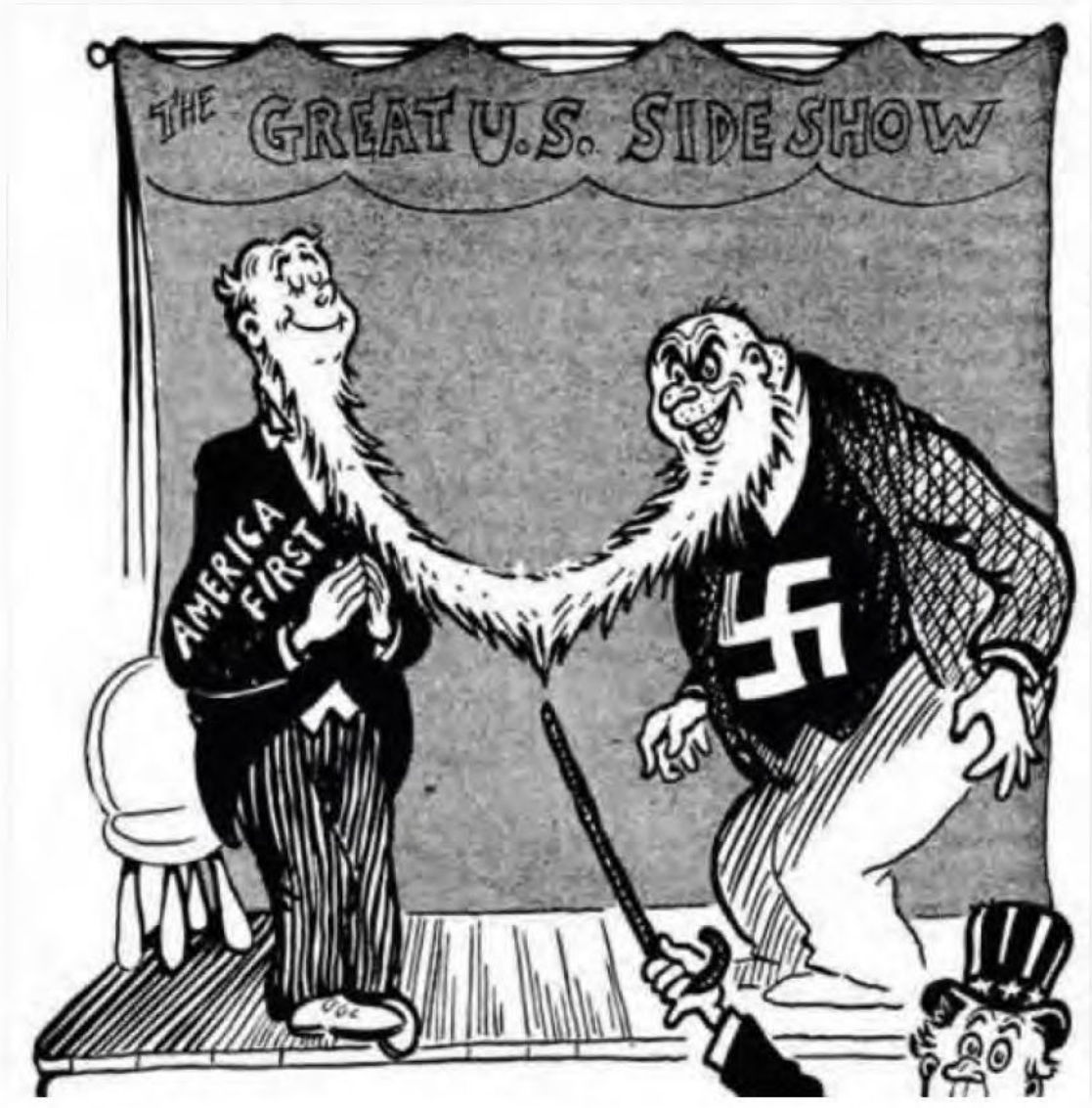
From the Atlantic editor and former George W. Bush speechwriter:

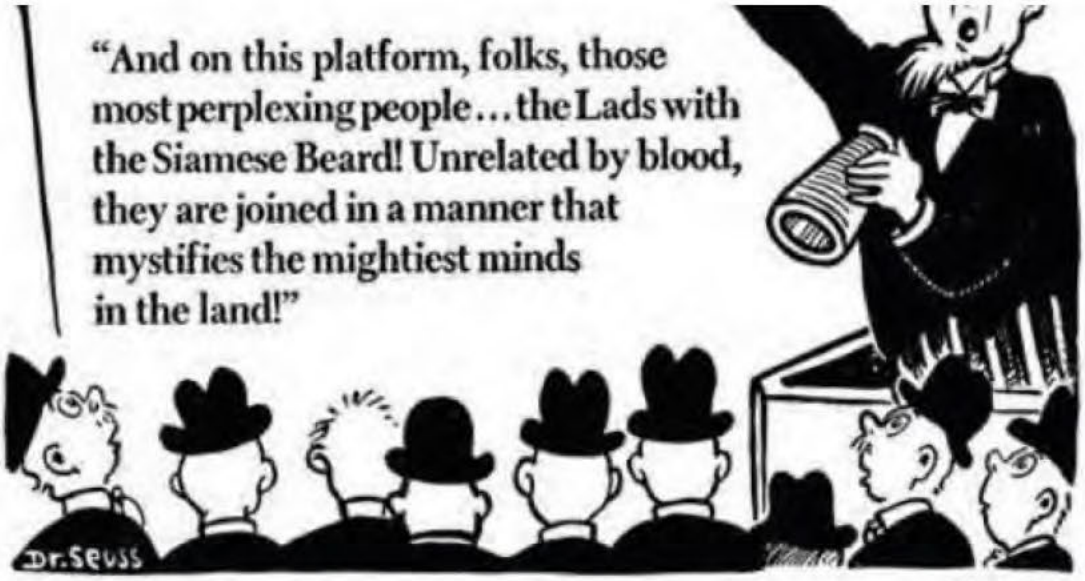
Trump also retweeted this from an alt-right conspiracy theorist:

Reality check:

Perspective from a Politico reporter:

Dr. Seuss's World War II-era cartoons were recirculated:





NCI
@nancaroling

Follow

by Dr. Seuss in 1941 pic.twitter.com/c3sXVQAZZi

8:39:37 PM - Aug 12 2017

43,385 72,589

On Trump's approval rating hitting a new low:

Benjy Sarlin
@BenjySarlin

Follow

"Trump hits 34%" doesn't convey the full story. It's "Trump somehow hits 34% without a recession, a military disaster, a gas crisis, etc"

1:47:10 PM - Aug 14 2017

6,021 16,467

Metaphor alert, via the Boston Globe's Annie Linskey:

GOOD READS FROM ELSEWHERE:

-- New York Times, "How a Conservative TV Giant Is Ridding Itself of Regulation," by Cecilia Kang, Eric Lipton and Sydney Ember: "The invitation from David D. Smith, the chairman of Sinclair, went to Ajit V. Pai, a commissioner on the Federal Communications Commission who was about to be named the broadcast industry's chief regulator. Mr. Smith wanted Mr. Pai to ease up on efforts under President Barack Obama to crack down on media consolidation, which were threatening Sinclair's ambitions to grow even bigger. Mr. Smith

did not have to wait long. Within days of their meeting, Mr. Pai was named chairman of the F.C.C. And during his first 10 days on the job, he relaxed a restriction on television stations' sharing of advertising revenue and other resources[.] … Since becoming chairman in January, Mr. Pai has undertaken a deregulatory blitz, enacting or proposing a wish list of fundamental policy changes advocated by Mr. Smith and his company."

-- Politico Magazine, "Cecile Richards to Democrats: Stand Firm on Abortion," by Edward-Isaac Dovere: "Democrats like [Democratic Congressional Campaign Committee chair Rep. Ben Ray Luján] argue that to win back the conservative areas they've lost, the party will need to be flexible and let candidates break with liberal orthodoxy—including on hot-button national issues like abortion—in order to win. To Richards, that isn't just wrong on principle, it's dense on politics."

HOT ON THE LEFT

"Former Va. attorney general Cuccinelli catches flak for telling Symone Sanders to 'shut up' on CNN," from Laura Vozzella: "Ken Cuccinelli II on Monday found himself trending on Twitter, and not in a good way, after

HOT ON THE RIGHT

"'Kid Rock' May Be Ineligible for Michigan Ballot" from Roll Call: "Robert Ritchie may end up challenging Democratic Sen. Debbie Stabenow in Michigan next year, but his stage name, Kid Rock, may not be allowed to appear on

telling CNN political commentator Symone Sanders to 'shut up' on TV. The remark came during a heated discussion about President Trump's response to ... Charlottesville. Sanders was critical of Trump … Cuccinelli, a Republican though hardly a Trump cheerleader, took issue with efforts to 'smear' the administration."

the ballot. Kid Rock is a household name to Americans under the age of 50, and voters might be attracted to vote for him, as a middle finger to the political establishment. ... If Ritchie were to submit enough valid signatures to make the ballot and indicate that he wanted to be listed as 'Kid Rock,' the Michigan Bureau of Elections staff would have to research the question of whether that name would be allowed. At an initial glance, Ritchie's stage name isn't an obviously acceptable one under the state's criteria."

Sanders spoke out on Twitter about the incident:

DAYBOOK:

Trump, waking up at Trump Tower for the first time since he became president, has an infrastructure discussion today, followed by the signing of an executive order on "establishing discipline and accountability" in the approval process for infrastructure projects.

Pence is in Buenos Aires. He will meet with Argentina's president and vice president, as well as participate in a joint news conference, before meeting U.S. Embassy staffers.

QUOTE OF THE DAY:

"The scenes at the right-wing extremist march were absolutely repulsive — naked racism, anti-Semitism and hate in their most evil form were on display," a spokesman for German Chancellor Angela Merkel, Steffen Seibert, told reporters before Trump's afternoon remarks from the White House. He added that such images and chants are "disgusting" and "diametrically opposed to the political goals of the chancellor and the entire German government." (AFP)

NEWS YOU CAN USE IF YOU LIVE IN D.C.:

-- It will be an ugly day in the District. The Capital Weather Gang forecasts: "Cloudy with scattered showers and maybe a thunderstorm. Highs move up a bit more than Monday into the middle-80s range, but if showers are more widespread around midday, we may struggle again to get much above 80 or the low 80s. We stay moderately humid as well."

-- A man with a tattoo that included a swastika was escorted out of the Rumsey Aquatic Center near Eastern Market by D.C. police after other pool attendees complained about his presence, and he became belligerent. (Peter Hermann)

-- Teachers in D.C. Public Schools would receive salary increases of 9 percent over three years under a proposal unveiled Monday to end a labor impasse that has lasted since their last contract expired in 2012. (Donna St. George, Peter Jamison and Emma Brown)

-- The Wizards released their 2017-2018 schedule yesterday. (Aaron Torres)

VIDEOS OF THE DAY:

Seth Meyers unequivocally referred to the Charlottesville violence as "yet another terror attack on American soil":

Seth Meyers' Statement on Charlottesville

Jimmy Fallon cited his "responsibility to stand up against intolerance and extremism as a human being":

Jimmy Fallon Addresses the Events in Charlottesville

ABC's Shonda Rhimes is moving her talents to Netflix:

What Shonda Rhimes and her TV heroines know about being a boss

You received this email because you signed up for The Daily 202 or because it is included in your subscription. For additional free newsletters or to manage your newsletters, **click here**.

We respect your **privacy** . If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, **click here**. **Contact us** for help.

©2017 The Washington Post | 1301 K St NW, Washington DC 20071

The Daily 202_ Trump has failed to offer moral ....pdf

From: The Washington Post

To: Taylor, Will (OPATTY)

Subject: The Daily 202: Trump has failed to offer moral leadership after Charlottesville. These 10 people are filling the void.
Date: Thursday, August 17, 2017 7:13:50 AM

If you're having trouble reading this, click here.

PowerPost

The Daily 202

Morning intelligence for leaders

Share:

Listen to The Big Idea

Trump has failed to offer moral leadership after Charlottesville. These 10 people are filling the void.

Hundreds marched peacefully last night as part of a candlelight vigil in Charlottesville. (Salwan Georges/The Washington Post)

BY JAMES HOHMANN
with Breanne Deppisch and Joanie Greve

THE BIG IDEA: It's not enumerated in Article Two of the Constitution, but consoler in chief has always been one of the most important responsibilities of the American president.

Playing this part has only become more important in the television age, and Donald Trump — who became president partially because of his mastery of the reality TV medium — has utterly failed to offer moral leadership during the biggest test yet of his seven-month presidency.

Think about Barack Obama's 2015 eulogy when a white supremacist massacred African American churchgoers in Charleston, his 2011 speech after Gabby Giffords was shot in Tucson

or his tearful comments after kids were gunned down at a Connecticut elementary school in 2012.

Bill Clinton encouraged Americans to "overcome evil with good" after 168 people were killed at the Oklahoma City federal building in 1995. "Let us teach our children that the God of comfort is also the God of righteousness: Those who trouble their own house will inherit the wind," he said. "Justice will prevail."

After millions of schoolkids saw the Challenger explode in 1986, Ronald Reagan spoke straight to camera from the Oval Office. "I know it is hard to understand, but sometimes painful things like this happen. It's all part of the process of exploration and discovery," he said. "The future doesn't belong to the fainthearted; it belongs to the brave."

Think back to the way Lyndon Johnson and then, a decade later, Gerald Ford worked to rehabilitate the country in the days after they inherited the most powerful job on Earth. As John F. Kennedy said in Germany a few months before he was assassinated, "Dante once said that the hottest places in hell are reserved for those who in a period of moral crisis maintain their neutrality."

9/11: George W. Bush visits Ground Zero

-- George W. Bush really set the standard after Sept. 11, 2001. He projected steely calm on the night of the attacks, addressing the nation from the White House when his security team wanted him to stay away from Washington. He spoke out poignantly against targeting Muslims in anger. But his best moment came when he visited the World Trade Center site on Sept. 14. Workers at Ground Zero were yelling that they couldn't hear him. Holding a bullhorn, Bush replied: "I can hear you. The rest of the world hears you. And the people … who knocked these buildings down will hear all of us soon!" Recalling that moment still gives us chills 16 years later.

Three days after Charlottesville, Trump also flew to New York and made an off-the-cuff statement about a national tragedy. But instead of rallying the country behind a common goal, this president

infected the wound. He offered a window into the depths of his soul, and his false moral equivalency is now generating fresh scrutiny of his checkered record on race.

Asked if he puts neo-Nazis on the same "moral plane" as liberal counterprotesters, Trump replied: "I'm not putting anybody on a moral plane. What I'm saying is this. You had a group on one side and you had a group on the other, and they came at each other with clubs and it was vicious and it was horrible."

As Trump continues to dig in his heels and becomes increasingly isolated, Bush yesterday released a joint statement with his father, George H.W. Bush, from Kennebunkport. "America must always reject racial bigotry, anti-Semitism, and hatred in all forms," they said. "As we pray for Charlottesville, we are reminded of the fundamental truths recorded by that city's most prominent citizen in the Declaration of Independence: we are all created equal and endowed by our Creator with unalienable rights. We know these truths to be everlasting because we have seen the decency and greatness of our country."

Trump's remarks on Charlottesville, in less than three minutes

Rich Lowry, the editor of the conservative magazine National Review, writes in a new column: "Over the past few days, **Trump hasn't spoken as the leader of the country, or even leader of one party, but as a leader of an inflamed faction**. In general, Trump's news conference was a tour de force of whataboutism, one of the most important rhetorical tools of the pro-Trump internet. The 'alt-right' marched on Charlottesville? Well, what about the 'alt-left'? Robert E. Lee's statue is coming down. Well, what about George Washington? … [They] were used, as whataboutism so often is, as cover for Trump's failings and to obscure rather than sharpen distinctions. **Charlottesville highlights how the problem with Trump is not the crudity of his expression.** This, at times, can be part of his charm and makes him a distinctively powerful communicator. **It's the crudity of thought and feeling.**"

Journalist Howard Fineman sees something even more sinister. "Having risen to power by dividing the country, his party leadership

and even, at times, his own campaign team, [Trump's] aim now is to divide or discredit any institution, tradition or group in his way," Fineman argues on HuffPost. "**Trump seems perfectly willing to destroy the country to maintain his own power.** … The goal, as always with Trump, is to win amid the chaos he sows, to be the last man standing in rubble. And 'winning' is rapidly being reduced to the raw, basic terms he prefers: brute survival. With a record-setting low approval rating, world crises everywhere and a special counsel on his tail, the main victory he can hope for is staying in office. It's not only an emotional imperative for Trump, it's a deliberate — and thus far successful — strategy."

-- Trump's continuing unwillingness and inability to console the country has created a huge void. Nature abhors a vacuum, and the American people yearn for someone who can powerfully restate our core principles in the face of the wickedness and hatred we saw last weekend. With Trump's failure to lead, others are stepping up to say what Trump will not — to clarify that what we saw in Charlottesville is not who we are.

Besides the Bushes, here are nine other people or entities who have shown this week that you don't need to be president to offer moral leadership for the country:

Heather Heyer's mother: You didn't shut her up, you just magnified her.

Susan Bro:

The mother of Heather Heyer gave an extraordinarily touching eulogy about her slain daughter during a memorial service in Charlottesville yesterday.

“They tried to kill my child to shut her up, but guess what, you just magnified her,” said Bro, sparking a standing ovation that lasted nearly a minute and a half.

More than that, it was a call to action for the 32-year-old’s life to not be lost in vain. “I have aged 10 years in the last week,” Bro said. After struggling up the stairs to the podium, she urged everyone watching to fight against intolerance “as Heather would do.”

“I’d rather have my child, but by golly if I got to give her up, we’re going to make it count,” she said.

“Moments later, as the service ended, Bro implored a protester in the

audience to stop her critical comments about President Trump by asking the woman to be respectful of her daughter. The woman, who called Heyer a hero, complied, and there were no other outbursts," Ellie Silverman, Arelis R. Hernández and Steve Hendrix report from Charlottesville. "In her remarks at the service, Bro described a determined, argumentative and passionate woman who made an impact on her community despite never going to college. She implored those who wished to honor Heyer to pay attention to social events in the way that her daughter had taught her and others to do. Citing a Facebook post of Heyer's, Bro said: 'If you're not outraged, you're not paying attention.'"

Shulkin quotes German pastor warning about Nazis

David Shulkin:

The Veterans Affairs secretary, a holdover from the Obama administration, said yesterday that he is "outraged" by what he saw from neo-Nazis and white supremacists in Charlottesville. "Shulkin, who is Jewish, spoke to reporters and said that although he serves

Trump, he does not speak for him," Dan Lamothe reports.

"I do feel like as an American and as a member of the Cabinet, that I can speak for my own personal opinions on this, and I am outraged by the behavior that I have seen with the Nazis and the white supremacists," Shulkin said. "I am outraged on the use of violence — to be able to put one's ideals, and force them upon others."

Shulkin said it is "a dishonor to our country's veterans for the Nazis and the white supremacists to go unchallenged, and that we all have to speak up about this as Americans." He then quoted the famous poem by Protestant pastor Martin Niemöller that begins, "First they came for the Socialists."

"I strongly believe that, and I believe that history teaches us that if we don't do that, we're going to get ourselves down a road that isn't consistent with what America stands for," Shulkin said. He added that "staying silent on these issues is not acceptable," and that he will continue to speak up for things that he believes are important.

Chairman of the Joint Chiefs of Staff Joseph Dunford Jr. speaks to reporters at the Pentagon. (Win McNamee/Getty Images)

The Joint Chiefs of Staff:

The commanders of each service branch of the military, who normally steer clear of anything that has even a whiff of politics, have each spoken out strongly against racism this week.

The chief of Naval Operations:

The Commandant of the Marine Corps:

The Army chief of staff:

The Air Force chief of staff:

Gen. Dave Goldfein
@GenDaveGoldfein

Follow

I stand with my fellow service chiefs in saying we're always stronger together-it's who we are as #Airmen pic.twitter.com/9XxOry93nf

10:01:52 AM - Aug 16 2017

3,548 7,917

The chief of the National Guard Bureau:

Gen. Joseph Lengyel
@ChiefNGB

Follow

I stand with my fellow Joint Chiefs in condemning racism, extremism & hatred. Our diversity is our strength. #NationalGuard

11:27:43 AM - Aug 16 2017

5,245 13,812

Jared Kushner and Ivanka Trump stand together as John Kelly is sworn in as White House Chief of Staff on July 31. (Joshua Roberts/Reuters)

Rabbi Emeritus Haskel Lookstein:

The rabbi who oversaw Ivanka Trump's conversion to Judaism sent a letter last night to his congregation condemning Trump's statements about Charlottesville.

Writing along with two other rabbis, he said: "We are appalled by this resurgence of bigotry and anti-Semitism, and the renewed vigor of the neo-Nazis, KKK, and alt-right. … While we avoid politics, we are deeply troubled by the moral equivalency and equivocation President Trump has offered in his response to this act of violence."

"Lookstein was close enough to the Trump family that last year he was

invited to speak to the Republican National Convention," Yashar Ali writes for New York Magazine. "He initially planned to give an invocation but later dropped out after outcry from the Modern Orthodox community and other groups."

Sen. Tim Scott, right, watches President Trump speak at a White House lunch last month. (Jabin Botsford/The Washington Post)

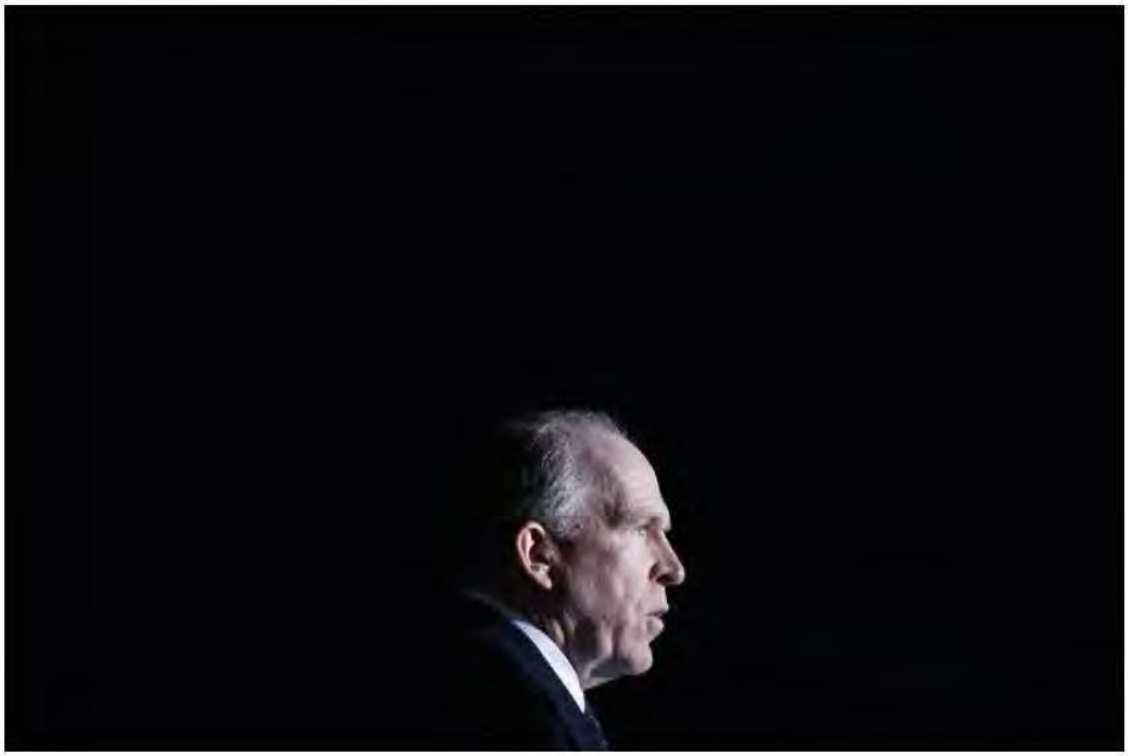
Sen. Tim Scott (R-S.C.):

The Senate's lone African American Republican said history has shown the nation typically sees the president as a part of the nation's moral high ground. From the Charleston Post and Courier's write-up of an interview with him yesterday: "Because of that, voters typically give deference to the objectives of the administration, he said. But he added that Trump's answers equalizing the roles of the supremacist groups and the protesters have left the president weakened on the

moral leadership front. ‘There is no doubt the last couple of days complicates this administration's moral authority,’ Scott said …

“Scott said the issue is simple: ‘We do not support in any way, shape or form any group that thinks they are superior, or any folks who are looking to divide this nation into smaller groups.’ … Scott further pointed out that Trump's rhetoric has not been clear enough on the denouncement of hate groups. That includes trying to equate protesters ‘with the extreme elements who are responsible for the death of an American citizen.’ By drawing a ‘moral equivalency’ between the white supremacists and counter-protesters, Scott said, ‘I think you are either missing four centuries of history in this nation or you are trying to make something what it’s not.’”

“When the administration speaks in a way that seems to cause confusion in ways I vehemently disagree, I’m going to speak out against the words of the administration,” Scott added.



John Brennan speaks during a 2011 memorial service. (Brendan Smialowski/Getty Images)

John Brennan:

The former CIA director wrote a letter to Wolf Blitzer, which he allowed to be published, after the CNN anchor noted on his show after Trump's news conference that he had lost all four grandparents to the evils of Nazism.

"I just want to extend my sympathies not only for their deaths but also to you and your family — and countless others — for the pain inflicted today by the despicable words of Donald Trump," Brennan wrote. "Mr. Trump's words, and the beliefs they reflect, are a national disgrace, and all Americans of conscience need to repudiate his ugly and dangerous comments. If allowed to continue along this senseless path, Mr. Trump will do lasting harm to American society and to our standing in the world. By his words and his actions, Mr. Trump is putting our national security and our collective futures at grave risk."

United Nation Secretary-General Antonio Guterres speaks during a press conference. (Efrem Lukatsky/AP)

António Guterres:

The secretary general of the United Nations issued a veiled but unmistakable criticism of Trump during a news conference yesterday, saying that racism is "poisoning our societies" and imploring all leaders to reject intolerance. "The U.N. chief was asked about Trump's remarks in response to the racially charged violence in Charlottesville … and while Guterres said he does not comment on individual leaders, his criticism of Trump was nonetheless plain," Anne Gearan reports.

"Racism, xenophobia, anti-Semitism or Islamophobia are … poisoning

our societies," Guterres said. "And it is absolutely essential for us all to stand up against them everywhere and every time. … To condemn all forms of irrationality that undermine those values is essential, at the present moment, be it in the United States or everywhere else in the world. Unfortunately, these demons are appearing a little bit everywhere."

President Trump listens as Ken Frazier, chairman and chief executive of Merck, speaks to the press last month. (Andrew Harrer/Bloomberg News)

Kenneth C. Frazier:

It took courage for Merck's chief executive to resign from Trump's manufacturing council on Monday. In so doing, he gave cover for others to follow. In a statement, one of the few African American CEOs in the Fortune 500 said he had to step down as "a matter of personal conscience."

“America's leaders must honor our fundamental values by clearly rejecting expressions of hatred, bigotry and group supremacy, which run counter to the American ideal that all people are created equal,” he said. “I feel a responsibility to take a stand against intolerance and extremism. … Our country's strength stems from its diversity and the contributions made by men and women of different faiths, races, sexual orientations and political beliefs.”

Other chief executives who have spoken out against Trump have seen their stocks fall when Trump inevitably retaliated, so it was a risky move. Indeed, with an hour after Frazier’s statement was first issued, Trump attacked Merck on Twitter for its “RIPOFF DRUG PRICES!” He followed up that night with another criticism of the company.

VanJones - We Rise Tour (Nashville) Interview with Constance

Constance:

Van Jones interviewed an activist named Constance in Nashville yesterday as part of his "We Rise Against Hate" tour. She was injured in Charlottesville on Saturday and is afraid to give her last name for fear of retaliation.

"The hate that I saw on Saturday is something that I've never ever seen before, or that I have felt before," Constance said. "One of [the Nazis] told me 'I really wish I could lynch you' and blew me a kiss."

Recounting what it was like to be hit by the car when it plowed into the crowd, she said: "I'll never forget the sounds … First I heard the car hitting people. Bam, bam, bam, bam, and then I heard the screaming. I don't remember getting struck, but I remember landing on the ground. And I remember hearing people saying get up, get up, he's putting it in reverse."

Jones told her, "You would be forgiven for saying 'I've done my part for justice and I'm going to let someone else go and carry this fight forward.' Is that your view?"

"Absolutely not," she replied. "I love this country too much."

Listen to James's quick summary of today's Big Idea and the headlines you need to know to start your day:

Play audio brief

Subscribe to **The Daily 202's Big Idea** on
Amazon Echo, Google Home, Apple Podcasts and other podcast players.

Welcome to the Daily 202, **PowerPost's** morning briefing for decision-makers.
Sign up to receive the newsletter.

Nora Neus
@noraneus

Follow

I've never seen the UVA lawn like this. And this is only a quarter of the people here. Hundreds more marching. pic.twitter.com/t0ChLe1BuC

9:35:49 PM - Aug 16 2017

8,657 28,603

WHILE YOU WERE SLEEPING:

-- Hundreds gathered at the University of Virginia on Wednesday

night for a candlelight vigil -- peacefully singing and marching through campus. Arelis R. Hernández and Clarence Williams report: "They sang 'God Bless America' and 'The Star-Spangled Banner' before invoking in unison the civil-rights-era anthem 'We Shall Overcome.' [And] as they stood on the steps of the Rotunda, students there led the chorus as the crowd on the central grounds followed singing 'Don't Let Hatred Blow It Out,' an altered verse to the old gospel tune 'This Little Light of Mine.' **The gathering was a 'community effort' ... to bring a different face to Charlottesville,** said [student] Rebecca Soistmann …

"Charlottesville resident Ben Brinkop said he found out about the vigil through an email that cautioned him not to place it on social media. There wasn't a specific agenda or theme to the event, he said. 'I thought it was just about coming out and not being afraid,' [he] said. 'It didn't seem there was an overarching message, but it felt really good to reclaim this.'"

"Someone recited Maya Angelou's poem 'I Will Rise,' and the crowd held a moment of silence for the three lives lost on Saturday. 'The energy here is beautiful,'" said one faculty member. (CNN)

Mike and Karen Pence wave before departing from Palomar Air Base in Buenos Aires, Argentina. (Erica Canepa/Bloomberg News)

GET SMART FAST:

1. **Mike Pence cut short his Latin America trip on Wednesday**, returning to Washington one day early for a strategy meeting with Trump and the national security team at Camp David. The vice president has also canceled two scheduled political appearances in Virginia this weekend, his aides confirmed, "to make himself available" to work on national security matters as needed. (Philip Rucker)
2. **Indian and Chinese soldiers yelled and hurled stones at one another in Kashmir,** Indian officials said, a move that could escalate tensions in the Himalayas even as the two nations remain engaged in a border standoff elsewhere. (AP)
3. **Three prominent young activists in Hong Kong were**

sentenced to prison on Thursday for their role in 2014 pro-democracy protests – a move some fear could be a signal of Beijing's creeping influence on courts in Hong Kong. The trio had been sentenced to community service for their role in the Umbrella Movement until a Beijing-backed local court pushed for harsher punishments. (Emily Rauhala)

4. **A Swiss hotel sparked outrage this week after it posted a sign asking "Jewish guests"** to shower before using the swimming pool. (James McAuley)
5. **Three schools in Australia were broken into by neo-Nazis this weekend,** who peppered the schools with posters calling to legalize the killing of Jewish people and "Keep Australia white." Others encouraged young people to join their "local Nazi group" and "reject Jewish poison." (Amanda Erickson)
6. **Meanwhile, an Australian senator wore a full body burqa to the Senate on Thursday.** Pauline Hanson of the anti-immigrant One Nation party, who has said the country is in danger of "being swamped by Muslims" would like to see the garment banned. (New York Times)
7. **The New York Times editorial page editor testified in court yesterday in a defamation lawsuit brought by Sarah Palin against the publication.** James Bennet said he didn't review the NYT's previous reporting when he rewrote an editorial stating that a political action committee linked to Palin distributed a map with gun crosshairs centered on members of Congress, linking the former veep candidate to the 2011 shooting of then-Rep. Gabby Giffords (D-Ariz.) The Times issued a correction saying no such connection was established between the shooting and the map.

(Politico)

8. **Cleveland has outpaced Las Vegas for the distinction of the city with the most "underwater" homes, meaning those homes that are worth less than their current mortgages.** (Bloomberg)
9. **A baby dolphin died in Spain after "hundreds" of beachgoers swarmed the animal to touch and take pictures of it**, earning harsh condemnation from animal rights groups. The mob of curious people covered the dolphin's blowhole as they touched and posed with the animal. (Amy B Wang)
10. **See that group of trendy people lined up outside a new restaurant or show? They could be getting paid to be there,** thanks to a new app called Surkus that helps businesses generate buzz. The "actors," if you will, are hand-picked by a casting agent and even given a "reputation score" based on their levels of engagement. (Peter Holley)

Chief strategist Steve Bannon looks on before President Trump meets with his Cabinet at the White House. (Nicholas Kamm/Getty Images)

ALL THE PRESIDENT'S MEN:

-- Steve Bannon called up the liberal American Prospect's Robert Kuttner this week to offer his unplugged views on China, North Korea and his enemies in the West Wing. He had no prior relationship with Kuttner, but he's told colleagues in the West Wing that he believed their chat was off-the-record. Kuttner says he didn't say that it was off the record and notes that Bannon, the former head of Breitbar News, is "probably the most media-savvy person in America." The interview really is worth reading in full, but here are the parts generating the most buzz:

- **The money quote on white nationalists and his role in giving**

them a platform on Breitbart: "Ethno-nationalism—it's losers. It's a fringe element. I think the media plays it up too much, and we gotta help crush it, you know, uh, help crush it more ...These guys are a collection of clowns."

- **On pulling U.S. troops out of South Korea:** "Bannon said he might consider a deal in which China got North Korea to freeze its nuclear buildup with verifiable inspections and the United States removed its troops from the peninsula, but such a deal seemed remote. Given that China is not likely to do much more on North Korea, and that the logic of mutually assured destruction was its own source of restraint, Bannon saw no reason not to proceed with tough trade sanctions against China."
- **Undercutting Trump's threats of military action against North Korea:** "There's no military solution [to North Korea's nuclear threats], forget it," Bannon said. "Until somebody solves the part of the equation that shows me that ten million people in Seoul don't die in the first 30 minutes from conventional weapons, I don't know what you're talking about, there's no military solution here, they got us."
- **On his "rivals" at the State and Defense Departments:** "They're wetting themselves," Bannon said. He then proceeded to detail "how he would oust some of his opponents" at the departments. "I'm changing out people at East Asian Defense; I'm getting hawks in," he said. "I'm getting Susan Thornton [acting head of East Asian and Pacific Affairs] out at State."
- **On whether that's a fight he can win internally**: "That's a fight I fight every day here," he said. "We're still fighting. There's Treasury and [National Economic Council chair] Gary Cohn and Goldman Sachs lobbying."

"Either the reports of the threats to Bannon's job are grossly exaggerated and leaked by his rivals, or he has decided not to change his routine and to go down fighting," Kuttner writes. "Given Trump's impulsivity, neither Bannon nor Trump really has any idea from day to day whether Bannon is staying or going. He has survived earlier threats. So what the hell, damn the torpedoes."

-- Trump's personal lawyer, John Dowd, forwarded an email that echoed secessionist Civil War rhetoric on Wednesday — declaring, among other things, that the Black Lives Matter group has been "totally infiltrated by terrorist groups." The New York Times's Michael S. Schmidt and Matt Apuzzo report: "The email forwarded by [Dowd], who is leading the president's legal team, painted the Confederate general Robert E. Lee in glowing terms and equated the South's rebellion to that of the American Revolution against England. Its subject line — 'The Information that Validates President Trump on Charlottesville' — was a reference to comments Mr. Trump made earlier this week in the aftermath of protests in the Virginia college town. **'You cannot be against General Lee and be for General Washington,' the email reads, 'there literally is no difference between the two men.'** [This, of course, is an insanely dumb statement. One led an army against the United States!]

"The email's author, Jerome Almon, runs several websites alleging government conspiracies and arguing that the F.B.I. has been infiltrated by Islamic terrorists. He once unsuccessfully sued the State Department for $900 million over claims of discrimination. Mr. Almon's email said that Black Lives Matter … is being directed by

terrorists, [and] blamed the group for deadly violence against police last year in Texas and Louisiana."

Dowd forwarded the email to more than two dozen recipients, including a senior DHS official, the WSJ's editorial page, and journalists at Fox News and the Washington Times. One of the recipients provided a copy to the New York Times. "You're sticking your nose in my personal email?" Dowd told the Times in a phone interview. "People send me things. I forward them." He then hung up.

-- Ben Carson, Trump's HUD secretary and the only African American member of his Cabinet, downplayed the violence in Charlottesville — calling criticism of Trump's remarks "little squabbles" being "blown out of proportion." Lisa Rein reports: "On Monday, touring communities in Louisiana ravaged byfloods a year ago, Carson said about Trump: 'When he talks about the fact that hatred and bigotry and these things are unacceptable,' Carson said of Trump, 'he's talking about everybody. … **You'd think he was saying that hatred and bigotry are unacceptable except by neo-Nazis.** We really have got to begin to think more logically and stop trying to stir up controversy.'" He accused the media of "overreacting" to Trump's comments, adding: "We the people have got to be smarter than this."

White House Chief of Staff John Kelly, left, watches as President Trump speaks to the media in the lobby of Trump Tower on Tuesday. (Pablo Martinez Monsivais/AP)

MORE WEST WING INTRIGUE:

-- Trump's comments on the violence in Charlottesville this week have left John Kelly "deeply frustrated and dismayed" – and underscore the difficult challenges the new chief of staff will face as he attempts to instill a sense of order in the White House. Ashley Parker and Robert Costa report: "During Kelly's short tenure, Trump has startled the world with his bellicose rhetoric on North Korea and attacked [Mitch McConnell], furthering imperiling his already stalled legislative agenda. Nonetheless, Kelly has so far largely improved staff morale, and implemented a rigor and order that has left West Wing aides feeling both more optimistic and less mistrustful of

one another … **Longtime Trump campaign associates have found themselves out of the loop and unable to build a rapport with Kelly.** In the week before Trump departed for an August [vacation], the entire West Wing team began showing up at the 8 a.m. senior staff meetings. Even [Ivanka] — who rarely if ever appeared at staff meetings led by Reince Priebus … began regularly attending.

"Nonetheless, Trump has shown signs of chafing ... one person close to the president described him as a 'caged animal' under Kelly, saying he is always going to respond negatively to attempts to corral him or keep him on a script. … Another Republican operative and unofficial White House adviser [said Kelly's tenure has] demonstrated an essential truth about the Trump White House: The president will act as he so pleases, even in spite of — and sometimes to spite — the efforts of his aides."

-- "[Trump's] decision to double down on his argument that 'both sides' were to blame for the violent clashes at a white supremacist rally in Charlottesville, Virginia, was driven in part by his own anger — and his disdain for being told what to do," Politico's Nancy Cook and Josh Dawsey report: "For Trump, anger serves as a way to manage staff, express his displeasure or simply as an outlet that soothes him. Often, aides and advisers say, he'll get mad at a specific staffer or broader situation, unload from the Oval Office and then three hours later act as if nothing ever occurred even if others still feel rattled by it. Negative television coverage and lawyers earn particular ire from him. **White House officials and informal advisers say the triggers for his temper are if he thinks someone is lying to him, if he's caught by surprise, if someone criticizes**

him, or if someone stops him from trying to do something or seeks to control him."

"In some ways, Trump would rather have people calling him racist than say he backed down the minute he was wrong," said one adviser to the White House. "This may turn into the biggest mess of his presidency because he is stubborn and doesn't realize how bad this is getting.'"

Hope Hicks. (Photo by Jabin Botsford/The Washington Post)

-- Hope Hicks, Trump's trusted confidante and adviser, has taken on an expanded communications role at the White House – working as interim communications director while staffers continue to search for a permanent replacement. Ashley Parker reports: "Hicks, 28, currently serves as Trump's director of strategic communications, and is one of the president's most loyal and trusted aides. She started

as Trump's press secretary during the 2015 campaign and sits right outside the Oval Office. She also has close ties to [Ivanka Trump and Jared Kushner] … In many ways, Hick's elevated role is just a continuation of a job she has already largely been doing … Hicks has previously been mentioned for the role of communications director, and has long unofficially served in that role for the president himself."

Trump speaks with members of his now-disbanded manufacturing council. (EPA/Michael Reynolds)

TRUMP IS INCREASINGLY ISOLATED, AS THE BUSINESS COMMUNITY DITCHES HIM:

-- The president was forced to shut down his major business advisory councils yesterday after his remarks on Charlottesville prompted a mass exodus of corporate leaders. Damian Paletta and Jena McGregor report: "Trump announced the

disbanding of the two councils — the Strategy & Policy Forum and the Manufacturing Council [in a tweet] … But **those groups had already decided to dissolve on their own earlier in the day** … The dissolution of the councils was a remarkable moment for Trump, who has made his corporate experience and ability to leverage America's business potential as one of his chief credentials."

-- Tick-tock: "On Wednesday morning, a dozen of the country's most influential C.E.O.s joined a conference call, and, after some debate, a consensus emerged: The policy forum would be disbanded," the New York Times's David Gelles, Landon Thomas Jr., Andrew Ross Sorkin and Kate Kelly report. "As the call began, more than a dozen of the nation's top business leaders dialed in from around the country … Two in the group — Jim McNerney, the former chief executive of Boeing and Jack Welch, the former leader of General Electric — proposed issuing a statement condemning the president, but keeping the group together. But most others, including [Laurence D.] Fink of BlackRock and [Indra] Nooyi of Pepsi, leaned toward disbanding. (JP Morgan's Jamie) Dimon was also furious and wanted off the council, but felt conflicted because of his role as chairman of the Business Roundtable… [Virginia M.] Rometty of IBM, who had faced criticism from employees for her role in the group, advocated that the executives 'condemn and disband.' That phrase soon drew broad backing. By the time the call was over, the group had agreed to disband. **Before they could make a statement announcing their decision, however, Mr. Trump spoke.** He had caught wind of their planned defection and wanted to have the last word … [and] claimed on Twitter that *he* was disbanding the advisory groups."

-- Apple said that it has begun disabling the Apple Pay option from websites selling white nationalist and Nazi apparel. Buzzfeed reports: "Uber, Facebook, Twitter, MailChimp, and WordPress have all taken varying levels of action against white supremacists on their platforms in the wake of Charlottesville. Airbnb banned people tied to white supremacist groups who attempted to use its site to book lodging for the rally last week. [And] on Monday, both GoDaddy and Google removed the registration capabilities of The Daily Stormer, a white supremacist blog, in response to its posts about the events in Charlottesville."

-- The narrative: "Silicon Valley significantly escalated its war on white supremacy this week, choking off the ability of hate groups to raise money online, removing them from Internet search engines, and preventing some sites from registering at all," Tracy Jan and Elizabeth Dwoskin report. "But the actions are also heightening concerns over how tech companies are becoming the arbiters of free speech in America. And in response, right-wing technologists are building parallel digital services that cater to their own movement. Gab.ai, a social network for promoting free speech, was founded shortly after the presidential election by Silicon Valley engineers alienated by the region's liberalism. Other conservatives have founded Infogalactic, a Wikipedia for the alt-right, as well as crowdfunding tools Hatreon and WeSearchr. The latter was used to raise money for James Damore, a white engineer who was fired after criticizing Google's diversity policy. **'If there needs to be two versions of the Internet so be it,' Gab.ai tweeted Wednesday morning.** The company's spokesman, Utsav Sanduja, later warned of

a ‘revolt’ in Silicon Valley against the way tech companies are trying control the national debate.”

Baltimore authorities removed the statue of Roger B. Taney, the majority author of the Dred Scott decision. (Mark Wilson/Getty)

AMERICA IS DIVIDED AND ON EDGE:

-- “City officials across the country are nervously trying to figure out how to avoid becoming the next Charlottesville as alt-right leaders and white nationalist groups vow to stage more rallies in coming days,” Janell Ross, Mark Berman and Joel Achenbach report. “A group claiming it is advocating free speech has planned a rally for Saturday on the historic Boston Common, with a group

advocating racial justice planning its own gathering in opposition. Boston officials said they have laid down strict conditions, including no sticks, weapons or backpacks. .... A rally scheduled for Aug. 26 in San Francisco has prompted [Nancy Pelosi] and several California lawmakers to urge the National Park Service to rescind the permit to gather on federal park land there."

-- Phoenix Mayor Greg Stanton said last night that he is disappointed about Trump's decision to hold a campaign-style rally in his city next week, and he called on the president to postpone. Also prompting concern is a Fox News interview this week in which Trump said he is "strongly considering" pardoning former Maricopa County sheriff Joe Arpaio. "If he is coming to Phoenix to announce a pardon for [Arpaio], then it will be clear that his true intent is to enflame emotions and further divide our nation," Stanton said in a statement.

-- The University of Florida has denied the request of a white nationalist group to hold an event on its campus. The rally is slated to be attended by white nationalist Richard Spencer and has been referenced on social media: "The Next Battlefield is in Florida." University of Florida President W. Kent Fuchs said in a statement Wednesday that while the school remains "dedicated to free speech and the spirit of public discourse … the First Amendment does not require a public institution to risk imminent violence to students and others." (Sarah Larimer)

-- A Georgia park association has denied a permit request to the Ku Klux Klan to hold a cross-burning ceremony on top of Stone Mountain, which was where the group began their 1915 "revival" with

a flaming cross on the evening of Thanksgiving. (The Atlanta Journal-Constitution)

-- Jeff Sessions said Wednesday that the Charlottesville car attack killing Heyer *may* be prosecuted as a hate crime, saying that federal authorities who are "intensely" probing the case could ultimately decide to prosecute the driver in a number of different ways. Mark Berman reports: "Sessions cautioned that **no federal charges were imminent** as officials are still conducting an investigation into the deadly attack that killed one woman Saturday and injured 19 others. 'It doesn't have to be done immediately,' he told NBC News in an interview. 'We will be working with the state to see how they will proceed with their charges. We could bring charges whenever the investigation justifies them. But I don't think we should just feel like we've got to do it in a matter of hours or days.'"

-- Fox News host Eboni K. Williams is receiving death threats after she criticized Trump on air this week. Variety's Erin Nyren reports: "The ['Fox News Specialist' co-host] addressed Trump on Monday in her 'Eboni's Docket' segment, which she writes herself, berating him for failing to specify white nationalist groups in his condemnation of the [Charlottesville violence]. She [said] her personal website … was inundated with over 150 emails, only three of which were anything other than 'seething, scathing' takedowns. 'I should meet my maker soon, I shouldn't be allowed to walk the streets of New York,' she cited as some examples of the type of comments she received. 'They heard that I live in Harlem — Harlem needs to watch out.' Her book publisher became so concerned that he asked her to request additional security from Fox News, which she did — Williams

is now escorted to and from the building when she arrives to work."

-- Politico Magazine, "How Militias Became the Private Police for White Supremacists," by Casey Michel: "In the Trump era, armed antigovernment groups have found common cause with Nazis, KKK and other white nationalists."

-- "The 'alt-right' is just another word for white supremacy, study finds," by Christopher Ingraham: "Although members of the 'alt-right' insist they're not racist, from a practical standpoint it's been tricky, if not impossible, to find any daylight between the views they espouse and plain old white supremacy. Now, a new study that asked 447 "alt-right" adherents to rank how "evolved" various groups are has sharply underscored just how indistinguishable those groups are. The most [striking result] came via the responses to questions asking survey-takers to rate how 'evolved' various groups were, using a series of silhouettes ranging from apes to modern humans as markers … On average, 'alt-right' adherents rated whites (92 points), men (88 points) and Europeans (87 points) the highest of all. They rated women lower, at 83 points. They rated Jews slightly below the figure of a spear-wielding Neanderthal figure, at 73 points. Mexicans came in at 67 points, while blacks came in at 65. Arabs, Nigerians, and feminists all came in at sub-60 points, close to the half-simian human ancestor in the middle of the chart. Muslims were the group ranked dead last, with 55 points."

A girl holds her mother's hand as she listens to a news conference on Obama's executive order on immigration. (Drew Angerer/Getty)

TRUMP'S AGENDA:

-- The administration formally terminated an Obama-era program that granted Central American minors temporary legal residence in the United States, shutting the door on 2,714 people who had won conditional approval to enter the country," David Nakamura reports: "[Obama's] administration established the 'CAM parole' program in 2014 to respond to a massive spike in the number of unaccompanied minors and families entering the country illegally from El Salvador, Guatemala and Honduras. Under the terms, minors who failed to win refugee status could enter on a two-year, renewable parole if they had a parent already legally present in the country ... DHS's [announcement] means that the agency will begin the process of notifying families that the minors who had been approved for entry

would have to reapply through other immigration channels that could be more difficult. In addition, 1,465 minors already in the [U.S.] under the CAM program will not be allowed to renew their status."

-- "[Jeff Sessions] lambasted Chicago and its political leaders Wednesday, tying local policies on undocumented immigrants to soaring crime rates and threatening to withhold federal police grants if the city does not change," Sari Horwitz and Mark Berman report: "In a speech in Miami, Sessions said that in Chicago 'respect for the rule of law has broken down,' and he linked the increase in crime there last year to the city's 'so-called sanctuary policies.' 'Every year, too many Americans' lives are victimized as a result of sanctuary city policies, whether it be theft, robbery, drugs, assault, battery and even murder,' Sessions said. 'We want to do everything we can to help … But we cannot continue giving federal taxpayer money to cities that actively undermine the safety and efficacy of federal law enforcement … **So if voters in Chicago are concerned about losing federal grant money, call your mayor.'"**

-- The Trump administration began talks to "reform" NAFTA on Wednesday, Ana Swanson reports. "On Wednesday, U.S. trade negotiators confronted the challenge of translating Trump's campaign trail pledges into technical policy as they met Canadian and Mexican representatives for the first of several rounds of negotiation scheduled to take place before the end of the year. At stake is the legitimacy of [Trump], who … campaigned on a pledge to renegotiate it. But also on the line are trillions of dollars of trade that flow through the North American economy."

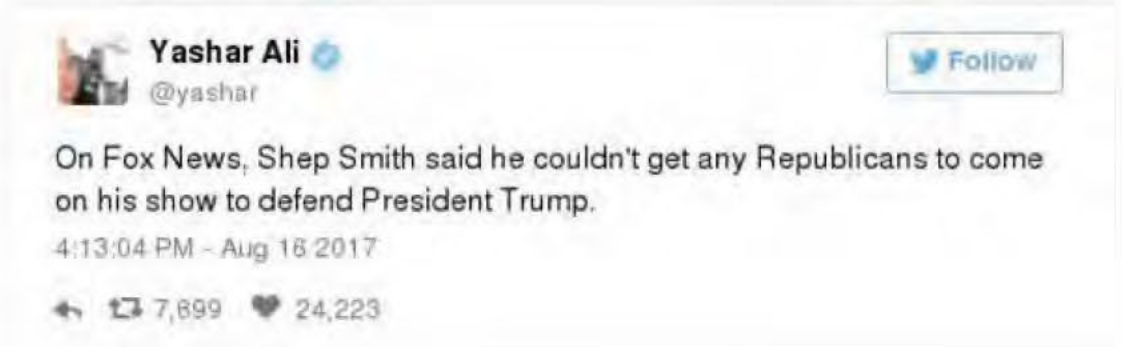
"In an opening statement, [Trump's chief trade negotiator] Robert

E. Lighthizer … emphasized that Trump would not be content with minor updates. 'We feel that NAFTA has fundamentally failed many, many Americans and needs major improvement,' [he said]." **But trade experts have suggested that the U.S. may face more challenges in the NAFTA talks than Trump's statements have implied."**

SOCIAL MEDIA SPEED READ:

Trump's longtime personal attorney tweeted this:

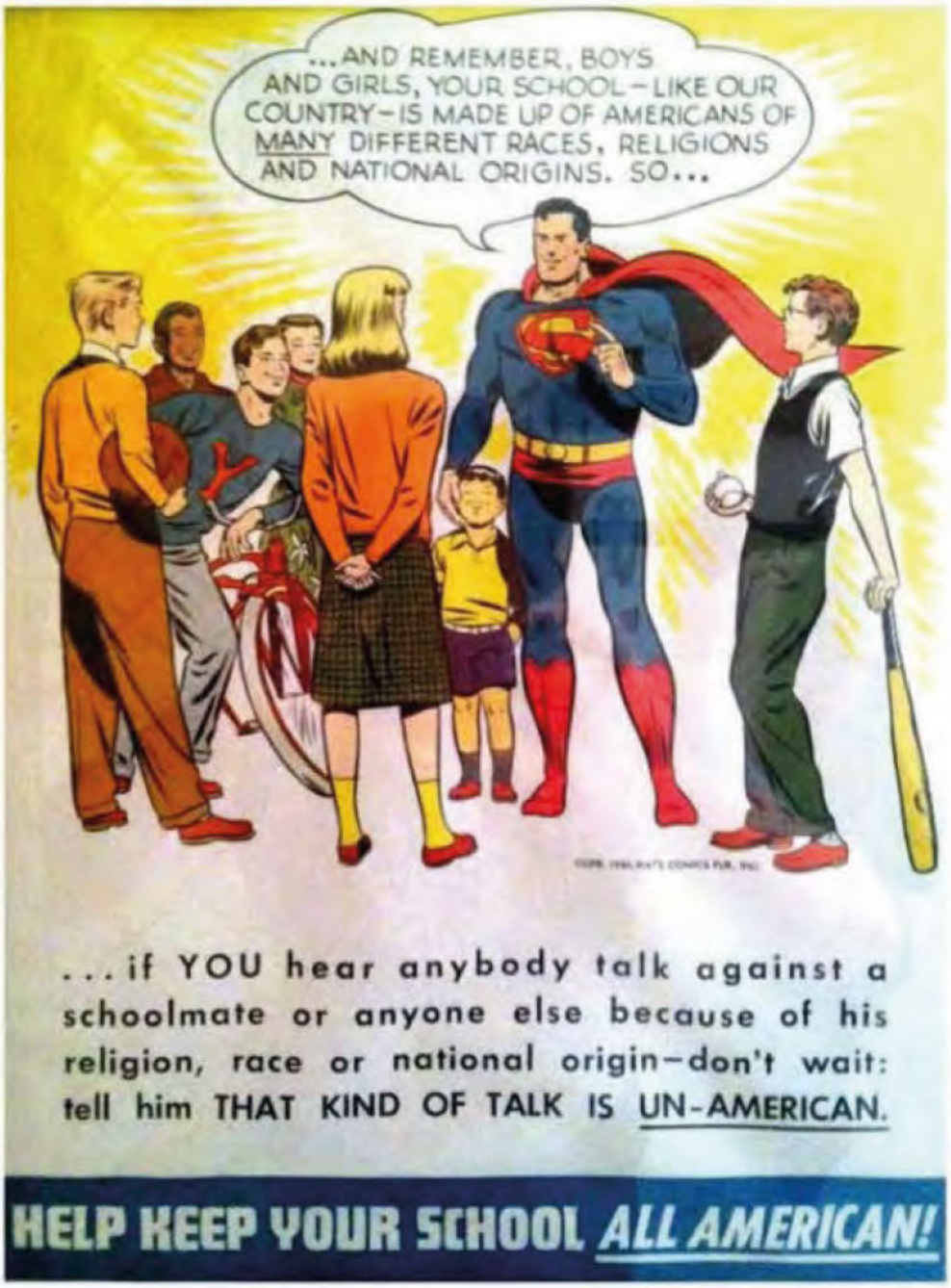
Here's how tough it's been to find *any* Republican willing to go on air to defend Trump...



Cory Booker pledged to introduce a bill removing Confederate statues from the U.S. Capitol:

Bill de Blasio also promised a review:

Jake Tapper shared this:



Jake Tapper
@jaketapper

Follow

pic.twitter.com/kFCAghT7a2

9:18:24 PM - Aug 16 2017

2,861 7,259

How one humor writer explained Trump's tweet about "disbanding" his business councils...

From a Post satire columnist:

From a Wall Street Journal reporter in Berlin:

HOT ON THE LEFT:

HOT ON THE RIGHT:

"Obama's administration requested a Bikeshare station at the White House. Trump's team just had it removed," from Perry Stein: "The District's Department of Transportation confirmed Wednesday that it removed the nine-slot Bikeshare station this week at the Trump administration's request. Unlike every other Bikeshare station in the region, this one was not accessible to the public and could only be used by commuters who had access to White House grounds. The Obama administration requested the station in 2010. It's unclear why the White House wanted it removed ..."

"Urine Art Show Aims 200 Gallon Stream Of Dissent At Donald Trump in SoHo," from Patch: "An exhibit going on show in SoHo next month is designed to aim a stream of dissent at President Donald Trump's administration – and it consists of 200 gallons of the creator's own urine. Transgender artist Cassils' installation comments on Trump's February decision to rescind protections for transgender students. The gallery described the piece as a 'minimalist structure' filled with all of the liquid that the artist has passed since Trump revoked the Obama administration's instructions to schools to allow students to use the

bathroom of their choice."

DAYBOOK:

Trump is in Bedminster, N.J. This afternoon, he will have lunch with the governor of Florida, Rick Scott, before meeting with the administrator of the Small Business Administration.

QUOTE OF THE DAY:

At Heather Heyer's funeral, longtime friend Justin Marks, 30, said he watched a live-stream with her on Friday night of the hundreds of torch-wielding marchers. "She was just saying how crazy it was that this was happening in our town," Marks said. "She didn't think what they were chanting was peaceful." But she didn't hate those people, he added. "Heather didn't have to stand up for anybody's rights. She was a straight white woman. She didn't have to show up that day," Marks said. "I hope that speaks to people in the same position." (Ellie Silverman, Arelis R. Hernández and Steve Hendrix)

NEWS YOU CAN USE IF YOU LIVE IN D.C.:

-- Humid and cloudy with some storms ahead, per today's Capital Weather Gang forecast: "Partly cloudy this morning with mostly cloudy conditions this afternoon. Temperatures advance into the middle to upper 80s for highs. Moderate to high humidity causes heat indices to register well up into the 90s. Scattered afternoon and evening thunderstorms could deliver some heavy downpours at times."

VIDEOS OF THE DAY:

Stephen Colbert calls Trump the first "racist grandpa" president:

Trump: America's First 'Racist Grandpa' President

Jimmy Kimmel shows us a preview of Trump Tower, the movie:

Trailer for The Trump Tower Movie (WORLD PREMIERE)

He also interviews Kellyanne Conway:

Jimmy Kimmel Interviews Kellyanne Conway About Trump Damage Control

See Seth Myers's take on the moment:

Trump Defends White Nationalists, President Obama's Most-Liked Tweet - Monologue

Conan O'Brien gives us celebrity surveys with President Trump and Stephen K. Bannon:

Celebrity Surveys: President Trump, Steve Bannon Edition - CONAN on TBS

You received this email because you signed up for The Daily 202 or because it is included in your subscription. For additional free newsletters or to manage your newsletters, **click here**.

We respect your **privacy** . If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, **click here**. **Contact us** for help.

©2017 The Washington Post | 1301 K St NW, Washington DC 20071

The Daily 202_ Trump keeps blaming Obama. Fresh....pdf

From:
To:
Subject: (b) (6) ama. Fresh polls show voters don't buy it.
Date: Wednesday, April 5, 2017 11:50:10 AM

If you're having trouble reading this, click here.

Share on Twitter Share on Facebook

Trump keeps blaming Obama. Fresh polls show voters don't buy it.

Barack Obama and Donald Trump arrive for the inauguration ceremony in January. (J. Scott Applewhite/AP/Pool)

BY JAMES HOHMANN
with Breanne Deppisch

THE BIG IDEA: For Donald Trump, the buck stops … with Barack Obama.

As the western world processed stomach-churning images of dead children, apparently murdered by chemical weapons, the president couldn't help but take a potshot at his predecessor. "These heinous actions by the Bashar al-Assad regime are a consequence of the past administration's weakness and irresolution," Trump said in a statement yesterday afternoon. "President Obama said in 2012 that he would establish a 'red line' against the use of

chemical weapons and then did nothing. The United States stands with our allies across the globe to condemn this intolerable attack."

As he ripped Obama, Trump mentioned neither Russia nor Iran. Both counties are actively propping up Assad's regime.

The president also offered no path forward, except to say that the savagery, which observers on the ground say killed at least 58, "cannot be ignored." Asked how the U.S. will respond, Sean Spicer replied: "We'll talk about that soon."

This White House is stuck in permanent campaign mode. Several officials involved in internal administration discussions told the AP that the National Security Council had been preparing a different statement, until the president's closest advisers took over the process.

This has been a pattern during Trump's first 75 days in office. When it suits him, the president takes credit for his predecessor's successes. More often, he points the finger. Trump's unsubstantiated allegation that Obama "wiretapped" his office is the most memorable illustration, but there are many others. After the botched raid in Yemen that killed a Navy SEAL, for instance, the White House claimed the operation had been authorized by the Obama team.

Suspected chemical attack kills scores of men, women and children in Syria

-- Obama has repeatedly acknowledged that Syria was the biggest failure of his presidency, and he knows it will haunt his legacy. He notoriously said in August 2012 that Assad using chemical weapons would cross a “red line” that would change his “calculus” about whether to intervene. When the Butcher of Damascus did it anyway, using sarin to kill hundreds of innocents, Obama lacked the will to act unilaterally. So he punted to an even less courageous Congress. American credibility suffered. Assad’s barbaric war crimes continued.

-- The timing of Trump’s dig was curious, however. Just last week, Rex Tillerson and Nikki Haley said publicly that removing Assad is no longer a U.S. priority – breaking with western allies.

-- Even more incongruously, Trump vociferously opposed the very action he now attacks Obama for not taking. The billionaire posted an endless stream of tweets like these over several weeks in 2013, which make yesterday’s statement look quite hypocritical:

Donald J. Trump
@realDonaldTrump

Follow

What will we get for bombing Syria besides more debt and a possible long term conflict? Obama needs Congressional approval.

2:14:25 PM - Aug 29 2013

339 147

Donald J. Trump
@realDonaldTrump

Follow

AGAIN, TO OUR VERY FOOLISH LEADER, DO NOT ATTACK SYRIA - IF YOU DO MANY VERY BAD THINGS WILL HAPPEN & FROM THAT FIGHT THE U.S. GETS NOTHING!

9:20:34 AM - Sep 05 2013

6,632 6,288

Donald J. Trump
@realDonaldTrump

Follow

President Obama, do not attack Syria. There is no upside and tremendous downside. Save your "powder" for another (and more important) day!

9:21:33 AM - Sep 07 2013

1,971 1,003

Donald J. Trump
@realDonaldTrump

Follow

The only reason President Obama wants to attack Syria is to save face over his very dumb RED LINE statement. Do NOT attack Syria,fix U.S.A.

7:13:51 AM - Sep 05 2013

891 533

Donald J. Trump
@realDonaldTrump

Follow

We should stay the hell out of Syria, the "rebels" are just as bad as the current regime. WHAT WILL WE GET FOR OUR LIVES AND $ BILLIONS?ZERO

8:33:43 PM - Jun 15 2013

664 459

Donald J. Trump
@realDonaldTrump

Follow

If Obama attacks Syria and innocent civilians are hurt and killed, he and the U.S. will look very bad!

3:26:45 PM - Aug 30 2013

585 273

Donald J. Trump
@realDonaldTrump

Follow

How bad has our "leader" made us look on Syria. Stay out of Syria, we don't have the leadership to win wars or even strategize.

5:28:39 PM - Aug 30 2013

346 171

Donald J. Trump
@realDonaldTrump

Follow

What I am saying is stay out of Syria.

10:00:07 PM - Sep 03 2013

1,288 883

-- Trump has claimed repeatedly since taking office that he "inherited a mess." As he put it during his 77-minute press conference in February, "I inherited a mess. It's a mess. At home and abroad, a mess. … The Middle East is a disaster. (Also) North Korea. We're going to take care of it all. I just want to let you know I inherited a mess."

-- After the GOP's Obamacare replacement package fell apart in the House, Trump announced that he will let the health care system fall apart. He thinks this will force Democrats to come to the negotiating table. **The president reasons that Obama will surely get blamed for any problems with something called Obamacare.**

-- A new poll from the Kaiser Family Foundation shows why Trump's strategy is flawed. The nonpartisan group conducts a respected monthly poll of public attitudes about health care. When asked which of two statements came closer to their view, 6 in 10 Americans endorsed the statement: "Trump and Republicans in Congress are now in control of the government and they are responsible for any problems with it moving forward." Just over 3 in 10 chose the alternative statement: "President Obama and Democrats in Congress passed the law and they are responsible for any problems

with it moving forward."

For context, the poll found that over 6 in 10 Americans say it's a "good thing" the House GOP bill went down. But that group is split evenly between those who do not want to repeal the law and those who want to repeal and replace the law but had concerns about the specific legislation.

The country is also split close to down the middle about next steps: 45 percent want to keep working on a plan to repeal and replace the 2010 law, and 49 percent think Trump and congressional Republicans should stop working on health care and move on to other priorities.

Trump waves to his supporters last month as his motorcade passes through Bingham Island on the way to Mar-a-lago in Palm Beach, Fla. (Michael Ares/Palm Beach Post via AP)

-- On the economy, the American people have a more nuanced

view than the president. A Quinnipiac University poll published yesterday is full of bad news for Trump. His approval rating is 35 percent. He's even underwater right now with whites and men. More than six in 10 registered voters nationally don't think he's honest, level-headed or shares their values. On the issues, the poll finds that 58 percent disapprove of how he's handling foreign policy and a 48 percent plurality doesn't think he's handling the economy well. The survey found that 52 percent think the economy is in excellent or good shape, while 45 percent say it's not so good or poor. Overall, 66 percent say Obama is more responsible than Trump for the current state of the economy.

When Obama left office in January, our Washington Post/ABC News poll found that 61 percent of Americans approved of his economic stewardship. That number was higher than at any point in his eight-year presidency, up from 50 percent in Jan. 2016 and 43 percent in Jan. 2014. So there is ample evidence that Americans were crediting him for the nation's improving economy before Trump took office.

Quinnipiac asked a series of questions in another poll last month on whether Obama or Trump should be credited with certain economic statistics. By more than 2 to 1 voters said Obama deserves more credit than Trump for the fact the unemployment rate has stayed under 5 percent. But a smaller 48 percent plurality credited Obama for the 200,000 jobs added in February, while 41 percent said Trump deserves credit. And 55 percent said Trump, not Obama, deserves more credit for the stock market's positive performance recently.

-- To be sure, Republicans often accused Obama of unfairly blaming George W. Bush late into his presidency. Because of the nature of the 2008 financial crisis, though, more voters always blamed Bush than Obama for the country's economic ills – including during the 2016 election, according to Gallup surveys conducted from 2009 through 2016. In its poll last summer, Gallup found that 64 percent of Americans thought Bush deserved a "great deal" or a "moderate amount" of blame for "current economic problems." Half, 50 percent, said Obama did.

A man carries the body of a dead child following a suspected gas attack in Syria. (Reuters/Ammar Abdullah)

THE BIGGER PICTURE:

-- Foreign policy has dominated the opening chapters of the Trump administration to a degree the president clearly did not anticipate. If he's got 99 problems, Syria is now certainly one.

-- Trump is learning that the panaceas he promised so often as a candidate do not actually exist. "No one — not even President Obama, as far as I could tell — was satisfied with the Obama administration's approach to the conflict in Syria," Andrew Exum, who was an Obama appointee at the Pentagon, writes for The Atlantic. "But if you assembled all of the Obama administration's critics in one room, they would not agree on an obvious alternative. The problem is wicked enough to confound easy solutions, and each policy alternative had strategic and moral deficiencies."

-- Russia is now trying to blame rebels for the attack, instead of Assad. From Louisa Loveluck: "A Russian military spokesman on Wednesday said that Syrian warplanes had been targeting rebel workshops used to produce crude chemical weapons on the eastern outskirts of Khan Sheikhoun when the deaths began. 'The territory of this storage facility housed workshops to produce projectiles filled with toxic agents,' Maj. Gen. Igor Konashenkov, the spokesman for

Russia's Ministry of Defence, said in a recorded statement. His comments marked a rare admission that air strikes had taken place in the area. **Moscow typically denies involvement in such mass casualty attacks, and has previously falsified video footage in an attempt to exonerate its war planes.** … Russia also blamed the 2013 sarin attack on rebels attempting to provoke international intervention."

Sen. Marco Rubio (R-Fla.) responded:

The U.N. Security Council will hold an emergency meeting today to discuss the attack, and international donors are gathered in Brussels to drum up billions in aid for Syria's eventual reconstruction. U.N. Secretary General Antonio Guterres called the chemical attack a "moment of truth" and expressed hope it will galvanize action. "The horrific events of yesterday demonstrate that, unfortunately, war crimes are going on in Syria and that international humanitarian law (continues to be) violated frequently," he said.

Sen. John McCain (R-Ariz.) said "Assad believes he can commit war crimes with impunity," and he challenged Trump to do

something. The question now confronting Washington, he said, "is whether we will take any action to disabuse him of this murderous notion."

-- How it's playing:

-- Three smart stories about Trump's broader foreign policy popped overnight:

1. "Trump embraces the Sunni autocrats," by The New Yorker's Robin Wright: "The first tangible steps in Trump's Middle East policy are taking shape … [with goals] to foster a bloc among often fractious Sunni leaders to counter the influence of Shiite Iran, take a larger role politically and physically in fighting extremism, and help navigate peace between Israel and the Palestinians. … **Trump's strategy could, however, rejuvenate the old authoritarian order of sclerotic autocrats and impervious monarchies in the Middle East. T**hese days, a common lament among Sunnis themselves is that they lack a vision, an ideology, or a leader to guide them. … Bitter rivalries for regional influence run deep ... A broader danger is that the Trump strategy—designed at the National Security Council, with almost no input from the State Department—could backfire."

Tom Malinowski, who was Obama's Assistant Secretary of State for Democracy and Human Rights until January, expressed concern: "We have traditionally acted in the Middle East in defense of interests and principles. We've never explicitly aligned ourselves with a bloc defined in religious terms. It's another thing to create the impression that we are aligning with Sunnis against Shiites—that we are effectively taking sides in a civilizational battle."

2. "For Trump, a Focus on U.S. Interests and a Disdain for Moralizing," by the New York Times's Peter Baker: "Mr. Trump has dispensed with what he considers pointless moralizing and preachy naïveté. … 'We would look like, to some degree, rather silly

not acknowledging the political realities that exist in Syria,' said spokesman Sean Spicer. … He has taken foreign policy to its most realpolitik moment in generations, playing down issues of human rights or democracy that animated his predecessors, including Jimmy Carter, Ronald Reagan, George W. Bush and Obama. … His foreign policy seems defined more by a transactional nationalism, rooted in the sense that the United States is getting ripped off. Rather than spreading American values, Trump's policy aims to guard American interests."

"It struck me that it was very Chinese in orientation," said Ian Bremmer, the founder and president of the Eurasia Group, a consultancy in Washington. "You take out all of the issues of American exceptionalism and values, you take out all the restraints and responsibilities of American alliances and architecture that are based on those values, and it creates a very different sense of foreign policy."

3. Trump's retrenchment on free trade, climate change and security alliances has created a leadership vacuum that is already working to Beijing's advantage. David Nakamura previews tomorrow's summit: "Since Trump's unexpected victory in November, Chinese President Xi Jinping has moved to position his fast-developing nation as a defender of globalization, and he has accelerated Beijing's challenge to U.S. primacy in Asia. This budding shift of power dynamics has alarmed U.S. allies and partners in the region and raised the stakes as Trump prepares to welcome Xi for a two-day summit starting Thursday at his Mar-a-Lago estate in South Florida. The two are expected to discuss a wide range of issues,

including North Korea's mounting nuclear threat and a lopsided trade imbalance in China's favor, in what aides called a meeting aimed at establishing a working relationship. ... More broadly, however, **the Trump administration has not developed or publicly enunciated a coherent policy to deal with China's growing economic and military clout**. And Trump, who called China a currency manipulator during his campaign, has delivered mixed messages on how far he is willing to go to confront Beijing."

CONTENT FROM MORGAN STANLEY

Capital creates better connections

Morgan Stanley helped All Aboard Florida raise capital to finance the development of Brightline, an express rail in the Sunshine State—which is projected to potentially add up to hundreds of millions in federal, state and local government tax revenue over the next several years. [1]

By Morgan Stanley

Welcome to the Daily 202, **PowerPost's** morning newsletter.

Pollster Scott Clement contributed. Sign up to receive the newsletter.

-- The Daily 202 is one of five finalists to win The Webby Award

for Best Email Newsletter. We're the only political or Washington-based contender to make the final round. You can vote here.

WHILE YOU WERE SLEEPING:

Activists protest for transgender rights outside Greenwich Village's famous Stonewall Inn. (Kena Betan Cur/AFP/Getty Images)

-- The 7th Circuit ruled last night that workers may not be fired for their sexual orientation, becoming the highest court in the country to find that the 1964 Civil Rights Act protects gays from workplace discrimination. The Chicago-based appellate court found that instructor Kimberly Hively was improperly passed over for a full-time job at Ivy Tech Community College in South Bend, Ind., because she was a lesbian. "While the Civil Rights Act does not explicitly prohibit discrimination on the basis of sexual orientation, it bars sex discrimination; the court concluded that the college engaged in sex discrimination by stereotyping Hively based on her gender," Sandhya

Somashekhar explains.

This sets up a landmark Supreme Court case because the 11th Circuit ruled the opposite just last month. The three Atlanta-based judges interpreted Title VII of the Civil Rights Act much more narrowly and found that sexual orientation is not a protected class under that law. That means that the high court will probably be forced to decide which appellate court is correct. **Based on his rulings, there is no doubt that Neil Gorsuch would agree more with the Atlanta judges than the Chicago ones.**

Why this is a big dang deal: In 28 states, there are no statewide laws that explicitly protect people from discrimination on the basis of sexual orientation or gender identity. And Trump is certainly not going to provide it. So it's up to the courts.

School board candidate Ed Yung unloads yard signs from the trunk of his car on Monday. (Stacey Wescott/Chicago Tribune via AP)

-- In a closely watched school board race at the center of the transgender rights debate, in the Chicago suburbs, a slate of conservative candidates who pledged to require students to use bathrooms and locker rooms aligned with their biological sex appear headed for defeat. From Moriah Balingit and Sandhya Somashekhar: "Elections are typically low-key for the Township High School District 211 Board of Education, but this year, the district drew national attention, highlighting the explosive debate over how schools should balance the needs of transgender students with the privacy of their peers. Under pressure from the U.S. Education Department, the board in December 2015 voted to allow a transgender girl to use the girls' locker room, spurring protests and a lawsuit. Three challengers … hoped to win enough seats to reverse the practice of allowing transgender students to use bathrooms and locker rooms aligned with their gender identity. Two board members who voted to allow the transgender girl into the locker room … were comfortably ahead of the challengers with votes in one precinct not yet counted." The district includes five high schools and nearly 11,900 students in the Palatine-Schaumburg area.

California State Assemblyman Jimmy Gomez canvasses in the Eagle Rock neighborhood of Los Angeles this weekend. He is the frontrunner to replace Xavier Becerra in the House. (Dania Maxwell for the Washington Post)

-- All the Berniecrats lost last night in California. In the special election jungle primary to replace Rep. Xavier Becerra (D-Calif.), who resigned to become the state's attorney general, the assemblyman who was most closely tied to the Democratic establishment and a Korean American who used to be on the L.A. planning commission beat out the Bernie Sanders-aligned contenders. **Assemblyman Jimmy Gomez, who has Becerra's endorsement, and Robert Lee Ahn, both Democrats, will now square off in a June 6 runoff.**

- **A scattered field:** "In one of the few districts in California that favored Sanders over Hillary Clinton in last year's primary, three candidates ran as self-styled 'Berniecrats,' hoping to continue the Vermont senator's 'revolution' … But all three were trailing … by thousands of votes," the Los Angeles Times reports. "Sanders

and Our Revolution, the political group he helped start, declined to endorse a candidate, leaving the trio to fight for votes on the left. An eleventh-hour controversy over allegations of sexism leveled at (Arturo Carmona) by former Sanders campaign staffers further split the field."

- **Mobilizing the ethnic vote:** "The 41-year-old Ahn, who would be the only Korean American in Congress if elected, spent major resources registering new voters in the Korean American community and turning them out at the polls," the LA Times notes. "Korean Americans cast more than 4,000 early ballots by mail, according to an analysis by the data firm Political Data."

North Korea launches missile ahead of U.S.-China talks

-- THE WORLD IS ON FIRE: North Korea fired another ballistic missile Wednesday morning, in what appeared to be a test of a land-based version of a rocket that can be fired from a submarine. Anna Fifield reports: "The launch comes days after Pyongyang said it planned to mark two key anniversaries this month as 'big' political events and days before [Trump] meets with China's Xi

Jinping — with North Korea at the top of the agenda." The missile appeared to fly a relatively short distance of 40 miles, prompting an emergency meeting from the South's national security council. U.S. Pacific Command said the missile 'did not pose a threat to North America.' Satellite images taken over the past 10 days have shown a prolonged and heightened level of activity at Pyongyang's underground testing site, sparking speculation about whether a sixth nuclear test was planned."

New sheriff shutting down Arpaio's tent city

GET SMART FAST:

1. **The lawman who toppled "Sheriff Joe" Arpaio last November has stopped making inmates wear pink underwear and now he's shuttering the notorious tent city in Phoenix.** "This facility is not a crime deterrent, it is not cost efficient, and it is not tough on criminals," Maricopa County Sheriff Paul Penzone said in Phoenix. "Starting today, that circus ends and these tents come down." Arpaio cultivated a reputation

as “America’s toughest sheriff,” starting in 1993, by making inmates stay outside in the scorching summer sun, sleeping in surplus Korean War military tents. (Kate Mettler)

2. **At least 18 big-name advertisers have now pulled their commercials from “The O'Reilly Factor," a boycott that follows a New York Times story that five women received $13 million in settlements after accusing the show's host of harassment or inappropriate conduct.** Among the companies that confirmed they were suspending or removing ads: the automakers Hyundai, BMW, Mercedes-Benz and Mitsubishi Motors; financial firms T. Rowe Price and Allstate Insurance; drugmakers Sanofi and GlaxoSmithKline; the online marketing company Constant Contact and men’s apparel seller Untuckit. (Paul Farhi)

3. **Baltimore’s police commissioner pledged to move forward on reform efforts that the city agreed to in a consent decree with the Obama Justice Department** after Jeff Sessions signaled he won’t enforce it. (Lynh Bui and Peter Hermann)

4. **The president of the Richmond branch of the Federal Reserve, Jeffrey Lacker, abruptly resigned after acknowledging that he leaked confidential information to a financial analyst in 2012.** (Ana Swanson)

5. **U.S. companies are poised to report their strongest quarterly earnings in years,** with analysts predicting the highest period of growth since 2011. (Wall Street Journal)
6. **The philanthropy established by eBay founder Pierre**

Omidyar is giving $100 million to support investigate journalism, fight misinformation and counteract hate speech. Early recipients will include the D.C.-based International Consortium of Investigative Journalists, the anti-Defamation League, and the Latin American Alliance for Civic Technology. (Margaret Sullivan)

7. **A newly-hired high school principal in Pittsburgh resigned after a group of student journalists noticed discrepancies in her education credentials,** prompting a weeks-long investigation that resulted in an article questioning the legitimacy of her degrees and work as an education consultant. (Samantha Schmidt)
8. **The NCAA said it has "reluctantly" ended its boycott of North Carolina after lawmakers repealed the state's "bathroom bill."** But the replacement law has drawn criticism for stopping short of a full repeal, and NCAA officials warned that, "if we find that our expectations of a discrimination-free environment are not met, we will not hesitate to take necessary action at any time." (Cindy Boren)
9. **A former Oklahoma football player has been accused of prostituting an ex-Sooners cheerleader.** Both were nabbed in a sting at an OKC hotel. (Des Bieler)
10. **Dallas Cowboys quarterback Tony Romo is leaving the NFL and will replace Phil Simms as the main color analyst on CBS.** (Cindy Boren and Marissa Payne)
11. **Rory McIlroy would think twice about golfing again with Trump if he gets invited.** At a pre-Masters press conference, the legend said he does not agree with the president on most policies, that they didn't talk politics during their round together

and that he mainly agreed to hang out with POTUS because he wanted to see the Secret Service in action. "Would I do it again? After the sort of backlash I received, I'd think twice about it," he said. (Golf Magazine)

12. **Divers are scouring Italy's Lake Nemi for the 2,000 year-old remains of one of Emperor Caligula's "pleasure ships" – the third in a line of massive and ornate barges rumored to be the site of wild orgies and excessive indulgence**. Caligula spent untold sums of money on similar projects during his time as emperor and had a number of bizarre personal habits – ranging from rolling around in literal piles of money to drinking precious pearls dissolved in vinegar. (Amy B Wang)

Grassley: Gorsuch 'will be on the Supreme Court sometime Friday night'

GOING NUCLEAR:

-- The Senate continued to careen toward a nuclear explosion, as Mitch McConnell filed for cloture. Sean Sullivan and Ed O'Keefe report: "There was no sign of compromise as the chamber formally

opened debate on Judge Neil Gorsuch, who [the majority leader] predicted will be confirmed on Friday before senators leave town for the two-week Easter recess. In a speech on the Senate floor, McConnell faulted Democrats for 'hurtling toward the abyss' and 'trying to take the Senate with them.'" Still, only four Democrats have defected.

Sen. Merkley starts Gorsuch filibuster

-- **Oregon Sen. Jeff Merkley (D) held the Senate floor all night.** He started speaking just before 7 p.m. Eastern on Tuesday evening. Over the next 12 hours, he portrayed Gorsuch as an extreme nominee, took aim at Trump and slammed Republicans for not moving ahead with Obama's nomination of Merrick Garland. "To proceed to fill this stolen seat will damage the court for decades to come," he said this morning.

-- Of course, it must be said that these speeches make no practical difference at changing the outcome. From Amber Phillips: "Procedurally there's nothing he nor his colleagues can do to

stop Gorsuch from getting a vote on Thursday to advance his nomination — and, ultimately, not much they can do stop him from getting on the court. To understand why, we first have to understand the most accepted definition of a traditional filibuster. The Senate has no limits on how long a senator can talk. And once a senator gets talking, they usually cannot be interrupted or cede the floor without their consent. So, if this were a traditional filibuster, it means as long as Merkley (and other senators who join him) talk, they can hold up the Senate procedure. Except there is one thing that can force a talking senator to yield the floor. And it's the one thing [McConnell] set in place Tuesday: A vote to end debate on Gorsuch."

Neil Gorsuch is sworn in at his confirmation hearing last month. (Melina Mara/The Washington Post)

CHARGES OF PLAGIARISM:

-- Neil Gorsuch copied structure and language from several authors without citing source material in his 2006 book and other

academic articles, Politico's John Bresnahan and Burgess Everett report. Someone provided them evidence that several passages from the 10th chapter of the judge's book are lifted nearly verbatim from a 1984 article in the Indiana Law Journal.

Some independent experts on academic integrity told Politico there was impropriety: "'Each of the individual incidents constitutes a violation of academic ethics. I've never seen a college plagiarism code that this would not be in violation of,' said Rebecca Moore Howard, a Syracuse University professor who has written extensively on the issue. Elizabeth Berenguer, an associate professor of law at Campbell Law School, said that under legal or academic standards Gorsuch's similarities to the Indiana Law Journal would be investigated 'as a potential violation of our plagiarism policy. It's similar enough to the original work.'"

The White House sent the reporters statements from more than a half-dozen scholars who have worked with the judge to say that this is not a big deal. Spokesman Steven Cheung called the revelations a "baseless, last-second smear" by those "desperate to justify the unprecedented filibuster of a well-qualified" nominee. It referred the authors to scholars who say the **"standards for citing work in dissertations on legal philosophy is different than for other types of academia or journalism: While Gorsuch may have borrowed language or facts from others without attribution, they said, he did not misappropriate ideas or arguments."**

The author of the lifted material isn't bothered: "Gorsuch, in his book, appears to duplicate sentences from an Indiana Law Journal article written by Abigail Lawlis Kuzma without attributing her," Bres

and Burgess write. "Instead, he uses the same sources that Kuzma used: A 1982 Indiana court ruling that was later sealed, a well-known pediatrics textbook, 'Rudolph's Pediatrics,' and a 1983 article in the Bloomington Sunday Herald. … At one point, Gorsuch's prose mimics Kuzma's almost word for word in describing a child born with Down syndrome. … Kuzma, a one-time aide to former Sen. Dick Lugar (R-Ind.), did not respond to an inquiry from Politico, but released a statement through Gorsuch's team. **Kuzma said she does 'not see an issue here, even though the language is similar.' 'These passages are factual, not analytical in nature,' Kuzma, now a deputy attorney general in Indiana, said. 'It would have been awkward and difficult for Judge Gorsuch to have used different language.'"**

-- A fun thought exercise: How would Ted Cruz react if this same information emerged about Merrick Garland ahead of his confirmation vote?

-- Reality check: This will move no votes.

Carter Page, then an adviser to the Trump campaign, speaks in Moscow last summer. (Pavel Golovkin/AP)

THERE'S A BEAR IN THE WOODS:

-- Former Trump adviser Carter Page made an appearance in a federal espionage case because he communicated several years ago with a Russian spy under surveillance by the FBI. Tom Hamburger and Alice Crites report: "In a statement released Tuesday, Page confirmed his role in the 2015 Justice Department spy case, adding another twist to the still-unfolding story of Trump's peculiar and expanding ties to people connected to Russia. Page said he assisted U.S. prosecutors in their case against Evgeny Buryakov, an undercover Kremlin agent then posing as a bank executive in New York. Buryakov was convicted of espionage and released from federal prison last week … [and] agreed to be immediately deported to

Russia…

"According to the 2015 complaint … Page met with a Russian agent, Victor Podobnyy, in January 2013 at an energy conference in New York. It says that from January to June of that year, Page as Male 1 'provided documents to [Podobnyy] about the energy business.' At the time, the Russians were seeking information on U.S. sanctions and on energy development. Although Page communicated with the Russian agents in 2013, he said the information he provided was innocuous. In his statement, Page compared the revelation of his role to ;the politically-motivated unmasking standards seen in the Obama Administration which have recently been exposed.' He said the information was released as 'retribution for my public positions of dissent' against Obama administration policy toward Russia."

Michael Flynn sits in the Oval Office as Trump talks on the phone with Vladimir Putin. (Andrew Harnik/AP)

-- Trump's own transition team did not think Michael Flynn should be national security adviser, Dan Balz scoops in a deep dive on Trump's messy transition: Two days after the election, leaders of Trump's transition team presented his inner circle with more than 100 names of candidates for key Cabinet and other senior positions in the new administration. Missing from the list for the post of national security adviser was Flynn. "Flynn was a loyalist who had a close relationship with Trump," Balz writes. "It was obvious to the transition team that Trump would give him a prominent appointment. But among some of those tasked with bringing forward prospective candidates, there was a belief that Flynn was ill-suited for the critically important job of coordinating national security policy in the new White House. (He was penciled in as a possible director of national intelligence, for which transition officials believed he was better suited.) Trump, however, had his own list of candidates, and Flynn was at the top."

- **"It went off the rails almost immediately after the election," said one knowledgeable person** who spoke on the condition of anonymity to offer a candid assessment of the transition process.
- **Indeed, the Trump team has still not scaled up:** The Partnership for Public Service, in collaboration with The Post, has been tracking 553 key administration positions that require Senate confirmation. To date, just 21 nominees have been confirmed, with 20 more formally nominated and an additional 25 awaiting nomination.

Dana Rohrabacher visits Moscow in 2013. (Alexander Zemlianichenko/AP)

-- Putin's biggest GOP ally inside the House met with Trump at the White House last night. Politico's Josh Dawsey, Isaac Arnsdorf and Tara Palmeri report: "Rep. Dana Rohrabacher woke up before dawn Saturday for a Fox News hit in which he gave a spirited defense of [Trump]. Minutes after the California Republican walked off the set, Trump was on the line, inviting him to come by the White House. The congressman's spokesman said Rohrabacher at first believed the call was a prank because it came from the White House switchboard, early on April 1. But it was the president, an avid TV watcher who often posts tweets or sets up meetings based on what he sees on-screen. Neither Rohrabacher's office nor the White House would comment … But the president's decision to host a lawmaker known for defending [Putin] raised eyebrows in Washington at a time when Trump is fending off questions about his administration's ties to

Moscow."

What to know about the back-and-forth over 'unmasking'

UNMASKING:

-- Susan Rice flatly denied that the Obama administration ever used the "unmasking" process for any improper or political purpose, saying in an MSNBC interview that it's "not unusual" to request the identities of people caught on intelligence surveillance. "There were occasions when I would receive a report in which a U.S. person was referred to … and sometimes in that context in order to understand the importance of that report, and assess its significance, it was necessary to find out or request the information as to who that U.S. official was," the former national security adviser told Andrea Mitchell. Rice also denied revealing the identity of Michael Flynn, who resigned after his communications with Russian officials were reported. "I leaked nothing to nobody and never have and never will," Rice said, stressing the point that unmasking does not mean making the information public. The reports are still highly classified

and viewable by a very select group of people with top secret clearance. “The notion that, which some people are trying to suggest, that asking for the identity of an American person is the same as leaking it, is completely false. There's no equivalence between so-called unmasking and leaking.”

-- Senate Intelligence Committee Chairman Richard Burr (R-N.C.) did not rule out interviewing Rice about the unmasking. "If the reports are right, she will be of interest to us," he told Karoun Demirjian. **Other Republican lawmakers also urged more investigation:** “When it comes to Susan Rice, you need to verify, not trust,” Lindsey Graham in a Fox News interview. John McCain also said that the Rice situation “obviously … needs to be investigated,” though he warned against drawing premature conclusions. The Arizona senator also said the names of other officials would pop up before the end of the investigation: “I promise you there will be many more,” he said. Tom Cotton called Rice "the Typhoid Mary of the Obama administration."

-- Rep. Adam B. Schiff (Calif.), the ranking Democrat on the House Intelligence Committee, called the attention focused on Rice a diversionary tactic. From Karen DeYoung's story with Karoun: He has also called on the Intelligence Committee’s chairman, Rep. Devin Nunes (R), a Trump transition official and fellow Californian, to recuse himself from the investigation. The White House, Schiff said, has a “strong desire . . . that we lose our focus, that we not pursue the investigation of Russia, particularly as it might impact the Trump campaign.” At the same time, Schiff told CNN, Rice has long been a target of what he called the “Breitbart crowd . . . the

hard right" since the September 2012 attacks on a U.S. diplomatic facility in Benghazi.

Mike Pence departs the Capitol after a meeting of House Republicans yesterday. (Aaron P. Bernstein/Getty Images)

THE OBAMACARE REPEAL EFFORT IS BACK ON LIFE SUPPORT:

-- Republican lawmakers led by Mike Pence are pushing to revive the health care replacement effort, meeting late into the night with party members eager to build new GOP consensus on a proposal. Mike DeBonis and Paul Kane report: "Pence spent much of Tuesday on Capitol Hill meeting with key groups of lawmakers, as well as with [Paul Ryan], a day after visiting separately with conservative hard-liners and moderates to gauge the potential for a revamped version of legislation that collapsed last month. The crux of the new proposal would be to allow states to seek exemptions from

certain mandates established under the Affordable Care Act — including a requirement that insurers cover 10 'essential health benefits' as well as a prohibition on charging those with preexisting medical conditions more than the healthy."

While the largely behind-the-scenes effort generated optimistic talk, no clear path has emerged toward House passage of the Republican bill: Last night, key players said they were still waiting to see new proposals in writing, and some lawmakers said they were wary of rushing the process: "There is a value sometimes to the vetting process," said House Freedom Caucus leader Mark Sanford. "That having been said, we'll see what comes our way."

-- "Trump administration officials and arch conservatives in the House Freedom Caucus have gotten off to a rocky start, driven at least in part by their mutual tendency to hear what they want to hear from the other side," Paul Kane explains in a smart analysis. "The latest negotiation is centered on allowing individual states to apply for waivers from mandates such as 'essential health benefits' … This is a modified version of a key issue from the standoff two weeks ago, when the conservatives pushed for and won inclusion of a provision to eliminate the essential benefit coverage. This effort is trying to thread the needle between conservatives who want to see lower premiums in the insurance markets, which they think would result once coverage mandates are lifted, and mainstream Republicans who balk at the idea of denying coverage for critical areas such as pregnancies. Everyone says they're open to finding common ground between the conservative and moderate [House GOP flanks]. ... The question is whether all sides are hearing one

another's concerns or, as they did in previous talks, are interpreting the discussions as evidence of a shift in their direction."

A veteran's wife learns whether she'll be deported

IMMIGRATION CRACKDOWN:

-- A Department of Homeland Security spokesman said yesterday that immigration agents may arrest crime victims and witnesses at courthouses, heightening growing tensions between the Trump administration and some state court officials, who say the threat could silence immigrants from reporting or providing evidence of crime. Devlin Barrett reports: "Just because they're a victim in a certain case does not mean there's not something in their background that could cause them to be a removable alien," DHS flack David Lapan told reporters, making clear the courthouse arrests are not limited to people who would otherwise be apprehended in a jail or prison. "Just because they're a witness doesn't mean they might not pose a security threat for other reasons." His remarks come after California Chief Justice Tani G. Cantil-Sakauye sent a letter to Trump

officials decrying the practice, saying courthouses "serve as a vital forum for ensuring access to justice and protecting public safety." Courthouses "should not be used as bait in the necessary enforcement of our country's immigration laws," she added.

-- Temporary reprieve: "'A wonderful day': A veteran's undocumented wife won't be deported by ICE," by Theresa Vargas: "For months, Veronica Castro had dreaded Tuesday, when she was scheduled to check in with immigration officials. The undocumented immigrant didn't know whether she would be detained and deported to Mexico or allowed to return home with her husband, a disabled veteran, and their four children, all U.S. citizens who live in Lothian, Md. [But on Thursday], their fears were allayed in less than 30 minutes. Immigration officials gave Castro another year before she would have to check in again. 'Im happy,' she said in Spanish, [greeting a cheering crowd gathered outside]. In the months leading up to Tuesday's appointment, she and Pineda appealed to politicians and clergy members for help. They feared that despite Pineda's service and their children's medical needs, Castro would be swept up in Trump's crackdown on illegal immigration. In Arizona, a mother of two U.S.-born children, checked in on Feb. 8, as she had done for eight years. The next day she was deported to Mexico. **'My husband wouldn't be able to take care of my children without my help,' Castro said. 'If I'm deported, my family will be destroyed.'"**

-- The Fairfax County Board of Supervisors declared itself a "welcoming and accepting place" for immigrants last night, carefully steering clear of the word "sanctuary," which Trump and Sessions have warned could lead to the withholding of

federal funds. Despite pleas from activists, the board also declined to declare itself opposed to a Muslim registry. It's the latest example of a jurisdiction trying to strike a delicate balance between "reassuring immigrants fearful of stepped-up deportation efforts and avoiding sanctions from a White House that has said an immigration crackdown is critical to maintaining public safety," Antonio Olivo explains.

-- A new bipartisan bill would prevent Americans' electronic devices from being searched at the border without a warrant. The bill was introduced yesterday by Ron Wyden (D) and Rand Paul (R) in the Senate, while Reps. Jared Polis (D) and Blake Farenthold (R) sponsored it in the House. (CNN)

-- Jared Kushner met confidentially with Muslim leaders before the inauguration for a "candid" discussion about what kind of relationship the new president might forge in office with American Muslims, striking a friendly tone as he solicited ideas for how to improve the administration's relationship with Muslims and asked them to recommend people to serve in the Trump administration. (Buzzfeed)

Trump unveils enormous chart to highlight federal regulations

TRUMP'S WISHLIST:

-- Trump signed another bill rolling back Obama-era worker safety rules that aimed at tracking and reducing workplace injuries, illnesses, and deaths. The vote comes less than a month after Obama repealed The Fair and Safe Workplace Act, requiring businesses competing for large federal contracts to disclose and correct serious safety and other labor law violations. (Kimberly Kindy)

-- Just hours after two Trump administration officials said the president's team was exploring a carbon tax and a value-added tax (VAT) to raise revenue, the White House disavowed both options and said they are no longer under consideration. Damian Paletta and Max Ehrenfreund report: "The rapid reversal illustrates a Trump administration still in the initial stages of a plan to rework the tax code, particularly as it looks to build support while also sticking close to conservative ideas." White House officials also signaled they will be much more involved in proposing and negotiating elements of

the plan then they were during plans to repeal and replace the Affordable Care Act.

-- Trump reiterated his pledge to spur $1 trillion in new infrastructure spending — or perhaps more — as he hosted a friendly audience of New York-area CEOs at the White House. "We have to build roads. We have to build highways," the president said. "We're talking about a very major infrastructure bill of a trillion dollars, perhaps even more." **The president's still-evolving infrastructure initiative has been overshadowed in recent weeks, but his advisers insist he remains committed to getting it done,** John Wagner reports:

- **Chief economic adviser Gary Cohn** said officials are working with "the broadest interpretation of infrastructure" and made clear that he expects many projects to be financed through public-private partnerships — or just private investments, in some cases.
- **Transportation Secretary Elaine Chao** said one challenge is that most federal infrastructure spending funnels to states and localities – thus complicating plans for a major spending infusion.
- **Ivanka Trump** said workforce development and vocational education will be part of the effort.

-- Trump received a cool reception at the annual legislative conference of the building trade unions yesterday after he launched into an oft-repeated tirade his election victory. Abby Phillip reports: "The electoral college is very, very tough," Trump told them, noting that he had won Wisconsin and Michigan, two states he "didn't even need." "They say almost impossible for a Republican to

win." **The crowd began shifting in discomfort. "I had the support, of I would say, of almost everybody in this room," Trump said. "I had tremendous support of the workers." "Nope," a few voices called out. Others followed with "boos" and chuckles.** Meanwhile, a group of conference attendees stood bearing signs with the "#RESIST" printed on them, earning a quick escort from the room.

-- "Trump Team Takes Steps to Keep Chinese Away From Westinghouse," from Bloomberg's Jennifer Jacobs, Saleha Mohsin, and Jennifer A. Dlouhy: "The Trump administration is so alarmed that Chinese investors may try to purchase Westinghouse Electric Co.'s nuclear business that U.S. officials are trying to find an American or allied buyer for the company instead ... Cabinet members including Energy Secretary Rick Perry and Treasury Secretary Steven Mnuchin have discussed preventing Westinghouse's purchase by a Chinese-linked company ... The administration is preparing for Westinghouse to come up during [Trump's] first meeting with [Xi]. … For years, Chinese entities have been interested in the nuclear reactor builder, and the company has been a repeated target of Chinese espionage. Westinghouse filed for Chapter 11 bankruptcy protection on March 29 and its parent company Toshiba Corp. is seeking a buyer for its money-losing reactor business. Trump administration officials and members of Congress are concerned the bankruptcy filing could allow a bid from an investment group with hidden Chinese backing."

SOCIAL MEDIA SPEED READ:

Jeff Merkley pulled an all-nighter:

House members are using the debate over Gorsuch as a campaign issue:

Strange bedfellows -- Republicans found themselves retweeting Cher:

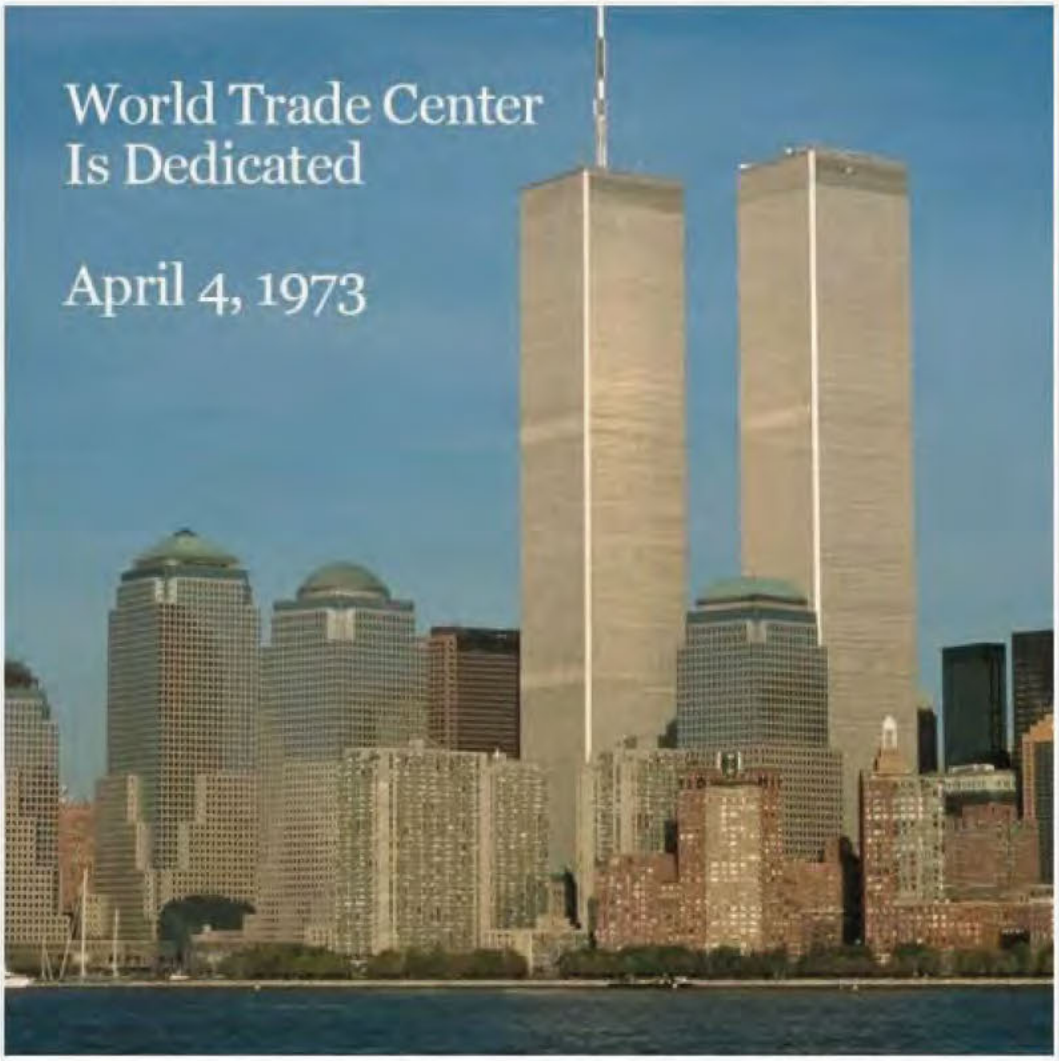
GOP consultant Ana Navarro weighs in on the Bill O'Reilly scandal:

O'Reilly and Don Lemon got into the act:

Is this part of Trump's pledge not to tip his hand to the enemy?

From a former Obama national security aide:

White House adviser Sebastian Gorka posted this:



Sebastian Gorka DrG
@SebGorka

Follow

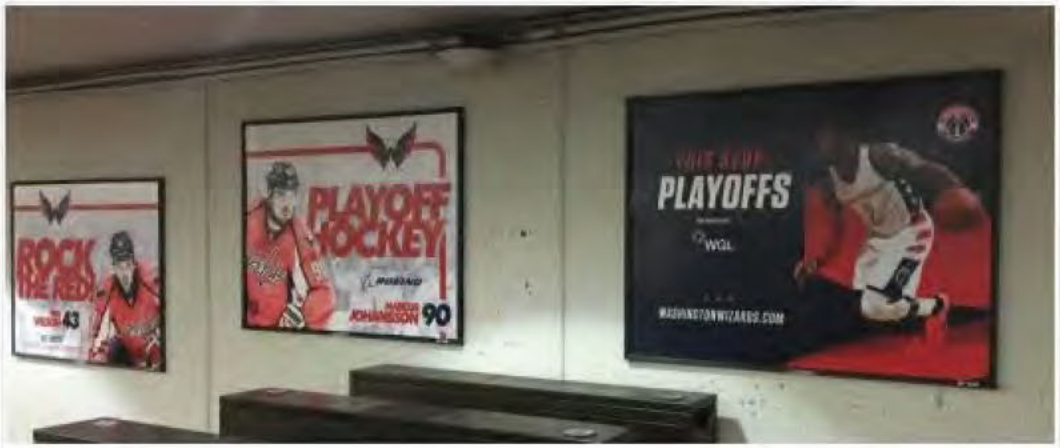
The reason Why we Fight.

Dedicated 44 years ago today. pic.twitter.com/3X5fx25SgT

11:35:12 PM - Apr 04 2017

835 1,845

@WMATA:



Dan Steinberg
@dcsportsbog

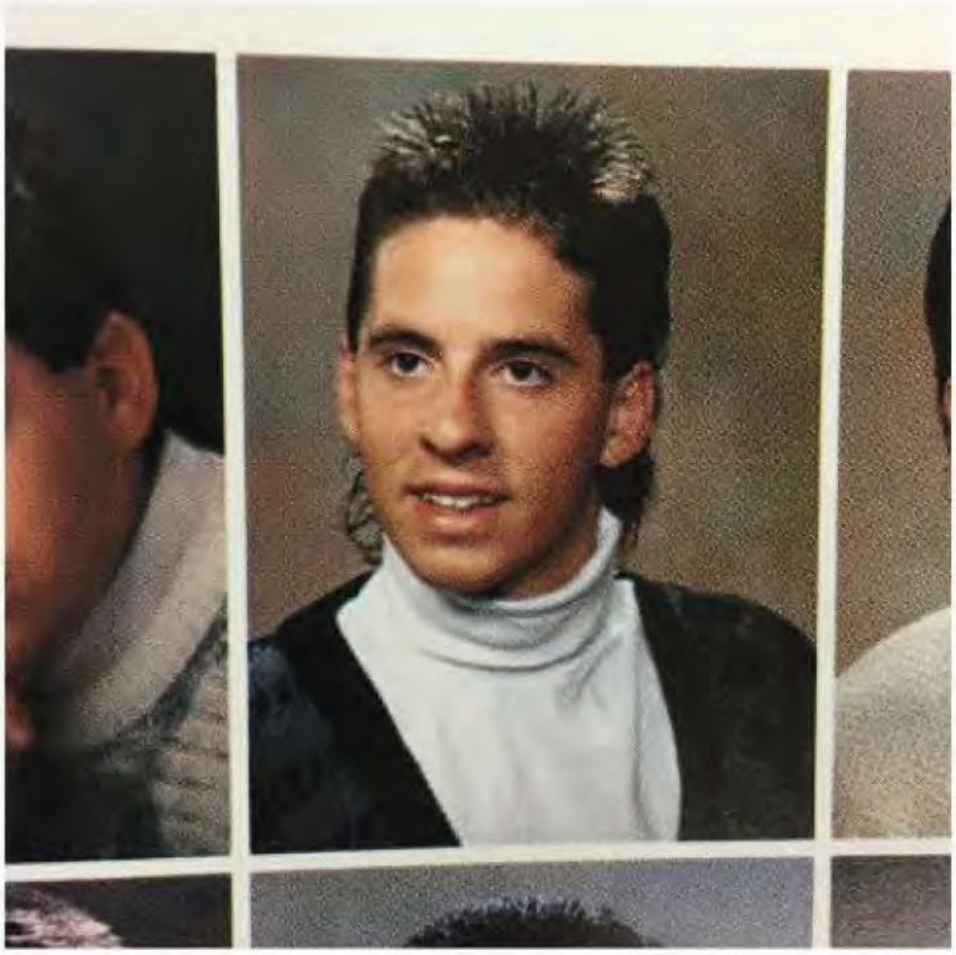
Follow

Metro is ready for the playoffs. (Offer may not extend to actual Metro)
pic.twitter.com/huZsyoTbkb

3:06:30 PM - Apr 04 2017

25 75

This picture of Devin Nunes from his 1991 yearbook went viral:



Devin Nunes in his 1991 senior yearbook photo. (Tulare Union High School yearbook)

Matea Gold
@mateagold

Follow

The great @cathleendecker profiles Devin Nunes from Tulare, with this amazing flashback pic:https://t.co/hu9AR6oum6 pic.twitter.com/fUr9N2vjVO

3:39:09 PM - Apr 03 2017

86 150

GOOD READS FROM ELSEWHERE:

-- Ivanka Trump's chic neighbor Dianne Bruce became an overnight internet sensation after a picture of her watching

protesters while sipping wine and donning a fur coat went viral. In an interview with Cosmo, she says she's "a little confused" why the internet loves her. Rebecca Nelson: "This wonderful car came in and there were two dancers on top," Bruce said of the event. "The most athletic, wonderful dancers I've ever seen. We were enjoying that thoroughly. And another neighbor came out with a bottle of wine, some glasses, so we all sat there and enjoyed watching the party."

- **How did you find out that you went viral?** "The next day, a friend of mine called and said, 'Oh, you're not gonna believe it, but you're in the Daily Mail!' It's so weird, because I don't even quite understand what the word 'go viral' means. Because I don't do tweet. I don't do Facebook. I don't do any of that. I don't really understand it all. It's just one very simple picture."
- **Has too much been made of it?** "Yeah ... I really would like somebody to explain it to me, in a way. When someone says 'go viral' — does everybody now hate me and they're gonna blow up my house?"
- **No! 'Go viral," as in, like, it's made its way across the internet. Like, a lot of people have seen it. I think you're safe!:** "[*Laughs*.] I'm not particularly crazy about the Trump administration. But they are people, and I in my own way can protest things. I mean, I went to the first march in my life when I went to the Women's March in Washington. And [I] was most impressed with all that. So I thought, well, protest is good, as long as it doesn't get ugly. And this definitely was not ugly. It was basically a party."

-- The New Yorker, "Death of a Dystopian," by Alec Wilkinson:

"Alt-right conspiracy theorists think that the government killed the aspiring Libertarian filmmaker David Crowley. The truth is far stranger."

HOT ON THE LEFT:

"Legislator Calls Out Her 'White Male' Colleagues For Skipping Speeches By Women Of Color," from HuffPost: "On Monday, Minnesota state Rep. Ilhan Omar (D) spoke out against a public safety bill, arguing that its increase in penalties for protesters who block major roads would weaken civil rights and could have blocked historic demonstrations throughout history. Melissa Hortman (D), the minority leader in the state House, was disappointed that more of her colleagues weren't in the chamber to hear this speech and others that had been delivered by women opposed to the bill. So she moved to make them come back. 'I hate to break up the 100 percent white male card game in the retiring room, but I think this is an important debate,' she said. That

HOT ON THE RIGHT:

"Swedish soccer hooligans wear Muslim niqabs to get around newly imposed mask ban," from Marissa Payne: "Swedish government officials thought they had the perfect solution to curtail violent behavior by masked soccer fans — ban their face coverings. The new law, passed in January and enacted in March, was supposed to prevent extremist fans from 'disguising all or part of their face so as to make it more difficult to be identified,' according to the bill's language … To make sure the bill didn't infringe on anyone's religious rights, however, the law offers an exemption for 'people who cover their face for religious reasons.': Well, it appears soccer is now a religion in Sweden. On Sunday, during the Stockholm club AIK's

comment deeply offended some of the white men in the chamber. [Still], Hortman refused to apologize[:] "I have no intention of apologizing," she said, adding that she is so tired of watching her colleagues give amazing speeches, and then "looking around, to see, where are my colleagues?" "And I went in the retiring room, and I saw where a bunch of my colleagues were," she added. "And I'm really tired of watching women of color, in particular, being ignored. So, I'm not sorry."

season opener against BK Häcken, several dozen of AIK's most boisterous fans — known as 'ultras' — traded their masks for niqabs, the traditionally Muslim face covering that obscures the entire face except the eyes. To really rub it in, AIK's extremists also unfurled two gigantic banners with a message for Interior Secretary Anders Ygeman, who spearheaded the legislation." "Freedom for ultras is the ultimate goal," the banner read. "Thanks, Ygeman, for the loophole."

DAYBOOK:

At the White House: Donald and Melania will welcome King Abdullah II and Queen Rania of Jordan to the White House. In the afternoon, Trump will meet with Abdullah before being joined by Pence for an expanded bilateral meeting. Later, the two will hold a press conference and working luncheon.

Pence will participate in a media interview with Fox News' Martha MacCallum before joining Trump to participate in his meetings with Jordan's king. Later, Pence will host a reception for Gold Star wives.

Ivanka Trump: 'Where I disagree with my father, he knows it'

QUOTE OF THE DAY:

Ivanka Trump criticized an "SNL" skit that portrayed her selling a perfume called "Complicit." A narrator called it "the fragrance for the woman who could stop all this, but won't." On CBS News, the first daughter said: "If being complicit is wanting to be a force for good and to make a positive impact, then I'm complicit. ... **I don't know what it means to be complicit.**"

NEWS YOU CAN USE IF YOU LIVE IN D.C.:

-- Another beautiful day of spring weather ahead, the Capital Weather Gang forecasts: "Mostly sunny skies through the morning and midday turn increasingly cloudy by midafternoon. But the rain holds off, and highs reach the delightful upper 60s to low 70s. Winds are light and variable in direction."

-- The Capitals beat the Maple Leaves 4-1.

-- The Wizards beat the Hornets 118-111.

-- Bernie Sanders endorsed Tom Perriello in the Democratic primary for Virginia governor, throwing his weight behind the former congressman competing against Lt. Gov. Ralph Northam, who is backed by the Richmond establishment and Gov. Terry McAuliffe. (Fenit Nirappil)

-- Ed Gillespie announced that he wants to see abortion "banned," suggesting a shift from his previously-stated stance of opposition except in cases of rape, incest, and when the mother's life is at risk. Spokesmen for the Virginia Republican gubernatorial candidate insisted after the forum that his position had not changed and that he still backs those three exceptions. (Laura Vozzella)

-- A Maryland lawmaker who was raped repeatedly in childhood by his adoptive father made it his mission to ensure child victims have more time to sue abusers – giving painful testimony before his colleagues as he vowed to sponsor the bill until it passed. On its third try Tuesday, it did. "I never wanted to share my personal business … but I did it because I thought it would help people," Del. C.T. Wilson said. "I wanted the victims of sexual abuse to know they are not alone and that we care about them." (Ovetta Wiggins and Josh Hicks)

-- A sign of the times: The Montgomery County Council voted unanimously to place security checkpoints at two entrances to its Rockville office building. "With no discussion, the council voted

9 to 0 to spend $300,000 for contract security guards, walk-through metal scanners and other equipment. The annual cost is estimated to be $664,000," Bill Turque reports.

VIDEOS OF THE DAY:

Jimmy Kimmel talks about how the rides at Universal Studios have gotten political:

Universal Studios' Rides Get Political, Florida News Roulette - Monologue

Seth Meyers talks about The Americans:

The Americans

Stephen Colbert says Sean Spicer is shrinking:

Sean Spicer Is Shrinking In Size

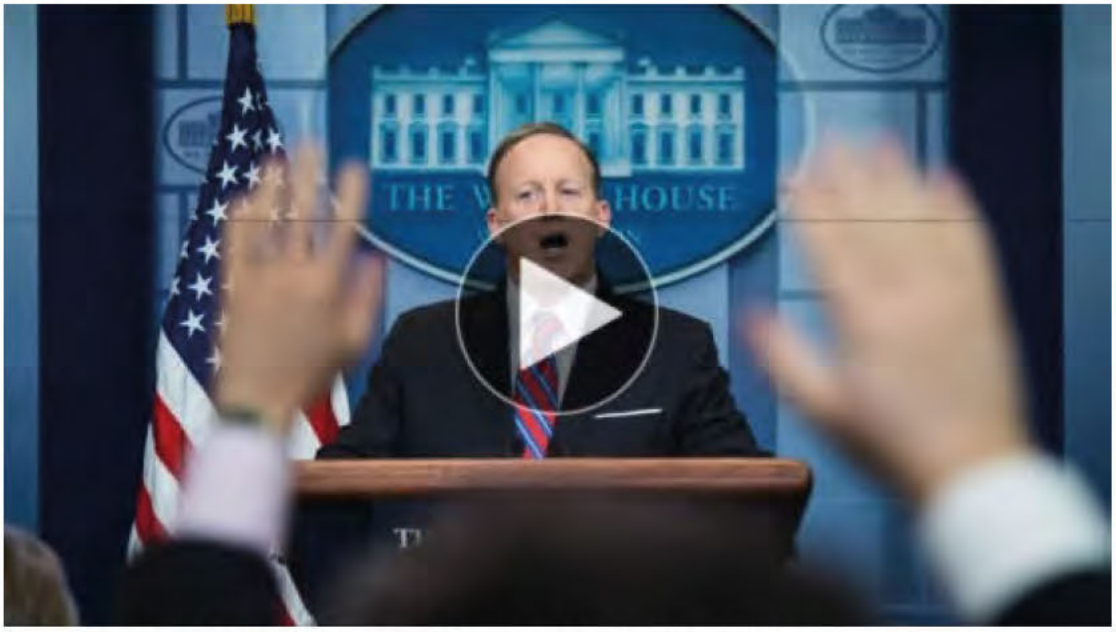
And he points to Scooby Doo's explanation of the Susan Rice "unmasking" charges:

Susan Rice's 'Unmasking' Allegations Explained By Scooby Doo

Watch drone footage capture Mt. Edna's lava flow:

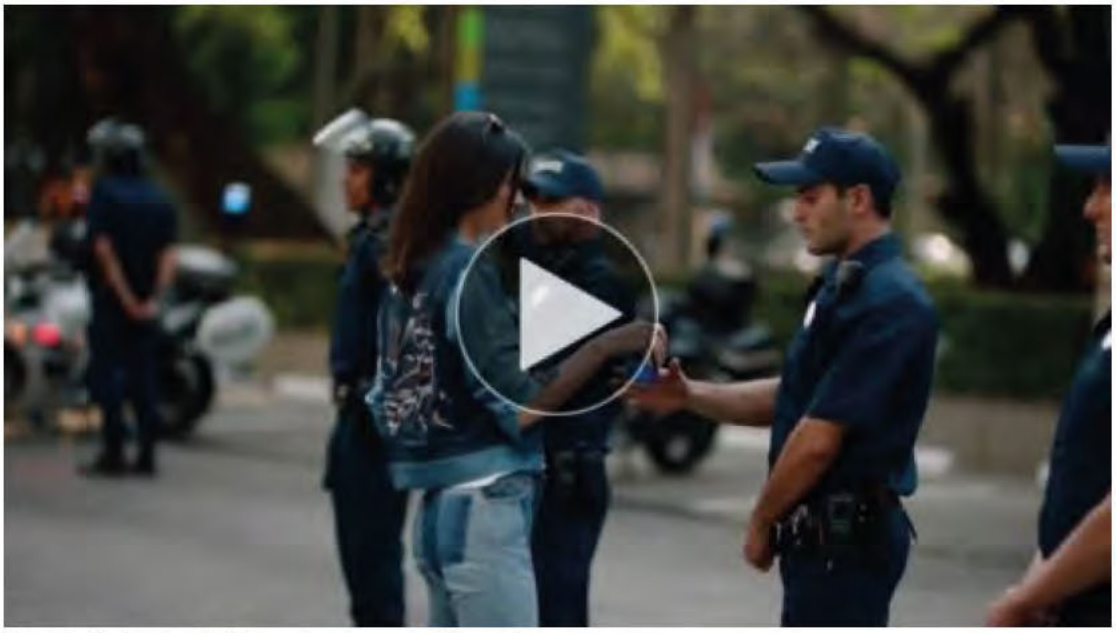
Watch: Drone footage shows view of Mt. Etna lava flow

See Sean Spicer take the next question at his press briefing pretty quickly:



Sean Spicer's habit of moving on to the next question quickly

See what all the fuss is about in Kendall Jenner's new Pepsi ad:



Kendall Jenner's Pepsi ad caused controversy

Wow: an Ethiopian maid is falling from a 7th story window, and her

boss filmed it.

Maid filmed dangling from window highlights widespread abuse in the Gulf

Ahead of Passover, there's a Matzoh Mobile making the rounds:

Introducing the Matzoh Mobile

You are receiving this email because you signed up for the The Daily 202 newsletter or were registered on **washingtonpost.com**. For additional free newsletters or to manage your newsletters, click **here**.

We respect your **privacy**. If you believe that this email has been sent to you in error, or you no longer wish to receive email from The Washington Post, **click here**. **Contact us** for help.

©2017 The Washington Post | 1301 K St NW, Washington DC 20071

The Daily 202_ Trumpism makes strange bedfellows.pdf

From: The Washington Post

To: Taylor, Will (OPATTY)

Subject: The Daily 202: Trumpism makes strange bedfellows
Date: Tuesday, September 12, 2017 7:08:11 AM

If you're having trouble reading this, click here.

PowerPost

The Daily 202

Morning intelligence for leaders

Share:

Listen to The Big Idea

Trumpism makes strange bedfellows

President Trump arrives in in Bismarck, N.D., last week. (Pablo Martinez Monsivais/AP)

BY JAMES HOHMANN
with Breanne Deppisch and Joanie Greve

THE BIG IDEA: In Shakespeare's "The Tempest," a storm shipwrecks Trinculo on an unfamiliar island. To survive, he takes shelter with Caliban, a native who he at first mistakes for a fish. "There is no other shelter hereabout: misery acquaints a man with strange bedfellows," Trinculo tells the audience near the start of Act 2. "I will here shroud till the dregs of the storm be past."

Four centuries later, Donald Trump's ascension to the presidency has created a feeling of misery for leading establishment figures of both parties. So much of what they thought they understood about politics turned out to be wrong during the 2016 cycle. Trump violated a dizzying number of shibboleths as a candidate and has tested norms of behavior during his first eight months in office.

Two such figures are teaming up to push back on Trumpism. William Kristol, the founder and editor at large of the conservative Weekly Standard magazine, and William Galston, a senior fellow at the Brookings Institution, are launching The New Center Project, a 501(c)(3) nonprofit. Their effort is being sponsored by the No Labels Foundation.

Kristol was the chief of staff to Vice President Dan Quayle when Bill

Clinton defeated George H.W. Bush in 1992. Galston joined the new Clinton White House as a top domestic policy adviser. Focused on passing HillaryCare, he vividly remembers Kristol's searing (and successful) activism against that effort.

They've debated each other repeatedly at public events over the years, including on several college campuses, but **Trump's rise inspired the two Bills to recognize how much common ground they share.** Until Nov. 8, 2016, each now says he took for granted the public's support for basic institutions and the core principles of liberal democracy.

After nine months of conversations, the two have co-written a new 70-page pamphlet that outlines seven "Ideas to Re-center America." This odd couple discussed their collaboration and previewed their proposals during a long lunch yesterday at the Bombay Club, a white-linen-tablecloth Indian restaurant one block from the White House.

"Simply bewailing the demagoguery does not solve the problem," Kristol said. "There was more general agreement and manageable differences than I expected."

"This booklet was our effort to figure out what the heck was going on and what we might do about it," Galston said. **"These ideas might appeal to a lot of people between the 35-yard lines in American politics."**

Galston, 71, has devoted most of his career to trying to revive the vital center. (He even worked on John Anderson's campaign in 1980.) **But Kristol, 64, had never dabbled in centrist politics**

before he became a Never Trumper. An avatar of neoconservatism, it never would have occurred to *anyone* to refer to Kristol as a moderate before now.

Both men, who have backgrounds in political science, embarked on a period of soul searching after the election to try understanding how the electorate could have possibly grown so disillusioned with the status quo despite years of decent economic growth. It's not just that Trump won, but they were also puzzled by how Bernie Sanders — a septuagenarian socialist from Vermont — could came so close to toppling Hillary Clinton in the Democratic primaries.

The loss of faith in both parties was much worse than they realized from their cushy offices in the Beltway. Kristol said the writing process has made him much more respectful of voter distaste for GOP orthodoxy. "There was more being missed by Republican politicians and think tanks than I realized," he said. "There's been far more sclerosis than we wanted to admit," Galston added.

The Bills say that their vision is for "a new center" that does not split the difference between left and right but offers a principled alternative to both. They spoke with dozens of friends at think tanks across the ideological spectrum, from the libertarian Cato Institute to the liberal Economic Policy Institute and the conservative American Enterprise Institute. "Grievance is not a basis for governance," they declare in their report.

William Kristol is co-chairing a new group proposing principled alternatives to Trumpism. (Chip Somodevilla/Getty Images)

-- Here's a quick sketch of their seven ideas:

1) Challenging the concentration of power among technology titans with a new antitrust policy: They advocate revising the Sherman Act of 1890 to make it easier for the federal government to go after companies like Google and Facebook, which they see as near monopolies. They call for a crackdown on predatory pricing practices, more scrutiny of mergers and better enforcement by the Justice Department.

2) Taking on China over its theft of American intellectual property: They want to increase federal funding for basic research and development that got slashed because of sequestration, overhaul the patent system and put in place stiffer penalties for IP theft. They believe the U.S. government should not allow any other nation to

require American firms to transfer control of their technology as a condition for doing business in that country.

3) Incentivizing work: America's labor force participation rate has declined more than any other advanced nation since 2000, and the Bills believe there are 10 million Americans who could or should be working but are not. They want to create a new regime of carrots and sticks to slash that number. They argue that better workforce development programs — always the go-to answer for politicians in both parties — don't address the problem of people who don't want to work. **They think the government should be more willing to "call laziness what it is," aggressively go after fraud in disability programs, make it easier for convicted criminals to reenter society, and provide more tax credits to help families pay for child care.** Inspired by Perkins Loans, they call for the federal government to make more education funding conditional upon students majoring in subjects where future job shortages are projected.

4) Getting economic growth to benefit the middle class more directly: Worried about stagnant median incomes and the increasing concentration of wealth among the richest 1 percent, the Bills call for once again taxing capital gains as income, expanding the earned income tax credit and incentivizing more profit-sharing by corporations. Not only do they want to increase the federal minimum wage, but both think it should be indexed to inflation.

5) Proposing a grand bargain that overhauls the tax code and funds infrastructure at the same time: They advocate for a package that would include a dedicated stream of revenue, such as a tax on

repatriated corporate profits, to invest in roads, bridges and the like. With the national debt so large, the Bills agree that overall taxes for high income earners should go no lower than current levels. They want to eliminate credits and deductions so that they can reduce the tax burden on lower- and middle- income families. As part of a deal, they support more user fees — such as a freight tax — to pay for public infrastructure.

6) Encouraging more people to start new businesses: A World Bank study shows that there are 51 countries where it is easier to launch a start-up than in the United States, including Portugal and Panama. Millennials are more risk averse than previous generations because of the Great Recession, so they aren't launching as many new enterprises. To make it easier to get money, the Bills want to revise provisions of Dodd-Frank that made it harder for community banks to lend to new businesses. They want less red tape, more flexible lending from the Small Business Administration and changes to the tax code to encourage angel investors to funnel more money into venture capital.

7) Trying again on an overhaul of the immigration system: Both guys oppose reducing the net number of immigrants, a proposal by Sen. Tom Cotton (R-Ark.) that Trump recently embraced. They want immigration policy to focus less on giving out visas for family reunification and more on whether someone will contribute directly to the economy. They propose coupling permanent legal status for illegal immigrants with mandatory tracking of expired visas. To encourage assimilation, they agree that basic English competence should be a requirement for completing the naturalization process.

-- **This is by no means a comprehensive agenda.** Their report does not deal with social issues or national security, for example. The Bills say this is merely a first crack, and that there are many more issues in which they've found common ground — such as how to tackle the opioid epidemic. "This is a first draft of the first chapter," Galston said. "This was proof of a concept," Kristol added.

Their shared hope is that enterprising presidential candidates in both parties pick up some of these policies and run on them in 2020. They recognize that the 2018 midterms will not be animated by ideas but will rather be a referendum on Trump's performance.

Galston sees parallels with 1989. Democrats believed for much of the previous year that Michael Dukakis would beat George H.W. Bush, and they found themselves mired in a civil war when he didn't. That internecine warfare did not get resolved until Bill Clinton prevailed four years later. "There is no shock to a political party greater than losing an election it expects to win," he said. "We are much closer to the beginning of the process than the end in Democratic politics. 2017 is 1989."

Most Democrats opposed NAFTA when Clinton endorsed it, Galston recalls. He thinks ambitious pols would be wise to learn from that by embracing ideas that might play better in a general election than in the primaries. "I do think there are opportunities for political entrepreneurship among people who are willing to take risks," he said.

Listen to James's quick summary of today's Big Idea and the headlines you need to know to start your day:

Play audio brief

Subscribe to **The Daily 202's Big Idea** on
Amazon Echo, Google Home, Apple Podcasts and other podcast players.

A MESSAGE FROM THE U.S. CHAMBER OF COMMERCE

Stop the looming health insurance tax

Congress is running out of time to protect families, seniors, and small businesses

Welcome to the Daily 202, **PowerPost's** morning briefing for decision-makers.
Sign up to receive the newsletter.

The many trials and tweets of Trump's travel ban

GET SMART FAST:

1. **The Supreme Court intervened to temporarily save a piece of Trump's travel ban,** putting on hold an appeals court ruling that prevented the government from blocking refugees with formal assurances from entering the United States. (Matt Zapotosky)
2. **The U.N. Security Council voted unanimously to impose its toughest-ever sanctions against North Korea.** Moscow and Beijing got on board after the United States softened its initial demands. The new sanctions limit Pyongyang's oil and textile exports, and while they are far less sweeping than Washington's original demands, experts predict their impact will be heavily felt. (Carol Morello)
3. **The Office of Congressional Ethics concluded that Guam's delegate to Congress likely broke federal law.** Del. Madeleine Z. Bordallo leased a four-bedroom home to the government of

Japan, allegedly in conflict with the Constitution's emoluments clause. (Elise Viebeck)

4. **Trump's voter fraud commission will hold an open meeting in New Hampshire today.** The event will provide critics of the effort their first opportunity to engage with members of the commission. (Politico)

5. **The University of Virginia released a report finding that the school was ill-prepared for the white nationalist rally on campus last month.** A working group argued the university incorrectly believed that rally would be similar to other events viewed as expressions of free speech. (Joe Heim)
6. **The top members of the Senate Finance Committee demanded a "detailed" accounting of the security systems at Equifax,** after a massive security breach exposed the sensitive information of up to 143 million customers. (Craig Timberg)
7. **Former House speaker John Boehner (R-Ohio) issued a statement imploring Trump to stay in the South Korea-U.S. trade agreement.** "For our strategic endeavors to succeed, however, the United States must strengthen – not weaken – its already vital economic relationships in the Pacific," Boehner wrote.
8. **Police in London have began deploying futuristic, steel-spiked road mats across the city in a bid to stop vehicular terrorist attacks.** Authorities said the giant barbed mats, also known as the "Talon," will likely become "a familiar sight" at events that attract large crowds. (William Booth)

9. **CDC officials are investigating a bacterial outbreak that has spread across at least seven states, and is linked to pet store puppies sold at Petland.** The bacteria has sickened at least 39 people in Ohio, Kansas, Missouri, Wisconsin, Tennessee, Pennsylvania and Florida, officials said, and nine people have been hospitalized with the infection. (Karin Brulliard and Lena H. Sun)
10. **Laura Ingraham is set to take over Fox News's 10 p.m. time slot.** The move will push Sean Hannity's show up to 9 p.m., and "The Five" will move back to the afternoon. (CNN)

Drone video shows hurricane damage

THE AFTERMATH OF TWO HURRICANES:

-- Irma's wrath has left approximately 12 million Floridians without power as it dissipated into a tropical storm on its way up the East Coast. Joel Achenbach, Katie Zezima, Mark Berman and William Wan report from Miami: "The once-powerful storm left trailer homes sliced open like ripe melons, boats tossed upside down on

roadways and centuries-old trees strewn across power lines. As it trailed off on Monday, Irma's rains caused floodwaters to rise from Jacksonville, Fla., to Charleston, S.C., continuing to impact a massive area of the American southeast. But it could have been much worse. …

"Though there was significant property damage in the Florida Keys and in some parts of southwest Florida, officials said it was remarkable that so far they are investigating just a small number of fatalities that came as the storm made landfall. … But in the face of cataclysmic warnings and worries ... Irma largely spared many of the major cities predicted to be in its path. Some, including Tampa and Orlando, escaped relatively unscathed. Others, such as Jacksonville, experienced unlikely — and record-breaking — effects."

-- An aerial tour of the Florida Keys revealed that the region, while still weeks away from its former self, largely dodged a bullet. Joel Achenbach reports from "above the Florida Keys:" "A Coast Guard C-130 transport plane carrying two U.S. senators, a congressman and a handful of journalists left from the Coast Guard air station in Opa-Locka, just north of Miami, for the two-hour tour of hurricane damage. At 2,000 feet, the journey offered no chance for a granular diagnosis, but **the big picture was clear: Southwest Florida and its huge population of retirees emerged relatively unscathed. The storm severely battered some of the small and fragile Keys. Key West itself is generally intact, though without power, a water supply and a functional sewage system."**

-- "Hurricane Irma spared one Florida coast and slammed into another," by Patricia Sullivan, Perry Stein and John Woodrow Cox:

"All around Immokalee — an inland Southwest Florida town of 24,000, where nearly half the residents live in poverty — was evidence of Hurricane Irma's power. … For days, meteorologists had guessed that the storm would plod west, then veer north and slam into the state's southeast corner near Miami. … Irma, though, kept churning west — past the South Beach condos, past the Miami high-rises, past Biscayne Bay — until, due south of the Sunshine State's famous Keys, it finally turned through them. It spared one coast that had been awaiting devastation and devastated another coast that had been awaiting not much at all."

Irma brings storm surge and flooding to coastal South Carolina

-- Irma's sights now shift to Georgia and the Carolinas, which have already begun experiencing extreme flooding.

- **"Irma assaults Georgia: Three dead and nearly 1.5 million without power,"** from the Atlanta Journal-Constitution: "Three Georgia deaths were blamed on the storm — a 55-year-old Sandy Springs man who was crushed by a tree that fell on his

home as he slept, a South Georgia man who was swept off his roof by high winds, and a woman killed when a tree fell on a vehicle in a Forsyth County driveway. Metro Atlanta — which shut down schools, governments and even mass transit in advance of Irma — was pummeled by rain and wind on Monday that sent stately tulip poplars and oak trees careening into houses."

- **"Area sees 'incredible' flooding as Irma pounds Charleston, coastal South Carolina,"** from Charleston's Post and Courier: "In the worst tidal surge since Hurricane Hugo, Irma's wide, whirling bands thrashed coastal South Carolina on Monday with stinging rains and punishing floods that put vast swaths of the Lowcountry under water. … At its height, the storm generated a nearly 10-foot tide. That was 4 feet more than normal and among the worst tidal surges in 80 years after Hugo in 1989 and a storm in 1940."
- **"Irma downs trees, and at least 270,000 remain without power in the Carolinas,"** from the Charlotte Observer: "A wind advisory for the Charlotte area was in effect until 4 a.m. Tuesday, with forecasters predicting winds of 15 to 25 mph and gusts of up to 40 mph. Winds blew limbs, trees and power lines onto roads across the Charlotte region on Monday, and onto homes in Burke, Gaston and Iredell counties."

A woman with her two children walk past debris left by Hurricane Irma in Charlotte Amalie, St. Thomas, U.S. Virgin Islands. (Ricardo Arduengo/AP)

-- The U.S. Virgin Islands were not so lucky. The New York Times's Luis Ferré-Sadurní reports: "Residents on St. John, which suffered even greater damage than St. Thomas, estimated that 80 percent of its structures had been extensively damaged, and those who had not evacuated were huddling together in groups of up to 50 in buildings that had no roofs. With many roads impassible, some had to walk for miles to food pantries to pick up ready-to-eat-meals and bottled water dropped by American military helicopters. … At least four people had been killed but the lack of communication led to widespread concern about who lived and who died. … **Many here complained that their**

suffering was being ignored, by the United States and local government."

-- Richard Branson, who rode out Irma in a wine-cellar on his private island of Necker, made the drastic suggestion of a "Marshall Plan" for the region to recover. "The region needs a 'Disaster Recovery Marshall Plan' for the BVI and other territories that will aid in recovery, sustainable reconstruction and long-term revitalisation of the local economy," Branson wrote in a Sunday blog post. "The UK government will have a massive role to play in the recovery of its territories affected by Irma — both through short-term aid and long-term infrastructure spending." (Alex Horton)

White House Homeland Security Adviser Tom Bossert. (Jonathan Ernst/Reuters)

-- A senior White House official falsely claimed during a news briefing on Monday that the administration's response to Irma

was "unprecedented," telling reporters during a news briefing that the Pentagon had put together "the largest-ever mobilization of our military in a naval and Marine operation." (He corrected himself in a statement Monday night.) (Dan Lamothe)

-- Tens of thousands of students were able to return to school yesterday in Houston, Moriah Balingit reports: "For a city in recovery … the reopening of 268 of the district's 280 schools represents a critical step toward normalcy in a city where thousands of homes remain uninhabitable and where signs of the storm still abound. Public officials heralded the reopening of the schools as one of the surest signs the region was bouncing back."

-- Gross: Floodwaters invading Houston neighborhoods are contaminated, having tested positive for high levels of toxins that can lead to illness, especially in the young and elderly. The Times's Sheila Kaplan and Jack Healy report: "Water flowing down Briarhills Parkway in the Houston Energy Corridor contained **Escherichia coli, a measure of fecal contamination, at a level more than four times that considered safe.** In the Clayton Homes public housing development downtown, along the Buffalo Bayou, **scientists found what they considered astonishingly high levels of E. coli in standing water in one family's living room** — levels 135 times those considered safe — as well as elevated levels of lead, arsenic and other heavy metals in sediment from the floodwaters in the kitchen. … Residents and medical professionals said they are seeing infections that likely resulted from exposure to the dirty floodwaters."

-- Congress may allow those affected by the storms to tap into

their 401(k) plans. Thomas Heath reports: "House Ways and Means Committee chairman Rep. Kevin Brady (R-Tex.) said he is considering legislation that would suspend a 10 percent penalty that was designed to discourage people from tapping their 401(k) retirement savings before they retire as early as age 59.5. … The package 'will include tax provisions, some of which will help people access their retirement funds without penalty for rebuilding activities ... "

-- Mexico took back its offer of aid to victims of Hurricane Harvey in neighboring Texas, after being battered last weekend by an earthquake and Hurricane Katia. Reuters reports: "Mexico's government offered to send food, beds, generators, mobile kitchens as well as doctors after torrential rains from Harvey flooded vast parts of Houston. The ministry noted that the U.S. embassy had taken nine days to respond to Mexico's formal offer … While government aid never arrived, Mexico's volunteer Red Cross rushed food and supplies to storm refugees. [Meanwhile], **Mexican media highlighted that Trump had not spoken about the quake,** which drew pledges of support from the pope and other world leaders, nor publicly acknowledged Mexico's aid offer. The foreign ministry thanked Texas Governor Greg Abbott for sending messages of solidarity following the earthquake."

White House senior adviser Jared Kushner attends a dinner hosted President Trump and first lady Melania Trump. (Carlos Barria/Reuters)

THERE'S A BEAR IN THE WOODS:

-- Some members of Trump's legal team concluded this summer that Jared Kushner should step down from his White House role because of potential legal complications stemming from the Russia probe. The Wall Street Journal's Peter Nicholas, Rebecca Ballhaus and Erica Orden report: "Among their concerns was that Mr. Kushner was the adviser closest to the president who had the most dealings with Russian officials and businesspeople during the campaign and transition ... [Kushner] has said he had four such meetings or interactions. Another issue was Mr. Kushner's initial omission of any contacts with foreign officials from the form required to obtain a security clearance. … After some members of the legal team aired their concerns to Mr. Trump in June, including in at least

one meeting in the White House, press aides to the legal team began to prepare for the possibility that Mr. Kushner would step down, drafting a statement explaining his departure … Mr. Trump wasn't persuaded that Mr. Kushner needed to leave."

-- In an interview with USA Today yesterday, Hillary Clinton said that she is now convinced the Trump campaign aided Russia's election interference. "There certainly was communication and there certainly was an understanding of some sort," Clinton said. "Because **there's no doubt in my mind that [Russian President Vladimir] Putin wanted me to lose and wanted Trump to win. And there's no doubt in my mind that there are a tangle of financial relationships between Trump and his operation with Russian money. And there's no doubt in my mind that the Trump campaign and other associates have worked really hard to hide their connections with Russians."** When asked whether she believed there was collusion with the Trump campaign, she responded, "I'm convinced of it. … I happen to believe in the rule of law and believe in evidence, so I'm not going to go off and make all kinds of outrageous claims. **But if you look at what we've learned since (the election), it's pretty troubling."**

-- Lawyers for Trump associates are urging their clients not to lie in the Russia probes to protect the president, but the directive could complicate Trump's strict sense of loyalty. Politico's Darren Samuelsohn reports: "Trump stalwarts know the president is closely following the media coverage of the Russia case – and the last thing they want is to be deemed a turncoat whose answers end up becoming further fuel for investigators. Several of the lawyers

representing current and former aides told POLITICO they're actively warning their clients that any bonds connecting them to Trump won't protect them from criminal charges if federal prosecutors can nail them for perjury, making false statements or obstruction of justice."

-- The Russian state-funded news agency Sputnik is being investigated by the FBI, as part of a probe into whether its acting as an "undeclared propaganda arm" of the Kremlin. Yahoo's Hunter Walker and Michael Isikoff report: "As part of the [investigation] … the bureau has obtained a thumb drive containing thousands of internal Sputnik emails and documents … The emails were turned over by Andrew Feinberg, the news agency's former White House correspondent, who had downloaded the material onto his laptop before he was fired in May." Feinberg confirmed he was questioned by an FBI agent and Justice Department lawyer earlier this month, who he said "wanted to know where … my orders come from and if I ever got any direction from Moscow."

-- Russian trolls reportedly organized anti-immigrant, anti-Muslim rallies at the height of the 2016 campaign. The Daily Beast's Ben Collins, Kevin Poulsen and Spencer Ackerman report: "A Facebook spokesperson confirmed to the Daily Beast that the social-media giant 'shut down several promoted events as part of the takedown we described last week.' … The Facebook events — one of which echoed Islamophobic conspiracy theories pushed by pro-Trump media outlets — are the first indication that the Kremlin's attempts to shape America's political discourse moved beyond fake news and led unwitting Americans into specific real-life action. … The event was 'hosted' by 'SecuredBorders,' a putative U.S. anti-immigration

community that was outed in March as a Russian front. The Facebook page had 133,000 followers when Facebook closed it last month."

The cover of a South Korean news magazine in Seoul. (Ahn Young-joon/AP)

-- Russian profiteers are quietly undercutting sanctions intended to stop North Korea's nuclear program, according to a new U.S. assessment, providing Pyongyang with shipments of petroleum and other vital supplies just as China finally agreed to crack down on its neighbor.

Joby Warrick reports: "Official documents and interviews point to a rise in tanker traffic this spring between North Korean ports and [the far-eastern Russian city of Vladivostok]. With international trade with North Korea increasingly constrained, [Russian] entrepreneurs are seizing opportunities to make a quick profit, setting up a maze of front companies to conceal transactions and launder payments … The

smuggled goods mostly are diesel and other fuels, which are vital to North Korea's economy and can't be produced indigenously. Traffic between Vladivostok and the port of Rajin in North Korea has become so heavy that local officials this year launched a dedicated ferry line between the two cities."

Sen. Bob Corker (R-Tenn.) speaks to reporters after the Senate approves $15.25 billion in aid for Hurricane Harvey victims. (Joshua Roberts/Reuters)

CANARIES IN THE COAL MINE?:

-- Sen. Bob Corker (R-Tenn.) announced yesterday that he may not run for reelection next year. Once considered a Trump ally, the Tennessee Republican recently made waves by questioning Trump's temperament, provoking criticism from Trump and his inner circle (Steve Bannon reportedly is trying to recruit a 2018 primary challenge for the senator).

Sean Sullivan and Mike DeBonis explain the national implications: "If he retires, it would probably put a seat that analysts expect to stay in GOP hands into a more uncertain state. It would also mark the end of the tenure of a well-respected member of the Republican Party's mainstream governing wing, which has frequently collided with Trump and his nationalist, populist allies. … Corker, chairman of the Senate Foreign Relations Committee, said in a statement that it has been 'a tremendous privilege to serve Tennesseans in the Senate' but added that he was 'still contemplating' his electoral future."

--That's not all: Corker's news came on the same day that Rep. Dave Trott (R-Mich.) announced he would not seek reelection in his suburban Detroit district that narrowly went for Trump in November: "Trott became the third Republican in five days to announce his retirement, joining Reps. Charlie Dent (R-Pa.) and Dave Reichert (R-Wash.) — all of whom represent swing districts vulnerable to Democratic takeover. Key political forecasters have moved their ratings for each of these seats toward Democrats ...

GOP strategists said Monday that the current pace of retirements is in line with historical averages, and that it is too early to tell whether there will be an unusually large number of open seats that will be contested next year. **But many are privately wondering if these are the first of a wave of retirements similar to what was seen in 2006, when Democrats took the House by winning 30 seats, and 2010, when Republicans reclaimed the majority with a 64-seat swing."**

-- Mitt Romney may run for Senate in 2018 if Orrin Hatch decides

to retire, Utah Policy's Bryan Schott reports: "So far, Hatch has not made up his mind as to whether he'll run for an eighth term in 2018. He has previously said he was planning on running as long as his and his wife's health holds up. A UtahPolicy.com poll shows Romney would be in great shape to win a Senate race against Democrat Jenny Wilson, [pulling 64 percent] of the vote to Wilson's 26 [percent]. … Earlier this year Hatch said he would be willing to step aside if an 'outstanding person' like Mitt Romney were to run for the seat he currently holds." Sources say Hatch is expected to make a decision by October or November.

-- And Democrats are ramping up their efforts to unseat Republican incumbents. Sen. Chuck Schumer told Rep. Kyrsten Sinema last month that he would back her in Arizona's Democratic primary should she decide to challenge Sen. Jeff Flake (R-Ariz.), delivering the strongest sign yet that Sinema, a three-term representative and centrist Democrat, is gearing up for a Senate bid. (The Hill)

Sen. Heidi Heitkamp (D-N.D.) flew on Air Force One with Trump last week. Tonight she's going to dinner at the White House. (Manuel Balce Ceneta/Associated Press)

CONGRESS'S TO-DO LIST:

-- Trump is planning to host a bipartisan group of six senators for dinner tonight as the White House tries to launch a debate on tax reform. The three Democratic invitees – Sens. Joe Donnelly (Ind.), Heidi Heitkamp (N.D.) and Joe Manchin III (W.Va.) – all face reelection next year in states that Trump won. (Ashley Parker and Ed O'Keefe)

-- But Trump is likely to encounter resistance from his own party when crafting a tax plan. Damian Paletta, Sean Sullivan and Kelsey Snell report: "The White House and GOP congressional leaders agree with the goal of slashing the corporate income-tax rate and also cutting individual income taxes to benefit the middle class. But they

have yet to agree about which existing tax breaks should be eliminated to pay for it all. In private talks with top congressional Republicans, Trump advisers are pressing to eliminate or reduce several popular tax deductions, including the interest companies pay on debt, state and local income taxes paid by families and individuals and the hugely popular mortgage-interest deduction."

But: "[Paul Ryan] said at a forum hosted by the New York Times last week that individual deductions for mortgage interest, health-insurance premiums and charitable donations should all be preserved. … That leaves lawmakers and Trump advisers with limited options to pay for the tax cuts they all seek. Underlying the whole endeavor is the unresolved tension over whether it will constitute the sort of 'tax reform' that Ryan has championed for years or a less ambitious but more politically feasible tax cut." Two of the largest tax breaks Trump is pushing also have robust lobbying groups to defend them. "**One Republican granted anonymity to speak candidly speculated Monday that the White House is lying in wait to cut a deal with Democrats** if Ryan and [Mitch McConnell] are unable to pass a budget blueprint[.]"

-- Meanwhile, Trump is accelerating a road campaign to sell a tax overhaul to voters. Bloomberg's Jennifer Jacobs and Justin Sink report: "Trump plans an aggressive travel schedule, taking him to as many as 13 states over the next seven weeks, to sell the idea of a tax overhaul[.] … [The strategy] calls for the president to visit states he won where a Democratic senator is up for re-election next year, including Florida, Indiana, Michigan, Montana, Ohio and Pennsylvania." **And the administration is not letting the absence**

of a clear plan on tax reform stop them from making these trips: "White House officials have concluded that, even without a specific tax plan, Trump can build support early by making a broad case for lower rates, a simpler tax code and more incentives for multinational corporations based in the U.S. to bring home profits stashed overseas."

-- Mitch McConnell said in an interview yesterday that the spending deal Trump struck with Democrats may not be "quite as good as my counterpart thought it was." The New York Times's Carl Hulse reports: "The reason? Mr. McConnell said that he insisted the newly passed legislation preserve Treasury's ability to apply 'extraordinary measures' and shift money within government accounts to pay off debt and extend federal borrowing power. That will delay the need for another increase in the debt limit well beyond the December deadline that Democrats have been trumpeting as their big moment of leverage. … **In fact, Mr. McConnell said, the debt limit will not have to be increased until well into 2018,** taking that volatile subject off the table for the December spending talks, and eliminating the Democrats' most dangerous bargaining chip in the first round of negotiations."

-- Sen. Rand Paul (R-Ky.) vowed last night to hold up a $700 billion defense bill unless he got a guaranteed vote on a new Authorization for Use of Military Force within six months. Karoun Demirjian reports: "A growing number of lawmakers have been calling for Congress to pass a new AUMF as the war in Afghanistan drags close to its 17th year. But [Paul] has largely been alone in his quest to force a deadline on Congress, as the chief agitators for a new AUMF,

Sens. Tim Kaine (D-Va.) and Jeff Flake (R-Ariz.), have expressed a firm preference for crafting such a measure in the Senate Foreign Relations Committee. … But less than an hour after issuing his threat, Paul and [Mitch McConnell] appeared to have struck a deal, guaranteeing Paul four hours on Tuesday to state his AUMF case on the Senate floor."

-- While shut out of power, congressional Democrats are stepping up their support of a single-payer health-care system. Aaron Blake writes: "Sen. Cory Booker (D-N.J.) became the fourth co-sponsor of Sen. Bernie Sanders's (I-Vt.) 'Medicare for all' health-care bill Monday. In doing so, he joined Sens. Elizabeth Warren (D-Mass.) and Kamala D. Harris (D-Calif.). What do those four senators have in common? Well, they just happen to constitute four of the eight most likely 2020 Democratic presidential nominees, according to the handy list I put out Friday."

Trump's full remarks in remembrance of 9/11

THE TRUMP AGENDA:

-- Trump delivered his first 9/11 commemoration as president on Monday – breaking from years of stoking criticism and trafficking in conspiracy theories as he instead struck relatively traditional notes of resolve and patriotism. Anne Gearan reports: "'These are horrible, horrible enemies — enemies like we've never seen before,' Trump said during remarks at the Pentagon[.] … 'The horror and anguish of that dark day were seared into our national memory forever,' Trump said of the attacks that killed nearly 3,000 people. **His own memory of the event, however, has often proved unreliable:"**

- **"In November 2015, Trump claimed [that] residents of a New Jersey town with a large Muslim population had cheered as the twin towers fell."** "I watched when the World Trade Center came tumbling down," Trump said then. "And I watched in Jersey City, New Jersey, where thousands and thousands of people were cheering as that building was coming down." (This claim has repeatedly been debunked, including by police.)
- **"On the day of the attacks, [Trump told a local television station] that** one of his buildings, 40 Wall Street, had reclaimed its position as the tallest building in Lower Manhattan." He also claimed he saw people jumping to their deaths — even though Trump Tower was more than four miles away.
- **"In 2011, he claimed to have predicted the attacks** in his 2000 book 'The America We Deserve.'"
- "On the 9/11 anniversary in 2013, he wrote on Twitter, 'I would like to extend my best wishes to all, even the haters and losers, on this special date, September 11th.'"

-- Press secretary Sarah Huckabee Sanders pushed back on

some of the assertions made by Steve Bannon in his "60 Minutes" interview, emphasizing the shadow that the former senior strategist still casts over the White House. Ashley Parker writes: "Bannon has cast himself as a loyal Trump soldier, attacking only the president's obvious enemies who need to be 'put on notice,' as he told [Charlie] Rose. But Bannon has at times also treated Trump as an imperfect vehicle for his own nationalist agenda, chafing at the advisers and family members the president brought in who did not share that vision. … **For now, however, the president is pleased with Bannon's most recent star turn.** Trump watched the '60 Minutes' interview and liked it, telling friends and aides he was appreciative of the praise Bannon offered for him and his policies[.]"

-- Thousands of federal buildings are still missing their customary portraits of the president and vice president on the wall, eight months after Trump's inauguration. Lisa Rein reports: "The changeover appears to be tangled in a bit of red tape and mystery. Federal agencies ordered photographs of their new commander in chief months ago. But they say they are still waiting for the Government Publishing Office, the printer of official portraits, to send them for distribution by the General Services Administration, which owns or leases 9,600 federal buildings across the country. The Government Publishing Office says it has yet to receive the images from the White House. And the White House says the president and vice president have not yet decided when they will sit for the type of high-quality official photographs usually churned out by the modern GPO[.]"

Donald J. Trump
@realDonaldTrump

Follow

DAMAC & #Trump Organization are developing a 2nd Trump #golf course, Trump World Golf Club #Dubai, at AKOYA Oxygen! pic.twitter.com/HLCYGmiBKB

9:55:33 AM - Sep 23 2014

113 153

-- Meanwhile, despite Trump's promise that his family business would not get involved with foreign government entities while he was in office, the Trump Organization hired a construction company owned by the Chinese government to work on a Dubai golf club. McClatchy DC's Anita Kumar reports: "Trump's partner, DAMAC Properties, awarded a $32-million contract to the Middle East subsidiary of China State Construction Engineering Corporation to build a six-lane road as part of the residential piece of the Trump World Golf Club Dubai project called Akoya Oxygen … The companies' statements do not detail the exact timing of the contract except to note it was sometime in the first two months of 2017, just as Trump was inaugurated and questions were raised about a slew of potential conflicts of interest between his presidency and his vast real

estate empire."

In this Jan. 26, 2016 photo, then-Republican presidential candidate Donald Trump is joined by Joe Arpaio. (Mary Altaffer/AP, File)

-- The Justice Department is supporting former Arizona sheriff Joe Arpaio's bid to erase a judge's finding that he violated a court order and was guilty of criminal contempt. Matt Zapotosky reports: "In a short court filing, attorneys from the Justice Department's public integrity section wrote that because President Trump's pardon of Arpaio … guaranteed he would face no consequences from the verdict against him, 'the government agrees **that** the Court should vacate all orders and dismiss the case as moot.' **Arpaio himself had asked for such a result after Trump pardoned**

him last month, but the judge in the case declined to do before an Oct. 4 hearing on the matter. … [Trump's] pardon guaranteed Arpaio … would face no punishment for being found guilty. But his attorney said having a judge take the technical step of dismissing her finding against him was a 'matter of clearing his name.'"

- **Meanwhile, two advocacy groups moved yesterday to challenge Trump's pardon of Arpaio.** The Roderick and Solange MacArthur Justice Center and the Protect Democracy Project both sought to file amicus briefs arguing that the pardon violated the judicial branch's authority guaranteed by the Constitution. (Politico's Madeline Conway)

-- Trump has already been able to nominate 42 U.S. attorneys, and only one of them was a woman. In comparison, of President Obama's first 42 nominees, 12 were women. One of those early Obama nominees, former U.S. Attorney Joyce Vance, said of the news, "It's a slap in the face. … It's a statement that this is not a priority." (Buzzfeed News's Zoe Tillman)

SOCIAL MEDIA SPEED READ:

Politicians marked yesterday's somber anniversary:

Donald J. Trump
@realDonaldTrump

Follow

May God Forever Bless the United States of America. #NeverForget911
pic.twitter.com/erycJgj23r

2:35:59 PM - Sep 11 2017

29,073 100,464

Barack Obama
@BarackObama

Follow

We remember everyone we lost on 9/11 and honor all who defend our country and our ideals. No act of terror will ever change who we are.

11:32:51 AM - Sep 11 2017

318,958 1,136,695

Florida Gov. Rick Scott viewed the damage wrought by Hurricane Irma from the sky:

Richard Branson offerd extensive aid to assist in the British Virgin Islands' Irma recovery:

The White House's claim about "unprecedented" aid to Hurricane Irma victims was fact-checked:

News networks took different approaches to their hurricane coverage:

Trump's tally of falsehoods went up again. From The Post's resident fact-checker:

Hillary Clinton sent pizzas to the people who lined up overnight for her book signing:

GregHale1
@GregHale1

Follow

Already a line for @HillaryClinton book signing (that's tomorrow). #WhatHappened @GradyKeefe @joysecuban pic.twitter.com/bPnfzBZ4k8

10:00:30 PM - Sep 11 2017

429 1,809

And Sens. Tim Kaine (D-Va.) and Lamar Alexander (R-Tenn.) practiced for their Friday performance together at the Bristol Rhythm and Roots Reunion:

Kaine has played at the music festival, which occurs at the Virginia and Tennessee state line, twice before, but it will be Alexander's first performance.

GOOD READS FROM ELSEWHERE:

-- The Cincinnati Enquirer, "Seven Days of Heroin": "The Enquirer sent more than 60 reporters, photographers and videographers into their communities to chronicle an ordinary week in this extraordinary time. … This is normal now, a week like any other. But a terrible week is no less terrible because it is typical. When heroin and synthetic opiates kill one American every 16 minutes, there is little comfort in the routine. There is only the struggle to endure and survive."

-- Wall Street Journal, "Both Parties Turn to Lawyer Abbe Lowell

in High-Stakes Cases," by Del Quentin Wilber: "Last week, Mr. Lowell launched his courtroom defense of Sen. Bob Menendez[.] … Mr. Lowell is also representing Jared Kushner[.] … Mr. Lowell's decades of representing major Washington figures in trouble, including 2004 Democratic vice-presidential candidate John Edwards, led to his unusual situation juggling arguably the two biggest political cases unfolding today."

-- Politico, "Liberals dominate Democrats' 2020 jockeying," by Gabriel Debenedetti: "[T]he lion's share of activity among potential 2020 hopefuls so far is on the progressive end of the Democratic spectrum — an indication of a broader ideological swing in a party struggling to be seen as more populist. The maneuvers shed light not only on the contours of Democrats' aggressive march toward 2020, but also how fundamentally [Bernie] Sanders' 2016 bid reshaped ambitious pols' views of what arguments break through in the age of President Donald Trump."

-- "Trump's Republican Civil War," by National Review's Jonathan S. Tobin: "Trump is not a true Republican, nor is he anyone's idea of a conservative. Nothing like Trump has ever happened before in American political history, and the long-term consequences of his presidency are still unknowable. But what is going on is not the birth of a third force in American politics[.] … Trump wants to change American politics in some ways, but he is not seeking to end the two parties' monopoly on power. … Trump doesn't have to invent a third party to get around the establishment. What we are witnessing is an attempt to expand upon last year's hostile takeover of the GOP that will remake the [party] in Trump's image."

HOT ON THE LEFT

"Pope Francis wants President Trump to expand his definition of 'pro-life' to include protecting DACA recipients," from Eugene Scott: "Pope Francis is urging the president to rethink a decision that the religious leader fears could tear families apart. 'If he is a good pro-life believer, he must understand that family is the cradle of life and one must defend its unity,' Francis said during an in-flight news conference en route to the Vatican from Colombia. … 'I hope they rethink it a bit,' the pope said. 'Because I heard the U.S. president speak: He presents

HOT ON THE RIGHT

"John Kelly fires back at Democrat who called him 'disgrace to the uniform,'" from Fox News: "Illinois Rep. Luis Gutierrez had leveled the criticism at Kelly over his support of President Trump's decision to end a controversial program that shielded young illegal immigrants from deportation. … Kelly responded by saying Congress did 'nothing' to help so-called Dreamers when they had the chance. 'As far as the congressman and other irresponsible members of congress are concerned, they have the luxury of saying what they want as they do nothing and have almost

himself as a person who is pro-life.'"

no responsibility,' Kelly said."

QUOTE OF THE DAY:

A Russian politician said on a panel show that U.S. "intelligence missed it when Russian intelligence stole the president of the United States." The subject of the panel was the decline of U.S. power in the world.

DAYBOOK:

-- Trump will meet throughout the day with members of his Cabinet, including Commerce Secretary Wilbur Ross. He also has an afternoon meeting with the Malaysia prime minister before a "bipartisan Senators dinner," which **Mike Pence** will join.

NEWS YOU CAN USE IF YOU LIVE IN D.C.:

-- D.C. may get some rain today. The Capital Weather Gang forecasts: "Mostly cloudy with occasional light showers possible, especially south of the city. Highs range through the 70s. Light winds blow mainly from the east. Rainfall totals should be very light — a trace to one-tenth of an inch. **These showers are the outer**

periphery of Irma's remnants."

-- Abortion has become a central issue in Virginia's gubernatorial race, possibly foreshadowing a trend in statewide races during Trump's presidency. Fenit Nirappil reports: "If the Supreme Court overturns Roe v. Wade ... [Gov. Terry] McAuliffe's successor could decide the legality of abortion in the Old Dominion. Planned Parenthood's Virginia arm has launched a $3 million field operation to support [Democratic candidate Ralph] Northam and other Democrats — surpassing its spending to elect McAuliffe in 2013. … Opponents of abortion are working with urgency, concerned that Virginia's changing demographics — growing urban areas, more residents of color — are turning the swing state blue. All five of the current statewide officeholders — Sens. Tim Kaine and Mark R. Warner as well as McAuliffe, Northam and Attorney General Mark R. Herring — are Democrats who support abortion rights."

-- Maryland's attorney general has joined three other states in a lawsuit opposing Trump's efforts to roll back DACA. Attorney General Brian E. Frosh announced yesterday that he would argue – alongside California, Maine and Minnesota – that the administration violated due process provisions of the Constitution by ending the immigration program. (Josh Hicks)

-- In a dramatic reversal, Maryland Gov. Larry Hogan offered to give an extra $500 million to the Metro system over the next four years if D.C., Virginia, and the federal government agreed to do the same. The proposal was praised by Metro officials and leaders in the region, though it is unclear whether the three other parties would go along. (Robert McCartney and Faiz Siddiqui)

VIDEOS OF THE DAY:

Seth Meyers mocked Steve Bannon's reputation as a "street fighter":

Steve Bannon Is a Street Fighter, 'It' Breaks Box Office Records - Monologue

Mike Pence became emotional discussing the sacrifice of those who died on Flight 93 on 9/11:

Pence emotionally thanks the 'heroes of Flight 93'

The Post's Glenn Kessler fact-checked the claim that the House has passed more bills than during other any recent president's first year in office:

Pence emotionally thanks the 'heroes of Flight 93'

This is how animals were kept safe as Irma prepared to make landfall:

How animals remained safe during Hurricane Irma

And a Colorado truck carrying livestock tipped over, leading to dozens of pigs milling about on the highway:

Truck full of pigs tips over on Colorado highway

You received this email because you signed up for The Daily 202 or because it is included in your subscription. For additional free newsletters or to manage your newsletters, **click here**.

We respect your **privacy** . If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, **click here**. **Contact us** for help.

©2017 The Washington Post | 1301 K St NW, Washington DC 20071

The Daily 202_ Trump™s border wall brinkmanship....pdf

From: The Washington Post

To: Taylor, Will (OPATTY)

Subject: The Daily 202: Trump's border wall brinkmanship may leave Republicans in Congress holding the bag
Date: Thursday, August 24, 2017 7:06:56 AM

If you're having trouble reading this, click here.

PowerPost

The Daily 202

Morning intelligence for leaders

Share:

Listen to The Big Idea

Trump's border wall brinkmanship may leave Republicans in Congress holding the bag

Trump: 'If we have to close down our government, we're building that wall'

BY JAMES HOHMANN
with Breanne Deppisch and Joanie Greve

THE BIG IDEA: Donald Trump is doing more damage to the public image of congressional Republican leaders than any Democratic operative could in their wildest dreams.

The president's threat to shut down the federal government if Congress does not pony up $1.6 billion for a border wall could further corrode his relationship with Mitch McConnell and Paul Ryan. It might also cause additional damage to the Senate majority leader and House speaker's standing with the Republican base.

By creating a new artificial crisis and making a demand that's unlikely to be met, Trump is setting up his supporters to be disappointed once again. But he's banking that Republicans on Capitol Hill will get blamed far more than him if the gambit fails.

Trump is probably right about this. Tony Fabrizio, who was the president's pollster during the 2016 campaign, has just conducted a survey of GOP and GOP-leaning voters that found **the congressional wing of the party has shouldered more blame than Trump for everything that's gone wrong the past few months.**

Everyone's image has taken a hit. Fabrizio reports that Trump's favorability rating has slipped from 78 percent among Republicans in June to 71 percent now. Ryan's favorability has dropped from 56 percent to 52 percent in that period. McConnell has slipped the most, however. The Kentucky senator was viewed favorably by 38 percent of Republicans and unfavorably by 30 percent in Fabrizio's June survey.

Now he's viewed favorably by 27 percent and unfavorably by 44 percent. Again, this is *among Republicans*.

Trump's approval rating is 75 percent among Republicans in Fabrizio's poll, but just 54 percent approve of the job Republicans in Congress are doing.

Asked who they blame more for the failure to repeal and replace Obamacare, 18 percent picked Trump and 82 percent picked Republicans in Congress.

What's going on when Trump does not fulfill his campaign promises? In Fabrizio's survey, 81 percent said it's because "the Republicans in Congress didn't support the president and blocked his promised proposal or policy." Only 19 percent said it's because, "The president didn't work hard enough and do what was needed to be done to fulfill the promise."

-- Only about 1 in 3 Americans want to build the border wall, but they happen to be the same people who still support Trump. Even the right-wing polling firm Rasmussen, whose results skew Republican, found in an automated national poll last month that 56 percent of Americans oppose building a border wall "to help stop illegal immigration," while 37 percent back it. A more reliable survey from the nonpartisan Pew Research Center showed in February that 35 percent support the wall and 62 percent oppose it.

Is that really a hill to die on? For Trump, who believes losing his core base of support could be fatal to his presidency, the answer is apparently yes. (Unless he's bluffing, which is totally possible.)

-- Trump's base is happy because it looks like he's taking steps to try following through on his promises. His shutdown threat was one of the biggest applause lines during his 76-minute speech at the Phoenix Convention Center.

The president's 2020 reelection campaign is trying to build up its small-donor list by pressuring Senate Republicans to fund the wall. A mass email that went out under Trump's name yesterday urged supporters to sign an "official" online petition. "I need your immediate help," he wrote. "Let's remind every single Senator the American VOTERS want this beautiful, impenetrable wall constructed. … This will only have an impact if EVERY American CITIZEN who understands the wall is a nonnegotiable signs this petition. … The Senate needs this urgent reminder that the American people want what they voted for. AS YOU SHOULD! We are so close to making this happen." (In fact, they are not close at all.)

Paul Ryan speaks during a visit to an Intel facility in Hillsboro, Ore., yesterday. (Don

Ryan/Associated Press)

-- GOP leaders on the Hill have no appetite for this fight, which they believe could derail the rest of their agenda. From Mike DeBonis, Damian Paletta and Elise Viebeck: "Republicans face a litany of high-stakes deadlines when they return to Washington after Labor Day: to extend funding for government agencies, raise the nation's borrowing limit, and reauthorize programs for flood insurance and children's health. GOP leaders also hope to begin an ambitious effort to rewrite the federal tax code in a bid to rescue their foundering legislative agenda. 'So I don't think anyone is interested in having a shutdown,' Ryan said at a tax policy event in Oregon. 'I don't think it's in our interest to do so.' Ryan said the border wall should ultimately be funded, reflecting the wishes of most congressional Republicans … But he has refrained from engaging in Trump's red-meat 'build the wall' rhetoric, in what GOP aides described as an effort to avoid poisoning upcoming negotiations with Democrats."

Ryan went out of his way to downplay the prospects of a shutdown when asked about Trump's Phoenix speech, predicting that Congress probably would pass a stopgap extension of funding to prevent a lapse when the fiscal year ends on Sept. 30 even if the wall issue remains unresolved.

McConnell has been somewhat evasive whenever directly pressed on the issue of wall funding, pivoting to express support for tougher border security more generally. But Trump has also been pressuring him to get rid of the legislative filibuster, so that he would not need to get Democratic senators to cross over. The president continued to harp on this message yesterday:

Many Republicans still have a bad taste in their mouths from the health-care fight. House members walked the plank to vote for a toxically unpopular bill. Trump celebrated with them in the Rose Garden, but then he went on Fox News and called the legislation "mean." This is something many lawmakers realize could be used against them in attack ads next year. They also worry that the same thing could happen again on a budget or a tax bill.

President Trump gestures during a rally at the Phoenix Convention Center. (Ralph

Freso/Getty Images)

-- **To be sure, threatening a shutdown is not without risk for the president.** Trump got rolled in April negotiations to keep the government funded through the end of September. Realizing he'd been outmaneuvered by Democrats and upset about news coverage that made him look like bad at making deals – which so much of his identity is wrapped up in – he lashed out by threatening a shutdown in the fall. "Our country needs a good 'shutdown' in September to fix mess!" Trump tweeted on May 2.

That time is drawing nigh. **If Trump caves once again and signs a budget without funding for the wall, it could make him look like weak and ineffective. If there is a protracted shutdown, on the other hand, independents and moderate Republicans might blame him.**

This would be first shutdown in American history to happen when the same party controls both Congress and the White House. Every other shutdown has happened when presidents and leaders on the Hill from opposite parties were at loggerheads. It would make the GOP look incapable of governing. It could spook markets and donors.

-- Trump will meet in the Oval Office at 11:45 a.m. today with the OMB Director Mick Mulvaney, his legislative affairs team and Vice President Pence to discuss their September strategy.

In southern Texas, a rancher explains why he supports Trump but not the wall.

-- While most congressional Republicans are supportive of a wall, there are some key holdouts. "Shutting the government down for $1.5 billion of a concrete structure doesn't make sense," Rep. Will Hurd (R-Texas), who represents a district on the border with Mexico that Hillary Clinton carried last year, said on PBS "NewsHour" last night.

-- Sen. Jeff Flake (R-Ariz.) is among the Republicans who have expressed skepticism publicly about Congress funding the wall.

Trump attacked Flake again on Twitter yesterday:

Shortly before taking the stage in Phoenix on Tuesday evening, the president met privately with two of Flake's prospective primary challengers: state Treasurer Jeff DeWit and former Arizona GOP Chairman Robert Graham. "Trump ripped the Arizona senator during the brief meeting, calling him 'the flake,'" Politico's Alex Isenstadt reports. "Trump … told DeWit and Graham, both of whom have aligned with the president, to get back to him about their interest in running. Also participating in the huddle was Rep. Trent Franks, a member of the conservative Freedom Caucus who appeared at the rally. At one point, Franks told the president that either DeWit or Graham would make strong challengers to Flake."

Trump-McConnell tension bursts into the open

-- The border battle is escalating amid deeper tensions between the president and his adopted party on Capitol Hill. Much of Trump's recent contact with key players on Capitol Hill has been counterproductive.

Trump has been lashing out at Republican lawmakers for not

giving him more support in the face of mounting Russia-related investigations.

He even called Sen. Thom Tillis (R-N.C.) on Aug. 7 to complain about a bill he'd just introduced that would make it harder for him to fire Robert Mueller as special counsel, Politico reported last night.

Two days after that, Trump phoned McConnell from his New Jersey golf club to berate him for the failure of the health-care bill. "He was even more animated about what he intimated was the Senate leader's refusal to protect him from investigations of Russian interference in the 2016 election," the New York Times reported, adding that the call "quickly devolved into a profane shouting match."

Trump also tried unsuccessfully to persuade Sen. Bob Corker (R-Tenn.) to back off the Russia sanctions legislation, arguing that the bill would damage his presidency. The Foreign Relations Committee chairman held firm.

"**Since coming into the West Wing, chief of staff John Kelly has tried to curb Trump's unscheduled interactions with legislators, senior administration officials say**," per Politico's Josh Dawsey and Elana Schor. "Trump has been known to see a senator on TV or think about an issue and immediately ask White House assistant Madeleine Westerhout to dial the senator. But Kelly has asked that senior White House aides, such as legislative affairs head Marc Short, be present for the calls, and for Trump to be briefed in advance on the topic."

-- McConnell and the White House issued statements yesterday trying to make things look hunky dory.

Press Sarah Huckabee Sanders said Trump and McConnell "remain united on many shared priorities, including … constructing a southern border wall…" "They will hold previously scheduled meetings following the August recess to discuss these critical items with members of the congressional leadership and the President's Cabinet," she said.

McConnell's statement mentioned a host of "shared goals" that he is in "regular touch" with the administration about, including the budget, but notably he omitted any mention of the border wall: "We are working together to develop tax reform and infrastructure legislation so we can grow the economy and create jobs; to prevent a government default; to fund the government so we can advance our priorities in the short and long terms; to pass the defense authorization and defense appropriations bills so we can support our troops and help implement an effective strategy against ISIL; to provide relief from Obamacare; and to continue our progress for our nation's veterans."

Listen to James's quick summary of today's Big Idea and the headlines you need to know to start your day:

Play audio brief

Subscribe to **The Daily 202's Big Idea** on Amazon Echo, Google Home, Apple Podcasts and other podcast players.

Welcome to the Daily 202, **PowerPost's** morning briefing for decision-makers.
Sign up to receive the newsletter.

WHILE YOU WERE SLEEPING:

President Trump is introduced by Defense Secretary Jim Mattis during the commissioning ceremony of the aircraft carrier USS Gerald R. Ford. (Jonathan Ernst/Reuters)

-- "The White House is expected to send guidance to the Pentagon in coming days on how to implement a new administration ban on transgender people in the military," the Wall Street Journal's Gordon Lubold reports. "The White House memo also directs the Pentagon to deny admittance to transgender individuals and to stop spending on medical treatment regimens for

those currently serving, according to U.S. officials familiar with the document. **The 2½-page memo gives Mr. Mattis six months to prepare to fully implement the new ban**, according to these officials. Mr. Mattis under the new policy is expected to consider 'deployability' — the ability to serve in a war zone, participate in exercises or live for months on a ship — as the primary legal means to decide whether to separate service members from the military, the officials said. …

"Employing the criteria of deployability to remove service members is bound to be greeted with deep opposition. 'Transgender people are just as deployable as other service members,' said Sue Fulton, the former president of Sparta, a military organization for lesbian, gay, bisexual and transgender people that advocates for open service. 'Other service members may undergo procedures when they are at home base, just as other service members schedule shoulder surgery or gall bladder surgery.'"

Alabama Senate candidate Roy Moore (R) holds a news conference in Montgomery, Ala. (Mickey Welsh/Montgomery Advertiser/AP)

GET SMART FAST:

1. **Alabama Senate candidate Roy Moore (R) has repeatedly questioned Barack Obama's place of birth.** As recently as December, Moore speculated that the former president was not a

natural-born citizen. Moore faces Sen. Luther Strange (R) in a Sept. 26 runoff for Jeff Sessions's former seat. (CNN)

2. **The U.S. Army has suspended numerous drill sergeants at its Fort Benning, Ga., training center** as officials investigate allegations of sexual assault against at least one trainee. (Dan Lamothe)
3. **The U.S. Air Force awarded Lockheed Martin and Raytheon separate $900 million contracts to begin development of a new nuclear cruise missile.** The award comes just days after the Air Force moved to reoutfit the Pentagon's ground-based ballistic missiles. (Aaron Gregg)
4. **U.S.-led coalition airstrikes in Raqqa are killing hundreds of civilians each month,** according to monitoring groups — deepening safety concerns for the thousands of families trapped inside the Islamic State's de facto capital in Syria. (Louisa Loveluck)
5. **A federal judge who previously compared Texas's voter ID requirements to a "poll tax" on minority voters struck down a revised version of the law** — delivering yet another blow to GOP leaders in the state. Texas Attorney General Ken Paxton slammed the ruling as "outrageous" and vowed to appeal. (AP)
6. **James Comey has taken a lecture post at Howard University.** The ousted FBI director will hold a one-year position at the university and deliver five public policy lectures. He is also slated to be the keynote speaker at a convocation ceremony for incoming students in September. (Politico)
7. **A U.S. postal worker was convicted of fraud this week after she faked cancer — and used her contrived illness to take**

two years of paid sick leave. As part of her punishment, a judge sentenced her to serve 652 hours of community service at a cancer treatment or hospice center — the exact number of hours she had falsified. (Alex Horton)

8. **Luxury fashion brands are distancing themselves from Louise Linton after her viral postings on Instagram.** Two of the designers tagged in Linton's Instagram post, Valentino and Tom Ford, denied any ties to the treasury secretary's wife. (Page Six)

9. **A single lottery ticket with all six winning Powerball numbers was purchased in Massachusetts.** The jackpot of $758.7 million was the second-largest grand prize in U.S. history. (Travis M. Andrews)

Police officials lob tear gas to disperse demonstrators after a President Trump campaign rally in Phoenix. (Sandy Huffaker/Reuters)

FRESH PHOENIX FALLOUT:

-- Advocates for Latinos and others who protested Trump's rally in Phoenix Tuesday night returned to the venue Wednesday morning to decry the president's suggestion he was prepared to pardon convicted Arizona sheriff Joe Arpaio. (John Wagner)

-- Arpaio told the Fox Business Network that he did not attend the rally because, "I didn't want to be the cause of any demonstrations, riots and that type of thing."

-- "If [Arpaio] is pardoned in coming days … the move will be the latest in a long line of hotly debated political pardons that critics say violate the spirit but not the laws of executive authority," Devlin Barrett reports: "For most applicants, seeking a pardon is a long, arduous process that begins with the pardon attorney at Justice Department headquarters ...The department recommends anyone seeking pardons wait at least five years after conviction, and be able to demonstrate their remorse … Arpaio, 85, has done none of that, and it's unlikely he will. If pardoned … [he] will be one of the rare but not unprecedented instances when a president decides to short-circuit ongoing or expected legal proceedings and preemptively grant a reprieve.

"[Former White House counsel Robert Bauer] said an Arpaio pardon would ignore criteria long used to evaluate potential pardons — that a presidential act of mercy should correct some past

injustice or oversight, or serve some greater public good. Granting a pardon now, **Bauer said, 'is a de facto interference in the administration of justice.'"**

-- The paperwork to pardon Arpaio has already reportedly been prepared by the White House. CNN's Kaitlan Collins reports: "An administration official said the White House has also prepared talking points to send to surrogates after he is pardoned. One of the talking points is that Arpaio served his country for 50 years in the military, the Drug Enforcement Administration and as Arizona's Maricopa County sheriff, and that it is not appropriate to send him to prison for 'enforcing the law' and 'working to keep people safe.'"

-- "Though No Longer Sheriff, Joe Arpaio Is Still a Polarizing Figure," by the New York Times's Simon Romero: "Mr. Trump's expression of support for Mr. Arpaio … has ignited a debate across Arizona about the tactics used to crack down on Latinos, the reactions the strategy spawned in fueling the repudiation by voters who ousted Mr. Arpaio, and the nationalist sentiment stoked by Mr. Trump[.] … Detested by some, loved by others and facing up to six months in jail[,] … Mr. Arpaio finds himself thrust back into the political fray at a time when he could quietly be in the twilight of his career."

-- Trump once again threatened to kill NAFTA in his speech, but Mexico and Canada were unfazed. Politico's Megan Cassella reports: "Canada and Mexico appear to have reached a conclusion that when President Donald Trump threatens to withdraw from NAFTA, it is a negotiating ploy that is all bark and no bite. … Both Ottawa and Mexico City downplayed Trump's latest comments as fairly standard procedure during sensitive trade negotiations."

-- Although Trump talked up the merits of "clean coal" in Phoenix, it's unclear that he actually understands the basics of the concept. (Dino Grandoni)

-- Ben Carson's appearance at the rally may have violated federal law. Philip Bump writes: "Right before Ben Carson took the stage at President Trump's rally in Phoenix on Tuesday night, the announcer introduced him. 'The secretary of the U.S. Department of Housing and Urban Development, Dr. Ben Carson,' the voice intoned, prompting cheers from the audience. And, as simply as that, a law was likely broken. … Among the prohibitions included in the Hatch Act is one prohibiting Cabinet secretaries from leveraging their positions for a political cause. That means that the head of, say, the Department of Housing and Urban Development can't appear at a campaign rally in a way that implies he's doing so in an official capacity. Say, by being introduced with his official title."

- A HUD spokesman denied any wrongdoing in a statement: "His travel and lodging were not paid for by the department. He was there in his personal capacity. He didn't discuss HUD during the speech." (AP)

-- Wall Street Journal editor Gerard Baker admonished his staff for their coverage of Trump's Phoenix rally, describing their reporting as "overly opinionated" in several blunt late-night emails. The New York Times's Michael M. Grynbaum reports: "'Sorry. This is commentary dressed up as news reporting,' Mr. Baker wrote at 12:01 a.m. … in response to a draft of the rally article that was intended for the newspaper's final edition. He added in a follow-up,

'Could we please just stick to reporting what he said rather than packaging it in exegesis and selective criticism? … **Baker has faced unease and frustration in his newsroom over his stewardship of the newspaper's coverage of [Trump], which some journalists there say has lacked toughness and verve.**"

The man behind the 'Blacks for Trump' signs has an interesting past

JUST WHO IS THAT GUY?

-- The African American man standing behind Trump at Monday's rally describes himself as "Michael the Black Man." And he has appeared behind the president at a number of other rallies, despite his checkered past. Katie Mettler and Lindsey Bever report: "The radical fringe activist from Miami once belonged to a violent black supremacist religious cult, and he runs a handful of amateur, unintelligible conspiracy websites. He has called Barack Obama 'The Beast' and Hillary Clinton a Ku Klux Klan member. Oprah Winfrey, he says, is the devil. Most curiously, in the 1990s, he was charged, then acquitted, with conspiracy to commit two murders … Michael told a

Chicago radio station Wednesday that he was the sixth person in line for the Phoenix rally and said he put himself directly behind the president's podium. 'They have seen me a lot of times,' [he said] … 'So when I went in, I just walked up there.' It's unclear whether the White House or Trump's campaign officials are aware of [his] turbulent history or extreme political views."

Lt. Gov. Ralph Northam and his wife Pam arrive at the Omni Homestead Resort in Hot Springs last month. (Bob Brown/Richmond Times-Dispatch/AP)

CHARLOTTESVILLE WOUNDS GO DEEP:

-- Virginia Lt. Gov. Ralph Northam — the Democratic gubernatorial nominee in this fall's contest — is now

enmeshed in the post-Charlottesville controversy, with the state GOP saying Northam turned his back on his slave-owning ancestors by calling for the removal of Confederate monuments. Laura Vozzella and Fenit Nirappil report: "The accusation drew swift condemnation from Democrats and some Republicans, who said it amounted to calling Northam a 'race traitor.' In a two-part tweet on its official account posted shortly after noon, the state party took aim at Northam ... whose great-great-grandfather owned [slaves] …" "[Northam] has turned his back on his own family's heritage in demanding monument removal," the two-part tweet read. "Shows @RalphNortham will do anything or say anything to try and be #VAGov — #Pathetic …" In response, Northam tweeted: "I feel fine about turning my back on white supremacy. How does @EdWGillespie feel about the president's position?"

-- Charlottesville is hosting a "community recovery town hall" tonight to provide "recovery updates." Those efforts have included shrouding two Confederate statues in black yesterday. (AP)

-- After Maryland's Senate president defended Supreme Court Chief Justice Roger B. Taney, who penned the *Dred Scott* decision, one of his Senate colleagues now wants him censured. (Ovetta Wiggins)

-- Christopher Cantwell, the white nationalist prominently featured in Vice's coverage of Charlottesville, turned himself over to authorities in Virginia. An arrest warrant had been issued for Cantwell on charges including two counts of illegal use of tear gas. (The New York Times's Matt Stevens and Frances Robles)

-- Trump's science envoy to the State Department quit Wednesday, penning a scathing letter of resignation blasting the president's Charlottesville response and subtly spelling out the word "I-M-P-E-A-C-H." Amy B Wang reports: "In a resignation letter posted to Twitter, [Daniel] Kammen wrote that Trump's remarks about the racial violence in Virginia had attacked 'core values of the United States' and that it would have 'domestic and international ramifications.' 'Acts and words matter,' Kammen wrote. 'To continue in my role under your administration would be inconsistent with the principles of the United States Oath of Allegiance to which I adhere.' However, his most biting message may have come in the form of a hidden acrostic: The first letter of each paragraph spelled out I-M-P-E-A-C-H."

-- A United Nations panel condemned Trump's handling of Charlottesville on Wednesday. The New York Times's Sewell Chan and Nick Cumming-Bruce report: "Without mentioning Mr. Trump by name, a body of United Nations experts on Wednesday denounced 'the failure at the highest political level of the United States of America to unequivocally reject and condemn' racist violence, saying it was 'deeply concerned by the example this failure could set for the rest of the world.' 'We were shocked and horrified by what happened," the committee's chairwoman, Anastasia Crickley, said in an interview … 'I was horrified as well by the way leaders of that movement were able to state afterwards that they felt secure in their support.'"

-- U.S. rabbis said that they are forgoing an annual high holidays call with the president over his response to Charlottesville. Colby Itkowitz reports: "'The president's words have given succor to those

who advocate anti-Semitism, racism, and xenophobia,' they wrote. 'Responsibility for the violence that occurred in Charlottesville, including the death of Heather Heyer, does not lie with many sides but with one side: the Nazis, alt-right and white supremacists who brought their hate to a peaceful community. They must be roundly condemned at all levels.'"

-- U.S. ambassador to Israel David Friedman also criticized Trump's response to the violence in a television interview Wednesday. Haaretz reports: "Asked by a Channel 10 TV reporter about if Trump's response to events following a white supremacist rally was 'fine,' Friedman said, 'I think that it was not fine,' and added he would rather not comment any further on the matter."

On script vs. off the cuff: Comparing Trump's speaking styles

A WEEK OF WHIPLASH:

-- Trump on Wednesday called for unity at the national convention of the American Legion in Nevada, appealing to the

country's "shared humanity" just hours after his raucous rally in Arizona. Abby Phillip reports: "'It is time to heal the wounds that have divided us, and to seek a new unity based on the common values that unite us,' Trump said ... 'We are one people, with one home and one flag.' 'We are not defined by the color of our skin, the figure on our paycheck or the party of our politics,' Trump continued. … [In Reno], Trump appeared to stick to his carefully crafted script, focusing on his administration's efforts to improve services for veterans, a key focus on the nation's largest veterans organization."

"But Trump's response to [Charlottesville] hung over his appearance here before a group of veterans that included some who fought against Nazism and fascism in World War II. The day before Trump's appearance, the Legion voted to reaffirm a nearly 100-year-old resolution condemning hate groups."

-- "In the span of 48 hours this week, [Trump] has boomeranged among three roles, the commander in chief, the divider and the uniter," Philip Rucker writes. "Like a contestant on one of his reality TV shows, Trump has taken on contrasting personas, showcasing divergent traits with flourishes seemingly to survive another day of his beleaguered presidency. Or, as Trump the television producer might put it, to keep up the ratings. … The whiplash from the three consecutive Trump speeches exemplifies the confusion and chaos that have come to define his presidency. Is Trump trying to heal the wounds of a country torn over this month's deadly white supremacist rally in Charlottesville? Or is he trying to pull it further apart? **Again and again, the pattern has been the same. The moments when Trump stays on message … almost inherently serve as a**

precursor for meltdowns … In some ways, the Phoenix rally was an encore of his Trump Tower performance the previous Tuesday, a showcase of the core Trump — impassioned and indignant at the seven-month mark of his presidency."

-- "[S]uch contrasts have become a recurring motif of his presidency," writes the New York Times's Mark Landler. "Mr. Trump has toggled between Teleprompter Trump and Unplugged Trump every day since the deadly clashes in Virginia, leaving Washington and the rest of the nation with a chronic case of rhetorical whiplash. … There were many reasons to believe that the president's angry performance in Phoenix was the real Donald J. Trump ... While reporters declared his rally one of his most caustic in the past two years, **some White House aides said privately on Wednesday that they found some comfort in the fact that it could have been worse."**

Robert Mueller departs Capitol Hill following a closed door meeting in Washington. (AP/Andrew Harnik)

THERE'S A BEAR IN THE WOODS:

-- Congressional investigators have unearthed an email written last summer by the now-deputy White House chief of staff relating to a previously unreported effort to arrange a meeting last year between Trump campaign officials and Vladimir Putin. CNN's Manu Raju and Marshall Cohen report: "The aide, Rick Dearborn … sent a brief email to campaign officials last year relaying information about an individual who was seeking to connect top Trump officials with Putin … The person was only identified in the email as being from 'WV,' which one source said was a reference to West Virginia. It's unclear who the individual is, what he or she was seeking, or whether Dearborn even acted on the request … [but] its existence suggests Russians may have been looking for another entry point into the Trump campaign … Dearborn's name has not been mentioned much as part of the Russia probe. But he served as then-Sen. Jeff Sessions' chief of staff, as well as a top policy aide on the campaign."

-- "How Alan Dershowitz Went From Hillary Donor to Trump's Attack Dog on Russia," by The Daily Beast's Betsy Woodruff: As Mueller's probe of alleged Russian interference in the 2016 election has gained momentum, Dershowitz has become a staple of conservative media. On Aug. 20, he told New York Republican billionaire radio host John Catsimatidis that Mueller's probe threatens American democracy. And last month on Fox & Friends, Dershowitz compared Mueller and his team to Captain Ahab from Moby Dick. … But those close to Dershowitz say his vociferous criticism of Mueller's

investigation is the opposite of surprising—and that Mueller and Dershowitz have a history. … **Some suspect Dershowitz's advocacy goes beyond his television appearances … A person familiar with the president's legal affairs said there are concerns Dershowitz has talked about legal affairs with Trump.**"

-- Russia's nearly infamous former ambassador to the United States, Sergey Kislyak, dismissed allegations of colluding with Trump associates as "nonsense." CNN's Matthew Chance, Emma Burrows and Zachary Cohen report: "When asked about US intelligence and security officials' conclusion that Kislyak had attempted to recruit individuals close to Trump, Kislyak pointed to others, including a former FBI director -- possibly meaning James Comey -- who only referred to him as a diplomat: **'I've heard that other statements by them, also by (the) former head of the FBI that said I was a diplomat. I have no -- no reasons to doubt that he knew what he said. OK.'** … Asked Wednesday if he and members of the Trump campaign -- specifically Jared Kushner -- discussed setting up secret channels to the Kremlin, Kislyak responded: 'I've said many times that we do not discuss the substance of our discussions with our American interlocuters. Out of respect to our partners.' …

"Kislyak also pushed back on claims that Trump disclosed secretive information about Syria during the now infamous Oval Office meeting between between the President and high-profile Russian diplomats. **'I'm not sure that I heard anything that would be secretive, but it was a good meeting and we were discussing things that are important to your country and to mine,' he said.** Ultimately, the former Russian ambassador told CNN that the future of US-Russian

relations is going to be difficult due to new sanctions levied on Moscow by the US government last month."

Energy Secretary Rick Perry speaks during the carbon capture, utilization and storage event in Beijing. (Andy Wong/AP)

TRUMP'S AGENDA:

-- "A much-anticipated Energy Department report on the electricity grid made recommendations for regulatory changes that would bolster coal and nuclear power plants," Steven Mufson reports: "The changes, if adopted, would alter the way prices are determined in electricity markets, ease environmental reviews for coal plants and speed the permitting process for a variety of energy sources. **The 187-page report rejects the notion that the coal and nuclear plants that have been forced to shut down over the past 16 years had been closed prematurely, noting that cheap,**

abundant natural gas had been the main factor — not environmental regulations or renewable energy sources as Republican leaders have contended ... the report has been seen as a test of whether the Trump administration is going to politicize government studies and disregard scientific evidence."

-- John Kelly is implementing a new process to try to control the information that Trump sees. Politico's Eliana Johnson and Nancy Cook report: "The new system, laid out in two memos co-authored by Kelly and [staff secretary Rob] Porter and distributed to cabinet members and White House staffers in recent days, is designed to ensure that the president won't see any external policy documents, internal policy memos, agency reports, and even news articles that haven't been vetted. … White House aides note that the new system is likely to slow the policymaking process. Executive orders, dashed out in a matter of days at the outset of the administration, are now likely to go through weeks of review as they are circulated to policy advisers, lawyers, and the president's legislative affairs team. But some hope that this new policymaking process will deliver legislative victories that have so far been elusive[.]"

-- The National Park Service is pushing back on National Rifle Association-backed legislation aimed at restricting hunting and fishing in parks. But leaked memo says Trump has prevented the Park Service from publicly voicing its concerns. McClatchy's Stuart Leavenworth reports: "Under the bill, the National Park Service would be prevented from regulating the hunting of bears and wolves in Alaska wildlife preserves, including the practice of killing bear cubs in their dens. It also would be prevented from regulating commercial and

recreational fishing within park boundaries and from commenting on development projects … that could affect the parks. [Acting director Michael Reynolds] objected to these in a memo … The park service later received a response from Interior with sections of Reynolds' concerns crossed out, next to the initials 'C.H.' Agency officials were told they could not repeat their concerns to Congress, according to Jeff Ruch, [of the] Public Employees for Environmental Responsibility … Ruch said it was his understanding that the 'C.H.' stands for Casey Hammond — an Interior political appointee … but that could not be verified."

-- Interior Secretary Ryan Zinke is expected to issue a recommendation today to strip the Bears Ears National Monument of its federal protection. The New York Times's Julie Turkewitz And Lisa Friedman report: "Shrinking the Bears Ears National Monument and reopening much of the land for possible mining and drilling would be widely seen as a direct blow to former President Barack Obama's environmental legacy, and the first major test of a century-old conservation law. … Native American tribes in the Southwest, who lobbied for years to get the Bears Ears region designated a national monument, are expected to fight any move to reduce its size. … Outdoor recreation and environmental groups are also expected to fight to preserve the monuments."

-- Trump is running out of time to make a decision on so-called Dreamers. Politico's Seung Min Kim reports: "Ten conservative states have threatened to sue the administration in order to kill off [DACA.] … That means DACA, which President Barack Obama began five years ago this month, is confronting its gravest danger yet. And one of the

biggest questions — will Trump defend the program in court — is still anybody's guess. Trump is facing pressure from his conservative allies to kill the initiative, but the hard-liner-in-chief has said that he wants to approach Dreamers 'with heart.' Meanwhile, it's also not clear how Trump would fare in court if he does defend the program, even as an early September deadline to act looms."

-- The Justice Department is fighting a lawsuit against Trump's religious liberty order -- saying it doesn't actually allow churches and religious groups to participate in political activity. Politico's Diamond Naga Siu reports. "'The Order does not exempt religious organization from the restrictions on political campaign activity applicable to all tax-exempt organizations,' government lawyers wrote in a court filing Tuesday. 'Rather, the Order directs the Government not to take adverse action against religious organizations that it would not take against other organizations in the enforcement of these restrictions.'"

Egypt's President Abdel-Fattah el-Sissi poses for a photo yesterday with White House adviser Jared Kushner in Cairo. (MENA via AP)

NEW WORLD ORDER:

-- Trump's decision to send more troops to Afghanistan will add billions of dollars annually to an already-staggering war cost, which has topped $1 trillion. And the government will still be paying for war veterans' health-care costs for at least another 50 years. Steven Mufson reports: "Direct U.S. spending on the war in Afghanistan will rise to approximately $840.7 billion if the president's fiscal year 2018 budget is approved, according to [military strategy expert Anthony Cordesman] … But the cost of the war also includes massive obligations for veterans' medical and disability costs. And veterans are filing claims in greater numbers and for more serious injuries than in past wars."

- **There are currently more than 12,000 American troops in Afghanistan, which is about 3,500 more than the Pentagon publicly acknowledges.** (The Wall Street Journal's Gordon Lubold and Nancy Youssef)

-- "How the Burden of Afghanistan Could Fall on Trump's Supporters," by Douglas L. Kriner and Francis X. Shen in Politico Magazine: "Our findings suggest that Trump drew support from American communities that have seen first-hand the human costs of war—and could pay those costs again with coming escalation in Afghanistan. Trump's Afghan gambit, in other words, risks retribution at the ballot box in 2020."

-- As Jared Kushner returns to the Middle East to help revive Israel-Palestinian negotiations, new political crises on both sides are likely to make his work in the region much harder. Loveday Morris and Ruth Eglash report: "Kushner is expected to arrive in Israel on Wednesday night along with deputy national security adviser Dina Powell and Middle East envoy Jason D. Greenblatt. [Earlier, he was slated to meet with] Egyptian President Abdel Fatah al-Sissi … and has already held talks with officials from Saudi Arabia and the [UAE] in Jordan. But since Kushner's last visit to the region in June, a corruption scandal embroiling [Benjamin Netanyahu] has deepened, leaving the Israeli leader increasingly beholden to right-wing factions in his coalition and support base and even less able to make concessions, some observers say. Meanwhile, Palestinian Authority President Mahmoud Abbas remains unpopular and politically isolated, with a decade-long split between his leadership in the West Bank and Hamas leaders in Gaza widening in recent months. 'Both leaders are

focused on their domestic political survival,' said former Israeli peace negotiator [Gadi Baltiansky] … With neither leader able to make 'courageous decisions,' one is needed from the U.S. administration, Baltiansky said."

-- Kushner also met with the Egyptian president to discuss the peace process, even as Egypt voiced displeasure over the State Department's decision to withhold hundreds of millions of dollars in aid over human-rights concerns. (Carol Morello)

-- Mike Pence once again addressed the Venezuelan crisis during a trip to Florida. Politico's Sergio Bustos reports: "Pence steered clear of uttering 'military operation' or 'military options' in South Florida, speaking only of 'economic and diplomatic powers' in dealing with the [Venezuelan President Nicolás] Maduro government. His comments echoed what he said last week during a tour of Latin American nations, where he spoke of a 'peaceable' solution for Venezuela in a sharp departure of Trump's declaration."

-- For the first time, ISIS used an American child in a propaganda video that threatens Trump. The child, who speaks in unaccented English and is identified as Youssef, says in the video, "My message to Trump, the puppet of the Jews: Allah promised us victory, promised you defeat. … This battle is not gonna end in Raqqa or Mosul. It's gonna end in you lands." (The Daily Beast's Katie Zavadski)

-- On The Post's front page today: "Returning to Mosul's Old City, where homes are now tombs," by Kareem Fahim and Aaso Ameen Schwan: "Time after time in Mosul, civilians were killed in a similar, disturbing pattern: Islamic State militants kidnapped families as

human shields in houses that served as the fighters' garrisons. Snipers took up positions on rooftops, firing at Iraqi troops or coalition planes. Then the houses were bombed, sometimes by artillery or airstrikes and with little apparent regard for the people inside, relatives and survivors said."

Clinton calls Trump a 'creep' in her new book, 'What Happened'

CAMPAIGN FLASHBACKS:

-- The first excerpts from Hillary Clinton's new book, "What Happened," are out. Cleve R. Wootson Jr. and Amy B Wang report: "Clinton said her 'skin crawled' as Donald Trump loomed behind her at a presidential debate in St. Louis, and added that she wished she could have pressed pause and asked America, 'Well, what would you do?' … Some of the moments during the campaign, she said, 'baffled' her. Others seemingly repulsed her: In recounting the October incident, she referred to Trump as a 'creep.' The book comes out Sept. 12, but audio excerpts, read by Clinton, were played Wednesday morning on MSNBC's 'Morning Joe.' In the recording, Clinton noted

that she wrote about moments from the campaign that she wanted to remember forever — as well as others she wished she could 'go back and do over.' …

"Clinton said in the audio clip played on MSNBC that 'What Happened' is not a comprehensive account of the 2016 race — and that it was difficult to write. 'Every day that I was a candidate for president, I knew that millions of people were counting on me, and I couldn't bear the idea of letting them down — but I did,' she said. 'I couldn't get the job done, and I'll have to live with that for the rest of my life.' Simon & Schuster, the book's publisher, says 'What Happened' is Clinton's 'most personal memoir yet.' 'In the past, for reasons I try to explain, I've often felt I had to be careful in public, like I was up on a wire without a net,' she writes in the introduction. 'Now I'm letting my guard down.'"

SOCIAL MEDIA SPEED READ:

Katie Couric is not known for hyperbole, so this is striking:

From a former British ambassador to the United States:

Ohio Gov. John Kasich noted his disappointment at Trump's rhetoric:

A Democratic senator criticized Trump's consideration of an Arpaio pardon:

Billy Joel, who lost many relatives during the Holocaust, took a stand against anti-Semitism:

A New York Times reporter noted this tension after Trump criticized Jeff Flake:

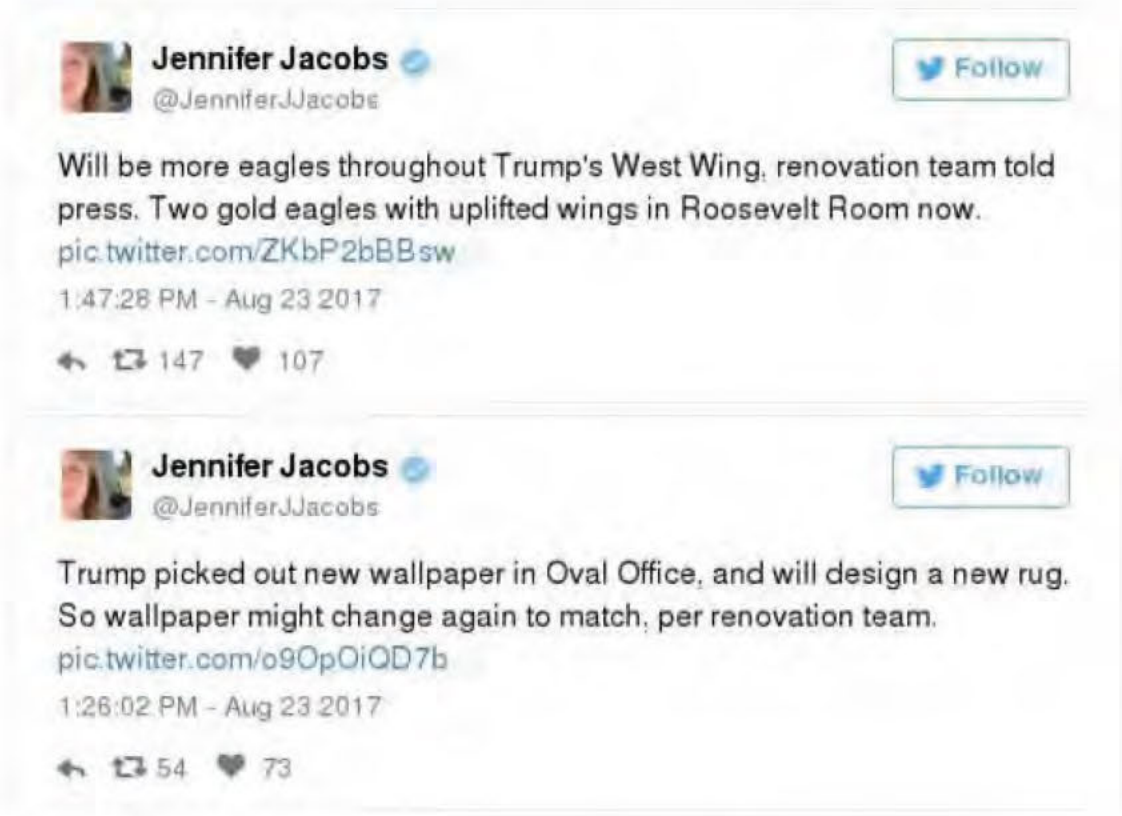
A German magazine portrayed Trump giving a Nazi salute on its cover:

Former National Security Adviser Michael Flynn's son, who has previously promoted conspiracy theories on social media, gave this suggestion:

A CNN reporter replied:

A House Democrat targeted Trump's possible conflicts of interest:

More details emerged from the White House's renovation process:



A government oversight group launched an inquiry:

GOOD READS FROM ELSEWHERE:

-- The New York Times, "Alaska's Permafrost is Thawing," by Henry Fountain: "In Alaska, nowhere is permafrost more vulnerable than here, 350 miles south of the Arctic Circle, in a vast, largely treeless landscape formed from sediment brought down by two of the state's biggest rivers, the Yukon and the Kuskokwim. Temperatures three feet down into the frozen ground are less than half a degree below freezing. This area could lose much of its permafrost by midcentury."

-- Politico, "California Democrats lead attack over Trump's mental health," by Carla Marinucci: "California Democrats are stoking a debate over Donald Trump's mental health and fitness for office, opening a new front in the resistance to the president but raising fears that the line of criticism could backfire. … Yet the concentrated focus on Trump's mental health worries many Democrats — even in the blue-state stronghold of California — who fear the party is expending too much energy obsessing over Trump at the expense of winning over voters to the party message."

-- The New York Times, "'It's a Slow Death': The World's Worst Humanitarian Crisis," by Shuaib Almosawa, Ben Hubbard and

Troy Griggs: "In just three months, cholera has killed nearly 2,000 people and infected more than a half million, one of the world's largest outbreaks in the past 50 years."

-- Politico Magazine, "When Nazis Filled Madison Square Garden," by Gordon F. Sander: "Some 78 years after the Bund rally at Madison Square Garden, a new generation of hectoring troglodytes descended on Charlottesville, Virginia. In 1939, Brown Shirts at Madison Square Garden felt emboldened to seize a Jewish protester who had rushed the podium where the Bund's German-born leader, Fritz Kuhn, was speaking, and beat him near-senseless."

HOT ON THE LEFT:

"Arizona Unconstitutionally Banned Mexican-American Studies Classes, Judge Rules," from HuffPost: "A federal judge ruled Tuesday that the state of Arizona violated students' rights by banning a Mexican-American studies program from Tucson public schools. The

HOT ON THE RIGHT:

"Clemson University Assistant Professor Labels All Republicans 'Racist Scum,'" from the Washington Free Beacon: "An assistant professor at South Carolina's Clemson University has called for violence against white supremacists and labeled Republicans 'racist scum' on his Facebook page. Bart

ruling issued by U.S. District Judge A. Wallace Tashima found that a law passed by Arizona's Republican-dominated state legislature in 2010 violated both the First and 14th Amendments. It marks a major victory for educators and activists who viewed the ethnic studies law as a flatly discriminatory effort by Arizona Republicans to keep Hispanic students from learning about their history or studying writers of color that are often ignored in public schools. 'We won on all points,' said Richard Martinez, one of six lawyers defending the students. 'It speaks to the importance of the judiciary and protecting everyone against racial discrimination.'"

Knijnenburg, who teaches in the School of Computing, allegedly wrote in recent posts, 'I admire anyone who stands up against white supremacy. Violent or non-violent,' with the hashtag '#PunchNazis.' He also denounced 'All republicans' as responsible for alt-right violence and demanded they either 'denounce"'and 'renounce' their GOP affiliation, 'or admit you're a racist.' The university [said it] is aware of remarks … [but would] not say if they would be taking any further action."

DAYBOOK:

Trump has two meeting today: one with H.R. McMaster and another with OMB Director Mick Mulvaney and the Office of Legislative Affairs.

Pence will join the Mulvaney meeting and will later tour the National Counterterrorism Center with DNI Dan Coats.

QUOTE OF THE DAY:

"**We're going to start working very hard on the Internet because they're using the Internet at a level that they should not be allowed to use the internet.** They're recruiting from the Internet. And we are going to work under my administration very hard so that that doesn't happen," Trump said in his American Legion speech about ISIS's online recruitment.

NEWS YOU CAN USE IF YOU LIVE IN D.C.:

-- The Capital Weather Gang forecasts a nice day in the District today: "Clouds should be few and far between in the morning but will be more numerous in the afternoon. Still the dry, mild conditions are nothing short of bliss. Highs settle in the upper 70s to lower 80s and winds are quite light from the north."

-- The Nationals lost to the Astros 6-1. (Chelsea Janes)

-- The Redskins acquired center Lucas Crowley from the Pittsburgh Steelers in exchange for defensive back Dashaun Phillips. (Mike Jones)

-- The National Park Service is already planning for Sept. 16, when more than 30 events are expected to take place in D.C. Perry Stein reports: "Permit applicants for that date include protests, a half-marathon, charity events and weddings. … The two most prominent events of the day will be the Juggalo march [of Insane Clown Posse fans] and a pro-Trump 'free-speech' rally dubbed the Mother of All Rallies. Joining them will also be a left-leaning protest at the White House called the March to Protect American Democracy[.]"

-- Howard University reiterated the importance of freedom of speech after two white teenagers were criticized for wearing "Make America Great Again" apparel on campus. Perry Stein reports: "University President Wayne A.I. Frederick said in a statement Tuesday that 'engagement, now more than ever, is the answer.' 'But that engagement must occur in a respectful manner between all parties on even footing,' he continued."

VIDEOS OF THE DAY:

Trevor Noah considered the "many sides" of Trump's Phoenix rally:

The "Many Sides" of Trump's Phoenix Rally: The Daily Show

The Post's Libby Casey examined how Trump's Twitter feed responded to his Phoenix speech. (Hint: there were many compliments.):

President Trump's rosy Twitter bubble

Chris Hurst, a former local television news anchor who watched two of his colleagues gunned down on air, is shaking up the House of Delegates race in one Virginia district:

His girlfriend was murdered on live TV. Now he's running in one of Virginia's most competitive races.

Protesters marched in solidarity with Colin Kaepernick outside the NFL's headquarters:

Protesters march outside of NFL headquarters in support of Kaepernick

And archaelogists uncovered a 1,500-year-old mosaic in Jerusalem:

Archaeologists uncover 1,500-year-old mosaic

Sen. Joe Donnelly (D-Ind.) was greeted by a mariachi band, hired by the National Republican Senatorial Committee, at a campaign stop:

GOP committee hires mariachi band to troll Ind. Democratic senator

You received this email because you signed up for The Daily 202 or because it is included in your subscription. For additional free newsletters or to manage your newsletters, **click here**.

We respect your **privacy** . If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, **click here**. **Contact us** for help.

©2017 The Washington Post | 1301 K St NW, Washington DC 20071

The Daily 202_ Trump™s penchant for revisionist....pdf

From: The Washington Post

To: Taylor, Will (OPATTY)

Subject: The Daily 202: Trump's penchant for revisionist history on display during Arizona rally
Date: Wednesday, August 23, 2017 7:05:08 AM

If you're having trouble reading this, click here.

PowerPost
The Daily 202
Morning intelligence for leaders

Share:

Listen to The Big Idea

Trump's penchant for revisionist history on display during Arizona rally

Trump's turbulent Phoenix rally, in 3 minutes

BY JAMES HOHMANN
with Breanne Deppisch and Joanie Greve

THE BIG IDEA: President Trump's raucous rally in Phoenix last night was one giant attempt to rewrite history.

-- These are the three biggest headlines out of his 76-minute speech:

- **Trump threatened to shut down the federal government if Congress does not fund a border wall by the end of next month.** "If we have to close down our government, we're building that wall," he said. "We're going to have our wall!"
- **He predicted that the North American Free Trade Agreement is "probably" going to be terminated "at some point."** "Personally, I don't think we can make a deal," he said of ongoing efforts to renegotiate the terms.
- **And he hinted strongly that he will pardon former Arizona sheriff Joe Arpaio at the right moment.** "I won't do it tonight because I don't want to cause any controversy. But Sheriff Joe should feel good," Trump said.

-- The bigger picture is that the president is in denial. His tendency to gloss over mistakes and pass the buck by recasting history in terms most favorable to himself was on vivid display. Just as the media was showing signs of starting to move on, **Trump devoted more than 16 minutes to re-litigating his response to the horror in Charlottesville.**

He defended the initial comment that he read on the day that Heather

Heyer was killed and 19 others were injured when a car plowed into a group of people who were protesting white supremacists. **Trump reread the first statement, but he notably omitted his declaration that there is hatred and bigotry "on many sides."** That is what generated the initial controversy.

"The words were perfect," Trump said. "I spoke out forcefully…"

He complained that he did not get enough credit for the second statement, delivered from the White House two days later. "I hit 'em with neo-Nazi, I hit 'em with everything. KKK? We have KKK. I got 'em all," Trump said.

Then he completely glossed over his news conference the day after that, in which he again insisted that "both sides" were to blame for the violence. "You had a group on one side that was bad, and you had a group on the other side that was also very violent, and nobody wants to say that," Trump said at Trump Tower.

As he recounted the story at the Phoenix Convention Center last night, Trump complained that the press intentionally ignored his condemnations. "I'm only doing this to show you how damned dishonest these people are," he said. "They said 'he wasn't specific enough.'"

Trump then turned to another page in his standard playbook. Essentially, it boils down to: *I know what you are, but what am I?* "The only people giving a platform to these hate groups is the media itself and the fake news," Trump said. (Steve Bannon famously boasted last summer that Breitbart is "the platform for the alt-right." After being ousted as White House chief strategist last Friday, Bannon

is again running the site.)

The president leaned hard last night on the "us" versus "them" trope that he used so effectively during the campaign. **Often, "them" is the press.** Trump described reporters as "sick people." "I really think *they* don't like *our* country," he said, leveling a serious (and patently untrue) charge against fellow citizens. Fox News is the exception, the president went on, singling out Sean Hannity for praise.

The media is "the source of division," he claimed. "*They* are trying to take away *our* history and *our* heritage. … It's time to expose the media … for their role in fomenting divisions in the country."

Trump laments CNN firing Jeffrey Lord: 'Poor Jeffrey'

-- Somewhat incongruously, Trump went on to attack CNN for firing a pro-Trump analyst who tweeted a Nazi slogan after Charlottesville. "They fired Jeffrey Lord. Poor Jeffrey," the president said of the ousted analyst. "I guess he was getting a little bit fed up, and he was probably fighting back a little too hard!"

In fact, **the cable network fired Lord for tweeting "Sieg Heil!"** during an argument with a liberal activist. "The phrase, meaning 'hail victory,' is banned in Germany because of its association with Adolf Hitler and his Nazi party," Andrew deGrandpre notes.

Lord responded with gratitude, tweeting: "Thank you @POTUS !!"

Trump rails on 'the crooked media' and praises 'Fox & Friends' and Hannity

-- It was more than the Charlottesville imbroglio, however. Trump sketched out an alternative reality full of what Kellyanne Conway once dubbed "alternative facts."

"I don't believe that any president has accomplished as much as this president in the first six or seven months," the president said, speaking in the third person.

Trump asserted that his brinkmanship with North Korea is paying dividends, claiming that Kim Jong Un is "starting to respect" the United States. (There is no evidence for this.)

“We won Arizona by a lot,” he declared near the start of his speech. (Trump carried the state by 3.5 points. John McCain’s margin of victory the same day, as a point of reference, was 13 percent. Mitt Romney beat Obama in Arizona by 9 points.)

Trump falsely claimed that the networks were cutting away from his speech as he laced into them. In fact, all three cable news channels continued to carry him live.

At another point, he maintained: “I don't do Twitter storms.”

Trump says former sheriff Joe Arpaio ‘can feel good’

-- Speaking about race relations, Trump defended himself by saying: “They were pretty bad under Barack Obama. That I can tell you.” They were bad in part because Trump spent years as a national leader of the birther movement.

Speaking of prominent birthers, Trump also asked the crowd what they think of Arpaio. The former Maricopa County sheriff, who lost reelection last year, was recently convicted on criminal contempt

charges related to racially profiling Hispanics even after a federal judge ordered him to cut it out. “So was Sheriff Joe convicted for doing his job?” Trump asked, as the crowd cheered. “You know what, I'll make a prediction: I think he's going to be just fine, OK?”

Illustrating how off script Trump was, White House press secretary Sarah Huckabee Sanders told reporters asking about Arpaio just hours before the rally that “there will be no discussion of that today at any point…”

-- **This is part of a pattern for Trump.** What made his speech on Monday night so rare was that he admitted he had changed his mind about Afghanistan after studying the issue carefully. Last night, he was true to form. The crowd loved the red meat.

From the director of The Post’s fact checking unit:

James Clapper, the former Director of National Intelligence, said he found the rally “downright scary and disturbing.” “I really question his ability to be -- his fitness to be -- in this office, and I also am beginning to wonder about his motivation for it,” Clapper told CNN's Don Lemon after the speech. “How much longer does the country have to, to borrow a phrase, endure this nightmare?”

"What we have witnessed is a total eclipse of the facts," said Lemon. "What in the world is going on?"

The former acting director of the Central Intelligence Agency added this:

Trump on the media: 'They are trying to take away our history and our heritage'

-- This morning's press coverage presents Trump's comments as somewhat unhinged. Here are 10 representative headlines:

- Fox News: "**Trump goes on rampage** against the media, sitting Arizona senators at Phoenix rally."
- Arizona Republic: "'Vintage Trump': **President unloads on**

enemies..."

- Associated Press: "**Trump revisits his Charlottesville comments in angry speech."**
- Financial Times: "**Trump threatens US government shutdown**."
- Time Magazine: "**Trump Goes on the Attack, Again**."
- Politico: "**A wounded Trump lashes out.**"
- CBS News: "Trump lashes out during **combative speech at campaign-style rally**…"
- Los Angeles Times: "**Trump fills Phoenix speech with charged language**, accusing media and fellow Republicans of failings."
- Washington Examiner: "**Frustrated by governing, Trump returns to campaigning**."
- Vanity Fair: "**Trump goes off-script in hour-long public meltdown.** Trump explained that the biggest victim in the Charlottesville violence last weekend was, in fact, himself."

Trump tours border security equipment

-- **How Trump's comments are playing on social media:**

The president's most devoted supporters were energized:

From provocateur Ann Coulter:

The banner on the Drudge Report:

Elites were horrified: The GOP focus group guru:

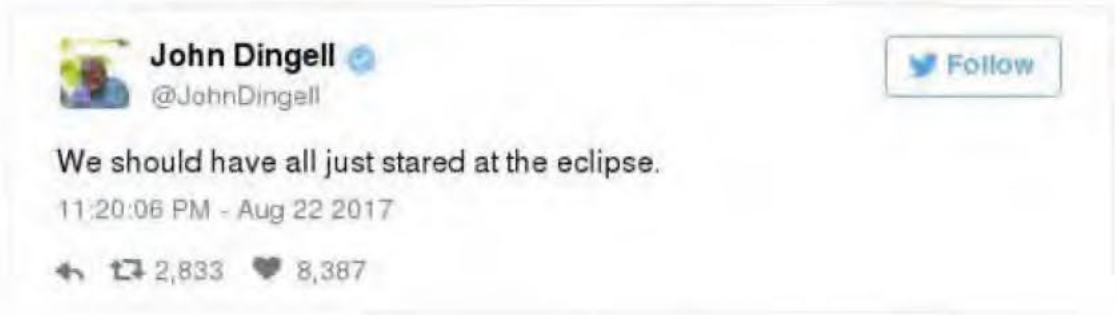
The political editor of Newsweek:

The New York Times columnist:

An NBC White House reporter:

An NYT White House reporter:

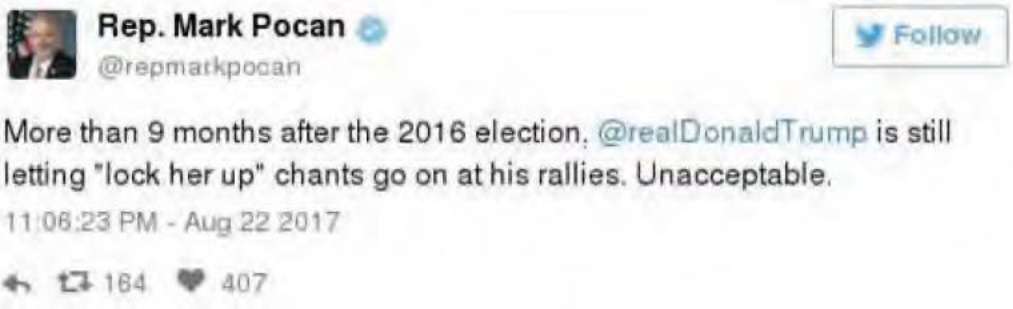
Democrats were aghast: The longest serving member of the House in American history (retired Michigan Democrat):



The Democratic congressman who represents Phoenix:

A Democratic congressman from Tennessee who has been pushing impeachment:

A Democrat from Wisconsin:



-- Finally, there's an old Trump tweet for almost every occasion.

Some were recirculating this post from 2011 overnight:

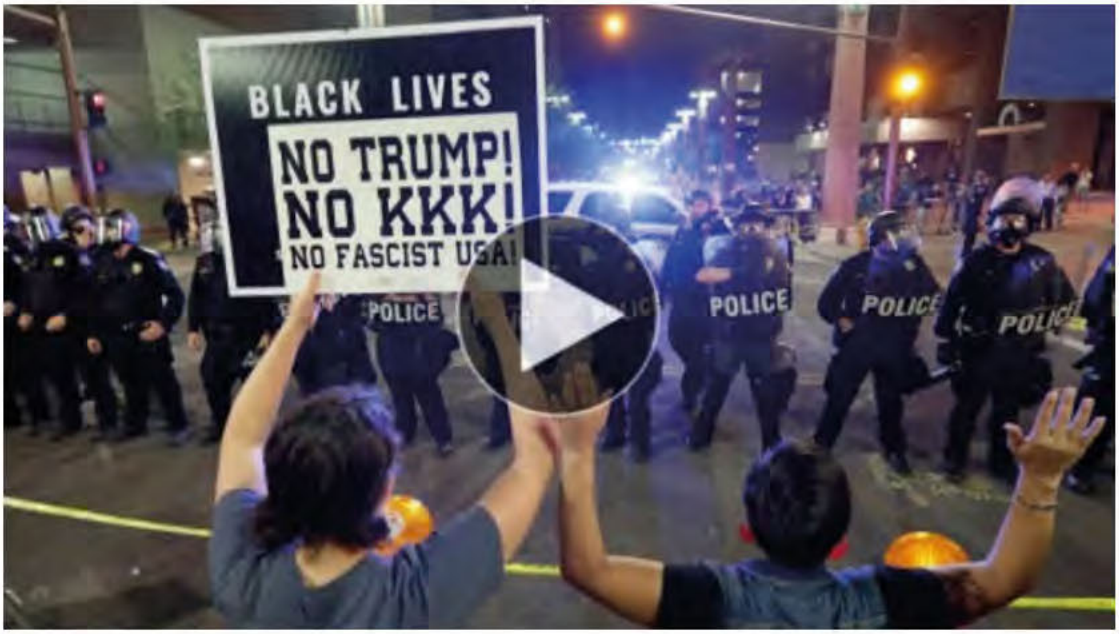
[Listen to James's quick summary](#) of today's Big Idea and the headlines you need to know to start your day:

Play audio brief

Subscribe to **The Daily 202's Big Idea** on
Amazon Echo, Google Home, Apple Podcasts and other podcast players.

Welcome to the Daily 202, **PowerPost's** morning briefing for decision-makers.
Sign up to receive the newsletter.

WHILE YOU WERE SLEEPING:



Protests erupt outside Trump's Phoenix rally

-- Authorities used tear gas to disperse protesters after Trump's rally ended. John Wagner, Jenna Johnson and Danielle Paquette report from Phoenix on how the crowd reflected America's divide:

"**Uzma Jafri, a 40-year-old doctor from Phoenix, walked through the crowds of Trump supporters and protesters with a backpack of medical supplies. She said she came here to quickly treat anyone if violence broke out.** 'My ethical background, and my moral background, is to assist anyone who needs it — regardless of if they hate me,' said Jafri, who poured a bottle of water over her black hijab in the 107-degree heat. **Brian Ratchford came to the event armed with a .357-caliber gun to defend Trump supporters if things got out of hand.** 'He's an American for Americans,' said Ratchford, 47, of Tucson. What Trump said after Charlottesville 'was perfect — people on both sides were causing the problems,' said Ratchford."

Divers find remains of some sailors on U.S. Navy destroyer after collision

-- "The Navy will relieve the admiral in charge of the service's 7th Fleet based in Japan in response to four embarrassing accidents this year, two of which killed sailors at sea," Dan Lamothe reports. "Vice Adm. Joseph P. Aucoin will be removed from his job formally Wednesday, the officials said. The incidents include the deadly

collision Monday of the destroyer USS John S. McCain with a much heavier oil tanker off Singapore, and a June 17 accident in which the destroyer USS Fitzgerald was ripped open by a larger Japanese container ship. Seven sailors were killed in the Fitzgerald disaster, and **at least some of the 10 sailors reported missing from the McCain are dead ...** Aucoin has been the 7th Fleet commander since September 2015, and was previously the deputy chief of naval operations for warfare systems. **His removal … is the highest profile in the Navy since the disasters occurred."**

Journalist disappears while reporting aboard submarine

GET SMART FAST:

1. **Danish police confirmed that a headless torso found in waters off Copenhagen is that of missing Swedish journalist Kim Wall.** Inventor Peter Madsen, who has been charged in her death, claimed that Wall died in an accident aboard his submarine. (Avi Selk and Samantha Schmidt)

2. **The terrorist cell responsible for two vehicular attacks in Spain had planned to bomb monuments in Barcelona.** One of the cell's surviving members told a court that the group was assembling bombs under the guidance of their imam. (William Booth and Souad Mekhennet)

3. **Libya's former prime minister has been kidnapped in Tripoli.** Ali Zeidan's family said they have not heard from him in nine days. (Times of Israel)

4. **Missouri Gov. Eric Greitens (R) stayed the execution of Marcellus Williams on Tuesday**, agreeing to investigate new DNA evidence that his attorneys contend could prove his innocence in the 1998 killing of a newspaper reporter. The decision came just hours before Williams was slated to be put to death. (Mark Berman and Wesley Lowery)

5. **A Las Vegas federal jury chose not to convict four men tied to the armed 2014 standoff near the Bundy ranch.** The decision could be an ominous sign for prosecutors as they prepare for Cliven Bundy's upcoming trial. (The New York Times)

6. **A Virginia priest stepped down from his post after admitting that he had previously been a member of the KKK.** While a member, William Aitcheson participated in the burning of a cross on the lawn of a black newlywed couple. (Dana Hedgpeth and Michelle Boorstein)

7. **A key figure in the production of the infamous Trump dossier answered questions on Capitol Hill.** Glenn Simpson, who hired Christopher Steele to assemble the dossier, appeared

before the Senate Judiciary Committee in a closed session. (ABC News)

8. **17 charities have canceled events at Mar-a-Lago since Trump's comment that "fine people" marched in the Charlottesville rally.** Several groups have also attempted to move events to other venues. (David A. Fahrenthold and Drew Harwell)

9. **German police said they have seized thousands of orange-colored ecstasy tabs in the shape of Donald Trump's head.** The haul was worth an estimated street value of more than $45,000, authorities said. (AP)

10. **The Cleveland Cavaliers's Kyrie Irving is headed to the Boston Celtics.** In return, the Cavaliers will acquire point guard Isaiah Thomas and a 2018 first-round draft pick. (Des Bieler)

11. **Malia Obama is officially moved in at Harvard.** The former first daughter was seen Monday on Harvard Square with her parents. (People)

Tillerson to Taliban on battlefield victory: 'We may not win one, but neither will you'

HERE'S WHAT 'PRINCIPLED REALISM' LOOKS LIKE IN AFGHANISTAN:

-- One day after Trump definitively declared the United States will win the war in Afghanistan, his secretary of state appeared to undercut him. Aaron Blake writes: "[Rex Tillerson] addressed the Taliban directly: **'You will not win a battlefield victory. We may not win one, but neither will you.'** 'We may not win one' is quite a different tune than the one Trump was singing Monday night. 'We will always win,' he began one thought. 'I'm a problem-solver, and in the end, we will win,' he added. … But a clear victory is something that basically any military expert will tell you is very difficult to foresee (much less predict) in Afghanistan[.]"

-- "What an Afghanistan Victory Looks Like Under the Trump Plan," by the New York Times's Rod Nordland: "Ever since 2008, when Adm. Mike Mullen, then chairman of the Joint Chiefs of Staff, said 'we can't kill our way to victory,' the cornerstone of American

policy in Afghanistan has been not about obliterating the Taliban but pummeling them toward peace talks. … In his speech Monday night, Mr. Trump asserted that the United States would yet achieve peace through victory. … Even if the new American troop commitment limits the Taliban to the territory they have seized in the past two years, the pressure of that advance and old political rivalries have brought the Afghan government to the brink of collapse. Further, the Taliban whom the Americans hope to bring to the table are not the same. The Taliban position against peace talks has rarely been more hard-line than now."

-- The Air Force's top general said that the service may increase its strikes in that country. Reuters's Phil Stewart reports: "Air Force Chief of Staff General David Goldfein said, however, he was still examining the matter, as the U.S. military's top brass had only begun the process of translating Trump's war strategy into action. Asked whether the Air Force would dedicate more assets to Afghanistan, where the United States has been engaged in its longest military conflict, Goldfein said only: 'Possibly.' … Still, he acknowledged that the Air Force was 'absolutely' examining the possibility of increasing air power, including to support U.S. ground forces[.]"

-- The White House is outlining a plan to increase pressure on Pakistan to stop harboring extremist groups. The Wall Street Journal's Felicia Schwartz and Saeed Shah report: "The effort — the latest in a series of start-and-stop U.S. campaigns to influence Pakistan dating to the Sept. 11 attacks — comes as a centerpiece of a new strategy encompassing Afghanistan and South Asia. … But experts and former officials with experience in the region question

whether it will be any more successful than its forerunners, and Pakistani officials already are chafing under new U.S. demands … [One] official said the administration's first move to press Pakistan would be to gradually withhold some security and economic assistance. That could be followed up by sanctions[.]"

-- Trump's Afghanistan announcement will likely set off a fresh round of congressional debate over approving a new use-of-force law. Ed O'Keefe reports: "Democrats and some Republicans blasted Trump for not disclosing more information and said they will redouble attempts to pass the first use-of-force resolution since the 2001 act that authorized military action against terrorist groups in the wake of the Sept. 11 attacks. … Trump's decision to adopt a conditions-based approach to the war without a specific timetable angered Democrats, who suggested the new plan could leave U.S. troops in Afghanistan indefinitely."

President Trump speaks at the White House, flanked by Senate Majority Leader Mitch McConnell and House Speaker Paul Ryan. (Evan Vucci/AP)

TRUMP VS. REPUBLICANS:

-- NYT's Alex Burns and Jonathan Martin have a deep look at Trump's souring relationship with one of the most critical GOP players in Washington -- Mitch McConnell, who more than anyone else holds the key to passing the president's agenda. Alex and Jonathan write that the two men are "locked in a cold war, threatening the G.O.P agenda."

"The relationship between President Trump and [McConnell] ... has disintegrated to the point that they have not spoken to each other in weeks, and Mr. McConnell has privately expressed uncertainty that Mr. Trump will be able to salvage his administration after a series of summer crises. What was once an uneasy governing alliance has curdled into a feud of mutual resentment and sometimes outright hostility, complicated by the position of Mr. McConnell's wife, Elaine L. Chao, in Mr. Trump's cabinet, according to more than a dozen people briefed on their imperiled partnership…

"During (a phone) call, which Mr. Trump initiated on Aug. 9 from his New Jersey golf club, the president accused Mr. McConnell of bungling the health care issue. He was even more animated about what he intimated was the Senate leader's refusal to protect him from investigations of Russian interference in the 2016 election …

"Mr. McConnell has fumed over Mr. Trump's regular threats against fellow Republicans and criticism of Senate rules … (He) has made

sharper comments in private, describing Mr. Trump as entirely unwilling to learn the basics of governing. … **In offhand remarks, Mr. McConnell has expressed a sense of bewilderment about where Mr. Trump's presidency may be headed, and has mused about whether Mr. Trump will be in a position to lead the Republican Party into next year's elections and beyond**, according to people who have spoken to him directly. …

"While maintaining a pose of public reserve, Mr. McConnell expressed horror to advisers last week after Mr. Trump's comments equating white supremacists in Charlottesville … Mr. McConnell signaled to business leaders that he was deeply uncomfortable with Mr. Trump's comments: Several who resigned advisory roles in the Trump administration contacted Mr. McConnell's office after the fact, and were told that Mr. McConnell fully understood their choices."

Trump attacks McCain and Flake but says 'I will not mention any names'

Part of why McConnell is upset is Trump has a habit of going

after sitting Republican officials. Last night, he did so again by attacking Arizona's GOP senators -- one of whom has brain cancer and the other who is running for reelection in 2018. The president didn't mention John McCain or Jeff Flake by name, but his point was obvious -- they're not his friends.

Trump noted repeatedly that attempts to overhaul Obamacare went down by "one vote," a clear reference to McCain. Then he said that "your other senator [is] weak on borders, weak on crime." "Nobody knows who the hell he is," Trump said of Flake. POTUS wrote on Twitter last week that it was "great" former state legislator Kelli Ward is challenging him in the Republican primary. But he did not mention or endorse Ward last night. (Sean Sullivan has more.)

The president also reiterated his calls for eliminating the filibuster rule that requires 60 votes to pass legislation on many issues in the Senate. He called budget reconciliation, which he's trying to use to enact an overhaul of the tax code, "a trick."**"**The Senate, we have to get rid of what's called the filibuster rule," Trump said. "If we don't the Republicans will never get anything passed. Eight Democrats are controlling all of this legislation."

The fiery rhetoric doesn't help stop comments like these:

A DIVIDED AMERICA:

-- Following a contentious meeting, the Charlottesville City Council voted to shroud two Confederate statues in black. Emma Brown reports: "The vote to cover the statues of Robert E. Lee and Stonewall Jackson was unanimous, and was meant to recognize the city's mourning[.] … In a period of public comment that stretched some four hours, residents faulted the City Council and Mayor Mike Signer (D) for the violence[.]"

-- Laura Vozzella writes about Virginia Gov. Terry McAuliffe's (D) moment in the spotlight: "Charlottesville also vaulted McAuliffe into the national spotlight like nothing else in his nearly four years in the governor's mansion, coming just as the term-limited, 60-year-old Democrat is considering life after January — including whether to make a 2020 bid to challenge Trump for the presidency. … McAuliffe, who once believed Confederate monuments should be left alone but now says they ought to be removed from public spaces, said the nation is facing a challenge that goes beyond bronze figures."

-- BUT BUT BUT a new survey shows that a slim majority – 51 percent – of Virginians believe the statues should remain standing. The survey also showed that **41 percent** of those surveyed

blame the neo-Nazis and counterprotesters equally for the violence that erupted. (Fenit Nirappil)

-- Steve Hendrix has a story on how Robert E. Lee's statue came to overlook the city of Richmond beginning in 1890 – and how Lee's legacy represents a unique dilemma for Virginia, the Confederate general's home state.

-- Even Lee's descendants are divided over whether the statues should remain or come down. (The New York Times's Simon Romero)

-- The monuments' controversy is reaching into governor's races. Politico's Daniel Strauss and Negassi Tesfamichael report: "Democratic candidates in Maryland, Florida, Georgia, New Mexico and Tennessee have all called for Confederate statues or icons to be taken down. … For Democratic candidates running for governor, there's a powerful incentive to make the Confederate monument argument a top talking point. It's increasingly the dominant position within the party, and it contrasts sharply with Trump..."

-- Trump has defended the statues' continued existence as an homage to "history" and "beauty," but he hasn't shown deference to works of art in the past. Frances Stead Sellers reports: "In 1980, the brash 33-year-old developer instructed workers to destroy two giant Art Deco bas-relief friezes of nearly naked dancing figures and to remove a 20-by-30-foot geometric grille built into the doorway of the Bonwit Teller building, which Trump was razing to construct his namesake tower. … What ensued was a public battle over the aesthetic and financial value of the pieces, with Trump

rep 'John Barron' (a pseudonym Trump sometimes used to represent himself) declaring that appraisers had dismissed them as 'without artistic merit' and that saving them would cause construction delays and be too costly."

-- Former South Carolina Gov. Nikki Haley -- now Trump's U.N. ambassador -- is familiar with the controversy after calling for the removal of the Confederate flag from statehouse grounds after a mass shooting at a Charleston church in 2015. She said she had a "personal conversation" with the president about Charlottesville, but didn't elaborate. Haley said on CNN, "But I will tell you that there is no hate in this country. I know the pain that hate can cause, and we need to isolate haters, and we need to make sure that they know there is no place for them." (Politico's Diamond Naga Siu)

-- Maine Gov. Paul LePage (R) claimed that the Civil War was initially fought over land, not slavery. "What was the war? If you really truly read and study the Civil War, it was turned into a battle for the slaves, but initially — I mean, 7,600 Mainers fought for the Confederacy," LePage said during an interview with a Maine radio station. "And they fought because they were concerned about — they were farmers — and they were concerned about their land. Their property. It was a property rights issue as it began. The President of the United States, who was a very brilliant politician, really made it about slavery to a great degree." Civil War historian David Blight expressed skepticism about LePage's 7,600 figure and referred to his idea that the war was fought over land as "patented nonsense." (CNN's Nathan McDermott and Andrew Kaczynski)

The landscape in Bears Ears National Monument as evidenced as the sun sets June 13, 2017 near Mexican Hat, UT. (Katherine Frey/The Washington Post)

THE TRUMP AGENDA:

-- "Meet the nation's most endangered monuments," by Juliet Eilperin and Susan Levine: "Sweeping wilderness vistas. Archaeological relics dating back thousands of years. Undersea worlds of corals, anemones and rare marine species. **Their fate could become clear this week when Interior Secretary Ryan Zinke concludes his review of 27 national monuments from the South Pacific Ocean to off the coast of New England**, as directed by an executive order [Trump] signed this spring. The order targeted designations of at least 100,000 acres that were made by former presidents [Clinton, Bush and Obama] under the 1906 Antiquities Act … Trump is no fan of the act … But Interior's review has come up against vehement pushback, [and] the secretary's final guidance to

the president could trigger both political and legal battles."

-- New York Magazine, "Is Anybody Home at HUD?" by Alec MacGillis: "In mid-May, [former HUD secretary Steve Preston] organized a dinner at the Metropolitan Club ... for [Ben Carson] and five other former secretaries whose joint tenure stretched all the way back to Gerald Ford. It was an event with no recent precedent within the department, and it had the distinct feel of an intervention ... [T]here is a whole other side to Trump's takeover of Washington: What happens to the government itself, and all it is tasked with doing, when it is placed under the command of the Chaos President?"

-- Federal prosecutors who requested information on web users who visited a site coordinating Inauguration Day protests are scaling back their request. Keith L. Alexander reports: "In a filing late Tuesday, prosecutors from the U.S. attorney's office in the District amended the original warrant by saying they plan to focus only on the 200 or so individuals who have already been charged with rioting." The prosecutors had originally requested more than 1.3 million IP addresses.

-- The owner of the Dakota Access Pipeline has accused Greenpeace of breaking organized crime law. Dino Grandoni reports: "[Energy Transfer Partners] accused Greenpeace and other environmental activists who helped organize protests of eco-terrorism, racketeering and other crimes. … Energy Transfer Partners accused the individuals and organizations named in the lawsuit ... of fabricating GPS coordinates for cultural and religious artifacts found along the pipeline route. The company also accused Greenpeace and others of falsely claiming that the company encroached on tribal treaty

lands. But perhaps the most provocative charge was that the environmentalists ... violated the U.S. Patriot Act by attempting to sabotage the pipeline, acts that, according to the company, amounted to 'serious terrorist threats.'"

White House Chief of Staff Gen. John Kelly looks on as President Donald Trump speaks at Trump Tower. (Drew Angerer/Getty Images)

ALL THE PRESIDENT'S GENERALS:

-- "High-ranking military officials have become an increasingly ubiquitous presence in American political life during [Trump's] presidency, repeatedly winning arguments inside the West Wing, publicly contradicting the president and even balking at implementing one of his most controversial policies," Robert Costa and Philip Rucker report: "Connected by their faith in order and global norms, these military leaders are rapidly consolidating power

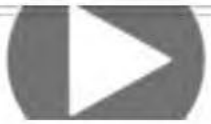
throughout the executive branch as they counsel a volatile president.

"Critics of the president welcome their ascendancy, seeing them as a calming force amid the daily chaos of the White House. 'They are standouts of dependability in the face of rash and impulsive conduct,' said Sen. Richard Blumenthal (D-Conn.) ... 'There certainly has been a feeling among many of my colleagues that they are a steadying hand on the rudder ... in an otherwise zigzagging White House.'

"Among some on the right, however, the view is more suspicious. Some Trump supporters, for example, worry about blurring the line between military and civilian leadership, as exemplified by recent headlines at Breitbart News, [with Steve Bannon at the helm once again] ... Trump's announcement Monday that he would escalate troop levels in Afghanistan was covered on Breitbart with alarm. Headlines warned of 'unlimited war' and 'nation-building' led by military leaders without links to Trump's base." Ann Coulter tweeted Monday, "The military-industrial complex wins."

-- An email prankster convinced top editors at Breitbart that he was recently returned Steve Bannon, tricking editors into promising they would do Bannon's "dirty work" against White House officials. CNN's Oliver Darcy and Jake Tapper report: "[Breitbart Editor-in-Chief Alex] Marlow suggested he could have Jared Kushner and Ivanka Trump ousted from the White House 'by end of year' and shared a personal smear about their private lives, perhaps an indication of how low the website is willing to go to achieve its agenda. … The email exchanges began with the prankster writing Breitbart editors a simple message from an account masquerading as Bannon's. 'Reading online about how i'll be bringing

forth my wrath on Ivanka and Jared,' read an email sent Sunday from the fake Bannon account to Marlow. … 'I spooked em today,' replied Marlow. 'Did five stories on globalist takeover positioning you as only hope to stop it.'"



Louise Linton's reaction to Instagram criticism had #nofilter

-- You can't make this up: Louise Linton, who is married to Treasury Secretary Steve Mnuchin, apologized after Instagram posts showed her tagging designers and mocking critics. Damian Paletta reports: "'I apologize for my post on social media yesterday as well as my response,' she said, according to a publicist. 'It was inappropriate and highly insensitive.' … Linton on Monday was accompanying Mnuchin on a trip to Louisville so the treasury chief could discuss ways to cut taxes for the middle class and so he could tour Fort Knox. … The spouses of recent treasury chiefs rarely traveled on official business with their husbands, and there is little precedent for a social-media fight such as this."

-- More members of a White House advisory council have resigned. The Hill's Melanie Zanona reports: "A number of those sitting on the National Infrastructure Advisory Council (NIAC), who were appointed under the previous administration, submitted their resignations on Monday evening, one day before the panel was scheduled to hold its quarterly business meeting. … 'We can confirm that a number of members of the NIAC who had been appointed under the previous administration have submitted their resignation,' a White House official said in a statement to The Hill. 'The NIAC met

today as planned with the majority of its members, who remain committed to the important work of protecting our Nation's critical infrastructure.'"

This file photo distributed by the North Korean government shows what was said to be the launch of a Hwasong-14 intercontinental ballistic missile. (Korea News Service via AP)

THE NEW WORLD ORDER:

-- The U.S. hit Chinese and Russian companies -- and individuals -- with sanctions for doing business with North Korea as part of a broader effort to isolate the hostile regime. Carol Morello and Peter Whoriskey report: "The sanctions against 10 companies and six individuals are designed to disrupt the economic ties that have allowed Pyongyang to continue funding its missile and nuclear program despite strict United Nations sanctions prohibiting it.

"But even as two federal agencies were taking stern measures against North Korea, [Rex Tillerson] made a gesture of appreciation to Pyongyang, welcoming its apparent restraint in not conducting any new weapons tests since the latest U.N. sanctions were adopted Aug 5." "We hope that this is the beginning of this signal that we've been looking for," Tillerson said at a news conference, "that they are ready to restrain their level of tensions, they're ready to restrain their provocative acts and that, perhaps, we are seeing our pathway to sometime in the near future having some dialogue."

- **China stated its opposition to the sanctions and warned they could harm U.S.-Sino relations.** (Simon Denyer)

-- North Korea's state media reported that Kim Jong Un has requested the country's scientists produce more solid-fuel rocket engines. CNN's Ben Westcott reports: "But it was the photos of the inspection released by state media which missile analysts seized upon immediately. … One photo of Kim reveals a poster on the wall clearly mentioning a missile called 'Pukguksong-3,' a potential successor to the previous two versions of the missile which were both solid-fuel, medium-range projectiles. North Korea's desire to build solid-fuel missiles is driven by their need for projectiles they can launch quickly and subtly[.]"

-- Jared Kushner is conducting a quiet trip to the Middle East. Politico's Annie Karni reports: "[Sources] said Kushner departed on Sunday and is set to arrive in Israel Wednesday night for meetings on Thursday.… It was not clear why the White House would announce the trip but keep details of Kushner's departure under wraps. … The purpose of Kushner's trip, according to a White House official, was to

'focus on the path to substantive Israeli-Palestinian peace talks, combatting extremism, the situation in Gaza, including how to ease the humanitarian crisis there,' as well as to explore economic steps that could be taken leading up to any potential peace deal. … Expectations for any deliverables that the trip might yield, however, were very low in the days leading to Kushner's arrival in Israel."

- H.R. McMaster's decision to add longtime GOP foreign policy adviser **Victoria Coates** to the Israel team appears to have moved Trump's strategy in the Middle East more towards that of a traditional Republican White House. (Annie Karni)

- **BUT, Egypt's foreign minister canceled a meeting with Kushner after the State Department decided to withhold the country's aid money.** Kushner's delegation will still meet with Egyptian President Abdel Fattah al-Sisi. (The Guardian)

-- Nikki Haley said Trump has not made a decision on next steps for the Iran nuclear deal. Anne Gearan reports: "The Trump administration is not looking for a pretext to junk the international nuclear deal with Iran, [Haley] said Tuesday ... 'We have no decision made. The president doesn't have a decision made,' Haley said in an interview. 'What we are doing is trying to find out as much information as we can.' … 'This is not a country that can be trusted. This is not a country that has given us a reason to trust them. So I think the president has every reason to be leery of the actions by Iran.'"

Sen. Robert Menendez speaks during a Senate Foreign Relations hearing. (Aaron P. Bernstein/Reuters)

REMEMBER THIS?:

-- Sen. Bob Menendez (D-N.J.) will soon face trial for federal corruption charges, and the implications of his verdict could reverberate across the federal government. The NYT's Shane Goldmacher reports: "If Mr. Menendez, a Democrat, is convicted and then expelled from the United States Senate by early January, his replacement would be picked by Gov. Chris Christie (R) ... That scenario — where Mr. Menendez's interim replacement would more than likely be a Republican — would have immediate and far-reaching implications: The Republicans would be gifted a crucial extra vote just as the party remains a single vote shy in the Senate of advancing its bill to dismantle President Obama's signature health care law. **Those potential consequences only heighten the drama around the first**

federal bribery charges leveled against a sitting senator in a generation."

-- The trial formally began yesterday, with a judge seating 10 jurors and Menendez entering a plea of not guilty. (Politico's Matt Friedman)

-- Menendez is being represented by Abbe Lowell, who defended former Sen. John Edwards (D-N.C.) on campaign finance violations and recently became Jared Kushner's counsel in the Russia probes. Politico's Josh Gerstein reports: "It's familiar terrain for Lowell, who has successfully represented a roster of clients including Republican lobbyist Jack Abramoff, former Nevada Republican Sen. John Ensign, and New York state Senate Majority Leader Joe Bruno[.] … But some of the most striking parallels may be to Lowell's defense of [Edwards] ... The case ended with a hung jury, prompting prosecutors to throw in the towel. …

"The crux of Lowell's looming challenge in the Menendez case: dismantling federal prosecutors' claims of a quid pro quo[.]

SOCIAL MEDIA SPEED READ:

An attendee at Trump's Phoenix rally endorsed an alarming web site:

But in a bizarre twist:

From Slate's chief political correspondent:

But many of Trump's most ardent supporters continue to approve of him. From the president of the liberal Center for American Progress:

The DNC tried a surprising marketing tactic:

A New York Times reporter responded to the DNC's strategy:

The Trump-backing Mercer family seems to be stepping up their fundraising game:

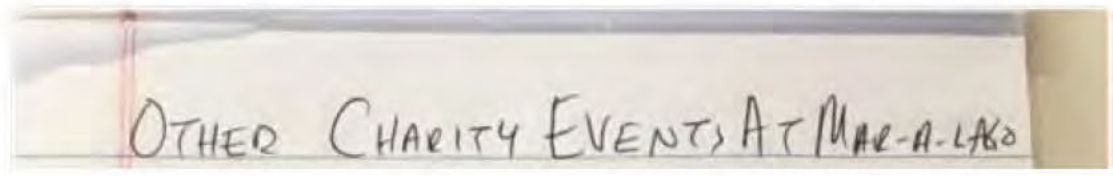
Louise Linton received more criticism for her social media comments:

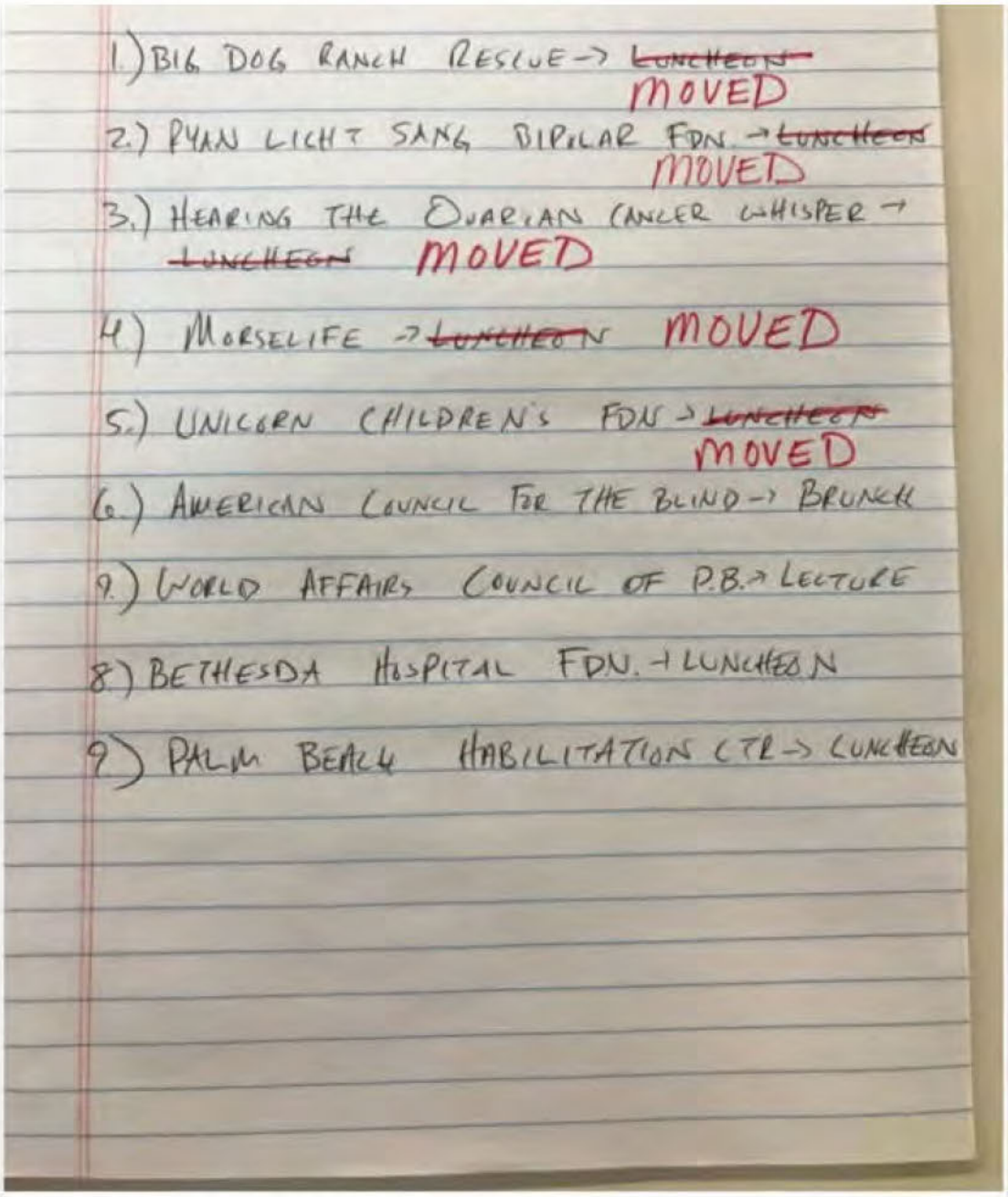
From a former Clinton campaign staffer:

From a syndicated columnist, who is married to Sen. Sherrod Brown:

From The Post's resident satirist:

Politics is proving bad for Mar-a-Lago's business:





David Fahrenthold
@Fahrenthold

Follow

UPDATE: @ucfoundation has cancelled its luncheon at @realdonaldtrump's Mar-a-Lago. 16th charity to cancel event. pic.twitter.com/F5S6EGQVjP

10:39:53 AM - Aug 22 2017

2,761 8,324

The first lady thanked Chelsea Clinton for defending Barron Trump:

The OMB director took a hit at his former House colleague on his birthday:

And Gowdy responded in kind:

Anthony Scaramucci tried to get in on the joke:

Tucker Carlson met expectations:

And two political couples celebrated their anniversaries:

Kamala Harris
@KamalaHarris

Follow

Happy Anniversary to my incredible husband, @douglasemhoff!
pic.twitter.com/5tUrJBw39S

6:04:07 PM - Aug 22 2017

412 5,395

After the ESPN news caught his attention, Sen. Orrin Hatch took the opportunity to clarify the name of another Civil War-era figure:

Robert Mueller, the special counsel probing Russian interference in the 2016 election, departs Capitol Hill. (AP Photo/Andrew Harnik, File)

GOOD READS FROM ELSEWHERE:

-- Bloomberg, "Mueller Uses Classic Prosecution Playbook Despite Trump Warnings," by Chris Strohm: "The former FBI director leading the probe into the Trump campaign's possible ties to Russia is taking a page from the playbook federal prosecutors have used for decades in criminal investigations, from white-collar fraud to mob racketeering: Follow the money. Start small and work up. See who will "flip" and testify against higher-ups by pursuing charges such as tax evasion, money laundering, conspiracy and obstruction of justice."

-- McClatchy, "Progressives begin 2020 dissection of Kamala Harris," by Alex Roarty and Christopher Cadelago: "In the early jockeying for 2020, [Harris] hardly carries the same baggage as other possible rivals, such as Cory Booker, a senator from New Jersey. But the criticism, if not fully representative of the liberal left, carries a warning. Even though she's popular with many progressives now, she's not the hero that Sens. Elizabeth Warren of Massachusetts or Bernie Sanders of Vermont are; and both of them are potential presidential candidates too."

-- FiveThirtyEight, "Fake Polls Are A Real Problem," by Harry Enten: "Is Kid Rock leading the U.S. Senate race in Michigan? A story like that is essentially designed to go viral, and that's exactly what happened when Delphi Analytica released a poll [with] Kid Rock [earning] 30 percent to Sen. Debbie Stabenow's 26 percent. A sitting U.S. senator was losing to a man who sang the lyric, 'If I was president of the good ol' USA, you know I'd turn our churches into

strip clubs and watch the whole world pray.' The result was so amazing that the poll was quickly spread around the political sections of the internet. There was just one problem: Nobody knew if the poll was real …"

-- Bloomberg, "How the Boys Run Trump Inc.: With Other People's Money and Some Dubious Partners," by Peter Robison and Michael Smith: "Donald Jr., 39, and Eric, 33, present themselves as hard-working, toned-down versions of their father. … Trump's sons have each had more than a decade of experience working under their father, however. They've repeatedly pursued licensing arrangements in which they attach the family name to projects, generating cash without bearing much risk. They have a seemingly ad hoc, opportunistic style that's sometimes led to partnerships with questionable characters, including people barred for securities violations or sued for fraud. And they've walked away, leaving employees, customers, or business partners with the fallout."

HOT ON THE LEFT:

"These Teenagers Showed Up To Howard University Wearing MAGA Hats And Quickly Got Criticized," from Buzzfeed News: "Two teenagers stirred up controversy at Howard

HOT ON THE RIGHT:

"ESPN removes Robert Lee from calling U-Va. game in Charlottesville because of his name," from Alex Horton: "The living Robert Lee, an ESPN sports broadcaster, was pulled from calling the University of Virginia home

University — a historically black college, or HBCU — on Saturday when they arrived at the campus wearing Make America Great Again paraphernalia ... Merdie Nzanga, a junior at Howard, said she was in the cafeteria eating her lunch when the school group arrived. 'I didn't say anything. To myself I thought, 'This is going to be trouble.' Nzanga said Howard students were upset because, though she feels the teens are entitled to express their views, they should have done their research and been respectful of the community whose space they were in. [She said one student] walked up to them and snatched

opener against William and Mary on Sept. 2 due to sharing a name with the Confederate general at the center of unrest in Charlottesville. 'We collectively made the decision with Robert to switch games as the tragic events in Charlottesville were unfolding, simply because of the coincidence of his name,' Derek Volner, an ESPN spokesman, told The Washington Post in an emailed statement."

their hats. Another student [cussed at them]. 'They walked out, went on Twitter, and started complaining about it,' [she said]."

DAYBOOK:

Trump will travel from Phoenix to Reno to give a speech at the American Legion's national convention and sign a veterans bill.

Pence will be in Doral, Florida today for a briefing at the U.S. Southern Command on Venezuela's deteriorating political situation. He will also participate in a listening session with the Venezuelan exile community in the region and deliver a speech on the matter.

QUOTE OF THE DAY:

Mike Pence on the controversy surrounding Confederate statues: **"I'm someone who believes in more monuments, not less monuments."**

NEWS YOU CAN USE IF YOU LIVE IN D.C.:

-- A possible shower earlier in the day should clear up for a partly sunny afternoon. The Capital Weather Gang forecasts: "Mostly to partly cloudy morning skies, with perhaps a spotty shower or two through midday, should turn partly sunny during the afternoon. After a fairly humid morning, we'll see the humidity drop in the afternoon, with highs reaching the mid-80s."

-- The Nationals beat the Astros 4-3. (Chelsea Janes)

-- Democratic megadonor Tom Steyer plans to spend $2 million helping to elect Ralph Northam governor in Virginia. Fenit Nirappil reports: "The former California hedge-fund manager turned climate activist told The Washington Post that Virginia ... is the most important campaign priority for his group, NextGen America. … NextGen America's $2 million commitment is expected to cover 70 paid staffers on 25 Virginia college campuses, who will register and try to turn out millenial voters in November. It will also pay for a digital campaign to reach millenials who aren't in college."

-- The White House was placed on lockdown yesterday afternoon after a suspicious package was found. Peter Hermann reports: "Police said the item had been discovered about 1:15 p.m. in an area along Pennsylvania Avenue and Lafayette Square[.] … A spokesman for the U.S. Secret Service said the package was determined harmless about 2:15 p.m."

-- Germantown's Lizandro Claros Saravia is struggling to adjust to El Salvador, a country he has not known since he was 10. Saravia made headlines earlier this month when he and his older

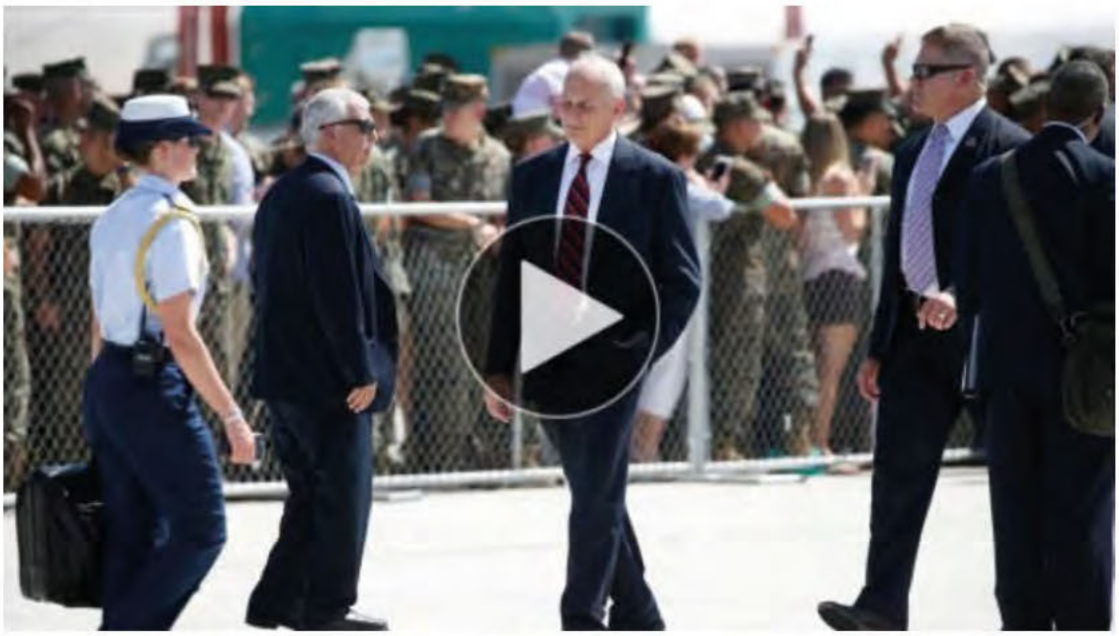
brother Diego were deported, despite no criminal records and Lizandro's soccer scholarship to a North Carolina college. (Maria Sacchetti)

VIDEOS OF THE DAY:

Trevor Noah saw glimpses of "freestyle Trump" in his Afghanistan speech:

Making Sense of Trump's Afghanistan War Strategy: The Daily Show

During a Marines meet-and-greet in Arizona, John Kelly offered a kiss to a baby:



Kelly kisses baby at Marine meet-and-greet

Trump seems to love photo-ops with American-made vehicles:

Trump and the art of the vehicular photo op

The Powerball jackpot has swelled to $700 million:

Powerball jackpot swells to $700 million

And the National Zoo's giant panda celebrated his second birthday with cake:

Giant panda Bei Bei celebrates birthday with cake

You received this email because you signed up for The Daily 202 or because it is included in your subscription. For additional free newsletters or to manage your newsletters, **click here**.

We respect your **privacy** . If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, **click here**. **Contact us** for help.

©2017 The Washington Post | 1301 K St NW, Washington DC 20071

The Daily 202_ Trump™s triangulation shows what....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: The Daily 202: Trump's triangulation shows what might have been
Date: Thursday, September 7, 2017 7:08:35 AM

If you're having trouble reading this, click here.

Share:

Listen to The Big Idea

Trump's triangulation shows what might have been

Senate Minority Leader Charles Schumer (D-NY) and Majority Leader Mitch McConnell (R-KY) are seen through a window of the Oval Office during a meeting with Donald Trump on Wednesday. (Photo by Bill O'Leary/The Washington Post)

BY JAMES HOHMANN
with Breanne Deppisch and Joanie Greve

THE BIG IDEA: In early 2016, as the field of Republican candidates winnowed, Bob Dole said that Donald Trump was preferable to Ted Cruz because he could "probably work with Congress."

"He's got the right personality, and he's kind of a deal-maker," said the former Senate majority leader and GOP presidential nominee.

Cruz pounced on that quote, working it into his stump speech as evidence that “the Washington establishment” believed Trump could be coopted. “If as a voter, you think what we need is more Republicans in Washington to cut a deal with … Nancy Pelosi and Chuck Schumer, then I guess Donald Trump is your guy,” said the Texas senator.

That line of attack never resonated with most Republicans. Many rank-and-file conservatives don’t like dysfunction, gridlock and government shutdowns. In the general election, even if they didn’t like him personally, swing voters overwhelmingly felt like the author of a book called “The Art of the Deal” could probably make pretty good deals – whether with foreign countries, defense contractors or Democrats. Indeed, that was a central rationale of Trump’s populist campaign.

Yesterday, President Trump cut his first big deal with Pelosi and Schumer. Snubbing Republican leaders and his own Treasury secretary, he agreed with Pelosi and Schumer on plans for a three-month bill to fund the government and raise the debt ceiling for the same amount of time.

The president also signaled support for a Democratic push to pass legislation that would shield undocumented immigrants who were brought to the United States as children from deportation. “Chuck and Nancy want to see something happen — and so do I,” Trump said.

Then he flew to North Dakota on Air Force One with Democratic Sen. Heidi Heitkamp, declared he really wants to work with her on overhauling the tax code and called her “a good woman.”

Trump praises Heitkamp as a 'good woman'

-- As some Trump advisers signaled that this is a sign of what's to come, Republican leaders on Capitol Hill seethed with anger about all three of these developments. Veteran negotiators in Trump's adopted party think the freshman president agreed to a bad deal that gives Pelosi and Schumer more leverage. They feel like they're being boxed in on immigration and being set up as fall guys. And they resent that Trump just gave meaningful air cover to one of the most beatable Democrats in 2018.

-- Entertaining counterfactuals can be silly, but what if Trump had acted this way from Day One? What if he had positioned himself consistently as a nonideological pragmatist? What if he made an earnest show of bipartisanship and focused on issues which Democrats would have felt compelled to cooperate on, such as infrastructure spending to repair crumbling roads? What if instead of demanding a straight repeal of Obamacare, he had insisted on regular order, supported *fixing* the health-care system and frontally

challenged pharmaceutical companies over drug pricing? What if the White House tried negotiating in good faith on overhauling the tax code, instead of focusing primarily on big corporate tax cuts?

Yesterday offered a small taste of what might have been if he had triangulated from the beginning. For one thing, it does not seem unreasonable to speculate that his approval rating would be higher than 37 percent.

Trump meets with Hill leadership in the Oval Office. (Bill O'Leary/The Washington Post)

-- Think back to Jan. 20: After railing against political elites of both parties during his inaugural address, President Trump went inside the Capitol for a cozy lunch with congressional leaders. He was chummy at a signing ceremony to nominate members of his Cabinet. He handed Pelosi one of the pens he used so she'd have a

memento to remember the day. Then he gregariously told Schumer to also take a pen. He called them "Nancy and Chuck," just like he did yesterday.

That back-slapping repartee suggested that the new president might be serious about building bridges. Perhaps he would slam Washington on the stump but schmooze his critics behind closed doors.

Instead of bargaining, though, he chose to govern with the very scorched-earth tactics that he had successfully employed on the campaign trail. The result is a litany of missed opportunities, essentially no legislative accomplishments and a well that has been poisoned.

There are 10 Democratic senators up for reelection next year in states Trump carried. The White House had good reason to believe that several of these lawmakers would feel compelled to work with them. (Trump won North Dakota by 36 points, for example.) But as the president's approval rating kept falling, even in red states, and Trump seemed to constantly be struggling with self-inflicted wounds, these senators lost that incentive.

Donald Trump holds his own umbrella as he walks out of the White House to begin a trip to North Dakota. (Bill O'Leary/The Washington Post)

-- Sometimes when Trump looks crazy, he's being crazy like a fox.

The media's coverage of the debt deal this morning is over-the-top negative. Partly this is because top Republicans on the Hill are angry that Trump didn't do what they want, so they're trashing the deal to reporters. Their frustrations are legitimate and sincere. They thought they had a real opportunity to not talk about the debt ceiling again until after the midterm elections. They know from experience how hard it is to get conservatives to vote for raising the borrowing limit, which always forces them to rely on Democratic votes to make it happen. "A three-month debt ceiling? Why not do a daily debt ceiling?" Rep. Mike Simpson (R-Idaho) joked to Politico. "He's the

best deal-maker ever, don't you know? I mean, he's got a book out!"

Let's keep what happened in perspective: Democrats didn't really win major concessions. They just agreed to prevent the government from defaulting on its debts for three months and funded initial relief efforts for Hurricane Harvey. Schumer and Pelosi are gleeful because they think they've positioned themselves perfectly for December negotiations. "Democrats still must prove, however, that they can actually *land* those victories," Paul Kane writes. "For now, they have (merely) secured a seat at the negotiating table."

Meanwhile, Trump looks independent from unpopular congressional Republicans and showed he can work across the aisle. In North Dakota last night, as an illustration of this, Trump boasted about his "great bipartisan meeting" with Schumer and Pelosi. "I'm committed to working with both parties to deliver for our wonderful, wonderful citizens," the president said. "Everybody was happy. Not *too* happy, because you can never be too happy, but they were happy enough." He called it a "very good" deal.

Trump also recognizes that he cannot force a showdown over funding for his border wall with Houston flooded, another hurricane bearing down on Florida and several must-pass bills on the docket. Now he gets to have that fight in December instead. Democrats insist they will never support money for the border wall, but administration officials believe they will agree to increased border security or some version of a fence if it means protecting 800,000 "dreamers" from deportation. "We believe that helping to clear the decks in September enables us to focus on tax reform," White House director of legislative affairs Marc Short told

reporters on Air Force One. “I think it puts pressure on all of us to get tax reform done before December.”

Senate leaders weigh in on debt ceiling deal

-- Another key reason Republican leaders are mad: Trump has once again humiliated Paul Ryan. Administration officials reportedly told congressional leaders on Tuesday night that the president would endorse their request for an 18-month extension. Based on that, Ryan told reporters at the Capitol that it was “ridiculous and disgraceful” that Democrats wanted just a three-month extension. Acting outraged, the Speaker accused the opposition of playing politics “when we have fellow citizens in need.” *Less than an hour later*, though, Trump accepted that “ridiculous and disgraceful” offer. Then Ryan and Mitch McConnell got on board.

They did so because they know Trump has more suction with Republican voters than they do. Just 28 percent of Republican voters said they’d be more likely to vote for a member of Congress that supported McConnell, according to a Politico/Morning Consult poll

published yesterday, while 30 percent said they'd be *less* likely and 15 percent said McConnell's support would have no impact.

-- "The pivot is real, and it's spectacular," writes conservative thought leader Ben Domenech, publisher of The Federalist. "It may be that this is the first sign Trump is himself waking up to the inaccuracy of the conventional wisdom about 'needing McConnell and Ryan' which has animated so much of the early failures of the Republican legislative agenda. So he's being more honest: he doesn't like McConnell and Ryan, never did. He likes Chuck Schumer, and knows him, and thinks he can work with him. And he knows Chuck always makes money for his partners. … Trump siding against GOP leaders and seeing them bend over illustrates how he could get them to do this on just about everything. **The path of least resistance, the path of popularity for him, is to dismiss the demands of Congressional Republicans on virtually everything** except abortion, judges, education, free speech, and regulations."

Bill Clinton flies on Air Force One in 1995 with Tom Daschle, Bob Dole and Newt Gingrich. (File)

-- Triangulation worked for Bill Clinton. He got reelected in 1996 after brutal losses in the midterms by positioning himself against both congressional Republicans and Democrats. Clinton declared that the era of big government was over, endorsed an income tax cut and signed onto welfare reform. Negotiating big bipartisan deals made him look like a third-way centrist after the HillaryCare debacle during his first year. **Outside Trump advisers have suggested in recent weeks that the Clinton model is instructive.**

-- But, but, but: The kind of deal making we saw yesterday probably cannot and will not last. Trump is toxic to most Democrats because of his personal behavior and his reaction to events like Charlottesville. Not to mention rescinding DACA, instituting the travel ban, pardoning Joe Arpaio, firing James Comey, etc., etc. The window for grand bargains has probably closed. Any Democrat who wants to run for president in 2020 recognizes that collaborating with Trump in any way will be a liability in the primaries, and more than a dozen Democratic senators want to run for president.

There is also a reasonable expectation that Trump will invariably go back to his old ways sooner than later. Maybe even with a tweetstorm today. Trump's instinct is still to play to his base and preach to the choir. (Recall last month's Phoenix rally.) The left also sees the Russia investigation as potentially fatal for the presidency.

-- Furthermore, continuing down this new course would require Trump to show self-discipline that he's lacked over the past

seven months.

Trump's biggest cheerleaders in the conservative media are mad that he's reaching across the aisle and will ratchet up pressure on him not to do it again. He's tended to be more comfortable pleasing his base than challenging it.

There's another risk: Relationships matter more than anything else in Washington, and trust is the coin of the realm. Trump's ties with Ryan and McConnell continue to fray. They might put on a good face publicly and show a stiff upper lip, but each time the president embarrasses them they become marginally more likely to turn on him down the road during his darkest hours. For example, what if Trump were to fire Robert Mueller as special counsel? Are Ryan and McConnell really going to risk permanent damage to their own legacies to defend someone who has burned them more often than not? Is that a risk the president would be willing to take?

-- Happening tomorrow at 9 a.m.: The Daily 202 Live with Wilbur Ross. Want to attend my discussion with the secretary of commerce at The Post tomorrow? We have lots to cover! ***RSVP here*.**

Listen to James's quick summary of today's Big Idea and the headlines you need to know to start your day:

Play audio brief

Subscribe to **The Daily 202's Big Idea** on
Amazon Echo, Google Home, Apple Podcasts and other podcast players.

A MESSAGE FROM THE U.S. CHAMBER OF COMMERCE

Stop the looming health insurance tax

Congress is running out of time to protect families, seniors, and small businesses

Welcome to the Daily 202, **PowerPost's** morning briefing for decision-makers.
Sign up to receive the newsletter.

WHILE YOU WERE SLEEPING:

Shoppers wait in line for the arrival of a shipment of water during preparations for the impending arrival of Hurricane Irma in Florida. (Joe Burbank/AP)

FLORIDA BRACES FOR A "CATASTROPHIC" STORM:

-- Hurricane Irma continued to tear across the Atlantic Wednesday with record-setting strength, sustaining Category 5 winds of 185 mph as it ripped through the eastern Caribbean and left areas of massive destruction in its wake. **The latest models currently show Irma making landfall in Florida by Sunday.** Locations in northern Florida as well as up into Georgia and the Carolinas could also get significant impact early next week. (Read the latest from the Capital Weather Gang here.)

-- Last night, the National Hurricane Center said a direct hit on Florida is more likely, prompting a new wave of mandatory evacuations in Miami-Dade County and the Florida Keys. In a blunt warning to residents, Gov. Rick Scott (R) said that anyone who intends to evacuate should "get out now." (Sunshine State News)

-- As Irma continues to track toward South Florida "as if following directions by GPS," the mood in the state has grown increasingly frantic. Joel Achenbach, Francisco Alvarado, Sandhya Somashekhar and Mark Berman report from Miami: "With the storm still days away, it was relatively unusual for the people of South Florida to go into full-on storm preparation mode. But this is a scary hurricane at a moment when anyone paying attention to the news understands what a big storm can do."

- **"There are more than 6 million people in Miami-Dade, Broward and Palm Beach counties,** all concentrated between the beach and the swamps. Many have been streaming north on Interstate 95 or Florida's Turnpike, and gas stations have plastic bags on the pumps.
- **"The region's airports were slammed**, and it had become difficult to score a seat on any airplane, going anywhere. Seats that were available still for purchase … were often exorbitantly expensive, in the range of $2,000."
- **"[University of Miami professor and Capital Weather Gang contributor] David McNoldy** … called up the model forecasts and showed how Irma is expected to move in more or less a straight line toward Florida, west by northwest, but then hang a sharp right to the north. That track could send it right to McNoldy's cubicle and on up the Gold Coast, as if the storm were trying to grind away a century of urbanization. 'That's extremely bad,' he said. **'That's basically every East Coast Florida city. This could easily be the most expensive U.S. storm if this happens.'"**

-- **"Irma's peak intensity (185 mph) ranks among the strongest in recorded history, exceeding the likes of Katrina, Andrew and Camille — whose winds peaked at 175 mph,"** our colleagues report. "The storm has maintained maximum wind speeds of at least 180 mph longer than any other storm on record in the Atlantic." To put that size into context, if it was dropped over the state of Ohio, it would cover the Buckeye State from Toledo to Steubenville and from Cincinnati to Cleveland, Philip Bump notes.

Wind rips across Caribbean island as Irma passes

IRMA'S WRATH:

-- **The New York Times reports that Irma "leveled" the small island of Barbuda,** damaging or destroying 95 percent of its buildings and rendering the island "barely habitable." Barbuda's prime minister said Wednesday that the island, home to more than 1,500 people, is

now “literally rubble.” **The storm also passed directly over Anguilla and St. Martin, causing severe damage.**

-- “As the storm heads west, hurricane warnings are in effect for the Dominican Republic, the Turks and Caicos, Haiti and the southeastern and central Bahamas,” Jason Samenow and Brian McNoldy report. “A hurricane watch covers Cuba and the northwestern Bahamas.” In Turks and Caicos, and the southeastern Bahamas, Irma could push ashore a “devastating” storm surge of 15 to 20 feet.

-- Meanwhile, two new hurricanes formed late Wednesday in the Atlantic basin: Jose in the eastern Atlantic Ocean, and Katia in the southwest Gulf of Mexico.

Residents and travelers take shelter in San Juan

-- #FakeNews: Conservative radio host Rush Limbaugh ludicrously accused the media of *faking* the potentially catastrophic effects of Hurricane Irma. "There is a desire to

advance this climate change agenda, and hurricanes are one of the fastest and best ways to do it," Limbaugh claimed on his talk show on Tuesday. "The media benefits with the panic, with increased eyeballs, and the retailers benefit from the panic with increased sales, and the TV companies benefit … These storms, once they actually hit, are never as strong as they're reported." **Infowars founder and conspiracy theorist Alex Jones, who has accused the federal government of using "weather weapons," last week suggested Harvey might have been manufactured or manipulated.**

-- One Florida sheriff's department took heat after it warned fugitives in a series of tweets that they would be escorted to jail if they turned up at a storm shelter, a policy that will likely risk lives. (The Daily Beast)

Stunning video captures wildfire ravaging Oregon

GET SMART FAST:

1. **In other extreme weather events, Western states continue to**

battle out-of-control wildfires. Almost 1 million acres in Montana have burned since the beginning of the summer. (John Hopewell)

2. **The Charlottesville City Council unanimously voted to remove a statue of Stonewall Jackson.** But the decision could be blocked depending on the outcome of a lawsuit questioning the council's ability to remove a separate statue of Robert E. Lee, the alleged subject of last month's violent rally. (Dana Hedgpeth)

3. **The Washington National Cathedral began the removal of stained-glass windows honoring Robert E. Lee and Stonewall Jackson,** citing the "painful, distracting, and one-sided stories" told in the decades-old art. **(**Michelle Boorstein**)**
4. **2017 appears to be on track to have the second-lowest annual violent crime rate since 1990.** The Brennan Center for Justice released data showing that the rate is expected to fall by 0.6 percent, despite previous doomsday predictions from Trump officials like Jeff Sessions. (Philip Bump)

5. **Some prominent Republicans are urging the Supreme Court to find partisan gerrymandering unconstitutional.** That position puts former politicians like Arnold Schwarzenegger and Bob Dole against the Republican National Committee, which is backing the GOP-led Wisconsin legislature's gerrymandered electoral map. (Robert Barnes)

6. **Trump announced the recipients of his $1 million donation to Harvey relief.** The Red Cross and Salvation Army each received $300,000, while 10 additional nonprofits split the

remainder. (David A. Fahrenthold)

7. **A U.S. general in Afghanistan apologized for the distribution of offensive propaganda leaflets, which superimposed a key Islamic text on the image of a dog.** Dogs are considered unclean, diseased and dangerous in Afghan society. **(**Sayed Salahuddin and Pamela Constable**)**
8. **A tiger in Georgia was shot dead by police,** after residents in an Atlanta suburb discovered the animal slinking through their neighborhood and attacking a dachshund. (Kristine Phillips)
9. **"Veep" is coming to an end.** The HBO series will conclude next year after its seventh season. (The New York Times)

Facebook says it discovered Russian ad sales from the 2016 election

THERE'S A BEAR IN THE WOODS:

-- Facebook told congressional investigators that it discovered it sold ads to a shadowy Russian company seeking to target U.S. voters during the 2016 election. Carol D. Leonnig, Tom Hamburger

and Rosalind S. Helderman scoop: "Facebook officials reported that they traced the ad sales, totaling $100,000, to a Russian 'troll farm' with a history of pushing pro-Kremlin propaganda … A small portion of the ads, which began in the summer of 2015, directly named [Trump] and [Clinton]. Most of the ads focused on pumping politically divisive issues such as gun rights and immigration fears, as well as gay rights and racial discrimination. … Even though the ad spending from Russia is tiny relative to overall campaign costs, the report from Facebook that a Russian firm was able to target political messages is likely to fuel pointed questions from investigators about whether the Russians received guidance from people in the United States …

"Facebook discovered the Russian connection as part of an investigation that began this spring looking at purchasers of politically motivated ads … It found that 3,300 ads had digital footprints that led to the Russian company. Facebook teams then discovered 470 suspicious and likely fraudulent Facebook accounts and pages that it believes operated out of Russia, had links to the company and were involved in promoting the ads." (An official familiar with the probe said Facebook does not have the ability to determine whether the ads it sold represented any sort of coordination. The company also turned over information about the ads to special counsel Robert Mueller.)

-- Donald Trump Jr. will meet today with Senate Judiciary Committee staff. CNN reports: "Sen. Dianne Feinstein, the top Democrat on the Senate judiciary committee, [said] her panel 'will have a public hearing with Mr. Trump at an appropriate time.' She did not say when or if Trump Jr. has agreed to the hearing. 'The

agreement that we had is that there will be a public hearing and, if they don't come, they'll be subpoenaed,' she said. Feinstein also clarified Trump Jr. will meet with committee staff for the interview Thursday -- not the committee. ... She said members can drop in, but cannot take over."

-- The Don Jr. meeting represents a new challenge for Senate Judiciary Chairman Chuck Grassley (R-Iowa), who has vacillated between defending the president and criticizing him for impeding the committee's investigation. Karoun Demirjian reports: "Grassley can be punishing with anyone who tries to circumvent his committee's authority — even the president, whom Grassley recently lectured in a letter to be more responsive to congressional oversight requests from Democrats and Republicans. … Grassley's refusal to be constrained, and his reputation for putting the integrity of his probes above all, including party, is why many Democrats trust him with the reins of an investigation into Trump."

-- House Intelligence Chairman Devin Nunes (R-Calif.) sent Jeff Sessions a letter last week threatening him with an open hearing if he didn't hand over documents tied to the infamous Trump dossier. CNN reports: "Nunes … accused Sessions and the FBI of stonewalling him repeatedly in a Sept. 1 letter … In the letter, he threatened to drag Sessions and [FBI director Christopher Wray] before the committee for a public grilling and hold them in contempt of Congress — a jailable offense — if they don't hand over the documents. Nunes also writes that he subpoenaed to discover whether information from the Russia dossier was used in the crafting of applications to conduct surveillance under the Foreign Intelligence

Surveillance Act. In the letter, which was signed only by Nunes and no other [panel] members … Nunes explained that he was extending the deadline for responding to the subpoenas to September 14."

-- "Hackers gain direct access to US power grid controls," by Wired Magazine's Andy Greenberg: "Security firm Symantec is warning that a series of recent hacker attacks not only compromised energy companies in the US and Europe but also resulted in the intruders gaining hands-on access to power grid operations — enough control that they could have induced blackouts on American soil at will. … **Never before have hackers been shown to have that level of control of American power company systems**, [Symantec security analyst Eric] Chien notes."

-- "The Gerasimov Doctrine," by Politico Magazine's Molly K. McKew: "Lately, Russia appears to be coming at the United States from all kinds of contradictory angles. Russian bots amplified [Trump] during the campaign, but in office, Kremlin-backed media portray him as weak, [and Vladimir] Putin is expelling U.S. diplomats from Russia. … Confused? Only if you don't understand the Gerasimov Doctrine. **In February 2013, [Russian General Valery Gerasimov] laid out a new theory of modern warfare — one that looks more like hacking an enemy's society than attacking it head-on.** Thanks to the internet and social media, the kinds of operations Soviet psy-ops teams once could only fantasize about — upending the domestic affairs of nations with information alone — are now plausible. The Gerasimov Doctrine builds a framework for these new tools, and declares that non-military tactics are not auxiliary to the use of force but the preferred way to win. … That they are, in fact, the *actual war*."

Rep. Mark Meadows (R-N.C.) makes his way to a meeting with other members of the House Freedom Caucus. (Ricky Carioti/The Washington Post)

GOP RIFT DEEPENS:

-- House hard-liners target Paul Ryan (again). Robert Costa scoops on the meeting between the perennially disgruntled House Freedom Caucus with the speaker to "candidly express their frustrations with his leadership and his handling of the Republican legislative agenda." The difference this time is that HFC members first met with ousted Trump adviser Steven K. Bannon, who is back at the bomb-throwing site Breitbart. "Several people close to Bannon and [HFC Chair Mark] Meadows said on Wednesday that the two men, who met on Monday on Capitol Hill, have begun to discuss who could replace Ryan as speaker, should conservatives rebel against him. But they stressed that those discussions remain speculative and informal,

with no plan yet for action." **We've seen this play before and House Republicans are so divided they had a hard time finding someone to replace Speaker John Boehner (R-Ohio) once they achieved his ouster. But Bannon's influence could help put momentum behind their cause.**

-- Beginning of a wave?: Dave Reichert, a moderate Republican from the Seattle suburbs, is retiring — representing a good pickup opportunity for House Dems. More from David Weigel: "Reichert was elected in 2004 and is one of 23 Republicans who represents a district where voters picked Hillary Clinton for president over [Trump]. … This year, Democrats had already put the 8th District on their target list, and eight Democrats had piled in to run against him. … **But veteran GOP advisers are waiting to see if this is the first of a string of retirement announcements, as the congressional session has produced little legislative results to tout, and looks like the 2018 midterms could be difficult for Republicans. Reichert is the 12th Republican to leave the House since the start of 2017."**

Rep. Tim Murphy (R-Pa.) makes an opening statement as he chairs a subcommittee hearing in 2014. (Andrew Harrer/Bloomberg News)

-- Pennsylvania GOP Rep. Tim Murphy admitted publicly on Wednesday to a marital affair with a "personal friend" after pressure from the Pittsburgh Post-Gazette to open his divorce court proceedings.

From the paper's Paula Reed Ward: "Congressman Tim Murphy publicly admitted Wednesday to having an extramarital affair with a personal friend, issuing a statement about the relationship hours after the Pittsburgh Post-Gazette prevailed in a court motion to unseal a divorce action. Mr. Murphy, R-Upper St. Clair, is not a party to the divorce. However, the husband in the case, Jesse Sally, a sports medicine physician, sought in July to depose the congressman as part of his divorce from Shannon Edwards, a forensic psychologist. Dorothy Wolbert, who represents Dr. Sally, said that the deposition is

relevant to alimony requested by Ms. Edwards." The judge agreed and said he must be deposed by Sept. 29, as well as turn over text and email communications between himself and the woman.

"Mr. Murphy, 64, who is in his eighth term in Congress, is a practicing psychologist and is married with an adult daughter. Ms. Edwards, 32, has a doctoral degree, and her practice involves significant work within the Allegheny County court system, performing evaluations of defendants in criminal and child custody cases. **The two met, she said, when she contacted his office to volunteer to do work on his mental health bill** that was signed into law in December. … In an interview Wednesday evening, Ms. Edwards said that her relationship with Mr. Murphy has ended."

-- Murphy's statement: "Last year I became involved in an affair with a personal friend. This is nobody's fault but my own, and I offer no excuses. To the extent that there should be any blame in this matter, it falls solely upon me."

Sen. Menendez emotionally thanks supporters on first day of corruption trial

-- Under fire: The corruption trial of New Jersey Sen. Bob Menendez (D) kicked off yesterday, "with a federal prosecutor charging that the lawmaker sold his office in exchange for luxury getaways, private jet flights and hundreds of thousands of dollars in campaign cash."

The Post's Devlin Barrett was on the scene in Newark: "'This is what bribery looks like,' said Assistant U.S. Attorney Peter Koski in opening arguments at U.S. District Court ... **'These two defendants corrupted one of the most powerful offices in our country. The defendants didn't just trade money for power, they also tried to cover it up.'** … Supporters of the senator applauded as he walked into the courthouse to face trial on 12 separate charges. **'Not once have I dishonored my public office,' Menendez said. He became emotional and choked back tears as he thanked his children and supporters who 'have stood by me as I try to clear my name.' … Menendez's lawyer, Abbe D. Lowell, accused the Justice Department of trying to paint a decades-long friendship as something sinister and criminal."**

Sen. John McCain speaks with reporters outside of his Senate office. (Oliver Contreras/The Washington Post)

-- Hope for health care? John McCain, the Arizona senator who effectively killed the GOP push to repeal-and-replace Obamacare, hinted yesterday he may be open to a new compromise being advanced by Sens. Lindsey O. Graham (R-S.C.) and Bill Cassidy (R-La.)

David Weigel and Sean Sullivan report: "On Wednesday, McCain told the Hill that he backed a proposal from Sens. [Graham and Cassidy] that would end the ACA's Medicaid expansion and insurance subsidies, and instead dole out money to states for whatever health insurance programs they favored. … 'If it's not through regular order, then it's a mistake,' McCain said. 'But it doesn't mean I wouldn't vote for it.'" McCain later clarified his stance in a follow-up statement: "I want to see the final legislation and understand its impact on the state

of Arizona before taking a position. As I have said all along, any effort to replace Obamacare must be done through the regular order of committee hearings, open debate and amendments from both sides of the aisle."

-- During Senate hearings on Obamacare yesterday, Senate Health, Education, Labor and Pensions Chair Lamar Alexander (R-Tenn.) called on Trump to extend cost-sharing reduction subsidies that help low-income Americans buy insurance through 2018. Amy Goldstein and Juliet Eilperin report: "He also said the government should allow states greater freedom to deviate from a variety of ACA rules, including the benefits that health plans sold through marketplaces must include. Alexander acknowledged that each party 'may be reluctant to support' certain elements but added, 'This is a compromise we ought to be able to accept … If we don't, millions of Americans will be hurt.'" A bipartisan group of state insurance commissioners echoed Alexander's recommendations at the hearing.

Audio: Trump makes remarks on DACA

DACA FALLOUT:

-- Paul Ryan yesterday assured "dreamers" they could "rest easy" as Congress looked to replace DACA following Trump's decision to rescind it (maybe, probably). Mike DeBonis reports: "Ryan sketched out a compromise that has been floated by numerous congressional Republicans — pairing relief for ["dreamers"] with border security and other enforcement measures supported by conservatives. He did not mention funding for a Mexican border wall[.] … He added: 'What we don't want to have happen is another DACA problem in 10 years from now. We want to make sure that we fix this issue for these kids, for these young people, and to address the root cause of the problem.'"

-- Trump said that he wants a congressional solution on the issue "where everybody is happy." He tweeted Tuesday night that he would "revisit" the program if Congress can't pass a replacement. "I have a feeling that's not going to be necessary," Trump said yesterday on Air Force One when asked to clarify. "I think they're going to make a deal. I think Congress really wants to do this." (Politico's Nolan D. McCaskill)

-- Congressional Democrats appear willing to consider some border security measures in exchange for replacing DACA, but there are many poison pills that could ruin a compromise, including Trump's border wall. Politico's Seung Min Kim reports: "Democratic leaders showed some willingness to play procedural hardball, when they vowed to try to attach Dreamers legislation to other must-pass items later this year. 'There are some things that are absolutely

unacceptable. A 2,200-mile border wall is unacceptable. Making it easier to deport the parents of Dreamers, not gonna do that,' Senate Minority Whip Dick Durbin of Illinois, a longtime advocate for Dreamers, said in an interview. But, Durbin added, 'If they want to put something on the table, I'll look at it.'"

-- But immigration hard-liners' controversial comments about the dreamers could complicate the path forward:

- Rep. Steve King (R-Iowa) told NBC News yesterday, "They came here to live in the shadows, and we're not denying them that opportunity to live in the shadows. … They need to be exposed to the enforcement of the law."
- Kansas Secretary of State Kris Kobach, who also co-chairs Trump's voter fraud commission, said to CNN, "They came in presumably with a parent or parents, and so the correct policy is for us to enforce federal law and deport the whole family to the home country."

-- Attorneys general from 15 states and the District of Columbia filed a lawsuit to save the DACA program. Matt Zapotosky reports: "The suit says that unwinding the program would damage states because DACA beneficiaries pay taxes, go to state universities and contribute in other ways and that phasing out the program would jeopardize their ability to do those things. 'Rescinding DACA will cause harm to hundreds of thousands of the States' residents, injure State-run colleges and universities, upset the States' workplaces, damage the States' economies, hurt State-based companies, and disrupt the States' statutory and regulatory interests,' the [attorneys general wrote]."

-- Immigration advocates continue to worry that "dreamers'" information, stored in a federal database, could be used to deport them. Craig Timberg and Tracy Jan report: "Much that is necessary to find and deport those who applied for [DACA] is contained in the database: home addresses, phone numbers, financial information, and education and employment history, as detailed across several federal forms and backed by supporting documentation. Even entries and exits from the country and visa expiry dates were required to complete the DACA application, giving government officials what amount to signed, dated admissions about violations of federal immigration law. All this information is now just a few clicks away on federal government computer systems."

Gary Cohn takes part in a strategic and policy CEO discussion with Trump. (Reuters/Joshua Roberts)

WEST WING INTRIGUE:

-- Trump is now very unlikely to nominate top White House economic adviser Gary Cohn as the next Federal Reserve chairman after Cohn criticized Trump's response to the violence in Charlottesville. Damian Paletta reports: "Trump is now leaning strongly against nominating Cohn, [sources said] … upending the search for who will control the most powerful economic post in the world. It is unclear who would be the next most likely option for Trump's pick for Fed chair. 'The president is considering several candidates,' said one of the people, a senior administration official. Cohn [who is Jewish], last month told the Financial Times that Trump should have responded differently to the white supremacist rally in Charlottesville. Trump was livid at the criticism, complaining to other White House aides that Cohn was being disloyal. Fed watchers think **other candidates could include John Taylor of Stanford University**, former Fed governor Kevin Warsh, Glenn Hubbard of Columbia University and current Fed Governor Jerome Powell."

-- John Kelly is shoving out some Trump allies and replacing them with experienced Washington insiders. Politico's Tara Palmeri and Eliana Johnson report: "Mercedes Schlapp, wife of American Conservative Union chairman Matthew Schlapp, is expected to be Kelly's first high-profile addition. She's in talks to join the White House in a senior role in the communications department[.] … It's the latest sign of Kelly's transformation of the West Wing from a drama-filled social hub into a more buttoned-down workplace that

resembles previous administrations, at least in structure and process. 'General Kelly is methodically looking at the portfolios of all the senior level staff and identifying redundancies and clarifying roles so that everyone has a clearly defined lane,' said one current White House official. … Trump's new chief of staff has also taken aim at aides close to Steve Bannon[.]"

-- Trump's top Russia lawyer Ty Cobb engaged in a lengthy, bizarre email exchange with a DC ramen bar owner on Tuesday night, in which he defended his decision to join Trump's team and appeared to refer to himself and John Kelly as the "adults in the room." He also suggested he might not stay in the role for long. Business Insider's Natasha Bertrand reports: "The exchange [was with restaurateur] Jeff Jetton … who has made himself known to reporters by digging into Trump's alleged ties to Russia — partly as an unabashed troll. [Cobb] responded to Jetton's obscenity-laden emails using his official White House email account." "How are you sleeping at night? You're a monster," Jetton wrote. "Like a baby," Cobb fired back. The conversation escalated quickly and continued for more than two hours. Asked at one point to explain how he is "justifying" his role at the White House to himself, Cobb replied he "can say assertively [that] more adults in the room will be better. Me and Kelly among others."

-- Stanley Fischer announced he is stepping down as vice chairman of the Federal Reserve, citing personal reasons, creating yet another vacancy for Trump to fill at the central bank, with only three of the seven board members staying past October. (CNBC)

-- Steve Bannon will appear on "60 Minutes" this weekend, sitting

with Charlie Rose for his first major televised interview since leaving the White House. (CBS News)

-- The reporter who was arrested at the West Virginia state capitol earlier this year for "aggressively" questioning HHS secretary Tom Price will not be prosecuted. Prosecutors finally announced yesterday that after a "careful review" they determined Dan Heyman had not acted unlawfully. (New York Times)

-- A new EPA buyout program is on course to slash the agency's workforce to Reagan-era levels, reducing the number of personnel from 15,000 to 14,428 after buyouts and retirements. (Reuters)

Hillary Clinton speaks to guests at the American Library Association's (ALA) annual conference on June 27, 2017 in Chicago. (Photo by Scott Olson/Getty Images)

HILLARY'S BOOK:

-- CNN obtained an early copy of Hillary Clinton's new book, set for widespread release next week. Dan Merica and Kevin Liptak write that Clinton has "a voice that swings from defiant to conciliatory to -- at rare moments -- deeply vulnerable[.]"

Here are some of the key nuggets:

- **On losing the 2016 election:** "I go back over my own shortcomings and the mistakes we made. I take responsibility for all of them. You can blame the data, blame the message, blame anything you want -- but I was the candidate. It was my campaign. Those were my decisions."
- **On Trump's tactics:** "I was running a traditional presidential campaign with carefully thought-out policies and painstakingly built coalitions, while Trump was running a reality TV show that expertly and relentlessly stoked Americans' anger and resentment."
- **On the concession phone call:** "I congratulated Trump and offered to do anything I could to make sure the transition was smooth. … It was all perfectly nice and weirdly ordinary, like calling a neighbor to say you can't make it to his barbecue. It was mercifully brief[.] ... I was numb. It was all so shocking."
- **On Bill Clinton:** It has been a marriage with "many, many more happy days than sad or angry ones."
- **On intense media scrutiny:** "What makes me such a lightning rod for fury? I'm really asking. I'm at a loss. … I think it's partly because I'm a woman."
- **On Vladimir Putin:** "There's nothing I was looking forward to more than showing Putin that his efforts to influence our election

and install a friendly puppet had failed. … I know he must be enjoying everything that's happened instead. But he hasn't had the last laugh yet."

-- CBS's "Sunday Morning" landed the first TV interview with Clinton about her new book.

Three things China can do to rein in North Korea

NEW WORLD ORDER:

-- South Korea has deployed an anti-missile system to rebuke North Korea's latest test, as the U.N. considers diplomatic options for reigning in Kim Jong Un. Reuters's Christine Kim and Michelle Nichols report: "The United States wants the U.N. Security Council to impose an oil embargo on North Korea, ban its exports of textiles and the hiring of North Korean labourers abroad, and subject leader Kim Jong Un to an asset freeze and travel ban[.] … Amid the rising tensions, Seoul installed the four remaining launchers of the U.S. anti-missile Terminal High Altitude Area Defense (THAAD)

system on a former golf course in the south early on Thursday. … Trump and Chinese President Xi Jinping committed on a phone call on Wednesday to 'take further action with the goal of achieving the denuclearisation of the Korean peninsula', the White House said."

-- "Lacking a Point Person on China, U.S. Risks Aggravating Tensions," by the New York Times's Mark Landler: "[Trump's call with Xi] still served to underscore the widening fissures between Washington and Beijing and the deepening confusion about how the Trump administration is managing the relationship. … Aside from Mr. Trump himself, it remains unclear who in the administration wields genuine influence on the relationship. … That lack of a guiding hand has contributed to the administration's dissonant signals toward Beijing. … If Mr. Xi refrains from putting more pressure on North Korea now, it will further test the relationship with Mr. Trump, which, analysts said, was already strained by the president's resolve to hit China on the trade front."

-- The commander of the U.S. Navy's Pacific Fleet argued in an interview yesterday that the sanctions-focused approach to North Korea has been a success. Anna Fifield and Michelle Ye Hee Lee report: "Adm. Scott Swift said that the only alternative to diplomacy and pressure was military action. 'I think that the strategy has worked,' Swift said[.] … 'I say it has worked because we are not at war.' Swift reiterated recent pronouncements from the secretaries of defense and state that 'all options are on the table' but that diplomacy and pressure were preferred to military action against North Korea. The international community is in a 'much better place' to deal with Pyongyang 'than if we had foreclosed on the diplomatic options,'

Swift said."

Afghan commandos with the 7th Special Operations Kandak practice moving wounded soldiers to an Afghan Air Force helicopter at Camp Bastion, Helmand Province. (Thomas Gibbons-Neff/The Washington Post)

-- Officials are now saying that the U.S. will send 3,500 additional troops to Afghanistan, bringing the total number of American troops in the country to over 14,000. Thomas Gibbons-Neff and Dan Lamothe report: "Last week, Secretary of Defense Jim Mattis told reporters that he had signed deployment orders for some of the troops but would not make an announcement on the specific numbers until after he briefed Congress. On Wednesday, Chairman of the Joint Chiefs of Staff Gen. Joseph F. Dunford Jr. met on Capitol Hill with lawmakers during a closed-door session."

-- U.N. investigators formally accused the Syrian government of using sarin gas in an April chemical attack on its people, which

killed more than 80 civilians -- including dozens of women and children -- and prompted a retaliatory missile strike from Trump. Investigators said **that sarin attack was one of more than 20 chemical assaults from the Assad regime since 2013**, most of them targeting families with no part in the conflict. (Louisa Loveluck)

-- The U.S. has placed sanctions on three associates to South Sudanese President Salva Kiir. The sanctions' targets have been accused of personally enriching themselves as the country faces civil war and famine. (Carol Morello)

SOCIAL MEDIA SPEED READ:

Trump previewed appearance with Sen. Heidi Heitkamp (D-N.D.) yesterday to tout tax reform:

But that fact, previously cited by the president, has been repeatedly debunked:

From the Wall Street Journal's tax reporter:

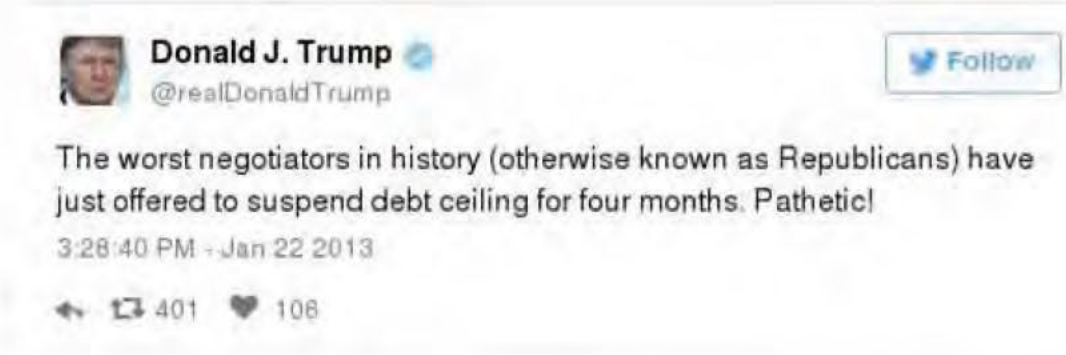
Trump also commented on the historic nature of Hurricane Irma:

From a reporter at the Houston Chronicle, which has been doggegly covering Hurricane Harvey's impact:

The Weekly Standard's editor-at-large criticized the GOP after Trump's budget deal with Democrats:

A Senate Republican put it more plainly:

And once again, there is always a relevant Trump tweet for any situation. This one's from 2013:



Conservative firebrand Ann Coulter commented on Trump's promise to "revisit" DACA if Congress can't pass a replacement:

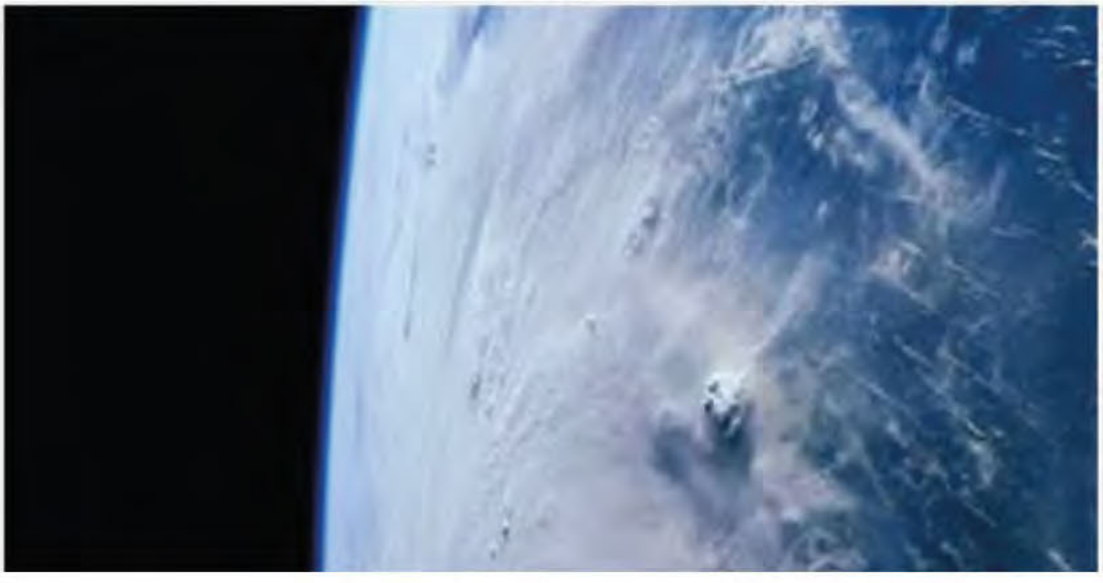
Paul Ryan's position on DACA underwent some rapid change:

Florida Gov. Rick Scott pleaded with his constituents as Hurricane

Irma approached:

NBC's Al Roker criticized Rush Limbaugh for questioning weather forecasts amid Irma's devastation:

Irma's eyewall is visible from space:



WeatherTAP
@weatherTAP

Follow

Check out this view of #Irma! So beautiful from space, so terrifying on the ground. What a contrast. pic.twitter.com/STOn4jd8ww

5:19:40 PM - Sep 06 2017

5 2

A rare bright spot was seen as the storm raged:

Hurricane Hunters
@53rdWRS

Follow

A sun flare inside the eye of #hurricaneIrma during one of today's flights.
pic.twitter.com/TZU8wf7IfF

5:14:56 PM - Sep 06 2017

4,747 7,558

And NBC's Lester Holt welcomed a new grandson:

GOOD READS FROM ELSEWHERE:

-- New York Times, "A Funeral of 2 Friends: C.I.A. Deaths Rise in Secret Afghan War," by Adam Goldman and Matthew Rosenberg: "Today there are at least 18 stars on that wall representing the number of C.I.A. personnel killed in Afghanistan — a tally that has not been previously reported, and one that rivals the number of C.I.A. operatives killed in the wars in Vietnam and Laos nearly a half century ago. The deaths are a reflection of the heavy price the agency has paid in a secret, nearly 16-year-old war, where thousands of C.I.A. operatives have served since the attacks of Sept. 11, 2001."

-- New York Times Magazine, "Michigan Gambled on Charter Schools. Its Children Lost," by Mark Binelli: "Free-market boosters, including Betsy DeVos, promised that a radical expansion of charter schools would fix the stark inequalities in the state's education system. The results in the classrooms are far more complicated."

HOT ON THE LEFT:

"Tom Perez, former U.S. labor secretary, to teach at Brown," from Providence Journal: "[Perez] will join Brown University as a senior fellow at the Watson Institute for Public Affairs, the university has announced. … Perez will lead a study group called 'Governance and Leadership in Challenging Times,' and it will feature speakers including Denis McDonough, Obama's former chief of staff; Rhode Island Gov. Gina

HOT ON THE RIGHT

"Some Harvard students protest Charles Murray speech," from Susan Svrluga: "Protesters greeted author and libertarian scholar Charles Murray at Harvard College on Wednesday evening, objecting that he should not be allowed to speak on campus because they believe he is racist. But others gathered in the auditorium to listen to Murray's talk, titled 'Coming Apart: Isolation of Elites & How Trump Became Possible,' and

Raimondo; Michael Steele, former chairman of the Republican National Committee, and others."

he praised the school for bringing both tough questions and security to make the event successful."

DAYBOOK:

Trump has a hurricane preparation briefing followed by a meeting with Rex Tillerson. Trump will then have a working lunch and press conference with Kuwait's Amir Sabah al-Ahmed al-Jaber al-Sabah. Paul Ryan will later join the president for dinner.

Pence will also meet with the Kuwaiti leader, and, in the evening, he will give a speech to the Texas congressional delegation at the Naval Observatory.

President Trump brings Ivanka on stage in North Dakota

QUOTE OF THE DAY:

Trump on his daughter Ivanka joining him for the tax event in North Dakota: "**She wanted to make the trip. She said: 'Dad, can I go with you?' She actually said: 'Daddy, can I go with you?' I like that, right?** 'Daddy, can I go with you?' I said: 'Yes, you can.' [She said,] 'Where are you going?' [I said,] 'North Dakota.' I said, 'Oh, I like North Dakota.'"

NEWS YOU CAN USE IF YOU LIVE IN D.C.:

-- Today begins a wave of beautiful weather in D.C. The Capital Weather Gang forecasts: "Some clouds and patchy fog are likely at sunrise but should break up steadily as drier air gradually settles in. Humidity levels may be downright low by day's end. Winds are on the light side out of the west and highs only reach the lower 70s for most of the area."

-- The Nationals beat the Marlins 8-1 in Miami. But the victory was overshadowed by the impending hurricane about to hit the area. (Chelsea Janes)

-- The National Democratic Redistricting Committee donated $500,000 to Ralph Northam's gubernatorial bid in Virginia. The group is led by former Attorney General Eric Holder and backed by Barack Obama. (Fenit Nirappil)

-- Protesters in D.C. tore down a fake statue of Jeff Sessions dressed as a Confederate soldier. (Rachel Chason)

VIDEOS OF THE DAY:

A Delta flight safely departed Puerto Rico for New York despite Irma's harsh conditions:

Delta flight takes off from Puerto Rico airport in the midst of Hurricane Irma

Sen. Luther Strange released his first television ad for the Alabama primary run-off, slamming Roy Moore as a “swamp critter”:

Swamp Critter - Roy Moore

Panasonic has created a robotic fridge that can fetch you drinks:

Panasonic creates robotic fridge to bring you drinks

The Post explained the "love story" between Michelle Obama and Beyonce:

Michelle Obama and Beyoncé, a love story

And this video of a father attempting to get a bat out of his kitchen went viral:

Dad's attempt to catch bat in family kitchen goes viral

You received this email because you signed up for The Daily 202 or because it is included in your subscription. For additional free newsletters or to manage your newsletters, **click here**.

We respect your **privacy** . If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, **click here**. **Contact us** for help.

©2017 The Washington Post | 1301 K St NW, Washington DC 20071

The NLJ’s Most Popular Stories of the Week.pdf

From: NLJ Weekend Edition
To: Kupers, Lawrence B. (OPATTY)
Subject: The NLJ"s Most Popular Stories of the Week
Date: Sunday, September 17, 2017 5:11:22 PM

THE NATIONAL LAW JOURNAL WEEKEND UPDATE

TODAY'S TOP STORIES

- Figuring Out What Young Associates Want, Over 15 Coffees
- Kagan Says Repeat Players at SCOTUS 'Know What It Is We Like'
- DAG Rosenstein: Changes Coming 'in the Near Future' to Yates Memo
- Justice Department, Divided Internally, Backed Colorado Baker Over Gay Couple
- Trump's Big Law FEC Nominee Under Fire for Tweets, Views
- Trump's Arpaio Contempt Pardon 'Ends This Prosecution,' DOJ Tells Judge
- EEOC Warns of 'Chaos' If Workplace Wellness Rules Are Vacated
- Ex-Jones Day Associate Is Trump's Pick for USDA General Counsel
- Citing the Pope, Catholic Bishops Bash Travel Ban With Help From Gibson Dunn
- Davis Polk Partner Picked for State Dept. Legal Adviser Discloses $1.5M Partner Share

SPONSOR SPOTLIGHT:
U.S. Chamber Institute for Legal Reform
2017 Legal Reform Summit - 10.25.2017

Each year, ILR's Legal Reform Summit gathers top legal minds, business and industry leaders, and preeminent issue experts to discuss the current state of legal reform. Get current on the issues and earn CLE credits. Register today, seating is limited.
Click Here

NEW JOB OPENINGS

POWERED BY LAWJOBS.COM

Litigation Associate
Gray Plant Mooty Washington D.C., District of Columbia

Associate Attorney- Atlanta, Ga
Confidential Macon, Georgia

Investigator
Office of the Federal Public Defender Baltimore, Maryland

Associate Legal Counsel
Expereo USA Reston, Virginia

Email Management Area

Please do not reply to the address you received this email from. Manage your email communications below.

Why you received this email message:

You are subscribed to the NLJ Weekend Edition as lawrence.b.kupers@usdoj.gov. You may be subscribed to multiple publications as part of your relationship with us.

To stop receiving the NLJ Weekend Edition (unsubscribe) or to update your email marketing preferences, please click here. On this page, please update your subscription choices to this publication, and any others you may receive. You may also change your opt-in of email marketing promotions from ALM. It may take up to 10 days for your changes to take effect.

How to contact us should you have questions:

The National Law Journal®
120 Broadway, 5th Floor,
New York, NY 10271-1101
Customer Service Phone: 1-877-256-2472

About ALM | Customer Support | Privacy Policy | Terms & Conditions

© 2017 ALM Media Properties, LLC.

All rights reserved.

Thursday’s Headlines_ Harvey™s wrath moves east....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: Thursday"s Headlines: Harvey's wrath moves eastward as water recedes in Houston
Date: Thursday, August 31, 2017 6:01:54 AM

The Washington Post

Democracy Dies in Darkness

Today's Headlines

The morning's most important stories, selected by Post editors

Powered by LiveIntent AdChoices

Top Stories

Harvey's wrath moves eastward as water recedes in Houston

Coastal towns in Texas and rural areas of Louisiana bore the brunt of the storm's second landfall, prompting evacuations as roads and homes were inundated with water. New Orleans officials expressed relief after their city was spared a direct blow from the storm. The mayor voiced support for Houston while recounting that city's efforts following Hurricane Katrina.

By Todd C. Frankel and Lee Powell • Read more »

In flooded Houston, the search for bodies begins

As the storm's death toll mounts, a graveyard shift takes a dark turn for police. After days of search and rescue, police fear a spike in dispatches about floating bodies, trapped in cars, dead on arrival.

By Chico Harlan • Read more »

Two volunteer rescuers killed in floodwaters after taking families to safety

On their third trip out, they lost control of their boat in strong currents and drifted toward downed power lines.

By Kevin Sullivan and Tim Craig • Read more »

Flood survivors face housing crisis expected to drag on for years

Many have little information about the homes they fled. Now the head of FEMA has reissued a call for

volunteers, saying help is needed as survivors navigate the complexities of insurance claims, government assistance and the decision of whether to rebuild or move.
By Joel Achenbach • Read more »

Fearing explosion at chemical plant, officials evacuate Texas town

Volatile chemicals at the flooded plant could explode at any moment. An evacuation zone was established for a 1.5-mile radius as workers tried to resolve the problem.
By Alex Horton • Read more »

In Houston, acts of kindness set off a chain reaction of goodwill

Families in Texas are opening their homes to strangers who were displaced by Harvey.
By Maria Sacchetti and Rachel Siegel • Read more »

ADVERTISEMENT

#AloneTogether

ad COUNCIL

Staying home saves lives.

For more info visit
coronavirus.gov

Opinions

Republicans slip into a 'predictable spiral'

By Dana Milbank • Read more »

A hurricane of conservative hypocrisy

By E.J. Dionne Jr. • Read more »

America's most important exports are under attack

By Charles Lane • Read more »

Yale saves fragile students from a carving of a musket

By George F. Will • Read more »

My son has autism. Discrimination almost cost him his life.

By Sunshine Bodey • Read more »

Will the divider in chief strike again?

By Editorial Board • Read more »

ADVERTISEMENT

More News

Mattis shows deft political touch with a drama-filled White House

The defense secretary has maintained an air of independence without directly provoking President Trump.

By Greg Jaffe and Dan Lamothe • Read more »

Fact Checker • Analysis

Breaking down President Trump's speech on his tax plan

Here's a roundup of 10 fishy claims made by the president in his speech in Springfield, Mo., on Wednesday.

By Glenn Kessler and Michelle Ye Hee Lee • Read more »

He was once Netanyahu's housekeeper. Now he's on a mission to bring him down.

Meni Naftali sees himself as a David, taking on the Goliath that is Israel's longtime leader. He has become the unlikely figurehead for a band of Israeli citizens fed up with corruption in the halls of power.

By Loveday Morris and Ruth Eglash • Read more »

Her ancestors were Georgetown's slaves. At 63, she's enrolled there — as a freshman.

Melisande Short-Colomb's family history is proof of how deeply the roots of slavery go in America's most prominent institutions.

By Terrence McCoy • Read more »

How Britain and the world mourned Diana, the 'people's princess'

For the eight days between her death and her funeral, the story of Diana's death dominated the media's attention.

By Jennifer Amur • Read more »

Extrajudicial killings spike in Egypt since Trump's Mideast trip, activists say

Activists, victims and their families said they have seen a rise in government abuses since May, when President Trump made clear that human rights would not be a priority for his administration in its dealings with allies in the Middle East.

By Sudarsan Raghavan • Read more »

White lawmaker in Georgia warns black attorney she may 'go missing' if Confederate statues are threatened

LaDawn Jones and Jason Spencer have had many disagreements over the past five years. She says his most recent comments went too far.

By Cleve R. Wootson Jr. • Read more »

Share Today's Headlines: Twitter Facebook

Trouble reading? Click here to view in your browser.

You received this email because you signed up for Today's Headlines or because it is included in your subscription. For additional free newsletters or to manage your newsletters, click here.

We respect your privacy. If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, click here. Contact us for help.

©2017 The Washington Post, 1301 K St NW, Washington DC 20071

Thursday’s Headlines_ Trump™s whiplash_ Three p....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: Thursday"s Headlines: Trump's whiplash: Three personas in three speeches, but the same president
Date: Thursday, August 24, 2017 6:01:39 AM

The Washington Post

Democracy Dies in Darkness

Today's Headlines

The morning's most important stories, selected by Post editors

Penny

This App Applies Every Promo Code on the Internet to Your Cart – And it's Awesome

READ MORE

Powered by LiveIntent

AdChoices

Top Stories

Trump's whiplash: Three personas in three

speeches, but the same president

Like a contestant on one of his reality TV shows, President Trump has showcased divergent traits with flourishes seemingly to survive another day of his beleaguered presidency. Or, as Trump the television producer might say, to keep up ratings.

By Philip Rucker • Read more »

‘I don’t know how it got this bad’: Trump supporters and protesters meet in Phoenix

America’s deepening political and racial divisions played out on the Arizona city’s downtown streets this week.

By Jenna Johnson, Danielle Paquette and Lourdes Medrano • Read more »

‘Have you lost your minds?’ Critics pile on Virginia GOP for saying Democrat rejected Confederate ‘heritage’

After state Republicans tweeted that gubernatorial nominee Ralph Northam “turned his back on his own family’s heritage,” the blowback was so severe that the party apologized.

By Laura Vozzella and Fenit Nirappil • Read more »

Mosul learns the price of

driving out militants: Homes are now graves

Weeks after Iraq's landmark military victory that ended the Islamic State's occupation of Mosul, the terrible cost is emerging in quarters of the Old City ground to rubble by airstrikes, shelling and suicide bombs. Under the barrage were thousands of homes packed with families.

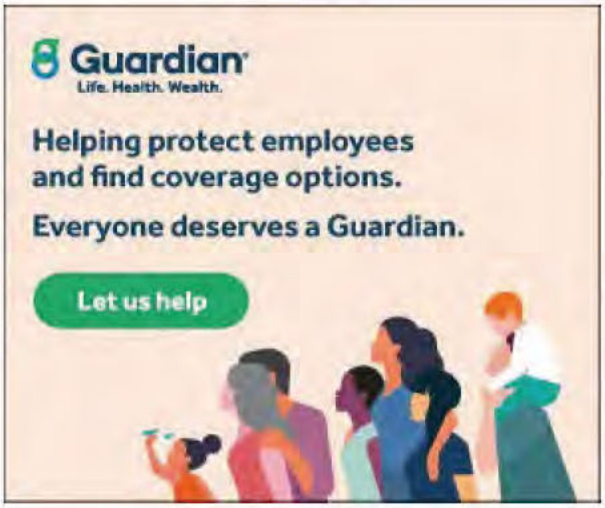
By Kareem Fahim and Aaso Ameen Schwan • Read more »

Amid reports of a widening rift, Trump and McConnell push back

The president has waged a public war with the Senate majority leader in recent weeks, but both issued statements Wednesday indicating unity on key Republican agenda items.

By Abby Phillip • Read more »

ADVERTISEMENT



Opinions

The generals have Trump surrounded

By Charles Lane • Read more »

Today, Stonewall Jackson. Tomorrow, Michael, Reggie and Jackson Hole

By Dana Milbank • Read more »

The disgraceful way Trump walks in Obama's footsteps

By George F. Will • Read more »

We know how a true leader deals with hatemongers. We've seen it.

By Douglas Brinkley • Read more »

The most consequential question facing the world

By E.J. Dionne Jr. • Read more »

What a president we could be proud of would have said in Phoenix

By Editorial Board • Read more »

ADVERTISEMENT

More News

A reprieve for Joe Arpaio wouldn't be the first 'political pardon' issued by a president

If the controversial former Arizona sheriff is pardoned — as President Trump strongly suggested this week — it will be one of the rare but not unprecedented instances when a president short-circuits legal proceedings and acts preemptively.

By Devlin Barrett •
Read more »

Energy Dept.'s recommendations would bolster coal, nuclear power plants

The report on the electricity grid rejects the notion that regulations or renewable energy sources caused premature shutdowns of coal and nuclear plants over the past 16 years, noting that cheap, abundant natural gas had been the main factor.

By Steven Mufson • Read more »

Qatar restores diplomatic ties to Iran amid regional crisis

Since the diplomatic dispute with Arab nations began in June, Iran has sent food shipments to Qatar and it also has incorporated the crisis into its regular criticism of Saudi Arabia, part of the two Mideast powers' long-running proxy war.

By Jon Gambrell | AP • Read more »

A teen reunited with her birth mother — who then killed her and burned her body, police say

Rebecca Ruud is accused of murdering the teen, Savannah Leckie, whom she'd given up for adoption 16 years before. Investigators allege that Leckie was tortured on an isolated farm in Missouri, forced to crawl through hog pens and have salt rubbed in her wounds.

By Avi Selk • Read more »

One postal worker faked cancer and got paid to miss two years of work. She received a special punishment.

The woman got probation, was fined, ordered to pay restitution and she must serve 652 hours of community service at a cancer treatment center, cancer research center or hospice — precisely how many hours of falsified sick leave she took.

By Alex Horton • Read more »

Missed the solar eclipse? You won't have to wait too long for the next one.

If you didn't see it this time, you'll have another chance in less than seven years to see one in the United States. If you can't wait that long, there will be four others elsewhere in the world before then.

By Justin Grieser • Read more »

Share Today's Headlines: Twitter Facebook

Trouble reading? Click here to view in your browser.

You received this email because you signed up for Today's Headlines or because it is included in your subscription. For additional free newsletters or to manage your newsletters, click here.

We respect your privacy. If you believe that this email has been sent to you in error or you no longer wish to receive email from

The Washington Post, click here. Contact us for help.

©2017 The Washington Post, 1301 K St NW, Washington DC 20071

Trump’s Arpaio Contempt Pardon ’Ends This Prose...(1).pdf

From: The National Law Journal Daily Headlines
To: Pendergrass, Matthew J. (OPATTY)
Subject: Trump"s Arpaio Contempt Pardon "Ends This Prosecution," DOJ Tells Judge
Date: Tuesday, September 12, 2017 7:04:26 AM

THE NATIONAL LAW JOURNAL DAILY HEADLINES

TODAY'S TOP STORIES

Trump's Arpaio Contempt Pardon 'Ends This Prosecution,' DOJ Tells Judge

The U.S. Justice Department on Monday urged an Arizona federal judge to end the contempt prosecution of former sheriff...

READ MORE »

This California Bill Would Restrict Immigration Enforcement in State Courts

A Los Angeles lawmaker says he'll pursue a bill in January that would bar federal immigration agents from arresting... READ MORE »

Equifax, Before Breach, Lobbied to Limit Class-Action Damages

In the months before revealing a data breach that potentially exposed the personal information of nearly half the adult... READ MORE »

Judges Look to Profs in Awarding Lower Percentage Fees in Biggest Class Actions

Larger common funds in class actions typically yield smaller percentage fees for lawyers, according to two studies relied...

READ MORE »

Class Action Fees Shaped by Circuit, Benchmarks

When it comes to attorney fees in class actions, it pays to be in the U.S. Court of Appeals for the Seventh Circuit... READ MORE »

Judge Slams Lawyer, Equating Fee Request to 'Attempted Bank Robbery'

A federal judge has taken Luzerne County attorney Cynthia L. Pollick to task for what the judge called "outlandish"... READ MORE »

• **Demonstrating Strength By Acknowledging Weakness In Mediation**

MORE STORIES FROM ALM

State Bar Leaves Reducing Exam Score for Supreme Court to Resolve

California state bar trustees on Wednesday punted the fate of the bar

exam pass score to the California Supreme Court,... **READ MORE »**

This California Bill Would Restrict Immigration Enforcement in State Courts

A Los Angeles lawmaker says he'll pursue a bill in January that would bar federal immigration agents from arresting... **READ MORE »**

Crime Doesn't Pay But Cooperation Does; Just Ask Wildstein

It is worthwhile to be reminded of the philosophy of the Ivan opinion from time-to-time: Crime may not pay, but cooperation...

READ MORE »

NEW JOB OPENINGS

POWERED BY LAWJOBS.COM

Assistant Professors of Law
GWU Law School | Washington D.C., District of Columbia

Associate Attorney- Macon, Ga
Confidential | Macon, Georgia

Email Management Area

Please do not reply to the address you received this email from. Manage your email communications below.

Why you received this email message:

You are subscribed to the NLJ Daily Headlines as jordan.pendergrass@usdoj.gov. You may be subscribed to multiple publications as part of your relationship with us.

To stop receiving the NLJ Daily Headlines (unsubscribe) or to update your email marketing preferences, please click here. On this page, please update your subscription choices to this publication, and any others you may receive. You may also change your opt-in of email marketing promotions from ALM. It may take up to 10 days for your changes to take effect.

How to contact us should you have questions:

The National Law Journal®
120 Broadway, 5th Floor,
New York, NY 10271-1101
Customer Service Phone: 1-877-256-2472

About ALM | Customer Support | Privacy Policy | Terms & Conditions

© 2017 ALM Media Properties, LLC.

All rights reserved.

Trump’s Arpaio Contempt Pardon ’Ends This Prose....pdf

From: The National Law Journal Daily Headlines
To: Kupers, Lawrence B. (OPATTY)
Subject: Trump"s Arpaio Contempt Pardon "Ends This Prosecution," DOJ Tells Judge
Date: Tuesday, September 12, 2017 7:04:34 AM

THE NATIONAL LAW JOURNAL DAILY HEADLINES

TODAY'S TOP STORIES

Trump's Arpaio Contempt Pardon 'Ends This Prosecution,' DOJ Tells Judge

The U.S. Justice Department on Monday urged an Arizona federal judge to end the contempt prosecution of former sheriff...

READ MORE »

This California Bill Would Restrict Immigration Enforcement in State Courts

A Los Angeles lawmaker says he'll pursue a bill in January that would bar federal immigration agents from arresting... READ MORE »

Equifax, Before Breach, Lobbied to Limit Class-Action Damages

In the months before revealing a data breach that potentially exposed the personal information of nearly half the adult... READ MORE »

Judges Look to Profs in Awarding Lower Percentage Fees in Biggest Class Actions

Larger common funds in class actions typically yield smaller percentage fees for lawyers, according to two studies relied...

READ MORE »

Class Action Fees Shaped by Circuit, Benchmarks

When it comes to attorney fees in class actions, it pays to be in the U.S. Court of Appeals for the Seventh Circuit... READ MORE »

Judge Slams Lawyer, Equating Fee Request to 'Attempted Bank Robbery'

A federal judge has taken Luzerne County attorney Cynthia L. Pollick to task for what the judge called "outlandish"... READ MORE »

• **Demonstrating Strength By Acknowledging Weakness In Mediation**

MORE STORIES FROM ALM

Lawyer Drafted Changes to Wills of McIver and His Wife Before She Died

An estate planning attorney hired by Atlanta lawyer Claud 'Tex'

McIver and his wife, Diane, has testified he drafted... **READ MORE »**

SI Administrative Judges Resign Amid News of Secret Recordings

The Staten Island judicial system was thrown into upheaval Thursday following reports that a court clerk surreptitiously... **READ MORE »**

Lawyer Caught Up in Willkie Partner's Arrest Promises Tell-All Memoir

A plaintiffs lawyer whose career was upended over his communications with a criminally indicted former Willkie Farr...

READ MORE »

NEW JOB OPENINGS

POWERED BY LAWJOBS.COM

Assistant Professors of Law
GWU Law School | Washington D.C., District of Columbia

Associate Attorney- Macon, Ga
Confidential | Macon, Georgia

Email Management Area

Please do not reply to the address you received this email from. Manage your email communications below.

Why you received this email message:

You are subscribed to the NLJ Daily Headlines as lawrence.b.kupers@usdoj.gov. You may be subscribed to multiple publications as part of your relationship with us.

To stop receiving the NLJ Daily Headlines (unsubscribe) or to update your email marketing preferences, please click here. On this page, please update your subscription choices to this publication, and any others you may receive. You may also change your opt-in of email marketing promotions from ALM. It may take up to 10 days for your changes to take effect.

How to contact us should you have questions:

The National Law Journal®
120 Broadway, 5th Floor,
New York, NY 10271-1101
Customer Service Phone: 1-877-256-2472

About ALM | Customer Support | Privacy Policy | Terms & Conditions

© 2017 ALM Media Properties, LLC.

All rights reserved.

Tuesday’s Headlines_ At least 9 dead in Harvey™....pdf

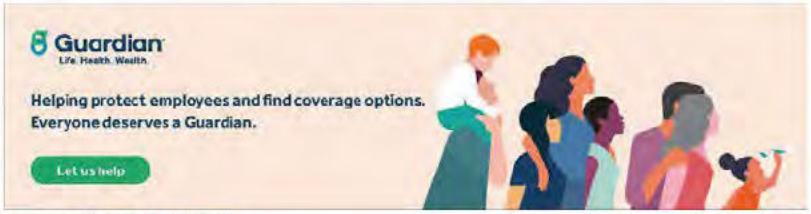
From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: Tuesday"s Headlines: At least 9 dead in Harvey's havoc
Date: Tuesday, August 29, 2017 6:01:45 AM

The Washington Post

Democracy Dies in Darkness

Today's Headlines

The morning's most important stories, selected by Post editors



Powered by LiveIntent AdChoices

Top Stories

At least 9 dead in Harvey's havoc

Texas officials said the death toll is expected to rise as rescue efforts go on and as soaking rains and

floodwaters continued to pummel the Gulf Coast in the days ahead. The storm's devastation may force 30,000 people into shelters, officials warned.

By Dylan Baddour, Sandhya Somashekhar and Mark Berman • Read more »

Thousands pile into makeshift shelters, big and small, across Texas

People are living in a convention center, churches, gyms, tiny recreation centers — even a furniture store. Many may need shelter for weeks or months.
By Kevin Sullivan, Katie Zezima and Arelis R. Hernández • Read more »

Fact Checker • Analysis

Ted Cruz's claim about the Hurricane Sandy bill

The Texas senator says that two-thirds of the measure had nothing to do with Sandy itself, repeating a myth about the relief funding effort that led him to oppose the 2013 bill.
By Glenn Kessler • Read more »

'Cajun Navy' races from Louisiana to Texas, using boats to pay it forward

The grass-roots effort, along with the "Cajun Coast Search and Rescue Team," roared into inundated Texas towns in pickup trucks with bass boats and pirogues, ready to help search-

and-rescue efforts.
By Emily Wax-Thibodeaux • Read more »

Top Trump Organization executive asked Putin aide for help on business deal

A 2016 email from Michael Cohen, a Trump attorney and executive vice president for the Trump Organization, to Dmitry Peskov, the Kremlin's top press aide, shows the Trump business official directly seeking Kremlin assistance in advancing Trump's business interests during the campaign.
By Rosalind S. Helderman, Carol D. Leonnig and Tom Hamburger • Read more »

North Korean missile flies over Japan, a brazen new escalation from Kim Jong Un

Japanese Prime Minister Shinzo Abe called the launch "a reckless act, and it represents a serious threat without precedent." The move underscored both Kim's defiance of the international community and his determination to press ahead with his missile program.
By Anna Fifield • Read more »

ADVERTISEMENT

Opinions

Trump abuses his power to help the cause of bigotry

By Michael Gerson • Read more »

Hurricane Harvey previews our stormy future

By Eugene Robinson • Read more »

Why did Trump pardon Arpaio? Because he sees himself in the former sheriff.

By Catherine Rampell • Read more »

Gary Cohn should not quit the White House. Here's why.

By Richard Cohen • Read more »

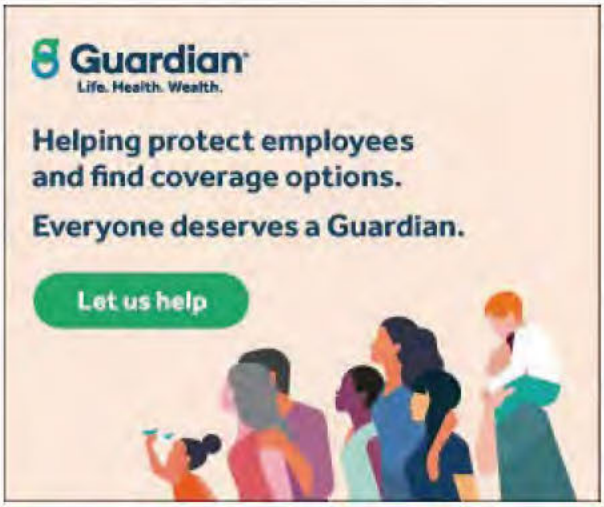
What did it take to finally unite Al Sharpton and Jews? Donald Trump.

By Dana Milbank • Read more »

The Arpaio pardon displays Trump's disdain for the rule of law

By Editorial Board • Read more »

ADVERTISEMENT



More News

Senior White House aides are increasingly airing their private disagreements publicly

Among allies of the president, the emerging

voices of dissent are being likened to a "mutiny" by disloyal aides. But so far, Trump has not taken any action to dismiss anyone, to the disappointment of those same allies.

By Abby Phillip and Anne Gearan • Read more »

Trump defends pardon of Arpaio, says announcing it during hurricane likely brought 'far higher' ratings

The president said he had expected the controversial decision to attract even more media attention amid coverage of the storm.

By Ashley Parker • Read more »

Trump calls NAFTA the 'worst trade deal ever made.' But in Mexico, it is changing the culture.

From barbecue to Walmart, the treaty has brought American tastes and habits to Mexico, a cross-border blending of behaviors that a clampdown on trade is unlikely to undo.

By Joshua Partlow and David Agren • Read more »

A pregnant woman vanished. Her

baby was found alive — while her body was spotted in a river.

Two people have been charged in connection with the death of Savanna LaFontaine-Greywind, whose body was discovered in Moorhead, Minn.

By Kristine Phillips • Read more »

Meet the cost-conscious streamers: TV watchers who sign up for one show — then cancel

These consumers take advantage of free trials, no-contract commitments and the industry's struggle in the face of technological change to help guard their wallets when their favorite show is off the air.

By Brian Fung • Read more »

Two killed, four injured in shooting at New Mexico library

A suspect was taken into custody after the shooting in Clovis, which is near the New Mexico-Texas border and home to Cannon Air Force Base.

By Andrew deGrandpre • Read more »

Share Today's Headlines: Twitter Facebook

Trouble reading? Click here to view in your browser.

You received this email because you signed up for Today's Headlines or because it is included in your subscription. For additional free newsletters or to manage your newsletters, click here.

We respect your privacy. If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, click here. Contact us for help.

©2017 The Washington Post, 1301 K St NW, Washington DC 20071

Tuesday’s Headlines_ Latest health-care push co....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: Tuesday"s Headlines: Latest health-care push comes with big risks for Republicans
Date: Tuesday, September 19, 2017 6:02:17 AM

The Washington Post

Democracy Dies in Darkness

Today's Headlines

The morning's most important stories, selected by Post editors

Powered by LiveIntent AdChoices

Top Stories

Latest health-care push comes with big risks for

Republicans

Two months after an effort to overhaul the Affordable Care Act failed, Senate Republicans are trying to corral support for a new bill. But it remains far from certain that leaders can marshal enough votes to secure passage. Even if they do, the party will own legislation that would slash health-care spending and likely cover fewer people than the last bill.

By Sean Sullivan and Kelsey Snell • Read more »

Would the House pass the Senate's health-care bill? Not so fast.

One might assume that the House, which already passed a GOP health-care bill in May, would simply rubber-stamp any Senate bill, high-five, and call it a day. But things are not quite so simple.

By Mike DeBonis • Read more »

At U.N., Trump to lay out vision of U.S. role in the world, focus on 'outcomes, not ideology'

The president's nationalist agenda has led to widespread anxiety among U.S. allies and partners, and foreign leaders will watch for signals about his willingness to maintain the United States' traditional leadership role.

By David Nakamura and Anne Gearan • Read more »

Donald Trump Jr. wants to give up Secret Service protection

The president's eldest son told friends he wants more privacy, according to two people briefed on the decision. Forgoing the protection is a rare move for members of the president's family, in part because the Secret Service says they are seen as targets for those opposed to their famous parent.

By Carol D. Leonnig • Read more »

Analysis

Scorched earth. Harrowing escapes. Half a million on the move. How did the Rohingya crisis come to this?

The human catastrophe in Burma — which the United Nations' top human rights official called "a textbook example of ethnic cleansing" against a Muslim minority group — has captured the world's attention. But it has also caused a lot of confusion. Here is an attempt to make sense of it.

By Max Bearak, Laris Karklis and Tim Meko • Read more »

Suu Kyi sidesteps allegations of atrocities in first address on crisis

Burma's de facto leader cast the conflict as just one of many problems ailing the country. She vowed to look into the abuses but stopped short of singling out perpetrators.

By Joe Freeman • Read more »

Hurricane Maria devastates Dominica, heads toward Puerto Rico as a Category 5 storm

The storm has rapidly intensified, which is a potentially disastrous scenario for the Caribbean islands it will sweep across in the coming days. Meanwhile, another hurricane, Jose, could scrape part of the Northeastern U.S. coast from Long Island to Massachusetts.

By Jason Samenow • Read more »

ADVERTISEMENT

Opinions

Ty Cobb fumbles in the field

By Dana Milbank • Read more »

Trump's pardon of Arpaio can — and should — be overturned

By Laurence H. Tribe and Ron Fein • Read more »

Tribalism triumphs in America

By Michael Gerson • Read more »

The 2016 election was not a fluke

By Eugene Robinson • Read more »

A chilling study shows how hostile college students are toward free speech

By Catherine Rampell • Read more »

How many dead children are too many for Congress to stomach?

By Editorial Board • Read more »

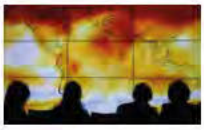
ADVERTISEMENT

More News

Toys ‘R’ Us files for bankruptcy amid struggle to pay down billions in debt

The 60-year-old iconic retailer said its 1,600 Toys “R” Us and Babies “R” Us locations would operate as usual, and that it would work with investors to address roughly $5 billion in debt.

By Abha Bhattarai •
Read more »



New climate change calculations could buy the Earth some time — if they’re right

An upward revision to the planet’s influential “carbon budget” was published by a number of researchers deeply involved in studying the concept,

but other outside researchers have raised questions about the work.
By Chris Mooney • Read more »

Trump says he wants July 4 to be a military spectacle like Bastille Day

President Trump loved France's Bastille Day parade so much that he told reporters he is looking into having a parade down the streets of Washington on Independence Day to show the United States' "military strength."
By Abby Phillip • Read more »

Lawmakers seek Facebook report on Russia as questions swirl about company's openness

Investigators are concerned the social network is withholding key information that could illuminate the shape and extent of a Russian propaganda campaign aimed at tilting the U.S. presidential election, according to people familiar with the probe.
By Carol D. Leonnig, Elizabeth Dwoskin and Craig Timberg • Read more »

London mayor targets 'ghost mansions' and 'zombie flats'

Sadiq Khan believes taxing the empty properties — which are often owned by rich, foreign investors — could ease the city's affordable housing shortage.

Others aren't so sure.
By William Booth and Karla Adam •
Read more »

James Corden jokes about photo of him kissing Sean Spicer at the Emmys

The photo had sparked a backlash, as lots of viewers were already angered that Spicer was invited to the Emmys for a surprise cameo after uttering many falsehoods during his tenure at the White House.
By Emily Yahr • Read more »

Call to Georgia Tech police was made by the student they would ultimately shoot and kill, investigators say

That student, Scout Schultz, left three suicide notes behind in a dormitory room, according to the Georgia Bureau of Investigation, adding further complexity to the death of Schultz, a 21-year-old who had a history of mental illness.
By Avi Selk and T. Rees Shapiro •
Read more »

Share Today's Headlines: Twitter Facebook

Trouble reading? Click here to view in your browser.

You received this email because you signed up for Today's Headlines or because it is included in your subscription. For additional free newsletters or to manage your newsletters, click here.

We respect your privacy. If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, click here. Contact us for help.

©2017 The Washington Post, 1301 K St NW, Washington DC 20071

Wednesday’s Headlines_ After record rains in Te....pdf

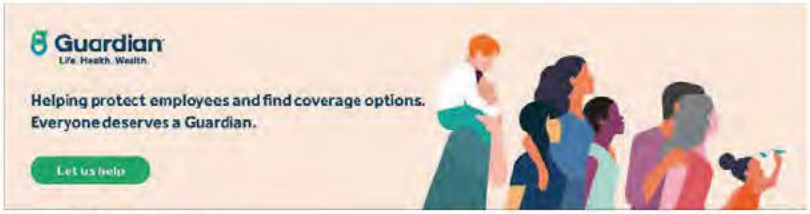
From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: Wednesday's Headlines: After record rains in Texas, Harvey now menaces Louisiana
Date: Wednesday, August 30, 2017 6:02:10 AM

The Washington Post

Democracy Dies in Darkness

Today's Headlines

The morning's most important stories, selected by Post editors



Powered by LiveIntent AdChoices

Top Stories

After record rains in Texas, Harvey now menaces Louisiana

More heavy rain is forecast along the upper Texas coast

and western and northern Louisiana, but the storm's immediate effects are not expected to be as devastating as its initial arrival in Texas. Up to 30 percent of Harris County in Texas — home to 4.5 million people in Houston and its suburbs — is under water. More than 20 people are confirmed dead.

By Kevin Sullivan, Arelis R. Hernández and David A. Fahrenthold • Read more »

'Where are we supposed to go?'

Throughout southeast Texas, rainfall of biblical proportions has flooded tens of thousands of people out of their homes. It is a mass catastrophe experienced by people one by one, two by two, wet, exhausted, clinging to each other — and to hope. This special presentation offers a glimpse of the storm's aftermath, both intimate and unfathomable.

By Washington Post Staff • Read more »

'He could hear the kids screaming': Six family members swept away trying to flee Harvey

The van made it across a submerged bridge, but then suddenly it was floating, its wheels just spinning under water. The children were in the back, behind a storage cage, and there was no way to get to them.

By Avi Selk and Lindsey Bever • Read more »

Harvey death toll rises amid stories of harrowing attempts to escape rising waters

As of Tuesday evening, officials believed that at least 22 people across Texas are dead of storm-related causes.

By Wesley Lowery and Avi Selk • Read more »

‘We never thought this area would flood’: Neighbors race to evacuate as Houston reservoirs spill over

Residential areas near two flood-control reservoirs — normally a safe haven from floods — are now in the path of water from releases and overflows.

By Emily Wax-Thibodeaux, Alex Horton and Amy B Wang • Read more »

How ‘Wild West’ growth may have contributed to Houston’s floods

Unchecked growth has diminished the land’s already-limited natural ability to absorb water, while the city’s drainage systems were not designed to handle massive storms.

By Shawn Boburg and Beth Reinhard • Read more »

Even in visiting ravaged Texas, Trump keeps the focus on himself

The president has talked about TV ratings and predicted that he'll soon be congratulating himself. He had yet to mention those killed, call on Americans to help, or directly encourage donations.

By Jenna Johnson • Read more »

There was no pretense about Melania Trump's heels. But sometimes, a little pretense helps.

Comfort wasn't the point — not hers or yours. She later changed into sneakers. It didn't matter.

By Robin Givhan • Read more »

ADVERTISEMENT

Opinions

How the pardon power could end Trump's presidency

By Philip Allen Lacovara • Read more »

Harvey's burdens will fall hardest on the poor

By David Von Drehle • Read more »

Harvey should be the turning point in fighting climate change

By Vernon Loeb • Read more »

Houston is paying the price for public officials' ignorance

By Editorial Board • Read more »

A diminutive woman — and a spy who defined courage

By David Ignatius • Read more »

Presidential pardons have lost their true purpose

By Margaret Colgate Love • Read more »

ADVERTISEMENT

More News

Transgender ban frozen as Mattis moves forward with new review of options

The defense secretary plans to convene experts to provide advice and recommendations on how to carry out President Trump's directive barring transgender people serving in the military.

By Dan Lamothe •
Read more »

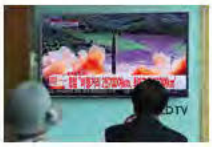
This miracle weed killer was supposed to save farms. Instead, it's devastating them.

Across the Midwest, the controversial herbicide dicamba has drifted from fields where it was sprayed, damaging millions

of acres of unprotected crops in what some are calling a man-made disaster.
By Caitlin Dewey • Read more »

Uber under federal investigation into whether it broke foreign bribery law

The transportation company said it is cooperating with the Department of Justice probe, which is the latest in a long litany of travails facing the company.
By Elizabeth Dwoskin • Read more »



With latest missile launch, North Korea suggests it rejects both U.S. threats and offers to talk

The launch over Japan seemed designed to wreak just the right amount of havoc: enough for Kim Jong Un to show that he would not be cowed but not so much as to invite the “fire and fury” that President Trump has warned could happen.
By Anne Gearan and Anna Fifield • Read more »

Fact Checker • Analysis

Was former Arizona sheriff Joe Arpaio’s criminal conviction an Obama ‘political witch hunt’?

Once you dig into the case, it’s clear that Arpaio’s conviction was not tied to the ideologies of Barack Obama’s political

appointees at the Justice Department.
By Michelle Ye Hee Lee • Read more »

Sean Spicer finally got to meet Pope Francis

Snubbed during President Trump's visit to the Vatican, the former White House press secretary took another trip and met the pontiff this time.
By Julie Zauzmer • Read more »

As a feud ebbs between India and China, tiny Bhutan reexamines its place in the world

For years, the landlocked nation has trod a delicate balancing act between its giant neighbors. But now some Bhutanese think it's time to rethink one of its relationships.
By Annie Gowen • Read more »

Share Today's Headlines: Twitter Facebook

Trouble reading? Click here to view in your browser.

You received this email because you signed up for Today's Headlines or because it is included in your subscription. For additional free newsletters or to manage your newsletters, click here.

We respect your privacy. If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, click here. Contact us for help.

©2017 The Washington Post, 1301 K St NW, Washington DC 20071

Wednesday’s Headlines_ Trump threatens shutdown....pdf

From: The Washington Post
To: Taylor, Will (OPATTY)
Subject: Wednesday's Headlines: Trump threatens shutdown, hints at pardon for embattled former sheriff
Date: Wednesday, August 23, 2017 6:02:07 AM

The Washington Post

Democracy Dies in Darkness

Today's Headlines

The morning's most important stories, selected by Post editors

The Motley Fool

2020 Top Stocks to Buy

Worried about the market? We're thinking long term and doubling down on these stocks.

LEARN MORE NOW

Powered by LiveIntent AdChoices

Top Stories

Trump threatens shutdown, hints at pardon for embattled

former sheriff

During a campaign-style rally, the president suggested a government shutdown might be needed to force Democrats' hand on funding for a border wall. Trump also signaled he was prepared to pardon former Arizona sheriff Joe Arpaio, who is anathema to the Latino community, and he expressed frustration with efforts to negotiate improvements to NAFTA, saying he was likely to terminate the deal with Canada and Mexico.

By John Wagner, Jenna Johnson and Danielle Paquette
• Read more »

Military leaders gain influence throughout executive branch as they counsel a volatile president

The high-ranking military officials have repeatedly won arguments inside the West Wing, publicly contradicted the president and even balked at implementing one of his most controversial policies. But some in both parties view them as safeguards for the nation in a time of turbulence.

By Robert Costa and Philip Rucker •
Read more »

Navy relieves admiral in charge of 7th Fleet in wake of deadly disasters at sea

Vice Adm. Joseph P. Aucoin was removed from command of the Japan-based fleet after two deadly collisions with merchant ships that killed American sailors.

By Dan Lamothe • Read more »

In this N.J. suburb, youth football is facing an uphill struggle. It's a trend that may be spreading nationwide.

Demographic shifts, concussions, single-sport specialization and cost have led West Windsor-Plainsboro High School North to drop varsity football this season. Those same issues have caused youth football numbers to fall nearly 5 percent nationwide over the last decade. "We're the leading edge of a much larger iceberg," Superintendent David Aderhold said.

By Jacob Bogage • Read more »

Retropolis • The Past, Rediscovered

The day white Virginia stopped admiring Gen. Robert E. Lee and started worshiping him

Stripping Virginia of its Lee tributes is far harder than in other places. His canonization began on May 7, 1890, when 10,000 people in Richmond helped haul his statue to what is now Monument Avenue.

By Steve Hendrix • Read more »

ADVERTISEMENT

Opinions

A reminder that it's good to be an Earthling

By David Von Drehle • Read more »

This is Trump's real Afghanistan strategy

By David Ignatius • Read more »

Bannon is already going to war — on Trump

By Dana Milbank • Read more »

Did anything happen while I was gone?

By Kathleen Parker • Read more »

India just outlawed instant divorces against women. Why did it take so long?

By Mili Mitra • Read more »

Trump's welcome self-correction

By Editorial Board • Read more »

ADVERTISEMENT

More News

Federal prosecutors vastly scale back request for info on visitors to anti-Trump website

Prosecutors investigating Inauguration Day rioting have amended their

warrant that originally demanded more than 1.3 million IP addresses from a Los Angeles tech company and said they are focusing on about 200 people who are already facing charges.

By Keith L. Alexander • Read more »

These are the nation's most endangered monuments

The fate of more than a dozen protected sites on land and in the ocean could become clear when Interior Secretary Ryan Zinke concludes his review of national monuments as directed by an executive order that President Trump signed this spring. The secretary's final guidance to the president could trigger both political and legal battles.

By Juliet Eilperin and Susan Levine • Read more »

In its bid to be everything, Netflix is still missing one thing: An identity

The story of Netflix began as one of revolution, and it still possesses some artistic ambitions, but it has been overtaken by its own voracious appetite for quantity over quality.

By Hank Stuever • Read more »

The Fix • Analysis

Tillerson totally undercut Trump's 'we will win' rhetoric on Afghanistan

President Trump said repeatedly Monday that the U.S. military would win in Afghanistan. That's apparently news to his secretary of state.

By Aaron Blake • Read more »

China demands U.S. immediately withdraw N. Korea-related sanctions

China blasted the United States for the penalties on companies and individuals and called for their withdrawal, warning that the sanctions would harm ties.

By Simon Denyer • Read more »

How Powerball manipulated the odds to make another massive jackpot

A modest change to the rules has made it much harder to win a jackpot, which, oddly, has led to more players spending money on tickets. And that's how we got to Wednesday's $700 million drawing, the second-biggest in Powerball history.

By Alex Horton • Read more »

Share Today's Headlines: Twitter Facebook

Trouble reading? Click here to view in your browser.

You received this email because you signed up for Today's Headlines or because it is included in your subscription. For additional free newsletters or to manage your newsletters, click here.

We respect your privacy. If you believe that this email has been sent to you in error or you no longer wish to receive email from The Washington Post, click here. Contact us for help.

©2017 The Washington Post, 1301 K St NW, Washington DC 20071

aftermath of Arpaio pardon.pdf

From: Kupers, Lawrence B. (OPATTY)
To: Bolitho, Zachary (ODAG)
Subject: aftermath of Arpaio pardon
Date: Tuesday, August 29, 2017 10:26:00 AM
Attachments: Arpaio.Motion to Dismiss.pdf

Zac:

Per my voicemail just now, I'm attaching the motion filed by Mr. Apaio's defense attorneys in the district court in Phoenix.

Larry

Arpaio.Motion to Dismiss.pdf

WILENCHIK & BARTNESS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
The Wilenchik & Bartness Building
2810 North Third Street Phoenix, Arizona 85004
Telephone: 602-606-2810 Facsimile: 602-606-2811
Dennis I. Wilenchik, #005350
John D. Wilenchik, #029353
admin@wb-law.com

GOLDMAN & ZWILLINGER PLLC
ATTORNEYS AT LAW
Mark Goldman, #012156
Vincent R. Mayr, #013954
Jeff S. Surdakowski, #030988
17851 North 85th Street, Suite 175
Scottsdale, AZ 85255
Main: (480) 626-8483
Facsimile: (480) 502-7500
docket@gzlawoffice.com
Attorneys for Defendant Joseph M. Arpaio

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America, **Plaintiff,** **v.** **Joseph M. Arpaio,** **Defendant.**	**Case No.: 2:16-cr-01012-SRB-1** **DEFENDANT'S MOTION FOR VACATUR AND DISMISSAL WITH PREJUDICE** **(Oral Argument Requested)** **(Assigned to the Honorable Susan R. Bolton)**

Pursuant to Fed.R.Crim.P. 48 *inter alia*, Defendant Joseph M. Arpaio ("Defendant") respectfully moves to vacate the verdict and all other orders in this matter, as well as the

Sentencing on October 5th, and to dismiss this matter with prejudice. This Motion is made on the grounds that on August 25th, 2017, the President of the United States of America issued a full and unconditional pardon of Defendant. A copy of the Executive Grant of Clemency is submitted to the Court as Exhibit "A" hereto, and incorporated as if set forth herein. The President's pardon moots the case, and it warrants an automatic vacatur of all opinions, judgments, and verdicts related to the criminal charge. This Motion is supported by the following Memorandum of Points and Authorities, and a proposed form of Order is submitted herewith.

Defendant respectfully requests that the Court rule on the instant Motion promptly, in order to enable the Defendant to update the United States Supreme Court as to the "final" status of this case before its scheduled conference on September 25th, 2017 (and/or to take action to withdraw the Petition to that Court, as appropriate).

RESPECTFULLY SUBMITTED August 28, 2017.

WILENCHIK & BARTNESS, P.C.

/s/ Dennis and Jack Wilenchik
Dennis I. Wilenchik, Esq.
John D. Wilenchik, Esq.
The Wilenchik & Bartness Building
2810 North Third Street
Phoenix, Arizona 85004
admin@wb-law.com

GOLDMAN & ZWILLINGER PLLC

/s/ Mark D. Goldman
Mark D. Goldman, Esq.
Vincent R. Mayr, Esq.
Jeff S. Surdakowski, Esq.
17851 North 85th Street, Suite 175
Scottsdale, AZ 85255
docket@gzlawoffice.com

Attorneys for Defendant Joseph M. Arpaio

MEMORANDUM OF POINTS AND AUTHORITIES

"[T]he vacatur of all opinions, judgments, and verdicts related to a criminal charge against the defendant is appropriate when the presidential pardon is granted during the pendency of the appeals process, which has the effect of rendering moot all the ongoing appeals; the efficacy of the verdict finding the defendant guilty of the charge is lost to the same mootness." 67A C.J.S. Pardon & Parole § 33; *citing U.S. v. Schaffer*, 240 F.3d 35 (D.C. Cir. 2001)(vacating guilty verdict where pardon was issued before conclusion of appeals). In

Schaffer, the defendant (Schaffer) was pardoned while his appeal of the conviction was still pending. *Id.* Schaffer filed a motion to dismiss, which was unopposed; but "the prosecutor advance[d] the odd suggestion that Schaffer's conviction is established as a matter of law." *Schaffer*, 240 F.3d at 38. The D.C. Circuit Court disagreed and held that because "[f]inal judgment never ha[d] been reached," and "the appeals process was terminated prematurely," then "[f]inality was never reached on the *legal question* of Schaffer's guilt." *Id.* (emphasis original). "When a case becomes moot on appeal…this court generally vacates the District Court's judgment, vacates any outstanding panel decisions, and remands to the District Court with direction to dismiss." *Id.* "Because the present mootness results not from any voluntary acts of settlement or withdrawal by Schaffer, but from the unpredictable grace of a presidential pardon, vacatur is here just and appropriate." *Id*. The D.C. Circuit then vacated "all opinions, judgment, and verdicts" of the district court (on the grounds that the defendant's claim of innocence "will never again be tried"), and it remanded the case to the district court, with directions to dismiss the case as moot. *Id.* The Ninth Circuit also has a clearly "established practice" of vacatur whenever mootness prevents appellate review. *See Dilley v. Gunn*, 64 F.3d 1365, 1369 (9th Cir. 1995)(Section "IV," subsection "A" of the Opinion). The only exception (which was also addressed in *Schaffer*) is when the defendant has caused the mootness that results in dismissal by "his own voluntary act," e.g. by entering into a plea agreement, or voluntarily ceasing the conduct that forms the basis for litigation. *See id.* (finding that rule of automatic vacatur is "inapplicable" if mootness results from the parties' voluntary settlement of the case, because in such event "the judgment is not unreviewable, but simply unreviewed by the appellant's own choice")(internal bracketing omitted). But as the D.C. Circuit Court found in *Schaffer*, *supra*, "the unpredictable grace of a presidential pardon" does not fall into such a category of "voluntary act[s]." *Schaffer*, 240 F.3d at 38. This is strikingly true for the case at bar in which the Defendant did not even ask the President for a pardon before it was granted.

. . .

Because the President issued a pardon before sentencing and judgment—and clearly, before the conclusion of any appeals—the Court is obligated to vacate its verdict and all other orders in this matter, and to dismiss the case with prejudice. Because Defendant will never have the benefit or opportunity to seek a reversal of the court's verdict through appeal (and a re-trial by jury), it is only fair that the Court vacate its verdict and all other rulings in the case. Further, as a practical matter, if the Court does not vacate its orders then it will have the certain effect of causing Defendant to maintain his appeal to the United States Supreme Court for a trial by jury, and to pursue a direct appeal, because of the collateral consequences of a standing conviction. Vacating the verdict would therefore achieve judicial economy, and save taxpayer expense.

In *Robson v. United States*, 526 F.2d 1145 (1st Cir. 1975), the defendant received an unconditional pardon from the President soon after his conviction; but when the defendant filed a Motion to Vacate the sentence, the district court denied the Motion and the defendant appealed. *Id.* at 1146, 1147, n.2. The First Circuit held that because the district court declined to vacate the sentence, then the appeal was not moot, because "the fact that petitioner has been pardoned does not relieve him from all the disabilities of a conviction. His conviction may be considered at sentencing in any subsequent criminal proceeding,[1] and may result in heavier penalties,[2] or may be introduced to impeach credibility.[3] In light of these adverse collateral consequences, the termination of petitioner's custody does not moot an action to review the validity of his criminal conviction."[4] *Id.* (internal citations omitted for readability, see footnotes). Accordingly, the First Circuit proceeded to review the case, and it reversed the

---

[1] *Citing Carlesi v. New York*, 233 U.S. 51, 34 S.Ct. 576, 58 L.Ed. 843 (1914).

[2] *Citing United States v. Morgan*, 346 U.S. 502, 512-13, 74 S.Ct. 247, 98 L.Ed. 248 (1954).

[3] *Citing Richards v. United States*, 89 U.S.App.D.C. 354, 192 F.2d 602 (1951), *cert. denied*, 342 U.S. 946, 72 S.Ct. 560, 96 L.Ed. 703, *rehearing denied*, 343 U.S. 921, 72 S.Ct. 676, 96 L.Ed. 1334 (1952).

[4] *Citing Carafas v. LaBallee*, 391 U.S. 234, 237-38, 88 S.Ct. 1556, 20 L.Ed.2d 554 (1968); *see also Gosa v. Mayden*, 413 U.S. 665, 670 n. 3, 93 S.Ct. 2926, 37 L.Ed.2d 873 (1973).

district court's order and remanded. *Id. See also People v. Chiappa*, 53 Ill. App. 3d 639, 368 N.E.2d 925 (1977)(finding that governor's pardon of police officer did not render case moot, where trial court apparently did not vacate the conviction). Likewise, if the Court does not vacate the Defendant's conviction, then Defendant will certainly pursue his appeals to achieve that, which would be—to put it bluntly—a waste of everyone's time and money, and patently contrary to the rule of automatic vacatur that applies in these situations. Further, the appellate courts would reverse the conviction on the grounds that Defendant was clearly entitled to a trial by jury under 18 U.S.C. § 402, ending the case in more needless effort and a reversal.

CONCLUSION

For the foregoing reasons, Defendant moves the Court to vacate its verdict and other orders in this matter, including the order setting a hearing for sentencing, and to dismiss the case with prejudice. A proposed form of Order is submitted herewith.

RESPECTFULLY SUBMITTED August 28, 2017.

WILENCHIK & BARTNESS, P.C.

/s/ Dennis and Jack Wilenchik
Dennis I. Wilenchik, Esq.
John D. Wilenchik, Esq.
The Wilenchik & Bartness Building
2810 North Third Street
Phoenix, Arizona 85004
admin@wb-law.com

GOLDMAN & ZWILLINGER PLLC

/s/ Mark D. Goldman
Mark D. Goldman, Esq.
Vincent R. Mayr, Esq.
Jeff S. Surdakowski, Esq.
17851 North 85th Street, Suite 175
Scottsdale, AZ 85255
docket@gzlawoffice.com

Attorneys for Defendant Joseph M. Arpaio

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2017, I electronically transmitted the foregoing Notice to the Clerk of the Court through the CM/ECF system, which will send a Notice of Electronic Filing to all CM/ECF registrants for this matter.

/s/Wendy L. Echols

EXHIBIT A

WILENCHIK & BARTNESS
A PROFESSIONAL CORPORATION

EXECUTIVE GRANT OF CLEMENCY

DONALD J. TRUMP

President of the United States of America

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

BE IT KNOWN, THAT THIS DAY, I, DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, PURSUANT TO MY POWERS UNDER ARTICLE II, SECTION 2, CLAUSE 1, OF THE CONSTITUTION, HAVE GRANTED UNTO

JOSEPH M. ARPAIO

A FULL AND UNCONDITIONAL PARDON

FOR HIS CONVICTION of Section 401(3), Title 18, United States Code (Docket No. 2:16-CR-01012-SRB) in the United States District Court for the District of Arizona, of which he was convicted on July 31, 2017, and for which sentencing is currently set for October 5, 2017; and

FOR ANY OTHER OFFENSES under Chapter 21 of Title 18, United States Code that might arise, or be charged, in connection with *Melendres v. Arpaio* (Docket No. 2:07-CV-02513-GMS) in the United States District Court for the District of Arizona.

IN TESTIMONY WHEREOF, I have hereunto signed my name and caused the seal of the Department of Justice to be affixed.

Done at the City of Washington this twenty-fifth day of August, in the year of our Lord two thousand and seventeen and of the Independence of the United States of America the two hundred and forty-second.

DONALD J. TRUMP
PRESIDENT

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America, **Plaintiff,** **v.** **Joseph M. Arpaio,** **Defendant.**	**Case No.: 2:16-cr-01012-SRB-1** **ORDER**

On August 25th, 2017, the President of the United States signed an Executive Grant of Clemency[1] granting Defendant Joseph M. Arpaio ("Defendant") "a full and unconditional pardon for his conviction of Section 401(3), Title 18, United States Code (Docket No. 2:16-CR-01012-SRB) in the United States District Court for the District of Arizona, of which he was convicted on July 31, 2017, and for which sentencing is currently set for October 5, 2017."[2]

[1] A copy of the Executive Grant of Clemency, bearing the seal of the Department of Justice and the signature of the President of the United States, has been submitted by Defendant to the Court.

[2] The Executive Grant of Clemency also grants a full and unconditional pardon "for any other offenses under Chapter 21 of Title 18, United States Code that might arise, or be charged, in connection with

Following this grant of a full and unconditional pardon, Defendant filed a "Motion for Vacatur and Dismissal with Prejudice" requesting that this matter be dismissed with prejudice, and that the Court's orders and verdict be vacated, including the Defendant's Sentencing currently set for October 5th, 2017. The Court, having reviewed the Executive Grant of Clemency and Defendant's Motion, now enters the following orders:

IT IS ORDERED vacating the Court's "Findings of Fact and Conclusions of Law" (Dkt. 210). The Court hereby vacates its finding that Defendant is guilty of criminal contempt, and the Defendant's conviction for the same.

IT IS FURTHER ORDERED vacating the Sentencing hearing currently set for October 5, 2017 at 10:00 a.m.

IT IS FURTHER ORDERED that all verdicts, orders and rulings in this matter are vacated, and that this matter is dismissed with prejudice.

Dated this ___ day of _____, 2017.

_____
Susan R. Bolton
United States District Judge

Melendres v. Arpaio (Docket No. 2:07-CV-02513-GMS) in the United States District Court for the District of Arizona."

article.pdf

From:	Taylor, Will (OPATTY)
To:	Kupers, Lawrence B. (OPATTY); Gillespie, Kira (OPATTY); Sargent-Burns, Rosalind A (OPATTY); Smith, Christina (OPATTY); Mills, Jennifer K. (OPATTY)
Subject:	article
Date:	Wednesday, August 23, 2017 4:54:18 PM

It appears that someone in the WH or DOJ leadership is confirming that they already have Joe Arpaio's clemency grant and they have prepared talking points. Oy!

http://www.cnn.com/2017/08/23/politics/joe-arpaio-pardon-white-house-paperwork/

Will Taylor
Executive Officer
Office of the Pardon Attorney
2Con | 145 N Street N.E.
Room 5E.103
Washington, DC 20530
(b) (6)
[redacted]
http://www.justice.gov/pardon/

language.pdf

(b) [redacted]
(5) [redacted]

[redacted]

order to show cause .pdf

From: Kupers, Lawrence B. (OPATTY)
To: Gillespie, Kira (OPATTY)
Subject: order to show cause
Date: Tuesday, June 27, 2017 12:14:16 PM
Attachments: Arpaio show cause.pdf

Arpaio show cause.pdf

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Joseph M. Arpaio,

Defendant.

2:16-CR-01012-1-SRB

ORDER TO SHOW CAUSE

This Order is entered pursuant to 18 U.S.C. § 401 and Rule 42 of the Federal Rules of Criminal Procedure. On October 11, 2016, the Government stated its intention to prosecute Joseph M. Arpaio for contempt under 18 U.S.C. § 401(3) based on the Order Re Criminal Contempt entered by United States District Judge G. Murray Snow on August 19, 2016, in the *Melendres* matter. *See Melendres v. Arpaio*, no. 2:07-cv-02513 (D. Ariz. Aug. 19, 2016), Order Re Criminal Contempt, ECF No. 1792. For the reasons set forth below, the Court issues this Order to Show Cause as to whether Joseph M. Arpaio should be held in criminal contempt for willful disobedience of Judge Snow's preliminary injunction of December 23, 2011, entered in *Melendres*. *See Melendres*, Order, ECF No. 494.

The essential facts constituting the charged criminal contempt are as follows:

In December 2011, prior to trial in the *Melendres* case, Judge Snow entered a

preliminary injunction prohibiting Sheriff Arpaio and the Maricopa County Sheriff's Office ("MCSO") from enforcing federal civil immigration law or from detaining persons they believed to be in the country without authorization but against whom they had no state charges. *See Melendres*, Order, ECF No. 494. The preliminary injunction also ordered that the mere fact that someone was in the country without authorization did not provide, without more facts, reasonable suspicion or probable cause to believe that such a person had violated state law. *See id.* Judge Snow noted that Sheriff Arpaio admitted he knew about the preliminary injunction upon its issuance and thereafter. (Doc. 1677 ¶ 15.) Sheriff Arpaio's attorney stated to the press that the Sheriff disagreed with the Order and would appeal it, but would also comply with it in the meantime. (*Id.* ¶ 14.) Sheriff Arpaio's attorney and members of his command staff repeatedly advised him on what was necessary to comply with the Order.

Almost immediately after the court entered its original October 2, 2013 injunctive order, (Doc. 606), Judge Snow had to amend and supplement the order and enter further orders because: (1) the Sheriff refused to comply in good faith with the order's requirement that he engage in community outreach, (Doc. 670; *see also* Doc. 1677 ¶¶ 368, 368 n.13), and (2) the Sheriff and his command staff were mischaracterizing the content of the order to MCSO deputies and to the general public, (Doc. 680; *see also* Doc. 1677 ¶ 367). Within one month of those revisions, the Defendants disclosed to the court the arrest, suicide, and subsequent discovery of misconduct of Deputy Ramon "Charley" Armendariz who had been a significant witness at the trial of the underlying

matter. Among other things, the disclosure of Armendariz's misconduct eventually resulted in the determination that the Sheriff had intentionally done nothing to implement the court's 2011 preliminary injunctive order; and the Sheriff was not investigating the allegations of misconduct in good faith—especially those that pertained to him or to members of his command staff.

The MCSO continued to stop and detain persons based on factors including their race, (*id.* at ¶ 161), and frequently arrested and delivered such persons to ICE when there were no state charges to bring against them, (*id.* ¶¶ 157–61). Judge Snow concluded that Sheriff Arpaio did so based on the notoriety he received for, and the campaign donations he received because of, his immigration enforcement activity. (*Id.* ¶¶ 58–60.) Since Sheriff Arpaio had previously taken some of his arrestees to the Border Patrol when ICE refused to take them, he determined that referral to the Border Patrol would serve as his "back-up" plan for all similar circumstances going forward. (*Id.* ¶¶ 40–41.) Sheriff Arpaio's failure to comply with the preliminary injunction continued even after the Sheriff's appeal to the Ninth Circuit Court of Appeals was denied. (*Id.* ¶¶ 42–44.) When Plaintiffs accused Sheriff Arpaio of violating the Order, he falsely told his lawyers that he had been directed by federal agencies to turn over persons whom he had stopped but for whom he had no state charges. (*Id.* ¶¶ 50–52.) Nevertheless, Sheriff Arpaio's lawyer still advised him that he was likely operating in violation of the preliminary injunction. (*Id.* ¶ 53.) Although Sheriff Arpaio told counsel on multiple occasions either that the MCSO was operating in compliance with the Order, or that he would revise his practices so that

the MCSO was operating in compliance with the Order, he continued to direct his deputies to arrest and deliver unauthorized persons to ICE or the Border Patrol. (*Id.* ¶¶ 55–57.) After exhausting "all of its other methods to obtain compliance," Judge Snow referred Sheriff Arpaio's intentional and continuing non-compliance with the court's preliminary injunction to another Judge to determine whether he should be held in criminal contempt. (Order Re Criminal Contempt at 12.)

THEREFORE, the Court issues a notice to show cause as to whether Joseph M. Arpaio should be held in criminal contempt for willful disobedience of Judge Snow's preliminary injunction of December 23, 2011.

IT IS FURTHER ORDERED that Trial for this matter is set for **December 6, 2016 at 9:00 a.m.** in the Sandra Day O'Connor U.S. Courthouse, 401 W. Washington Street, Courtroom 502, Phoenix, Arizona 85003.

Dated this 25th day of October, 2016.

Susan R. Bolton
United States District Judge