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## Why Is France So Corrupt?

Robert Zaretsky

Last week, France's *Les Républicains* had an American Republican moment — namely, they relived Richard Nixon's televised 1952 Checkers speech. Just as the U.S. vice presidential candidate responded to charges that he and his family had dipped into a political campaign fund, so too did François Fillon, the French *Républicains'* presidential candidate, appear on television to defend himself against similar charges.

Nixon's gamble paid off. His remark that his wife, Pat, wore a "respectable Republican cloth coat" instead of mink won over enough Republican voters to salvage his place on Dwight Eisenhower's ticket. Whether Fillon's will do the same remains to be seen. He faces greater odds. As the satirical and investigative weekly *Le Canard Enchaîné* revealed last Wednesday, Fillon had funneled enough money — about \$540,000 — from his taxpayer-funded parliamentary account into his wife's private bank account for her to buy plenty of fur, should she so choose. One week later, the news got worse: turns out, according to *Canard*, the figure was closer to \$900,000.

No one in France disputes Fillon's right to have paid his wife as an "assistant" over the course of eight years. While nepotism laws in America prohibit such practices — unless you are president — not so in France. More than one-fifth of French parliamentary representatives — 115 of 577 — employ one or more family members as "assistants." Yet, while it is not illegal for political officeholders in France to hire family members, it is illegal to create so-called *emplois fictifs*, or make-believe jobs where you pay relatives for work they have not, are not, and never intend to do. Herein lies the rub with the Fillons. Until the *Canard's* scoop, there was no reason to believe that the Welsh-born Penelope Fillon devoted her life to anything other than her family of five (unless you count the five horses stabled near the family's 12<sup>th</sup>-century chateau). Mme Fillon has previously conceded that she had extra time on her hands. In 2007, she told an interviewer with *The Telegraph* that she had just enrolled in a Shakespeare class: "I

realized that my children have only known me as just a mother but I did a French degree, I qualified as a lawyer and I thought 'Look here, I'm not that stupid.' This will get me working and thinking again."

During his televised interview, Fillon insisted that his wife's work was real: Penelope Fillon reviewed his speeches, met with associates, gathered and collated news stories, and the like. And yet not only was she never seen in the halls of the National Assembly, even the residents of Sablé-sur-Sarthe (the village that is home to chateau Fillon) were astonished to learn she was her husband's assistant. As one local official told a journalist, "The separation was always clear: He took care of politics, she took care of the family."

And if the goal of appearing on television was to contain the damage, it does not appear to have worked: Fillon did not help his cause by revealing in the same interview that, while a senator, he had also paid two of his children to handle specific cases for him because of "their particular competence as lawyers." (The problem, as several newspapers quickly pointed out, is that neither child was a lawyer yet; the latest *Canard* story reports that they were paid approximately \$90,000 for their work.) Over the weekend, fresh news broke out that between 2005 and 2007, Fillon had written himself seven checks totaling about \$28,000 from an account earmarked for paying assistants; then came the new revelations that his wife's pay had been even more than first thought.

"Penelope-gate" — as the affair is now inevitably called — threatens to tarnish, even torpedo, Fillon's chances of reaching the Élysée.

The two pillars of Fillon's candidacy have been the economic imperative of scaling back the state's social protections, and the political imperative of being untouched by scandal. The two are interconnected; the former relies on the latter.

The two pillars of Fillon's candidacy have been the economic imperative of scaling back the state's social protections, and the political imperative of being untouched by scandal. The two are

interconnected; the former relies on the latter. That Penelope Fillon drew an exorbitant salary for reading her husband's speeches before saddling up for a morning canter will not go down well with an electorate being asked to make financial sacrifices. At the same time, Fillon has always emphasized that his hands, unlike those of his fellow Gaullist contenders, were clean. During his primary debate with Alain Juppé, who was found guilty in 2004 of creating phony jobs while serving under Jacques Chirac, Fillon announced: "One cannot lead France if one is not irreproachable." Fillon also blasted his rival Nicolas Sarkozy's many entanglements over alleged campaign finance shenanigans by evoking the moral rectitude of the national conservative patriarch Charles de Gaulle: "Who could imagine the Général ever being taken in for a police questioning?" Now that finance inspectors have begun a preliminary investigation into Fillon's case, the General seems more alone than ever.

France is not a particularly corrupt country, in global terms, but in the West it is something of an outlier. According to Transparency International's 2016 "corruption perception" index, France ranked 23<sup>rd</sup> among 176 nations, just behind Estonia and just ahead of the Bahamas. It is not, of course, Somalia or Syria. But neither is it Denmark, New Zealand, Canada, or even the United States. In Western Europe, it outranks only Portugal, Italy, and Spain.

What may make matters worse is that French corruption is particularly high-profile: It doesn't come in the form of cops asking for petty bribes, or companies buying off bureaucrats. Rather, thanks to the peculiarly French principle of a republican monarchy, French corruption involves vast sums and takes place at the highest levels of government. Created by De Gaulle in 1958, the Fifth Republic hands vast power and prestige to the presidency. The president, in principle, is not answerable to Parliament; the president, in essence, reigns and his ministers merely rule. While De Gaulle also endowed the office with his personal imperiousness and incorruptibility, his descendants have held tight to

the former while mostly trashing the latter. From the late 1970s, when Central African Republic Emperor Jean-Bedel Bokassa showered Valéry Giscard d'Estaing with diamonds, through the 1980s, when Chirac, while mayor of Paris, embezzled public funds for his presidential campaign, to Sarkozy and the kaleidoscope of court cases confronting him, ranging from influence peddling to accepting \$54 million in campaign financing from former Libyan dictator Muammar al-Qaddafi, the French presidency has been consistently mired in scandals worthy of the Bourbons. (François Hollande, for all his fecklessness, has — to give credit where it's due — kept his hands relatively clean during his time in office; his scandals have been of the personal sort.)

This relentless drip of scandals both dampens public attitudes toward the mainstream parties — a Transparency International poll taken late last year revealed that three-quarters of the French believe that parliamentary deputies and government ministers are corrupt — and continues to raise the boat of the far-right National Front (FN). Marine Le Pen's party has its own instances of financial misbehavior: The European Union had determined that the FN defrauded the European Parliament budget of more than \$324,000, which it used to illicitly pay FN staffers. Perhaps because the victim was Brussels, however, and because Le Pen was not enriching herself personally, the scandal has had little traction in France; this week, while Fillon was busy battling for his political life, Le Pen was scoffing at the notion that she might return the funds. More to the point, it hasn't stopped Le Pen from positioning herself as the only candidate able to drain the French swamp. Given the steady 25 to 26 percent support her party attracts in polls, a sizable group, it seems, believes her.

The reluctance of French governments to address the problem of corruption is well known. In 2014, a European Union report rapped France's knuckles for its faulty firewalls in campaign financing, its judiciary's relative lack of independence, and the absence of political willpower to tackle a culture of corruption. Until recently,

moreover, the foot-dragging of politicians over these issues has not unduly bothered French voters. As Jean-François Picard of the watchdog group Anticor notes, through the 1980s and 1990s the public mostly tolerated such wheeling and dealing. "In France, there is the idea that defrauding and wasting public money is not too serious a problem as long as there are no direct victims," he said in a recent interview with the weekly French magazine *L'Obs*.

There have been some recent attempts to remedy the problem: Last year, the country enacted the Sapin II Law, which, for the first

time, creates an anti-corruption agency, requires members of Parliament to render public the names of everyone listed on their official payrolls, and affords fuller legal protection to *lanceurs d'alerte*, the rather awkward French term for whistleblowers. The law has been hailed as an important step by transparency advocacy groups, but much of the law is aimed at targets lower down than the Élysée.

It is still too early to tell if the recent revelations will bar Fillon from the presidency, but it is looking increasingly likely. He has already vowed that he will end his campaign if formal charges are brought

against him; on Tuesday, police were spotted at his parliamentary office looking for evidence. Even if the courts do not act before this spring's election, Fillon's reputation has already taken a serious hit. In an Odoxa poll taken after the *Canard*'s scoop, 61 percent of respondents had a bad opinion of Fillon, while just 38 percent thought favorably of him — a 4 percent drop since Jan. 8. An even more recent poll, conducted by Elabe, shows that Fillon is now in danger of not even making it past the first round of France's two-stage election process. One of the beneficiaries of his decline will be Le Pen, who even

before Penelope-gate had overtaken Fillon in a *Le Monde* poll; another may be Emmanuel Macron, the center-left independent whose campaign continues to gain momentum. French politics is looking more unpredictable than ever, and much can still happen between now and the first round of the election, which is slated for late April. But one thing does seem clear: With Penelope-gate, a long French tradition looks set to continue.



## French Socialists decisively pick leftist Benoît Hamon in presidential race

The Christian Science Monitor

January 31, 2017 —Benoît Hamon will represent France's ruling Socialist Party in the country's presidential election, as determined by his winning margin of nearly 59 percent of the votes in the three-quarters of polling stations tallied Sunday.

The underdog victory of Mr. Hamon, who has proposed giving all French adults a regular monthly income to protect them in an automated future where they may lose their jobs to machines, appeared to reflect widespread rejection of outgoing President François Hollande and Hamon's opponent, Manuel Valls, who served as President Hollande's prime minister for more than two years.

Hamon "has a lot of the youth vote with him, which is sick of the old politics," 18-year-old Maayane Pralus, a student and first-time voter, told the Associated Press. "People call him utopian, but that's the politics

we've been waiting for."

Facing the lowest approval ratings in modern history, President Hollande opted in December not to run for reelection. Hamon's victory over Mr. Valls, who had been the favorite for the Socialist primary, is not the first surprising development in what observers are calling one of the most unpredictable elections in recent times, as Sara Miller Llana reported for The Christian Science Monitor on Monday:

The prospect that far-right leader Marine Le Pen could win has had the world on tenterhooks, as the anti-establishment sentiment that swept Donald Trump into power in the United States and is pushing Britain out of the European Union threatens to knock out the political elite here, too.

But she's not the only force representing the riotous mood. Both mainstream parties dismissed their centrist contenders, choosing the more ideological underdog on both the right and left. There is even a

chance neither will make it to Round 2 of the race expected this May...

Much of what is happening here is driven by an electorate that looks familiar across the West: one fed up with the same faces, the sense that the political elites are just in it for themselves, that there is no difference between left or right anymore. And some of the wild ride toward the presidency is driven by particularly French pressures that could ultimately reshape the Fifth Republic — perhaps not all for the worse...

In France specifically, the Fifth Republic has functioned as a multiparty system with two major poles. This race clearly indicates that dynamic has shifted. Some believe major institutional change will follow.

"I have never seen such a volatile situation before, where you feel like everything is possible," Bruno Cautrès, a political analyst at Cevipof (Center for Political

Research) at Sciences Po in Paris, told the Monitor on Monday.

Now, some leading members of the Socialist Party have publicly refused to support Hamon, whose controversial policies also included legalizing cannabis and canceling debts between EU states. Some Valls supporters may shift their allegiances over to centrist Emmanuel Macron, deepening divisions in an already-weakened Socialist Party.

A poll published on Sunday in French newspaper *Le Figaro* showed far-right leader Marine Le Pen coming in first in the election's first round in April with 25 percent of the votes, and conservative candidate François Fillon earning 21-22 percent and Macron 20-21 percent.

*This report includes material from the Associated Press and Reuters.*



## Eurozone Economy on Pace With U.S.

Paul Hannon and William Horobin

Updated Jan. 31, 2017 4:39 p.m. ET

PARIS—The eurozone economy kept pace with that of the U.S. for the first time since 2008 last year and its jobless rate fell to a seven-year low, putting the currency area on a steadier footing at the start of a year clouded by political uncertainty.

A fourth-quarter pickup allowed the eurozone economy to expand by 1.7% compared with 1.6% for the U.S. in calendar 2016, demonstrating the currency zone's resilience in the face of repeated shocks to confidence, including the U.K.'s June vote to depart the European Union and terrorist

attacks in France, Belgium and Germany.

Figures released Tuesday by the EU's statistics agency, Eurostat, also showed consumer prices were 1.8% higher in January than a year earlier, marking the eurozone's highest inflation rate since February 2013.

The 2016 data should largely allay worries that the eurozone would follow Japan into a long period of deflation, or a self-perpetuating state of falling prices and economic stagnation. That fear inspired the launch of a series of stimulus programs by the European Central Bank from mid-2014.

To be sure, the eurozone's gross domestic product grew more slowly last year than 2015's 2.0%. U.S. growth fell off even more sharply, however, and the two economies' rates remain close: Measuring fourth-quarter growth against the fourth quarter of 2015, the eurozone was up 1.8% compared with 1.9% for the U.S.

Consumer prices in the currency zone were falling as recently as May. As in other parts of the world, a rise in energy prices is largely responsible for the turnaround, making most ECB policy makers reluctant to declare total victory in their battle against deflation, or to begin weaning the eurozone economy off their support. In

January, energy prices were up 8.1% over the year. But the core measure of inflation that excludes energy, food and some other items was unchanged at 0.9%, which is lower than in January 2015.

"The rise in euro area inflation, coupled with a strengthening of GDP growth, will likely add to calls, primarily from Germany, for the ECB [European Central Bank] to begin to normalize monetary policy," said Cathal Kennedy, an economist at the Royal Bank of Canada. "However, the fact that underlying inflation remains subdued should allow the ECB to continue to counter those calls."

In December, the ECB announced an extension of its bond-buying



program until the end of this year, and left open the possibility that it could be prolonged further. At the same time, officials announced they would cut their monthly purchases to €60 billion (\$64 billion) from €80 billion starting in April, a move ECB Executive Board Member Benoît Coeuré said reflected their perception that “deflation risks largely disappeared.”

Although a breakdown of the factors driving growth in the final three months of last year isn't yet available for the eurozone as a whole, national figures point to a revival of investment spending.

Ficime, a federation of 417 French companies importing and distributing machinery, reported an 8.1% rise in revenues related to business investment in 2016.

“Growth was well above previous years,” Ficime President Alain Rosaz said. “It's a clear sign businesses are responding to the recovery after not investing for a long time.”

A stronger eurozone would be a support to a global economy that continues to experience an underpowered recovery from the financial crisis. But most economists are looking for a bigger boost from a possible fiscal stimulus package from U.S. President Donald Trump, while worrying a slowdown in China would work in the opposite direction.

For its part, the eurozone faces considerable headwinds in 2017. Rising inflation is a mixed blessing, since higher energy prices could cut household spending on other goods and services unless workers can secure similarly large wage rises. Higher wages have become slightly more likely with a sharper fall in unemployment toward the end of last year. Figures also released Tuesday by Eurostat showed the jobless rate fell to 9.6% in December from 9.7% in November, its lowest level since May 2009.

The euro rose 0.94% against the dollar to \$1.0795. The move came after a Financial Times article, which said a trade adviser to Donald Trump said Germany was using a “grossly undervalued” euro to get an advantage over trading partners, including the U.S. German Chancellor Angela Merkel rebutted the comments in a news conference.

Economists also worry that growth could be damped by high levels of uncertainty ahead of a several key elections that could register gains for parties hostile to the euro and the EU.

In France, the leading presidential candidates are proposing significant departures from the current economic policy of President François Hollande's administration ahead of two rounds of voting in April and May.

National Front leader Marine Le Pen has centered her campaign on pulling France out of the euro and the EU, while the conservative candidate François Fillon says he would implement a deep austerity program coupled with tax cuts for business and tax increases for consumers. Pro-business and pro-European centrist Emmanuel Macron, who has surged in the polls in recent weeks, has indicated he would concentrate on loosening labor laws to tackle unemployment.

At French food supplement company Laboratoire Carrare, chief executive Alban Maggiar renewed computer equipment at his small Paris office at the end of the year after a period of sustained sales growth.

“When you have a small business, you are resolutely optimistic,” said Mr. Maggiar. “But, and it's a big but, French election years are never very good for consumption.”

Similar uncertainty surrounds the future of economic policy in the Netherlands and Germany, which also face elections this year, as may Italy. And the U.K. government is expected to invoke Article 50 of the EU's treaty in March, starting a two-year exit process on terms that are as yet unknowable.

So far, that uncertainty has yet to take its toll on confidence or growth. Both the French and German

economies picked up during the final three months of last year, although from a weak third quarter. Although many national figures have yet to be released, Spain appears to have once again led the way among the eurozone's larger members.

Assessing recent developments during a news conference in January, ECB President Mario Draghi noted signs of a growth pickup at the turn of the year, he also warned that “the risks surrounding the euro area growth outlook remain tilted to the downside and relate predominantly to global factors.”

Among those global factors, business leaders are concerned about the impact on Europe if President follows through on his antitrade rhetoric with protectionist policies, but not resigned in the face of it.

“If protectionism ends up being a real problem, we will focus on options outside the U.S., and there are quite a few,” said Robert Saller, a board member at DELO, a company near Munich that produces adhesives for electronic devices.

— Jeannette Neumann in Madrid and Nina Adam in Frankfurt contributed to this article.

## THE WALL STREET JOURNAL

### Jenkins : Incompetence Is the Norm

Holman W.  
Jenkins, Jr.

A leader who makes decisions of sweeping import without thinking through the consequences? This charge, leveled against President Trump, is in fact a democratic redundancy. It applies widely, maybe universally. Case in point: After 12 years Germany will be deciding in September whether to re-elect just such a leader. Her name is Angela Merkel.

Mrs. Merkel's list of ill-considered policy spasms include:

- After the Japanese tsunami and earthquake, she precipitously ordered the closure of Germany's 17 nuclear plants. Never mind that not a single death, among the 18,000 in the Japanese earthquake and its aftermath, was caused by radiation exposure—though 1,600 deaths are estimated to have resulted indirectly from the unnecessary evacuation of 300,000 Fukushima prefecture residents.
- With her *Energiewende*, she ordained Germany's forced march toward renewable power, which recently collided with stable high-

pressure systems that left Germany cloudy and windless for three weeks. Now Germans learn, at catastrophic expense, they must maintain duplicate power systems, one running on coal. Germany's CO<sub>2</sub> emissions are higher than when Mrs. Merkel started.

- She threw open the European Union's gates to Middle Eastern and African migrants, a decision now seen as a direct spur to Brexit, the rise of anti-EU parties across the Continent, even the election of the anti-NATO, anti-EU administration of Donald Trump in the U.S.

- She adopted “extend and pretend” tactics for Europe's debt crisis, buying time for Germany's banks but leaving indebted countries struggling with stagnation and threatening to bring down Europe's common market and currency system.

Mrs. Merkel's spinning and trimming, let's be fair, has also been extraordinarily successful at keeping her in power, the first job of any elected politician. When it comes to fixing any problem or setting Europe on a productive path, however, the

record is incomplete but mainly suggests a valiant effort to push off disaster onto somebody else's watch.

At some point, the incoming Trump administration will achieve a greater smoothness in its consideration and implementation of policy—unlike the chaotic rollout of its travel ban.

The opportunity before Mr. Trump and the Republican Congress, for a major overhaul and rejuvenation of American institutions in the direction of a faster, more dynamic economy, remains in hand.

But the actual signs have always been more ambiguous and less encouraging than many would like to believe. One Merkel lesson is that rent-seeking almost always takes over. Her energy vision, whatever it might have been, is now consumed by the demand of wind farms and solar installers for subsidies, and the clamor of politically-connected businesses for exemptions from the resulting high electricity prices.

In the short weeks since Mr. Trump was elected, the vision of clean, straight tax reform has gone out the window. Instead of merely lowering

or, ideally, ending the corporate rate, we may get a 20% border-adjustment tax to go along with a 20% corporate income tax. That is, two taxes instead of one, which Congress can immediately start peppering with exemptions, exclusions and deductions.

His promise of deregulation for the auto industry in return for job promises has been notably scant on details of the deregulation. A rationally “disruptive” president would seek a legislative end to the 40-year experiment in regulating fuel consumption, phenomenally bureaucratic and ineffectual. Here's betting, when all is said and done, Team Trump will be satisfied with rejiggering the rules to increase the favoritism toward Detroit's pickups and justify the large investments of Tesla, GM and others in electric vehicles.

Health-care reform already may have been fatally undermined by the repeal circus—repeal being an unnecessary diversion and political show. It would be quite a bit easier and more efficient for Republicans simply to graft their priorities onto ObamaCare—first, by deregulating

the “essential benefits” list so insurers could design economical policies the public would actually find worth buying.

But those who noticed the absence of the words “liberty” and “freedom” in his inaugural address identified the real problem. Missing is any vision of how America came to be

great in the first place.

Mr. Trump has ideas but they are ankle-deep. His transactional presidency may disrupt for the purpose of disrupting, but not clear yet is whether it's really leading anywhere. Ronald Reagan created a lasting legacy. In his parting address to his staff, he linked his

vision of lower marginal tax rates and reduced regulation to the eternal fight against those seeking to drag us a “mile or two more down what Friedrich Hayek called the road to serfdom.”

We didn't start with Mrs. Merkel by accident. For all his faults, Mr. Trump's election is at least the

biggest sign yet that Western electorates have figured out something has gone wrong with the Western economic model, even if they are divided over exactly what the trouble is.



## Angela Merkel Has a Playbook for Bullies like Trump

Paul Hock

Angela Merkel

may not seem at first glance the hardest-nosed operator: She's soft-spoken, physically unimposing, and and concertedly uncharismatic. But if Donald Trump thinks he can intimidate the German chancellor into doing his bidding, or at least staying out of his way as he does his own, he might consider counsel from his fellow parody of hyper-masculine bullying, Vladimir Putin. The Russian president, whose economy is now paying the price for testing her on Ukraine, considers Merkel a “dangerous person,” alone among her European peers capable of pushing back, according to Russian dissident Mikhail Khodorkovsky.

The chancellor's astounding record in outfoxing, outlasting, and outmaneuvering full-of-themselves male rivals, however, began before Putin appeared on the scene. Her track record offers the outlines of a go-to plan for dealing with bullies — and, not coincidentally, it dovetails tightly with her top foreign-policy advisor's five-point plan for taking on Trump.

Merkel prides herself on her caution and dispassion, and she has thus far refused to dignify Trump's repeated exhortation of her refugee policy as a “catastrophic mistake” with a direct response. But she wasted no time in responding full force to the president's immigration ban that bars the entry of refugees and others from several Muslim-majority countries, pointedly reminding Trump of the international right to political asylum embedded in the Geneva Conventions. At a press conference Monday, she sugarcoated nothing: “The necessary and resolute fight against terrorism in no way justifies a general suspicion against all people who share a certain faith, in this case people of the Muslim faith, or people from a certain background.” The procedures adopted by the Trump administration contradict the fundamental philosophy of international refugee assistance and international cooperation, continued Merkel.

From zero hour of the Trump era, German Chancellor Angela Merkel

has indicated that she will not play the patsy.

From zero hour of the Trump era, German Chancellor Angela Merkel has indicated that she will not play the patsy. Upon learning on election night that Donald Trump would become the next U.S. president, she insisted that Germany's relationship with the United States continue within the traditional parameters of the North Atlantic alliance, based on their common values of democracy, freedom, and human rights. She specifically underscored respect for “the dignity of the individual, regardless of their origin, skin color, creed, gender, sexual orientation, or political views.” On the basis of these values, she said, “I offer close cooperation to the future president of the United States of America, Donald Trump.”

Berlin insiders say the German government is extremely wary of the new president and his team and uncertain whether he sets any store at all in the North Atlantic alliance. Among other headline issues, Germany is deeply worried that he'll unravel the tenuous deal in Ukraine by abandoning sanctions against Russia, damn NATO with faint attention, or through either meddling or bungling exacerbate existing rifts in the EU. Trump and Merkel spoke by telephone Saturday afternoon, for the first time since the inauguration, apparently discussing a wide spectrum of issues including NATO, the situation in the Middle East and North Africa, the conflict in Ukraine, and relations with Russia including sanctions.

Though caught off guard by Trump's victory, the German government has scrambled to come up with a strategy of dealing with him. Indeed, Merkel has a plan, one that builds on her considerable experience taking on aggressive “alpha male” bullies, evident in the dozen or so scalps she already has on her belt.

Most outsiders have probably forgotten a pivotal early moment in Merkel's precipitous rise in German politics, namely her brazenly principled, unemotional cutting loose of her political mentor, former Chancellor Helmut Kohl. Merkel's dramatic move in 1999 stunned the

country and burnished insight into how she'd deal with domineering, ethically challenged alpha males in the years to come. As the brand-new Christian Democratic Union (CDU) chair, Merkel, who owed her entire political career to Kohl's patronage, unceremoniously relieved Kohl of his post as honorary CDU chairman (and de facto king-maker) for operating secret party bank accounts worth millions of dollars. In the name of principle, she effectively banished Kohl from German politics.

A sense of how bold and — especially in the top-down, authority-obliging CDU — wildly contentious this was: Merkel was still a relative political fledgling. Shortly after the fall of the Berlin Wall, Kohl handpicked the 37-year-old nobody from East Berlin, a naive-looking career physicist with no political record at all, to serve in his cabinet, a post from which he shepherded her into ever higher positions of power, eventually as the CDU's No. 1 in 1998. She was referred to as “Kohl's girl” — and appeared to demurely accept the part. Kohl, in stark contrast, was a world-renowned statesman, a figure destined for the history books for engineering German unification and redefining German Christian democracy. But Merkel did the right thing — the secret accounts for funding the party branches were completely illegal — and stuck to her guns when the CDU faithful came after her screaming “treason” and “patricide.”

In many ways, Merkel's cold dispatch of Kohl presaged how she would deal with a long string of male rivals in German politics, as well as how years later as chancellor she'd engage with the likes of Nicolas Sarkozy, Recep Tayyip Erdogan, and Putin — and she shows every intention of using much the same playbook with Trump. The day before the inauguration, her foreign-policy confidant, Christoph Heusgen, in an entirely unprecedented move, publicly issued a five-point policy paper on Trump-era transatlantic relations. In short: Germany will not be coddling Trump the way British Prime Minister Theresa May seems wont to do.

**No sudden movements.** Strategic patience is needed at first, according to Heusgen. Understandably, the chancellery has said it wants to see what Trump really has up his sleeve in Europe before Germany can act.

This will not prove challenging for Merkel; it is the foundation of her career, especially when dealing with unpredictable hotheads, whether they're German, Russian, or American, and the aspect of it most deeply rooted in her upbringing. What some criticize as a lack of pathos is in fact a go-slow pragmatism gleaned from three decades of living as a pastor's daughter in the dictatorship that was communist East Germany. She watched and waited for the government's actions, keeping her cards close to her chest. (Some former East German oppositionists note that she waited much too long to become involved — until after communism had collapsed.)

Central to Merkel's demeanor is her steely patience, which makes her impossible to bait. “She's not like Meryl Streep, who's provoked to emotional reaction by Trump,” said Caroline Fetscher, a columnist for the German daily *Der Tagesspiegel*. “She rose in German politics in a party dominated by loud, West German men. She, an East German woman, watched them very closely to identify strengths and weaknesses, but she never mimicked them.”

Fetscher claims that Merkel has employed this reserve to her advantage again and again. “Merkel is so *not* an alpha that she's constantly underestimated,” Fetscher said. “But she's thinking, observing. She often appears vague, but she has a taste for power. This helps with big-headed people because she isn't intimidated by them. She's obviously not one of the boys, nor can men play up to her femininity because she goes for none of that either. She doesn't play on the same chessboard they do, and that flummoxes them.”

As for Putin, one 2007 episode might have led him to respect Merkel even before her pushback on Crimea's annexation. At Putin's



summer residence in the Russian city of Sochi, Merkel, who is famously afraid of dogs, remained calm and even forced a smile when the Russian leader let into the room his full-grown black Labrador Konni, who stalked around for a while before finally settling at Merkel's feet. She kept her nerves and refused to lash out at Putin afterward, even though German observers saw it as a deliberate, audacious provocation. She told the German press corps after the incident that only insecure types resort to such tricks. And through them, she added, is how you discover their vulnerabilities.

**Show off a little.** The chancellery has recognized that one of Trump's beefs is Germany's failure to meet its commitment as a NATO member to spend 2 percent of GDP on national defense. Apparently Berlin has received the message and is willing to pitch in more, if not the full 2 percent, which would be politically unpopular.

But the implication of Trump's one-liners is an insult: that Germany and other NATO members don't do much of anything on security at all, but rather simply free-ride on America's coattails. The Heusgen manifesto says Germany has to flaunt what it can do and has done on the geopolitical stage.

Merkel is not a showoff; on the contrary, understatement is an art form she has perfected. But Merkel has presided over a foreign and security policy with victories to its credit — they're just not the kind that hawks such as Trump think matter. Those successes tend to involve significant compromise and long, arduous negotiations, such as those at the height of the euro crisis — which kept the EU intact (for the moment, at least) — and in hammering out a deal with Turkey on refugees, which in 2016 cut down the number of refugees arriving from Turkish shores.

Take Russia again. When Russia grabbed Crimea in 2014 and then went on to encourage and arm ethnic Russian separatists in eastern Ukraine, it looked like pro-

Russian forces would march straight to Odessa. But Germany led the diplomatic efforts to end the war, and even though the Russians didn't stop in their tracks, they eventually halted. American hawks urged the Europeans to respond militarily. But Merkel ruled it out, grasping that this could ignite full-scale war with Russia. The German-brokered Minsk accords are anything but perfect (Crimea isn't even addressed), yet they finally stopped the worst of the carnage, maintained the formal territorial unity of Ukraine, and introduced a civilian peacekeeping mission into the country. Rather than a military response, Germany led the imposition of EU sanctions on Russia, which are hurting Russia still today.

Heusgen underscored other German contributions: Bundeswehr troops in Latvia, German warships in the Aegean, military helicopters in Mali. Germany is involved in police and peacekeeping missions across the world. Merkel could go further, pointing out that Germany spends a much higher proportion of its budget on development aid than does the United States, which some observers think will do leagues more to maintain international stability than investment in weaponry. The total that the EU and its 28 member countries pay for aid is nearly three times that of the United States under former President Barack Obama's administration. Look for Merkel to remind Trump of that.

**Make (or resist) a deal.** Germany has to speak a language that the businessman in Trump understands, the chancellery maintains. Apparently, this was a piece of advice that Obama gave Merkel on his final swing through Europe in late 2016. The Germans figure that a businessman will listen to dollars-and-cents reasoning. But all indications until now are that that's just wishful thinking on their part.

Rather, Merkel will soon probably find herself forced to accept that any deals with Trump will have to proceed from his idiosyncratic idea of American interests. Here, her résumé illustrates that she won't

cave in if she thinks Germany's bottom-line values are at stake, be they human rights or international norms. The deal many Europeans are expecting is some quid pro quo for dropping sanctions against Russia (perhaps involving a Russian reduction of nuclear stock piles). Many EU nations have been hurt economically by the sanctions and would gladly call them off. Some suspect this is what Theresa May is currently negotiating with the U.S. president.

But Merkel has been unbending when it comes to the fundamental values of Europe's liberal order.

But Merkel has been unbending when it comes to the fundamental values of Europe's liberal order. By far the most well-known instance is her highly controversial migration policy. Though she has come a long way from the open-borders policy of 2015 (and the number of refugees entering Germany has dropped by nearly three-quarters), Merkel has steadfastly refused to limit the right to asylum for the politically persecuted.

**Do-it-yourself leadership.** If the United States pulls back from NATO, the EU is going to have to stand up to replace the alliance's security guarantee, the cornerstone of Atlantic security since World War II. This is easier said than done considering the vast discrepancy between America's military capabilities and those of the EU states. Europe has been trying unsuccessfully for ages to get common foreign and security policies off the ground but to little avail.

Nevertheless, Washington threw the Ukraine conflict into Berlin's lap, and it responded admirably. Germany has led most of Europe's important diplomacy in recent years. Moreover, Heusgen notes, Germany has been pushing for a joint central command for European troops for ages, but the Brits had until now blocked it. Brexit has changed that.

Merkel doesn't want to give up the North American leg of the Atlantic alliance; she sees the North Atlantic-led West as responsible for ending

communism in Europe — and liberating her and her fellow East Germans. But her relations with Trump will be largely determined by the extent to which Merkel believes that Europe can go it alone and the extent of the leverage she feels that gives her. The stumbling block is that neither she nor anyone else in Europe has a clear vision of what a post-NATO European alliance would look like. How much investment would it take to plausibly defend Eastern Europe? So unexpected was Trump's victory that no one has even done the numbers yet.

**Fire back.** "When steps are taken that adversely impact German interests," the chancellor will "duly comment on it," claims Heusgen. Although "duly commenting" doesn't really amount to "firing back," the chancellor's first diplomat was surely just being professional. In her release of Kohl, German politicians first learned that this unassuming woman could and would fire back — coolly, without anger or vengeance, but with cold efficiency. And she has done it many times since then. As a matter of fact, she has already fired back at Trump: with her bold election night note and clear condemnation of the president's immigration ban. Firing back may weaken his moral legitimacy or even contribute to isolating the United States under Trump's leadership. But Merkel isn't leading the entire free world against Trump. Rather, she's defending a liberal Europe, which is under threat from its own populists now, too, who hail Trump's every move.

Merkel's masterpieces in political power have been when she is the weaker protagonist, says political scientist Detlev Claussen. "She didn't seek out confrontation but rather waited until her opponent showed weakness or sentimentality and then, ice-cold, drove a knife into their back." Claussen notes that Europe isn't Trump's priority at the moment. "She'll probably wait until some of his initial glitter rubs off. But this is how she'll take him on."

## THE WALL STREET JOURNAL

7:00 a.m. ET

Sales of commercial real estate in Italy hit a nine-year high in 2016, driven by investors looking outside of Europe's biggest property markets for higher returns.

Property transaction volumes in Italy reached €9.1 billion (\$9.7 billion) last

## Italy Takes Unlikely Turn as Real Estate Hot Spot

Art Patnaude

Jan. 31, 2017

year, topping the €8 billion in 2015 and the highest level since the €10.4 billion peak in 2007, according to real-estate services firm CBRE Group Inc. The increased demand has helped boost values of the most sought-after types of property in top cities, like stores in Milan's most fashionable shopping districts.

The size of the market in Italy remains small compared with the

rest of Europe. While the Italian economy is the fourth biggest on the Continent, it accounted for just 4% of the €251 billion of property traded in Europe last year, CBRE said. Sweden, a much smaller economy, made up around 7% of the total.

Still, the increasing deal activity in Italy reflects a shift by some investors away from Europe's biggest markets. Following the 2008

financial crisis, investors in Europe first set their sights on the U.K., Germany and France, and later turned to countries like Spain and Ireland.

But after years of strong demand pushing up values in those markets, investors have been looking further afield. For instance, U.K. transaction volumes were nearly halved in 2016 from the year earlier, while deals in

Germany fell around 27%, according to deal tracker Real Capital Analytics.

Italy attracted a few U.S. private-equity investors and major global players like Houston-based Hines in the early postcrisis years. But lately they have been joined by others. Last year “marked the return of cross-border and domestic institutional investors,” said Jos Tromp, head of EMEA research at CBRE.

Barings Real Estate Advisers, based in Charlotte, N.C., recently made its first two acquisitions in Italy. In December, the firm bought an office building in Milan for €44.35 million. In January it bought the Nuovo Borgo shopping mall in the town of Asti, about 70 miles from Milan, for €51.5 million.

The property in Milan fits into Barings's plans to invest in major European office markets, said Valeria Falcone, head of Italy at the firm. The mall is in the wealthier northern part of the country, where retail has performed well even during periods of economic weakness, Ms. Falcone said.

Italy's higher yields than elsewhere in Europe “of course make it more interesting,” Ms. Falcone said.

Yields for prime retail property in Milan averaged 3.25% in the fourth quarter of 2016, compared with 2.25% in central London and 2.85% in Paris, CBRE data show. Milan and the surrounding area has been an especially popular destination for investors, Mr. Tromp at CBRE said.

Investing in Italy “is a way to move up the risk curve and deliver returns promised to investors,” said Mahbod Nia, chief executive at NorthStar Realty Europe Corp., a U.S. real-estate investment trust. NorthStar, which focuses on the U.K., Germany and France, sold two properties in Italy last year that it had acquired in earlier portfolio deals.

Strong demand has started to push prices higher and initial returns lower for buyers. Prime office yields in Milan were 3.75% in the fourth quarter of last year, down from 5% in the same period two years earlier, CBRE data show.

Peter Papadakos, an analyst with Green Street Advisors, estimated that yields for top quality property in Italy have fallen 0.25 to 0.5 percentage point in the past year. Falling yields are a sign that prices are rising.

“Even with what we've all read about the Italian banking system, there is availability of credit from Italian banks at spreads that are very reasonable,” Mr. Papadakos said. “There's nothing that's indicating the market is freezing. There's nothing that's indicating that volume is drying up.”

Indeed, yields of some properties have fallen to the point that some investors are expressing concern about the Italian market overheating. They warn that the low yields could be a risk if interest rates at central banks start to rise.

“When you invest in a trophy building in the center [of Milan] at a 3% yield, that's pretty tight,” said Manfredi Catella, chief executive at Italian property firm Coima. “Paradoxically, locations where investors perceive risk to be lowest might not be what they assume.”

Investors caution that many of the perennial problems with investing in Italy remain. These include poor transparency, low liquidity, political uncertainty and weak economic growth.

“It's not one of those markets where one can autopilot a deal from abroad,” said Riccardo Dallolio, a managing director at Miami-based private-equity firm H.I.G. Capital LLC.

H.I.G. in January bought an office building in a Milan suburb and a shopping mall about 55 miles away. The company didn't disclose what it paid. The firm's average deal size is around €40 million to €50 million, Mr. Dallolio said.

Despite challenges, investors expect demand in Italy to continue to rise this year. “There is a lot of capital chasing yield,” Mr. Catella said.

**Corrections & Amplifications**  
The name of Barings Real Estate Advisers was misspelled as Barings Real Estate Advisors in an earlier version of this article. (Jan. 31, 2017)

**The New York Times**

## Czech Government Suspects Foreign Power in Hacking of Its Email

Hana de Goeij

PRAGUE — A “statelike actor” infiltrated the Czech Foreign Ministry and hacked emails belonging to the foreign minister and dozens of his colleagues, in a manner similar to the breach of the Democratic National Committee's servers, the minister announced on Tuesday.

The announcement immediately raised fears across Central Europe of potential interference by Russia, which the United States government said was behind the attack on the D.N.C. That breach resulted in embarrassing leaks ahead of Donald J. Trump's victory over Hillary Clinton in the United States presidential election. Legislative elections are expected to be held in October — another unnerving resemblance to the D.N.C. hack.

The attack in the Czech Republic occurred repeatedly and was detected only during a recent systems check, officials said.

The foreign minister, Lubomir Zaoralek, said at a news briefing in Prague that no classified information had been compromised and that the government uses a separate internal

server to exchange confidential information. There have been previous hacking attempts at the ministry, but none succeeded.

However, a report at the online news site Neovlivni said highly sensitive messages had been downloaded, and described the breach as one of the most serious in years. Experts agreed that the government had probably played down the scope of the attack.

“No matter how great the leak is, a respected institution will not admit it, because it is its failure,” Karel Randak, a former head of foreign relations in the Czech foreign intelligence service, said.

Mr. Zaoralek, at the news conference, said, “The attack was very sophisticated and probably carried out by a statelike actor,” though he declined to specify which country might be behind it. He said the attack resembled that carried out against the D.N.C., but he did not provide details.

Prime Minister Bohuslav Sobotka called the hacking a serious threat to national security and ordered a thorough analysis into what had

happened. “The issue has to be thoroughly investigated,” he said.

Mr. Sobotka has had his own encounters with security breaches. His private email account was hacked in January 2016; about 80 emails were stolen and posted on an extremist white supremacy website. A month earlier, his Twitter account had been hacked and flooded with racist comments. (Experts said that somebody had simply guessed the password and that the attack was not the result of a coordinated or elaborate operation.)

The target suggested that the hacking was aimed at collecting sensitive information about other countries, not just the Czech Republic, said Michal Salat, threat intelligence director at Avast, a computer security company.

“Regardless of the quality of information that was hacked, political institutions should properly protect all of their accounts, as data leaks always lead to a loss in trust,” Mr. Salat said. “That it was the Czech foreign minister that was hacked suggests that the attackers were eager to access information regarding other countries.”

Czech government institutions have faced a growing number of hacking attempts, according to Daniel P. Bagge, director of cybersecurity policy at the Czech National Security Bureau.

In October, the Czech police detained a 29-year-old Russian, Yevgeniy Aleksandrovich Nikulin, on accusations of hacking. He was indicted by a federal grand jury in California on charges that he hacked into computer networks at LinkedIn, Dropbox and Formspring, damaged computers and conspired to traffic in stolen information. Both the Russian and American authorities have requested his extradition; he remains in custody in Prague.

“The information security threat from both governmental and nongovernmental groups is most likely substantially much higher than perceived,” said Kyrre Sletsjoe, the owner of Cepia Technologies, a company in the Czech city of Brno that does computing work for governments. “I am convinced that the majority of these attacks are never discovered.”

**The Washington Post**

## Foreign state seen behind hack into Czech Foreign Ministry email

By Robert Muller PM

By Robert Muller January 31 at 4:43

PRAGUE — Hackers have breached dozens of email accounts

at the Czech Foreign Ministry in an attack resembling one carried



out during the 2016 U.S. presidential campaign, Foreign Minister Lubomir Zaoralek said Tuesday.

He said he was told by experts that the cyberattacks were probably conducted by a foreign state. He said the ministry's internal communication system was not affected and no confidential material was compromised, though an extensive amount of data was stolen.

Zaoralek, whose email account was also hit, did not name any countries he thought might be responsible for the attack.

Today's WorldView

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"When I discussed this with the best experts that we have here, they told me that the character of the attack was such that the attack was very sophisticated, that it must have been, according to them, conducted by some foreign state, from the outside," Zaoralek said at a news conference.

"They also told me that the way the attack was done very much resembles the character of attacks against the system of the Democratic Party in the United States," he said.

Hackers attacked the email accounts of the Democratic National Committee and the campaign chairman for Hillary Clinton, the party's presidential nominee. Information from those hacks was posted online and blamed for damaging Clinton's campaign. U.S. security officials have said Russia

was involved in the hacking. Moscow has denied those assertions.

Zaoralek said the ministry had known since the beginning of January that hackers had breached its email and added that it was necessary to check whether other key government institutions have also been attacked, something he said was possible.

He said the ministry was not registering any further attacks at the moment.

The Czech Republic is a member of the U.S.-led NATO military alliance and of the European Union.

In October last year, Czech police detained Russian citizen Yevgeniy Nikulin, who has been indicted in the United States for allegedly hacking computers of social-media companies. The United States and

Russia have both requested his extradition.

In December, Germany's domestic intelligence agency reported a striking increase in Russian propaganda and disinformation campaigns aimed at destabilizing German society, and targeted cyberattacks against political parties.

German Chancellor Angela Merkel said that she could not rule out Russia interfering in Germany's 2017 election through Internet attacks and misinformation campaigns.

Russian officials have denied all accusations of manipulation and interference intended to sway the U.S. election outcome or weaken the European Union.

## INTERNATIONAL

**The  
New York  
Times**

### Papers Offer a Peek at ISIS' Drones, Lethal and Largely Off-the-Shelf

Eric Schmitt

In the past two months, the Islamic State has used more than 80 remotely piloted drones against Iraqi forces and their allies. About one-third of the aircraft, some as small as model airplanes, dropped bombs or were rigged with explosives to detonate on the ground, said Col. John L. Dorrian, the spokesman for the American-led operation against the Islamic State in Baghdad.

Iraqi officials said bombs dropped by the drones, which were primarily quadcopters, had killed about a dozen government soldiers and injured more than 50. "It poses a threat to troops on the ground, and it has value as a propaganda technique," Colonel Dorrian said of the Islamic State drone program in an email. "However, it's certainly not a game-changer when it comes to the outcome of the battle to liberate Mosul."

A new video message from the Islamic State, "Knights of the Departments," appeared to depict these new drone missions.

The documents were discovered by Vera Mironova, an international security fellow at the Belfer Center at the Kennedy School of Government at Harvard. Ms. Mironova obtained the documents while she was conducting research

in Iraq on the individual behavior of Islamic State fighters. She said in an interview via Skype that she had come across the materials in a drone workshop formerly under the control of the Islamic State in the Muhandeseen neighborhood of Mosul, near Mosul University.

Iraqi soldiers were not interested in the documents, Ms. Mironova said. But recognizing their potential value to the American military, she contacted the Combating Terrorism Center at West Point, which has previously published her work.

Two researchers at the center, Don Ressler and Muhammad al-Ubaydi, reviewed the roughly 30 pages she sent. Confirming the authenticity of documents from a war zone is always tricky. But in a nine-page assessment, an advance copy of which was provided to The New York Times along with the documents themselves, the authors concluded the materials were genuine based on where and how Ms. Mironova obtained them and the center's experience working with an array of captured battlefield material.

All of the documents appear to be from around 2015 — the early phases of the drone program — and the collection includes a mix of official Islamic State forms and handwritten notes, according to the researchers' analysis.

The materials reveal that the Islamic State, much like its forerunner, Al Qaeda's affiliate in Iraq, is detail-oriented and bureaucratic when it comes to its operations. According to the assessment of the documents, the Islamic State's drone unit falls under the Al Bara' bin Malik Brigade, a part of the aviation sector of the Islamic State's Committee for Military Manufacturing and Development.

The standardized four-page checklist for drone operations provided another example. On the first page, drone operators were asked to provide details about their mission — specifically, the type of mission (there are six options, including "Bombing" and "Explosive Plane"), the militants who were involved, the location and the way point coordinates for the flight.

The second page of the form consisted of a checklist that seems to have been designed to help the drone operators conduct pre- or post-mission checks of their systems and equipment (including "Bomb Ignition sys" and "Bomb igniter RC"), the assessment said. The third page was a checklist of gear in the operator's "tool case," including "screwdriver," "pliers" and "knife."

The last page of the form asked the operators to note whether their

mission had succeeded or failed. It also provided space for the operators to write notes, perhaps to document lessons learned from failed missions or interesting events that occurred during successful ones, the assessment said.

The documents also contained detailed acquisition records, essentially shopping lists for the off-the-shelf commercial technology that the Islamic State is buying.

The lists showed the group's efforts to buy items like a GoPro camera, memory cards, GPS units, digital video recorders and extra propeller blades, the assessment said. The purchasing lists also highlighted the group's efforts to enhance the range and performance of its drones, whether bought commercially or not. For example, to protect the transmission of their drone video feeds, members of the group wanted to acquire encrypted video transmitters and receivers, the assessment said.

"There seems to be a list of material necessary to the construction of those drones," said Damien Spleeters, head of operations in Iraq for Conflict Armament Research, a private arms consultancy that has been investigating weapons recovered from the Islamic State since 2014. Mr. Spleeters has also reviewed the documents for the

West Point center. "So it shows consistency and standardization, certainly with some sort of chain of supply in place," he said.

American military officials said that the Pentagon had dedicated significant resources to stopping Islamic State drones but that few

Iraqi and Kurdish units had been provided with the sophisticated devices that the American troops had to disarm them. The officials said they had ordered the Pentagon agency in charge of dealing with explosive devices — known as the Joint Improvised-Threat Defeat Organization — to study ways to

thwart hostile drones. Last summer, the Pentagon requested an additional \$20 million from Congress to help address the problem.

The recovered documents offer few clues about how the militants view the future of their drones.

"In the short term, we should expect the Islamic State to refine its drone bomb-drop capability," the assessment concluded. "It is likely that the Islamic State's use of this tactic will not only become more frequent, but more lethal as well."

**The  
Washington  
Post**

## In deadly Yemen raid, a lesson for Trump's national security team (UNE)

<https://www.facebook.com/missy.rya>  
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The mission facing the Navy SEALs as they approached a remote desert compound was a formidable one: detain Yemeni tribal leaders collaborating with al-Qaeda and gather intelligence that could plug a critical gap in U.S. understanding of one of the world's most dangerous militant groups.

Instead, a massive firefight ensued, claiming the life of an American sailor and at least one Yemeni child, and serving as an early lesson for President Trump's national security team about the perils of overseas ground operations.

The raid Saturday in Yemen's Bayda governorate, which also included elite forces from the United Arab Emirates, was the first counterterrorism operation approved by Trump, who took office a week earlier. And the death of Chief Special Warfare Operator William "Ryan" Owens, who would later succumb to his injuries, was the first combat fatality of Trump's young presidency.

Checkpoint newsletter

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Special operations such as this have always been risky for presidents to approve. Trump and some of his advisers have promised to give the military greater rein in authorizing such missions as part of their desire to wipe out extremist threats. But the president has also said he is leery of getting entangled too deeply in costly operations overseas.

*[U.S. service member killed in Yemen raid marks first combat death of Trump administration]*

In Saturday's operation, the SEALs faced difficulties from the start. After the U.S. forces descended on the village of Yaklaa, a heavily guarded al-Qaeda in the Arabian Peninsula (AQAP) stronghold surrounded by land mines, militants launched an intense counterattack.

As the pitched gunbattle continued, officials called in Marine Cobra helicopter gunships, backed by Harrier jets, to strike the AQAP fighters, according to U.S. officials familiar with the incident.

An elite Special Operations air regiment was then sent in to pull the team and its casualties out of the fray, banking into the night under heavy fire to link up with a Marine quick-reaction force that had taken off in MV-22 Ospreys from the USS Makin Island floating offshore.

The two units planned to meet in the desert to transfer the wounded SEALs so they could be taken back to the amphibious assault ship for treatment, but one of the Ospreys lost power, hitting the ground hard enough to wound two service members and disable the aircraft.

With the twin-engine transport out of action, a Marine jet dropped a GPS-guided bomb on the disabled \$70 million Osprey to ensure that it did not fall into militant hands.

Yemeni officials said the operation killed 15 women and children, including the 8-year-old daughter of the late radical Yemeni American cleric Anwar al-Awlaki, who was killed in 2011 in a U.S. drone strike. American officials said they were unable to immediately confirm the civilian deaths but suggested that most or all of those killed were militants.

Capt. Jeff Davis, a Pentagon spokesman, said women participated in the gunfight.

The Pentagon confirmed on Jan. 29 that a U.S. service member was killed in a raid in Yemen targeting al-Qaeda, marking the first American combat death under President Trump. The Pentagon confirmed on Jan. 29 the death of a service member in a raid in Yemen, marking the first American combat death under President Trump. (Video: Reuters / Photo: EPA)

The Pentagon confirmed on Jan. 29 that a U.S. service member was killed in a raid in Yemen targeting al-Qaeda, marking the first American combat death under President Trump. (Video: Reuters / Photo: EPA)

According to current and former officials with knowledge of the operation, military officials had proposed it weeks before, under the Obama administration, as part of an attempt to compensate for intelligence losses caused by Yemen's extended civil conflict.

Since 2015, Saudi Arabia has led a coalition of Arab nations launching air attacks on Shiite Houthi rebels in Yemen. The United States has provided some support to those air operations but has distanced itself over allegations of repeated attacks on civilian targets.

After considering the operation for several weeks, Obama officials concluded that the raid would not be possible before the president's Jan. 20 departure. They began to prepare a detailed assessment of the Pentagon proposal in anticipation of a final decision by Trump's top advisers, said one former senior U.S. official who, like other current and former officials, spoke on the condition of anonymity to discuss internal deliberations.

*[Navy SEAL killed in al-Qaeda raid is identified]*

The operation, the first U.S.-led ground raid in Yemen since 2014, comes as the United States tries to rebuild a counterterrorism mission that has been severely curtailed since 2015. Last year, the United States established a tiny Special Operations presence in coastal Yemen, working alongside Emirati troops to keep tabs on AQAP activities.

The group has been one of the most potent branches of the global militant network and has been involved in multiple plots to attack the West.

"Undoubtedly DOD is focused on steps that make up for the current gaps in our knowledge in Yemen," the former senior official said.

The operation may also be a sign of things to come. The Pentagon, according to two defense officials who spoke on the condition of anonymity to discuss intelligence matters, is drawing up plans to be considered by the White House that,

if approved, could delegate decision-making for operations in Yemen to a lower level and accelerate activities against AQAP.

While that would seemingly be indicative of a more aggressive stance by Trump, one official described the raid and the proposal as an outgrowth of earlier Obama-era operations that have pushed al-Qaeda militants from their sanctuaries and provided more opportunities for U.S. strikes.

"We expect an easier approval cycle [for operations] under this administration," another defense official said.

The same model was applied after an extended U.S. air campaign in Libya that pushed Islamic State militants into desert camps, where they were eventually pursued and destroyed by stealth bombers.

A former senior defense official familiar with prior operations in Yemen said Saturday's raid and the potential for expanded operations were "overdue."

"We really struggled with getting the White House comfortable with getting boots on the ground in Yemen," the former official said. "Since the new administration has come in, the approvals [at the Pentagon] appear to have gone up."

Already, the Trump administration, in a flurry of executive actions, has shown a penchant for tightly held decision-making that has left out key agency officials.

Luke Hartig, who was a senior official for counterterrorism under President Barack Obama, cautioned that even swift or delegated decision-making on national security matters requires consultation with a range of agencies that could address legal, diplomatic and other questions.

"It's not about slowing things down — it's about making sure the complexities are well addressed prior to approval," said Hartig, who is now a fellow at New America and runs a research group at National Journal.

The Trump White House touted the operation this week as a success. A

release by the White House on Sunday said the raid killed 14 militants and captured intelligence

that could deter future attacks.

This week, Trump spoke with Owens's family to offer his condolences.

## The New York Times

### U.S. Airstrikes Hit Taliban After Attack on an Afghan Army Post

Mujib Mashal and Taimoor Shah

KABUL, Afghanistan — American airstrikes hit Taliban positions in an embattled district of Helmand Province in southern Afghanistan on Tuesday after the militants tunneled under an army post and set off explosives, causing heavy casualties, Afghan officials said.

The toll from the explosions that rocked army posts in the town center of the Sangin district, which has been the scene of intense fighting for two days, was not immediately clear. Afghan officials said 10 to more than 20 soldiers had been killed, with many others unaccounted for. A Defense Ministry official, however, played down those numbers.

Brig. Gen. Charles H. Cleveland, a spokesman for American forces in Afghanistan, said the United States military had carried out approximately 10 airstrikes in and around the town of Sangin, where Helmand's main market and seat of government are,

in the past 24 hours. "We are continuing to focus closely on Sangin, and Helmand at large, to help our Afghan partners," General Cleveland said.

Shakil Ahmad, a spokesman for the Afghan Army's 215 Maiwand Corps in Helmand, put the toll at 10 killed and six wounded. Other officials said the number of deaths was at least twice that.

However, Mohammad Radmanish, the deputy spokesman for the Defense Ministry, denied the reports of high casualties and played down concerns that Sangin was on the verge of falling. Mr. Radmanish said the Taliban had planted explosives under the main market in Sangin, "but the market is under our control."

The fighting in Helmand, where the government has lost control of most territory beyond the provincial capital, has Afghan leaders scrambling to prevent the fall of the district. Reinforcements were sent to the scene of the battle on Tuesday, and the government's chief executive, Abdullah Abdullah, flew

into the provincial capital, Lashkar Gah, along with senior security officials for emergency meetings.

Provincial council members say that of the 14 districts in Helmand, Afghanistan's largest province in terms of territory and poppy cultivation, the government fully controls only two. Six districts are contested, and six others are largely controlled by the Taliban.

With the Taliban at the gates of Lashkar Gah, the fear that another major provincial capital will fall has led the NATO mission in Afghanistan to take a greater advisory role there. The United States has announced that about 300 Marines will take over that role in the spring, more than two years after the Marines left the province following years of bloody fighting.

During a meeting on Tuesday in Lashkar Gah that lasted more than six hours and was attended by senior NATO generals, Mr. Abdullah and his team tried to assess the vulnerabilities in the province and the steps that needed to be taken to

recapture some of the lost territory before the spring fighting season.

"The police in Helmand are not in good condition," said Javid Faisal, a spokesman for Mr. Abdullah, adding that the police force and the army needed to be strengthened.

Haji Mirajan, a member of the Sangin district council, said that little territory in the district remained under government control, and that Afghan forces were fighting to keep control of a few army posts and the district governor's building.

Mr. Mirajan said the fact that the Taliban could tunnel right under an army base and set off explosives showed how limited the movement of Afghan forces had become in the district center. "The Taliban dug a long tunnel from the lower end of the bazaar, which they are controlling, to the clinic where army soldiers were and blew it up with explosives," he said.

## The Washington Post

### Iraqi leader to U.S.: Americans come to Iraq to fight with ISIS, but I haven't banned you

<https://www.facebook.com/lovedaymorris?fref=ts>

IRBIL, Iraq — Iraq's prime minister said Tuesday that a ban preventing his citizens from visiting the United States was an "insult" but that barring Americans in retaliation could hurt national interests during the war against the Islamic State.

Prime Minister Haider al-Abadi gave a measured response in his first public comments since Iraq was included on a list of seven Muslim-majority countries in President Trump's executive order restricting immigration.

Abadi said he was looking for ways to "reduce the damage" from the decision. He said he would not enforce an equal ban on Americans,

an option the Iraqi parliament had supported in a vote Monday.

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"We are in the middle of a battle," he said.

More than 5,000 U.S. troops are stationed in Iraq, where they are backing Iraqi forces in their fight against the Islamic State. The visa ban has shaken relations between the two countries as they draw close to defeating the militant group in Mosul, the last major city it controls in Iraq.

Who is affected by Trump's travel ban

[The number of people affected by Trump's travel ban: About 90,000]

The restrictions have increased pressure on Abadi, who is being pushed to act in retaliation to the ban but is beholden to U.S. military support.

Abadi pointed out that it is unfair to tar with the same brush the entire population of a nation.

"There are Americans fighting with" the Islamic State, he said. "I can't say because of that all Americans are terrorists. Each country has good and bad people."

It echoed comments made a day earlier by Iraq's foreign minister, Ibrahim al-Jafari, who added that no Iraqis have been responsible for acts of terrorism on U.S. soil. Other countries whose nationals have

been involved in attacks, such as Saudi Arabia, have escaped the ban, which has been imposed for 90 days while the Trump administration makes assessments. Refugee processing has been suspended for 120 days.

The move caused chaos at airports as those with valid visas were turned back. Some Iraqi families who had sold all their possessions after being approved for resettlement were told they could not travel.

Mustafa Salim in Baghdad contributed to this report.

## THE WALL STREET JOURNAL

### U.N. Court Orders Release of Turkish Judge Arrested in Crackdown

Margaret Coker

Updated Jan. 31, 2017 10:15 p.m. ET

ISTANBUL—A United Nations court ordered Turkey to release an international war crimes judge arrested in the nation's post-coup

crackdown so he can resume his role in an appeals case against a Rwandan convicted of genocide.

The U.N. Mechanism for the International Criminal Tribunals said in a ruling published Tuesday that Aydin Akay's detention in Turkey violated his U.N. diplomatic

immunity and the principle of judicial independence, as well as Turkey's obligations to the United Nations.

Mr. Akay, 66 years old, was the presiding judge in a case and oversaw procedural motions at the U.N. court set up to hear appeals from the Yugoslav and Rwanda war

crimes tribunals when authorities arrested him at his home in Turkey in September.

Turkey alleges the judge is one of tens of thousands of secret members of the religious group led by U.S.-based Turkish cleric Fethullah Gulen, whom President



Recep Tayyip Erdogan blames for the failed July coup. Mr. Gulen denies any role in the coup. Mr. Akay has denied being a Gulenist.

The Turkish Foreign Ministry didn't respond to requests for comment. The government hasn't participated in the U.N. court hearings that led to the ruling.

Previously, officials familiar with the case have said they don't believe Mr. Akay's position as a U.N. court judge provides immunity from domestic Turkish criminal investigations.

The U.N. court has the power to refer Turkey to the Security Council for possible sanction if Turkey ignores the court ruling, according to a person familiar with the situation.

Mr. Akay hasn't been charged by Turkey. The president of the U.N. court said his imprisonment has delayed his court's work and

violated a main principal on which the U.N. body was established: the impartiality of judges free from interference from their home country or any other nation.

"The right to an independent and impartial tribunal is an absolute right that may suffer no exception. To uphold this right...diplomatic immunity is a cornerstone of an independent international judiciary, as envisaged by the United Nations," Judge Theodore Meron wrote in his ruling.

Mr. Akay spent a career in Turkey's Foreign Ministry defending the state against human rights allegations. His defense lawyers now say he is a victim of state overreach.

Turkish officials have accused him of ties to Mr. Gulen due to the fact that he, along with tens of thousands of Turkish citizens, downloaded a chat app called

ByLock, which the Turkish intelligence agency believes was a means of communication used by followers of the cleric.

Authorities have compiled a list of more than 200,000 ByLock users as part of the government's investigation into alleged Gulenist plots in Turkey. Around 9,000 alleged users have been detained since July.

However, Turkish intelligence officials have told the Journal that ByLock wasn't used by the coup plotters, and that by 2015 the app had fallen out of favor among so-called Gulenists.

Mr. Akay has told Turkish investigators that he used ByLock, in addition to other commercially available chat apps, to discuss personal issues with friends, according to court documents reviewed by The Journal.

The Turkish Justice Minister's office and the prosecutor assigned Mr. Akay's case have declined to comment, citing privacy grounds.

Mr. Meron's ruling on Tuesday was precipitated by a motion made by the defense lawyers for a former Rwandan official, Augustin Ndirabatware, who had been convicted of inciting genocide. Mr. Akay was the presiding judge over his appeals proceedings, which were due to start in the fall in The Hague but have been delayed due to Mr. Akay's detention.

Mr. Ndirabatware's lawyer says there is new evidence that he believes will exonerate his client and reverse his 30-year conviction.

Mr. Meron's ruling Tuesday ordered Turkey to release Mr. Akay by Feb. 14.

## THE WALL STREET JOURNAL

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COMMENTS

### Editorial : Trump's Iran Notice

One early test for the Trump Administration will be how it enforces the nuclear deal with Iran, and that question has become more urgent with Iran's test last weekend of another ballistic missile.

The test of a medium-range, home-grown Khorramshahr missile is Tehran's twelfth since it signed the nuclear deal with the U.S. and its diplomatic partners in 2015. John Kerry, then Secretary of State, insisted that the deal barred Iran from developing or testing ballistic missiles. But that turned out to be a self-deception at best, as the U.N. Security Council resolution merely "called upon" Iran not to conduct such missile tests, rather than barring them.

Iran has little reason to stop such tests because the penalties for doing them have been so light. The Obama Administration responded with weak sanctions on a few Iranian entities and individuals, even as it insisted that Iran is complying with the overall deal and deserves more sanctions relief. In December Boeing signed a \$16 billion deal to sell 80 passenger planes to Iran, never mind that the regime uses its airliners to ferry troops and materiel to proxies in Syria.

President Trump has offered contradictory opinions about that sale, but he has been unequivocal in his opposition to what he calls the "disastrous" Iran deal. In a call Sunday with Saudi Arabia's King Salman, the President pledged to enforce the Iran deal "rigorously," and on Monday the Administration requested an emergency Security Council meeting to discuss the latest test.

That meeting probably won't yield much, thanks to the usual Russian obstruction, but it will put a spotlight on the willingness of allies such as Britain to do more to uphold an agreement the enforcement mechanisms of which they were once eager to trumpet. Whatever happened to the "snapback economic sanctions" that were supposed to be the West's insurance policy against Iran's cheating?

The Administration could also warn Iran that the Treasury Department will bar global banks from conducting dollar transactions with their Iranian counterparts in the event of another test, and that it will rigorously enforce "know your customer" rules for foreign companies doing business with counterparts in the Islamic Republic, many of which are fronts for the Revolutionary Guards.

The U.S. needs to provide allies with military reassurance against the Iranian threat. Supplying Israel with additional funds to develop its sophisticated Arrow III anti-ballistic missile system would send the right message, as would an offer to Saudi Arabia to sell Lockheed Martin's high-altitude Thaad ABM system. The State Department and Pentagon will have to explore diplomatic and military options in case the deal unravels.

What the Administration can't afford is to allow the latest test to pass without a response. That would tell Iranians they can develop missiles and threaten neighbors with impunity. Mr. Trump is keen to show he will honor his campaign promises, and charting a tougher course against Iran is one of them.

## THE WALL STREET JOURNAL

### For China, a Rethink on Donald Trump

Andrew Browne

SHANGHAI—The officials who look after China's relations with the world respect—even admire—a tough negotiator. That's how they first thought about the challenge of Donald Trump.

Even when he rattled the foundations of U.S.-China relations by taking a call from the Taiwan president after his election, their calm response reflected hopes that he was bluffing. Indeed, Mr. Trump encouraged the idea by suggesting that trade concessions from Beijing might make his threats to abandon

America's longstanding "One China" policy go away.

By now, it must be dawning on Chinese policy makers how badly they may have misread him. Whether banning refugees or going ahead with a wall along the Mexican border, Mr. Trump has made clear in his first days as president that he actually means what he says to his popular base.

The course appears set for confrontation between the two nuclear-armed giants over issues that have been stewing for years: China's mercantilist trade practices,

its cybertheft, military buildup and ambitions to dominate its neighborhood. Chinese leaders must decide how—or whether—to deal with a U.S. president who has proven more volatile and unrestrained by diplomatic protocol than they could have imagined, and just as prone to sound off about U.S. allies as adversaries.

Can China do business with this White House?

The Mexican president, Enrique Peña Nieto, asked himself the same question after increasingly hostile exchanges with Mr. Trump over

whether Mexico would pay for the proposed wall—and canceled his visit to Washington. The two leaders later spoke by phone.

The episode stands as a warning about how quickly U.S. ties could unravel with China, a far more important relationship, and knock confidence in the U.S. among its Asian allies who count on the world's two largest economies getting along. Jorge Guajardo, a former Mexican ambassador to Beijing, says the Chinese leadership may conclude that attempting to make nice with Mr. Trump is a waste of time. Mr. Peña Nieto had "bent

over backwards" to accommodate Mr. Trump, he says, welcoming him to Mexico in August with all the courtesies of a state visit.

"I didn't think he would be so callous and cruel immediately," said Mr. Guajardo.

Then there are the tweets. Chinese diplomacy is fastidious. Official exchanges are minutely scripted. Chinese public opinion, conditioned by a sense of national victimhood, is acutely sensitive to foreign slights. Imagine, then, the anxiety of Beijing's leaders knowing that Mr. Trump could blow up a high-level meeting by embarrassing them with a 140-character blast.

That's the point, of course. Mr. Trump employs impulsiveness as a negotiating tactic—the "Art of the Deal." He believes—with some justification—that skillful Chinese

negotiators have outsmarted their predictable U.S. interlocutors at every turn. Lopsided trade flows illustrate the point. U.S. technology markets are open, China's are closing. Where's the reciprocity? "They're killing us," Mr. Trump complains.

Yet there's a difference between hardball negotiating and gratuitous offense.

Mr. Peña Nieto can't afford a complete rupture; he's torn between national pride and fear that Mr. Trump will withdraw from the North American Free Trade Agreement and badly damage Mexico's trade-dependent economy.

China's trade surplus with the U.S. dwarfs that of Mexico. But Beijing has more cards to play. If Mr. Trump raises trade tariffs, it can retaliate against U.S. multinationals such as

Boeing or Apple that are reliant on the Chinese market.

China has missiles and cyberwarfare capabilities. Ultimately, the U.S. would prevail in a military contest over Taiwan or the South China Sea, but at a terrible cost.

Beijing would greatly prefer tough negotiations over a standoff, or worse. President Xi Jinping needs internal stability as he prepares to consolidate power at a key Communist Party congress late this year. Any mishandling of the U.S. relationship could expose him to criticism. Meanwhile, the economy is stumbling; as capital flees the country, export revenues from the U.S., China's largest market, are more important than ever.

High-level communication between Beijing and Washington is vital to prevent disagreements spiraling into

crises. Diplomats agree that Mr. Trump's most urgent priority is rolling back the nuclear threat from North Korea. He can't make progress without Mr. Xi. That means striking up a personal rapport. An early summit would help.

Risk-averse Chinese leaders may try to wait out Mr. Trump, hoping he softens, or his presidency implodes. If they take the plunge and engage, his erratic negotiating style will be a wild card. Trying to use Taiwan as a bargaining chip will play as disastrously with China as the wall does with Mexico. In that sense, Mr. Trump's ugly spat with the Mexican president is ominous.

Says Mr. Guajardo, the former ambassador: "He doesn't even allow you to get to the table."

## **The New York Times** Trump Aide's Deal With Chinese Firm Raises Fear of Tangled Interests (UNE)

Sharon LaFraniere, Michael Forsythe and Alexandra Stevenson

"You are not going to get an administration with thousands of political appointees and not have people who have contacts with the Chinese," said Derek Scissors, a China specialist at the American Enterprise Institute, a conservative-leaning research organization in Washington.

Still, he said, no one should have any illusions about the Chinese motivation behind such deals. "HNA is looking for influence in an administration that looks like it is positioning itself to be anti-China," he said. "They all are."

Previous administrations have rarely faced such issues, partly because the surge of Chinese investment in the United States is relatively recent. Chinese companies are on a buying spree, investing about \$50 billion in American companies and projects last year alone. HNA Group, a conglomerate focused heavily on aviation, burst onto the American business scene last year when it bought a quarter of the hotelier Hilton Worldwide Holdings for \$6.5 billion, and paid \$6 billion for the information technology giant Ingram Micro.

Last year, Anbang Insurance Group, a Chinese financial colossus, began negotiating an investment in a Manhattan apartment tower owned by the family business of Mr. Trump's son-in-law, Jared Kushner. Mr. Kushner, 36, is now one of the president's most influential advisers, with a White House portfolio that is expected to include handling America's relationship with China.

Mr. Trump has taken a hawkish stance toward China, threatening to raise tariffs on Chinese imports, and demanding that China abandon the artificial islands it has built in the South China Sea in an attempt to bolster its claim to the vast area.

Compared to Mr. Kushner, who still has some ties to his family's real estate empire, Mr. Scaramucci appears to be making a clean break from his business, SkyBridge Capital. Although the sale price could rise as high as \$230 million, depending on the company's future performance, Mr. Scaramucci's payment is fixed, he said in an interview on Monday.

HNA is a newcomer to the asset management field in the United States, and companies like SkyBridge — so-called funds of funds that act essentially as middlemen investing clients' money in hedge funds — have experienced pain in recent years. Citing high fees and disappointing performance, investors have withdrawn billions from such firms. SkyBridge's asset pool has shrunk by more than \$2 billion since mid-2015, and its flagship fund posted its second straight year of negative returns in 2016.

While Mr. Kushner's negotiations with Anbang apparently raised few eyebrows in Mr. Trump's inner circle, some White House officials appear to view Mr. Scaramucci's sale of his firm to HNA with more suspicion. Mr. Scaramucci was left out of the group of about two dozen White House aides who were sworn in on Jan. 22.

One White House official cited concerns that it could take as long as three months for the SkyBridge deal to close and be approved by the ethics office. Mr. Scaramucci's lawyer said this period of time was standard for any large, complex deal.

A White House spokesman did not comment on Mr. Scaramucci's status.

Allies of Mr. Scaramucci's said the sale of his company was a red herring, and attributed the delay in his swearing-in to objections from Reince Priebus, the White House chief of staff, who they said had not favored giving Mr. Scaramucci a White House position. Mr. Priebus's allies denied that.

In an interview, Mr. Scaramucci rejected any notion that HNA was seeking a friend in the administration, saying that his company was a highly attractive investment and that HNA was a logical buyer. HNA has described the purchase as an important foothold in the American market for its growing asset management businesses.

Even if HNA was hoping for influence, Mr. Scaramucci said, he has walled himself off from any discussions with the Chinese company. David Boies, his lawyer, said Mr. Scaramucci went well beyond what was required to rule out any perception of a conflict of interest.

"They know they cannot talk to me, so what influence are they buying?" Mr. Scaramucci said in the interview. "If people are saying that

HNA is trying to buy access, then people are saying HNA is stupid."

"I took their bid because it would protect my clients, partners and investors," he said. "So what did I do wrong?"

An irrepressible self-described "diva" nicknamed "the Mooch," Mr. Scaramucci, 53, is as outspoken as HNA's owners are tight-lipped. His support for Mr. Trump in the Republican primaries came late, and only after he initially attacked Mr. Trump as a "hack politician" with "a big mouth." He first backed Scott Walker, the governor of Wisconsin, and then Jeb Bush, the former Florida governor.

Still, he was one of the first Wall Street financiers to sign up with Mr. Trump's campaign, and has been a relentless cheerleader for him since May, using the blunt, colorful speech that made him a frequent news show guest. At a national business conference sponsored by SkyBridge in May, Mr. Scaramucci said that Mr. Trump was only "saying cuckoo-la-la things" because he knows that "the red-meat-eating Middle American loves the swipes at the know-it-alls."

Analysts of Chinese politics and strategy say the ties between administration officials and companies like Anbang and HNA bear careful watching, because while such firms are ostensibly privately owned, their very survival depends on the good will of the Chinese government.

"They will do, and they have time and time again done, many, many things at the behest of the Chinese government," said Victor Shih, a

professor of political science at the University of California, San Diego who specializes in the nexus between business and politics in China.

And few private companies have as obvious ties to the Chinese government as HNA, whose connections rival even those of Anbang, whose chairman married the granddaughter of Deng Xiaoping, China's former paramount leader.

Faxes and emails sent to HNA press offices in Beijing and in Hainan were not responded to, and phone calls were not answered. A company spokesman in the United States declined to comment for the record.

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**THE WALL  
STREET  
JOURNAL**

Paul Vieira and  
Elena Cherney

Jan. 31, 2017 12:01 p.m. ET

Canadian police say they have issued search warrants in Quebec to determine whether further charges related to terrorism are warranted against a 27-year-old charged with murder after a deadly shooting at a Quebec City mosque.

A spokesman for the Royal Canadian Mounted Police said Tuesday investigators are determining whether terrorism-related charges should be laid. He declined to elaborate further, adding that the investigation is ongoing.

A spokesman for the Surete du Quebec, the provincial police service, declined to comment on whether police have come closer to identifying a motive.

The RCMP, Surete and police from Montreal and Quebec City are involved in the probe.

**THE  
CHRISTIAN  
SCIENCE  
MONITOR**

The Christian  
Science Monitor

January 31, 2017 —When a house of worship is attacked, the response often brings more than the usual outrage over such an act of hate. Sacred places, after all, whether a mosque, church, temple, or synagogue, are supposed to be free of fear and full of love. For Canadians, a Jan. 29 shooting at a mosque in Quebec City that killed six Muslims certainly provoked anger. But another response

Chen Feng, the firm's chairman and founder, has the Chinese political titles that are the equivalent of a peerage or knighthood. He has been a delegate since 2002 to the high-level Communist Party conclaves held every five years that pick the country's leadership, a streak almost no other private company executive can match.

While HNA's ownership structure is murky, it has paired with a company run by the son of a former member of the party's top ruling body, the Politburo Standing Committee. In 2008, HNA formed a venture in the northern city Tianjin with Womei Investment Management, part of a group of firms led by a son of He Guoqiang, then the Communist Party's powerful discipline chief, Chinese corporate records show.

With more than \$90 billion in assets, HNA has been showered with cheap loans that have helped fuel its overseas purchases. The amounts

are extraordinary for a private company.

HNA Group's biggest lenders are two government policy banks, followed by a gaggle of state-owned commercial banks that as of the end of 2015 gave HNA a combined \$67.4 billion line of credit, according to a bond prospectus.

One major shareholder, Guan Jun, who records show may indirectly own more than a quarter of the company, lists his address in a rundown apartment block in Beijing. In the filthy hallway outside his door, a decaying bed lies upright, a bag of trash suspended from its frame.

Some in Mr. Trump's inner circle argued that Mr. Scaramucci's skills as a salesman made him the perfect fit to head the White House Office of Public Liaison. Mr. Scaramucci said he was so eager to serve his government that he took the job for

\$1 a year and gave up a "phenomenal" company.

Mr. Scaramucci, who had a controlling interest in the firm, said three other entities bid for SkyBridge besides HNA, including one that offered him more money but would have laid off 40 employees. HNA, which teamed up with a second firm to buy the company, will become its majority owner.

Whether selling his firm to join the White House will prove a wise move still seems uncertain. "Why are people so stupid to blow up their lives to serve the country they love?" Mr. Scaramucci said in the interview on Monday.

"Maybe that is the story you should be writing."

## Police Weigh Terror Charges in Quebec Mosque Shooting

Quebec police charged Alexandre Bissonnette on Monday with six counts of first-degree murder and five counts of attempted murder. He is the son of a retired Quebec bureaucrat and his Facebook page identified him as a student of political science and anthropology at Laval University, a chess fan and a member of several antiabortion Facebook groups.

According to an analysis from the SITE Intelligence Group, which monitors extremism, the majority of Mr. Bissonnette's public posts reflected little in the way of his political affiliation, "although select posts hint at nationalistic leanings."

The firm said Mr. Bissonnette liked a Facebook group of French National Front leader and far-right politician Marine Le Pen. He also liked Facebook groups belonging to several politicians in the separatist Parti Quebecois, U.S. President Donald Trump and U.S. Sen. John McCain.

The six people killed Sunday night in the shooting at the Quebec Islamic Cultural Center in a suburb of Quebec City's eastern edge were all men and between 35 and 60 years old.

Prime Minister Justin Trudeau in Parliament on Monday called it a terrorist attack on "innocents targeted for practicing their faith."

"It was an attack on our most intrinsic and cherished values as Canadians—openness, diversity and freedom of religion," he said, adding that the government and law-enforcement authorities "would get to the bottom of this."

Quebec Premier Philippe Couillard said Tuesday the province had emerged from "the acute phase of this, but there's still work to do. There are consequences to deal with."

Quebec Security Minister Martin Coiteux said he has ordered increased surveillance of Muslim-gathering places such as mosques

across the province, and instructed law-enforcement agencies to take seriously all threats made against the province's Muslim community.

Mr. Trudeau joined thousands at a vigil Monday night in Quebec City to honor the victims of shooting, who included a grocery-store owner, university professor and Quebec government employee. Four people remain hospitalized, two in critical condition and two in stable condition, the Quebec City hospital system said Tuesday.

More than one million Muslims live in Canada, representing about 3.2% of the country's total population, according to the 2011 government census. The French-speaking province of Quebec is home to nearly a quarter of all Canadian Muslims.

## Canada's response to a mosque massacre

showed just how much places of worship have in common as lights against the dark.

Across Canada, churches and mosques reached out with vigils and prayers in a spirit of solidarity to protect their spiritual havens. An Anglican minister in Aylmer, Quebec, for example, organized a vigil outside a mosque that brought together hundreds of different faiths. In Winnipeg, the Manitoba Islamic Association opened its doors for visitors. In Gatineau, Quebec,

people walked from the cathedral to the mosque.

In Sudbury, Ontario, the Islamic Association asked for solidarity with this statement: "The sanctity of all houses of God in Canada must be protected by every citizen committed to peaceful living from any form of violation, let alone the heinous crime of killing individuals during the act of prayer." (Police who arrested a Laval University student after the mosque shooting said it was an act of terror.)

Such responses are hardly unique to Canada. In the United States, attacks on religious centers often bring a strong ecumenical reaction, such as after the killings at a black church in Charleston, South Carolina, in 2015, or a Sikh temple in Oak Creek, Wis., in 2012. When a mosque mysteriously burned down Jan. 28 in Victoria, Texas, thousands of people of different faiths quickly contributed nearly \$1 million to rebuild it.



In Nigeria, after terrorist attacks by Boko Haram on churches and mosques, many Christians and Muslims began to guard each other's places of worship. In Kenya, mosques and churches in the Kibera slum of Nairobi painted their walls yellow in solidarity and in defiance of attacks by the Islamist terror group

Al Shabab.

In Iraq, a series of major attacks on both Sunni and Shiite mosques in 2006 led leaders of both groups to demand a halt to such terrorism. "All houses of worship are sacrosanct, including mosques and the non-Muslim houses of worship of all faiths and religions," stated the

group in what is called the Mecca Charter.

In every society, religious centers provide support and solace that many people cannot find in the home, at a workplace, or from government. A tragic attack on one house of worship is easily seen as an attack on all – as well as the

spiritual resources they provide. The response in Canada to the mosque killings was yet another reminder that different faiths have a common purpose, especially to roll back hate.

## The New York Times

### As Canada Transforms, an Anti-Immigrant Fringe Stirs

Craig S. Smith and Dan Levin

Few people believe that this stirring, which is moderate by United States standards, contributed directly to the shooting Sunday inside Quebec City's largest mosque, in which six worshipers were killed and eight injured. And no evidence yet has emerged that the accused assailant, a Québécois university student, had ties to specific groups. But the attack has put many on guard that Canada's embrace of Muslim immigration is raising tensions. Even the most radical groups seem to sense that expressing extreme views can be dangerous.

There are at least 100 right-wing extremist groups in Canada, according to two Canadian studies published last year, with most of them active in the provinces of Ontario, Quebec, Alberta and British Columbia.

While their targets include gays and lesbians, Jews and other minorities, Muslims have faced a sizable amount of the hostility. In 2014, the last year for which statistics are available, Canadian police forces recorded 99 religiously motivated hate crimes against Muslims — up from 45 in 2012, according to Statistics Canada.

Some critics have blamed Donald J. Trump's nationalistic language, but right-wing extremism has long thrived in Canada among skinheads, white supremacists and others, said Barbara Perry, a global hate crime expert at the University of Ontario Institute of Technology in Oshawa, Ontario, and the lead author of a report published last year in the journal *Studies in Conflict & Terrorism*.

"A lot of that sentiment has been there," said Ms. Perry, who said the internet has helped spread the ideology.

Canada has witnessed a flurry of nationalist groups proliferating in recent years, including the Soldiers of Odin, a white nationalist group that began in Finland. While the Canadian group has denied racist beliefs and members have participated in community foot patrols in cities like Edmonton and Vancouver, its main Canada

Facebook page has anti-Muslim screeds and derogatory references to immigrants.

The Canadian authorities have recorded thousands of hate-motivated crimes in recent years, but Ms. Perry said Canadian law enforcement officials have played down the threat of right-wing extremists, preferring instead to focus on Islamic terrorism. "That's where all the money and attention goes," she said. "Law enforcement officers in communities with a fairly well known right-wing presence, they either denied they were there or that it was an issue."

The Royal Canadian Mounted Police and the Canadian Security Intelligence Service declined to comment on actions they have taken to monitor and stop the spread of white nationalist groups, though the intelligence service has in the past minimized the movement's influence, telling the Canadian news media that "right-wing extremist circles appear to be fragmented and primarily pose a threat to public order and not to national security."

Anti-racism activists and others opposed to such views say the government has not done enough to protect vulnerable groups. In 2013, Prime Minister Stephen Harper's government repealed hate speech provisions in the Canadian Human Rights Act, which supporters said hindered free speech. A federal court ruled that the provisions did not violate freedom of expression, but they have not been reinstated.

Daniel Gallant, a former white supremacist from Vancouver who changed his views 15 years ago and is now a social worker and a law student, said widespread Canadian denial about the prevalence of right-wing extremism was a major problem. "It's everywhere," he said.

A 2016 telephone survey by the Canadian polling firm Forum Research found that in a random sampling of 1,304 Canadians, Muslims were the focus of the most animosity in Quebec, where 48 percent of respondents expressed dislike of the religion.

"It is clear from these findings that respondents in Quebec are the most

likely to hold unfavorable feelings towards Jewish and Muslim people," said the firm's president, Lorne Bozinoff.

Nowhere have those elements been as vocal as Quebec City.

Handbills, posters and occasional demonstrations by such groups as the Fédération des Québécois de Souche (which translates roughly as "people of original Québécois stock") have proliferated in the city. Québécois de Souche's slogan is "I exist, so I act," but as with fringe movements everywhere, it and other groups are most active behind the anonymity of the internet.

"It's very hard to know their numbers," said Stéphane Leman-Langlois, a sociology professor at Laval University who studies Quebec's far right, adding that there is a small core to each group and that the followers are less active. He said the movement has fragmented and re-formed and groups have changed names for the past 20 years, although the recent surge in immigration has strengthened their cause. "It's not a new thing," he said.

La Meute, a group that includes many Afghanistan war veterans, has gathered about 43,000 followers since it started a closed Facebook page last year. The name means "wolf pack" in French, and its members are not politically virulent by United States standards but focus on concerns about Muslim immigration.

At the other end of the scale are followers of *Légitime Violence*, a proudly fascist heavy metal band that announces its concerts to a vetted list of fans and performs songs like "Final Solution," which is as subtle as it sounds.

Other extremist groups in Quebec include *Atalante Québec*; *Pégida Québec*, which is an offshoot of a German group; and *Soldiers of Odin*.

Calling these groups "far right" may be a misnomer. The Fédération des Québécois de Souche says its members include people with different political beliefs, including socialists and libertarians. The common denominator is an

opposition to immigration, particularly by Muslims.

"Our objective is not to shrink to a minority," said Rémi Tremblay, spokesman for the Fédération des Québécois de Souche. He says groups like his have helped to start a debate about immigration and multiculturalism that was "unthinkable" when the group formed 10 years ago. "We want to free the tongues of the people so they start thinking about this without the constraints of political correctness," he said.

That conversation among largely anonymous anti-immigration extremists exists in the broader context of a right-leaning talk radio culture in Quebec that has been critical of Muslim immigration and what it sees as a failure by Muslims to assimilate into Canadian culture. Talk radio of this stripe is rare elsewhere in Canada and is reminiscent, albeit far more mild, of the raucous right-wing shows in the United States.

The radio stations Radio X and FM93 are among those cited as giving voice to anti-Muslim activists. While their own commentary may be muted, they give a platform to less-tolerant voices from sites like *Point de Bascule*, which means *Tipping Point*, and *Poste de Veille*, which translates roughly as "Watchtower" and whose website shows a pirate ship with a jihadist flag as its sail approaching Quebec City.

One popular conspiracy theory links Prime Minister Justin Trudeau to the Muslim Brotherhood, a pan-Arab group that supports the application of Islamic law in Muslim communities.

Even Quebec City's mayor, Régis Labeaume, who was visibly moved at a news conference on Monday while showing support for the Muslim community, has expressed frustration with some orthodox Muslim customs.

In 2014, during interviews about the appearance of the "burkini" at community pools, he recalled one extremely hot summer day seeing a man dressed in shorts and sandals while his wife was wearing a full niqab — head-to-toe covering including black gloves. Mayor

Labeaume said his own wife had to hold him back from insulting the man and "ripping his head off."

Many people have called for toning down the talk in the wake of Sunday's mosque shooting in a suburb of Quebec City by a

professed immigration opponent.

"The tone should definitely be more respectful on all sides," said Dominic Maurais, who hosts a show on Radio X and is a leading voice of Quebec's conservative talk shows. Mr. Maurais noted that he was pro-immigration.

"However, we should all be careful about letting political correctness win over crucial, frank and essential discussions about radical Islam and Islamic values in our democracies," he said in a telephone interview.

The Fédération des Québécois de Souche and Atalante Québec issued

a joint statement deploring the violence and calling the gunman deranged.

## The New York Times

Andrew E. Kramer

### Ukraine War Heats Up as U.S. Seeks Thaw With Russia

MOSCOW — The war in eastern Ukraine that simmered quietly for months has erupted in a lethal bout of fighting in recent days.

The violence, which killed at least eight Ukrainian soldiers and three on the pro-Russian side, shifted the front lines by only a few hundred yards in several spots, but potentially complicates American efforts to improve relations with Russia.

The United States Army helps to train and equip Ukrainian soldiers, who are fighting Russian-backed separatists in two eastern provinces of Ukraine, in the only active war in Europe today.

In the latest outbreak, the sides vied for control of what are known as "gray zone" territories, areas between the front lines that had previously been in buffer zones.

The Ukrainian Army advanced in at least two places, according to news

reports and official Ukrainian accounts, but it said it did so to rebuff rebel attacks. Each side blamed the other for the escalation.

Referring to one front-line town, an adviser to the Ukrainian Interior Ministry, Yuri Kasyanov, told Radio Free Europe on Tuesday, "The defenders of Avdiivka preferred to advance the line" to a more defensible position.

Ukraine's Foreign Affairs Ministry issued a statement appealing to Western governments to intervene diplomatically.

"For the last two days, the Russian occupation forces carried out massive attacks across the line," firing with rocket artillery, heavy mortars and other long-range weapons, the statement said. European monitors reported heavy shelling of Avdiivka since Sunday.

Journalists who visited the town reported evidence of a psychological warfare operation of a sophistication that suggested Russian

involvement. Cellphones in the town received text messages addressed to Ukrainian soldiers, who often carry phones, saying, "You are just meat to your commanders."

The shelling disrupted electrical and water supplies. The Ukrainian authorities set up heated shelters for residents whose homes had been damaged, as nighttime temperatures dropped to minus 18 degrees Fahrenheit (minus 28 Celsius).

"Given harsh weather conditions and the continuing shelling by the militants, the humanitarian situation in the area continues to deteriorate," the Foreign Affairs Ministry's statement said. The authorities said they were preparing to evacuate the town's 16,000 residents.

The rebel governments of the Luhansk and Donetsk People's Republics, which are not recognized internationally, issued a joint statement addressed to President Vladimir V. Putin of Russia and

President Trump that also called for a diplomatic solution.

The Trump administration's maneuvering for better relations with Russia has alarmed Ukrainian officials, who fear that Western pressure could ease on Russia to withdraw its unacknowledged military forces in eastern Ukraine. But Ukraine is not without options in defending itself, including using its army, which showed an ability to fight even before American training began.

Since the so-called line of contact was initially negotiated in a cease-fire in September 2014, the Ukrainian Army has in places given ground after separatist attacks. With its recent advance, the army moved back into at least one such area, near Avdiivka, without crossing the original cease-fire line, Mr. Kasyanov, the adviser to the Interior Ministry, said.

## The Washington Post

### Editorial : Trump is sworn in, rockets fall on Ukraine

COULD IT have been just a coincidence that Russian-backed forces in Ukraine launched their biggest offensive in months the day after Vladimir Putin spoke by phone with President Trump? Somehow, we doubt it. Rather, the volleys of Grad rockets and heavy artillery that have been raining down on Ukrainian army positions since Sunday look a lot like a test of whether the new president will yield to pressure from Moscow.

Mr. Trump and Mr. Putin didn't speak much about Ukraine during their call; officials told us that Mr. Trump called it "a tough issue" before moving on. Nor did the White House issue a widely rumored executive order abruptly lifting U.S. sanctions on Moscow for its invasions of Crimea and eastern Ukraine. That may have been due to pushback Mr. Trump heard from British Prime Minister Theresa May on Friday, as well as from senior congressional Republicans.

Perhaps a disappointed Mr. Putin felt the need to do some pushing from the other side. Or maybe he wanted to wreck a meeting Ukrainian President Petro Poroshenko had scheduled for Monday with German Chancellor Angela Merkel, his strongest Western supporter. In any case, Russian guns that had been quiescent for weeks suddenly erupted Sunday near the government-controlled town of Avdiivka, north of the separatist-held city of Donetsk. The shelling soon spread south to Mariupol, a key government-held city on the coast of the Sea of Azov. One sign the offensive was serious and Kremlin-directed: Ukrainian soldiers and civilians were swamped with threatening text messages characteristic of Russian electronic warfare units.

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Russia, predictably, blamed Ukraine for the fresh fighting, and Ukrainian commanders acknowledge that in recent weeks their forces had moved some positions forward in the no-man's land between the front lines. But Mr. Poroshenko, who was forced to break off his trip to Germany, has scant cause to seek another round of warfare in the east when the past two have led to crushing Ukrainian defeats. In Kiev, the Ukrainian economy is showing signs of revival; positive growth was reported for 2016, while Russia remained in recession. Slow progress is being made on economic and institutional reforms. The new fighting places those at risk.

That's likely one of Mr. Putin's aims. Another is to speed Mr. Trump toward the concessions Moscow seeks: not just the lifting of sanctions, but also the acceptance of a Russian sphere of influence including Ukraine. In exchange for what? Mr. Putin offers "cooperation" in fighting the Islamic State in the Middle East, a possibility repeatedly touted by Mr. Trump. But that U.S.-

Russian military cooperation has also been a prime objective of Mr. Putin's. In other words, the deal he's offering is something he really wants in "exchange" for something else he really wants.

(Reuters)

Ukraine's military says the number of its soldiers killed in an offensive by pro-Russian separatists over the past two days has risen to seven in the deadliest outbreak of fighting in the east of the country since mid-December. Ukraine says seven soldiers killed in deadliest clashes in weeks (Reuters)

If Mr. Trump goes along with this, Mr. Putin will achieve a third objective — diminishing U.S. global influence to the gain of Russia. That's what congressional leaders such as Sen. John McCain (R-Ariz.) have been trying to point out to Mr. Trump, and what the past two presidents' history with Mr. Putin vividly demonstrates. If the White House chooses to ignore all that, Ukraine will not be the only loser.

## 'Why let 'em in?' Understanding Bannon's worldview and the policies that follow. (UNE)

<https://www.facebook.com/dafahrent hold/>

In November 2015, Stephen K. Bannon — then the executive chairman of Breitbart News — was hosting a satellite radio show. His guest was Rep. Ryan Zinke (R-Mont.), who opposed President Obama's plan to resettle some Syrian refugees in the United States.

"We need to put a stop on refugees until we can vet," Zinke said.

Bannon cut him off.

"Why even let 'em in?" he asked.

Bannon said that vetting refugees from Muslim-majority countries would cost money and time. "Can't that money be used in the United States?" he said. "Should we just take a pause and a hiatus for a number of years on any influx from that area of the world?"

In the years before Bannon grabbed the world's attention as President Trump's chief White House strategist, he was developing and articulating a fiery populist vision for remaking the United States and its role in the world.

Bannon's past statements, aired primarily on Breitbart and other conservative platforms, serve as a road map for the controversial agenda that has roiled Washington and shaken the global order during Trump's first two weeks in office.

Now, at the center of power in the White House, Bannon is moving quickly to turn his ideas into policy, helping direct the biggest decisions of Trump's administration. The withdrawal from a major trade pact. A ban on all visitors from seven majority-Muslim countries. And — in an echo of that conversation with Zinke, who is now Trump's nominee for interior secretary — there was a temporary ban on all new refugees.

The result has been intense fury from Democrats, discomfort among many Republicans, and a growing sense of unease in the world that Trump intends to undermine an America-centered world that has lasted 70 years. This sense of turmoil, welcomed by many Trump supporters as proof that the new president is following through on his vow to jolt Washington, reflects the sort of transformation that Bannon has long called for.

That worldview, which Bannon laid out in interviews and speeches over the past several years, hinges

largely on Bannon's belief in American "sovereignty." Bannon said that countries should protect their citizens and their essence by reducing immigration, legal and illegal, and pulling back from multinational agreements.

At the same time, Bannon was concerned that the United States and the "Judeo-Christian West" were in a war against an expansionist Islamic ideology — but that they were losing the war by not recognizing what it was. Bannon said this fight was so important, it was worth overlooking differences and rivalries with countries like Russia.

It is not yet clear how far Bannon will be able to go to enact his agenda. His early policy moves have been marred by administrative chaos. But his worldview calls for bigger changes than those already made.

In the past, Bannon had wondered aloud whether the country was ready to follow his lead. Now, he will find out.

"Is that grit still there, that tenacity, that we've seen on the battlefields ... fighting for something greater than themselves?" Bannon said in another radio interview last May, before he joined the Trump campaign.

That, said Bannon, is "one of the biggest open questions in this country."

Bannon, 62, is a former Navy officer and Goldman Sachs banker who made a fortune after he acquired a share of the royalties from a fledgling TV show called "Seinfeld." In the past 15 years, he shifted into entertainment and conservative media, making films about Ronald Reagan and Sarah Palin and then taking a lead role at Breitbart News.

At Breitbart, Bannon cemented his role as a champion of the alt-right, the anti-globalism movement that has attracted support from white supremacists and found a home on the far-right website.

Bannon also forged a rapport with Trump, interviewing the businessman-candidate on his show and then, in August 2016, joining the campaign as chief executive.

Now, Bannon has become one of the most powerful men in America. And he's not afraid to say so.

As nationwide protests against President Trump's immigration mandate rage on, he reshuffled the National Security Council and put

chief strategist and former Breitbart News chair Stephen Bannon in an unprecedented national security role. As nationwide protests against President Trump's immigration mandate rage on, he put chief strategist Stephen Bannon in an unprecedented national security role. (Jenny Starrs/The Washington Post)

(Jenny Starrs/The Washington Post)

In interviews with reporters since Trump's election, Bannon has eschewed the traditional it's-all-about-the-boss humility of presidential staffers.

"Dick Cheney. Darth Vader. Satan. That's power," he told the Hollywood Reporter in November, embracing the comparisons of him to those figures.

In the same interview, Bannon compared himself to a powerful aide to England's Henry VIII — an aide who helped engineer a world-shaking move of his era, the split of the Church of England from the Catholic Church.

"I am Thomas Cromwell in the court of the Tudors," Bannon told the Hollywood Reporter.

To explore Bannon's worldview, The Washington Post reviewed hours of radio interviews that Bannon conducted while hosting a Breitbart radio talk show, as well as speeches and interviews he has given since 2014.

Bannon did not respond to a request for comment made on Tuesday afternoon.

In his public statements, Bannon espoused a basic idea that Trump would later seize as the centerpiece of his campaign.

While others saw the world rebounding from the financial crisis of 2008, Bannon just saw it becoming more divided by class.

The elites that had caused the crisis — or, at least, failed to stop it — were now rising higher. Everyone else was being left behind.

"The middle class, the working men and women in the world ... are just tired of being dictated to by what we call the party of Davos," Bannon said in a 2014 speech to a conference at the Vatican in a recording obtained by BuzzFeed. Davos is a Swiss ski resort that hosts an annual conclave of wealthy and powerful people.

Bannon blamed both major political parties for this system and set out to

force his ideas on an unwilling Republican leadership.

What he wanted, he said again and again, was "sovereignty." Both in the United States and in its traditional allies in Western Europe.

On one of the first Breitbart Radio shows, in early November 2015, Bannon praised the growing movement in Britain to exit the European Union. He said that the British had joined the E.U. merely as a trading federation but that it had grown into a force that had stripped Britons of sovereignty "in every aspect important to their own life."

Bannon has been supportive of similar movements in other European countries to pull out of the union. Trump has echoed those sentiments in his first few days as president. It is a remarkable shift in U.S. policy: After decades of building multinational alliances as a guarantee of peace, now the White House has indicated it may undermine them.

Bannon, in his 2014 speech at the Vatican, cast this as a return to a better past.

"I think strong countries and strong nationalist movements in countries make strong neighbors," Bannon said. "And that is really the building blocks that built Western Europe and the United States, and I think it's what can see us forward."

In the case of the United States, Bannon was skeptical of multinational trade pacts, saying that they ceded control. In a radio interview in November 2015, Sen. Jeff Sessions (R-Ala.) agreed with Bannon.

"We shouldn't be tying ourselves down like Gulliver in the land of Lilliputians with so many strings a guy can't move," said Sessions, who is now Trump's nominee to become attorney general. He was referring to a scene from the novel "Gulliver's Travels" in which the hero is tied down by a race of tiny men. "That is where we are heading, and it's not necessary."

One solution put forward by Bannon: the United States should pursue bilateral trade agreements — one country at a time — rather than multi-country agreements such as the Trans-Pacific Partnership supported by Obama.

He suggested as much to Trump himself, when the candidate appeared on his show in November 2015.



"Trump brings [a deal] back to the Senate and gets his bilateral trade deal with Taiwan or with Japan approved by two-thirds of the Senate," Bannon said. "And you have to go argue, 'Hey, this is why it's a good deal.' And that's the way the Founders wanted it."

On a March 2016 episode, Bannon said that restoring sovereignty meant reducing immigration. In his radio shows, he criticized the federal H-1B visa programs that permit U.S. companies to fill technical positions with workers from overseas.

The "progressive plutocrats in Silicon Valley," Bannon said, want unlimited ability to go around the world and bring people back to the United States. "Engineering schools," Bannon said, "are all full of people from South Asia, and East Asia. ... They've come in here to take these jobs." Meanwhile, Bannon said, American students "can't get engineering degrees; they can't get into these graduate schools because they are all foreign students. When they come out, they can't get a job."

"Don't we have a problem with legal immigration?" asked Bannon

repeatedly.

"Twenty percent of this country is immigrants. Is that not the beating heart of this problem?" he said, meaning the problem of native-born Americans being unable to find jobs and rising wages.

In another show, Bannon had complained to Trump that so many Silicon Valley chief executives were South Asian or Asian. This was a rare time when Trump — normally receptive to Bannon's ideas on-air — pushed back. "I still want people to come in," Trump said. "But I want them to go through the process."

So far, Trump has made no changes to the high-skilled visa program. This week, White House press secretary Sean Spicer said that the Trump administration may reexamine the program.

Even as Bannon was calling for a general retreat from multinational alliances, however, he was warning of the need for a new alliance — involving only a subset of the world's countries.

The "Judeo-Christian West" was at war, he said, but didn't seem to understand it yet.

"There is a major war brewing, a war that's already global," Bannon said at the Vatican in 2014, at a time when the Islamic State was gaining territory. "Every day that we refuse to look at this as what it is — and the scale of it, and really the viciousness of it — will be a day where you will rue that we didn't act."

Bannon has given few details about the mechanics of the war he thinks the West should fight. But he has been clear that it is urgent enough to take priority over other rivalries and worries.

In his talk at the Vatican, Bannon was asked about Russian President Vladimir Putin. Bannon's answer was two-sided.

"I think that Putin and his cronies are really a kleptocracy, that are really an imperialist power that want to expand," he said. But, Bannon said, there were bigger concerns than Russia — and there was something to admire in Putin's call for more traditional values.

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"However, I really believe that in this current environment, where you're facing a potential new caliphate that is very aggressive that is really a situation — I'm not saying we can put [Russia] on a back burner — but I think we have to deal with first things first," Bannon said.

If Bannon succeeds, Bannon's own comparison, to England's Thomas Cromwell, might be apt — to a point.

"The analogy — if it's going to work — is that Bannon has his own agenda, which he will try to use Trump for, and will try to exploit the power that Trump has given him, without his master always noticing," said Diarmaid MacCulloch, a professor of history at England's Oxford University.

But Cromwell was later executed, after Henry VIII turned against him. For a man like that, MacCulloch said, power is always tenuous: "It's very much dependent on the favor of the king."



## Trump's Grand Strategic Train Wreck

Colin Kahl, Hal Brands

Believe it or not, President Donald Trump has a grand strategy. According to some analysts, Trump's endless streams of erratic and apparently improvisational ideas don't add up to anything consistent or purposeful enough to call a grand strategy. We see it otherwise. Beneath all the rants, tweets, and noise there is actually a discernible pattern of thought — a Trumpian view of the world that goes back decades. Trump has put forward a clear vision to guide his administration's foreign policy — albeit a dark and highly troubling one, riddled with tensions and vexing dilemmas.

Grand strategy is the conceptual architecture that lends structure and form to foreign policy. A leader who is "doing grand strategy" is not handling global events on an ad hoc or case-by-case basis. A grand strategy, rather, represents a more purposeful and deeply held set of concepts about a country's goals and orientation in international affairs.

At a minimum, a grand strategy consists of an understanding of the basic contours of the international environment, a country's highest interests and objectives within that environment, the most pressing

threats to those interests, and the actions that a country can take in order to address threats and promote national security and well-being. Grand strategy, then, is both diagnostic and prescriptive. It combines an analysis of what is happening in the world and how it impacts one's country, with a more forward-looking concept of how a country might employ its various forms of power — hard or soft, military or economic — to sustain or improve its global position. Every grand strategy has a "what" dimension, a notion of what constitutes national security in the first place, and a "how" dimension, a theory of how to produce security in a dynamic international environment and given the tools at hand.

(Photo credit: SEAN GALLUP/Getty Images)

### Threats and Fears

The fundamental grand strategic interest of the United States today is precisely the same as it has been for the past 240 years: to ensure the country's physical security, economic well-being, and way of life. The really interesting part of a particular president's grand strategy, therefore, often begins with his or her perception of the nature of the international environment and the main threats to these basic interests. For Trump, the principal

threats to the United States stem primarily from what might be called "intermestic" challenges — that is, powerful external forces that reverberate directly into the American domestic arena, threatening homeland security, disrupting the U.S. economy, and contaminating our society.

In particular, three dangers dominate the new president's worldview.

In particular, three dangers dominate the new president's worldview. The first is the threat from "Radical Islam" — which, for the president and many of his closest advisors, poses an existential and "civilizational" threat to the United States that must be "eradicated" from the face of the Earth. Trump and his team see this threat as emanating not only from Sunni jihadist groups such as the Islamic State and al Qaeda, but from all Islamists. Michael Flynn, Trump's national security advisor, has described all forms of Islamism as a "cancer," a "political ideology" that "hides behind being a religion," and a "messianic mass movement of evil people." (K.T. McFarland, the new deputy national security advisor, also appears to share these views.) The Trump worldview draws no distinctions between Sunni, Shiite, or other Islamic sects and traditions. Consequently, the description of the

threat extends to Shiite Iran, which is a deeply problematic actor in the Middle East, but one that frequently finds itself at odds with radical Sunni jihadist groups such as the Islamic State. And, perhaps most troubling of all, the perceived threat also includes many devout Muslim-American citizens in the United States, who — in Trump's view — are a potential fifth column of homegrown Islamic extremists.

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Second, Trump portrays unfair trade deals and the trade practices of key competitors as grave threats to the U.S. economy and therefore a national security priority. In Trump's view, "disastrous trade deals" like the North American Free Trade Agreement (NAFTA) have gutted American manufacturing and depressed wages for millions of American workers. Trump has described the recently negotiated (but not ratified) Trans-Pacific Partnership (TPP) along similar

lines, labeling it a "rape of our country" on the campaign trail.

In Trump's eyes, however, Enemy No. 1 in the economic domain is China — which is not, contrary to what he often said during the campaign, a party to the TPP. Just as Trump often accused Japan of waging a campaign of economic predation against the United States in the 1980s, today Trump has gone so far as to declare that "we already have a trade war" with China — one that Beijing is winning. For years, Trump has accused China of devaluing its currency, dumping steel and aluminum, stealing intellectual property, and exploiting other unfair trade practices vis-à-vis the United States, especially since China's entry into the World Trade Organization in 2001. The purported goal of this Chinese campaign is to cripple American manufacturing and advance Beijing's goal of economic and military dominance over the United States.

Trump has delivered warnings about China's geopolitical behavior as well, including its militarization of the South China Sea and failure to do enough to rein in North Korea. But these issues are ultimately secondary to the dagger China has allegedly stuck into the heart of the U.S. economy. Trump's pick for U.S. trade representative, Robert Lighthizer, has expressed a similar zero-sum view of the economic competition with China, as has Peter Navarro, the head of Trump's newly created National Trade Council. And the view also extends to Trump's top national security aides, Flynn and McFarland. Indeed, in White House meetings during the recent presidential transition period, a number of incoming Trump officials made it clear that the new administration viewed the economic war with China as perhaps the defining issue of the 21st century.

Third, and finally, Trump has consistently railed against illegal immigration, arguing that the pace and scale of migration has cost American jobs, lowered wages, and put unsustainable strains on housing, schools, tax bills, and general living conditions. He has also consistently framed immigration as an issue of personal and national security, arguing that illegal immigration is associated with crime, drugs, and terrorism — and claiming, without providing supporting evidence, that "countless Americans" have died as a consequence. And, tying the issue back to his diagnosis of the terrorist threat, Trump has consistently portrayed Muslim refugees, immigrants, and the children of immigrants as a "Trojan Horse" for the spread of radical Islam in the United States.

(Photo credit: DREW ANGERER/Getty Images)

### The Trump Doctrine

To address these perceived threats, Trump has put forward an "America First" grand strategy with four key pillars.

The first is what White House chief strategist Stephen Bannon proudly calls "economic nationalism." Trump has signaled a willingness to embrace a protectionist and mercantilist foreign policy more familiar to the 19th and early 20th centuries than to the 21st. In his inaugural address, for example, Trump declared: "From this day forward, it's going to be only America first, America first. Every decision on trade, on taxes, on immigration, on foreign affairs will be made to benefit American workers and American families. We must protect our borders from the ravages of other countries making our product, stealing our companies and destroying our jobs. Protection will lead to great prosperity and strength."

To enact this vision, Trump, in one of his first executive actions as president, withdrew the United States from the TPP. He has also pledged to renegotiate NAFTA, and to withdraw from that accord if Canada and Mexico do not meet his terms. He has threatened stepped-up trade enforcement actions and the imposition of tariffs as high as 45 percent against China and others engaged in unfair trade. And he says he will impose "consequences" on U.S. companies that move jobs overseas, perhaps by enacting heavy border duties on the importation of goods manufactured abroad. If you think that the foreign economic policies of the 1920s and 1930s worked well for the United States, then Trump's economic statecraft is for you.

A second key pillar is what might be called "extreme" homeland security. This includes the infamous wall along the U.S.-Mexico border and other investments in stepped-up border security. It includes Trump's threat of mass deportations of illegal immigrants, starting with those with a criminal record. And his approach calls for an indefinite ban on Syrian refugees, a temporary ban on all refugees, and a suspension of legal immigration from several Muslim countries until such time as "extreme vetting" procedures can be put in place to ensure that entrants to the United States "share our values and love our people." Last week, Trump signed an executive order putting all of these measures in motion. Trump has also expressed openness to a registry of all Muslims living in the United States, and threatened punitive

action against those who fail to report friends or family members suspected of holding extremist views to law enforcement.

In Trump's view, the United States should be willing to cut deals with any actors that share American interests, regardless of how transactional that relationship is, and regardless of whether they share — or act in accordance with — American values.

What we call "amoral transactionalism" represents the third, and perhaps most central, feature of Trump's grand strategy. In Trump's view, the United States should be willing to cut deals with any actors that share American interests, regardless of how transactional that relationship is, and regardless of whether they share — or act in accordance with — American values. In the battle against radical Islam, for example, Trump has said: "All actions should be oriented around this goal, and any country which shares this goal will be our ally." The biggest perceived opportunity, in this regard, is for a strategic realignment with Russia — a country Trump and some of his advisors see as a natural partner in the fight against Islamic extremists and perhaps in countering China too.

Trump's grand strategy is transactional in another sense as well. It contends that those allies and partners that gain from U.S. assistance should "pay up" — and, if they don't, that the United States ought to cut them loose. Since the 1980s, Trump has consistently characterized U.S. allies as wealthy freeloaders who disproportionately gain from American commitments and expenditures, to the detriment of U.S. security and the American economy. He has argued that NATO is obsolete and questioned the wisdom of the U.S. commitment to Japan and South Korea. For Trump, America's treaty alliances in Europe and Asia are not sacred commitments; U.S. allies are no better (or worse) than any other states, and, accordingly, our relationships with them should be conditional rather than special. As Trump argued in April: "The countries we are defending must pay for the cost of this defense, and if not, the U.S. must be prepared to let these countries defend themselves. We have no choice." Trump put it even more starkly in his inaugural address, arguing that the United States had "subsidized the armies of other countries while allowing for the very sad depletion of our military" — in essence, that America's alliances have made the country weaker and less secure.

The final pillar of Trump's grand strategy is a muscular but aloof militarism. For decades, Trump has advocated "extreme military strength." On the campaign trail and during the transition, Trump called for larger U.S. naval, air, and ground forces, and significant new investments in cyber warfare capabilities and nuclear weapons. (On January 27, Trump announced an executive order to follow through on this commitment, but the details remain unclear.) Yet Trump's stated purpose is not to engage in military adventures, or to bolster U.S. alliances, but rather to deter potential adversaries and defeat those who attack the United States. Trump has pledged to intensify the military campaign against the Islamic State and other terrorist groups — but he has consistently criticized both regime change and nation building. In the campaign against the Islamic State, it is clear Trump hopes to depend heavily on local and regional "Muslim forces" to carry on the fight on the ground while the U.S. military's role is primarily to "bomb the shit out of them" — and perhaps, if Trump is taken literally, to take Iraq's oil once the Islamic State is defeated. Past U.S. presidents wanted an America that was strong enough to shape global affairs; Trump seems to want an America that is strong enough to eradicate terrorism and then simply be left alone.

Taken together, Trump's "America First" grand strategy diverges significantly from — and intentionally subverts — the bipartisan consensus underpinning U.S. foreign policy since World War II. American presidents in the postwar era have generally seen a world of expanding democracy and free markets as safer and more prosperous. They have also believed that the modest investments the United States makes in protecting its allies and supporting international institutions are bargains, because they prevent adverse geopolitical developments that might ultimately require far higher costs — in both lives and money — to address.

Not so for Trump. He simply doesn't subscribe to the long-held belief that "American exceptionalism" and U.S. leadership are intertwined — that the influence of the United States on the world stage is rooted in the idea of America and the values it represents, not just its material power. Moreover, as Thomas Wright notes, "Trump believes that America gets a raw deal from the liberal international order" it helped construct seven decades ago and sustain to this day. He is therefore hostile to that order, institutionalized through alliances with other

democratic states and international agreements that promote an open, rule-based international economy, and refuses to invest blood and treasure to maintain it.

(Photo credit: DMITRY ASTAKHOV/AFP/Getty Images)

### Trump's Grand Strategic Dilemmas

Trump's grand strategy is thus at odds with longstanding traditions in American foreign policy and poses an acute threat to the liberal international order that has underwritten U.S. security and prosperity for the past seven decades. Yet, even on its own terms, Trump's grand strategy is plagued by internal tensions and dilemmas that will make it difficult to achieve the president's stated objectives. There are many problems, but here we emphasize six.

First, it will be difficult for Trump to reconcile his policies toward Russia and Iran on the one hand with his desire to defeat the Islamic State on the other. Trump's apparent desire to go all-in with Russian President Vladimir Putin — and perhaps Syrian President Bashar al-Assad — to fight the Islamic State in Syria is likely to backfire. President Barack Obama conditioned the prospect of counterterrorism cooperation with Russia in Syria on Moscow enforcing a nationwide cease-fire and ensuring humanitarian access for the U.N. — conditions the Kremlin was ultimately unable or unwilling to meet. Moreover, during discussions with Moscow last fall, Obama insisted that the United States would have a veto over Russian targeting, that Assad's air force would be grounded over much of the country, and that the parties should return to the negotiating table to discuss a political transition. If Trump chooses to cooperate with Russia with no strings attached, it will make the United States complicit in Russia's indiscriminate bombing campaign and its efforts to prop up Assad. This is a recipe for fueling the civil war and jihadism, not combating it, and it is likely to alienate precisely the Sunni states Trump hopes to join his anti-Islamic State coalition on the ground.

Then there is the issue of Iran. In practice, backing Russia and Assad means aligning — whether openly or tacitly — with Iran, its surrogate Hezbollah, and Iranian-backed Shiite militias in Syria. This would effectively strengthen Iranian influence in Syria and the broader region — the very opposite of what Trump and his advisors desire. Consequently, if Trump means what he says about taking a harder line against Iran — both in the context of the nuclear deal and vis-à-vis Iran's

destabilizing behavior across the Middle East — he will have to try to convince Moscow to sever its partnership with Tehran and attempt to box Iran and Hezbollah out of Syria. That is easier said than done. Iran and Hezbollah's tentacles in Syria run deeper than Russia's, and they have a far greater stake in the outcome of that conflict than Moscow does. The Iranians are, therefore, likely to react to any overt effort to push them out by playing an active spoiler role that undermines the campaign against the Islamic State and, potentially, puts at risk U.S. special operations forces supporting counter-Islamic State opposition forces on the ground in Syria.

A similar dilemma will face Trump in Iraq. The United States should work to balance and minimize Iranian influence in Iraq, in particular by encouraging the Baghdad government to work overtime to rein in Shiite popular mobilization forces (PMF). But an overtly hostile posture toward Iran (not to mention continued rants about taking Iraq's oil) would put Iraq's Shiite Prime Minister Haider al-Abadi in a jam, empowering his rivals who seek to distance Iraq from the United States. It could also incentivize Iran to unleash Shiite PMF to attack the approximately 5,000 American forces supporting the counter-Islamic State campaign in Iraq, something Iran has refrained from doing over the past two-and-a-half years. The result could be dramatically increased U.S. casualties and reduced American influence in Baghdad.

A second dilemma is that Trump's extreme measures to protect the homeland could further complicate the fight against the Islamic State. At home, Trump's expansive definition of radical Islam, his apparent belief that many American Muslims harbor secret sympathies for the Islamic State, and his threats to profile, register, and collectively punish entire communities, could poison ongoing efforts to forge better relations between American Muslims and law enforcement. Meanwhile, Trump's executive orders banning refugees and immigrants casts the United States as deeply Islamophobic, making it much less likely that Muslim-majority countries will step up their support for the U.S.-led fight against the Islamic State overseas. This will be doubly true if Trump follows through on other actions he has repeatedly pledged, including resuming torture, expanding Guantánamo, and moving the U.S. embassy in Israel to Jerusalem.

Third, Trump's approach to Europe and Russia — at least as he has outlined it so far — is equally self-

defeating and contradictory. Trump's warm embrace of Putin; intimation that he will throw Ukraine (and potentially the Baltic states) under the Russian bus and lift Ukraine-related sanctions on Moscow; repeated trash-talking of NATO, the European Union, and committed Atlanticist leaders such as Germany's Angela Merkel; and celebration of Brexit and European populist movements will all drive a deep wedge between America and its most important democratic allies. These steps will also embolden Moscow's attempts to divide and coerce its European neighbors, and incentivize countries like Italy and Hungary, which are eager to get back to "business as usual" with Moscow and lift sanctions against Russia. Meanwhile, although Trump's threats to abandon U.S. allies might lead to greater European defense spending in the short term, it will radically undercut the organic solidarity and cohesion that make NATO so exceptional, and lead Washington's European partners to consider whether the United States is a dependable partner after all.

As problematic as these outcomes would be for European stability and security — the preservation of which has been a fundamental objective of U.S. policy since World War II — Trump might not find any of them particularly objectionable on their own. But what he appears not to understand is that weakening Europe will cut across his other policy objectives. Losing the support of U.S. allies will make it harder for Trump to cut "good" deals with Moscow: On issues from Ukraine to arms control to sanctions, the Kremlin will take advantage of every opportunity to play the United States and its estranged allies off one another. More broadly, the transatlantic alliance is the primary vehicle through which the United States tackles nearly every world problem, from the Islamic State to financial crises. Undercutting that alliance will therefore make for a more dangerous world, and more onerous American burdens of the sort Trump so often laments.

Trump is likely to have difficulty taking punitive action against China while also contending with the growing threat from North Korea.

Fourth, Trump is likely to have difficulty taking punitive action against China while also contending with the growing threat from North Korea. Pyongyang already has a fairly robust nuclear arsenal, and according to news reports, it could field test its first nuclear-capable intercontinental ballistic missile in the coming months. Two new U.N. Security Council resolutions passed last year imposed unprecedented

sanctions on Pyongyang, including a strict limit on coal exports. These represent the best hope for a nonmilitary solution to the North Korean problem, but they will curb Pyongyang's programs only if China faithfully implements them, something Beijing regularly holds at risk depending on the tenor of the U.S.-China relationship. At times, Trump has suggested that he intends to use economic leverage to pressure China to play ball on North Korea. Most recently, in early January, Trump tweeted: "China has been taking out massive amounts of money & wealth from the U.S. in totally one-sided trade, but won't help with North Korea. Nice!"

Yet, consistent with Trump's view that the main axis of U.S.-China conflict is the zero-sum economic contest between Washington and Beijing, he seems more likely to try to use geopolitical leverage to change China's economic behavior. Trump has explained his threats to re-open the "One China policy," for example, as a negotiating tactic to force Chinese concessions on currency and trade. The net result is likely to be a policy that is so antagonistic toward China — an approach that puts Beijing's most important interests at risk, and actively seeks to harm China's economic prospects — that it cannot generate or sustain a working relationship to help address North Korea (or any other global challenge). Trump's tendency to diss and dismiss America's key Asian allies, Japan and South Korea, will further complicate his efforts to address the North Korea threat.

Fifth, in a bid to supposedly help American workers by withdrawing from the TPP (a pact creating a free-trade zone among a dozen countries representing 40 percent of global GDP), Trump is in fact helping China by ceding the economic battlefield in Asia to Beijing. He is also undermining America's geopolitical position in the world's most dynamic region. Seven of the 12 TPP countries (Australia, Brunei, Japan, Malaysia, New Zealand, Singapore, and Vietnam), as well as eight other countries (Cambodia, India, Indonesia, Laos, Myanmar, the Philippines, South Korea, and Thailand) are already in negotiations with Beijing on a Regional Comprehensive Economic Partnership. This partnership would promote trade with China, and offer new opportunities for China to expand its political influence, without any of the requirements for economic liberalization or labor and environmental protections built into the TPP.

Economists disagree about how much the TPP would or would not



help the U.S. economy. But what is indisputable is that the Asia-Pacific region views the TPP as a bellwether of U.S. geopolitical commitment, and key states are likely to make decisions on non-economic issues like the South China Sea based on perceptions of retrenchment by the Trump administration. After all, if the United States is willing to abandon them on the TPP after many years of difficult negotiations, they may justifiably ask: What guarantee do they have that a Trump administration will actually show up when a major security threat emerges?

Finally, Trump's proposal to "build a wall" and somehow force Mexico to pay for it (perhaps through a 20 percent border tax), his threat to deport millions of illegal immigrants, and his pledge to renegotiate or even withdraw from the North American Free Trade Agreement, could create a train wreck in the U.S.-Mexico relationship — as evidenced by the abrupt cancellation of Mexican President Enrique Peña Nieto's planned visit to Washington. A diplomatic crisis with Mexico would deeply complicate cooperation on a host of issues, including immigration, that are top priorities for Trump.

Since 2009, migration from Mexico itself has fallen dramatically. Nevertheless, Mexico has served as a "land bridge" for tens of thousands of migrants from other parts of Latin America seeking to make their way to the United States, especially those fleeing poverty, corruption, and crime in Central America. In recent years, Mexico has cooperated with the United States to address this challenge by improving security along the Mexico-Guatemala border and repatriating

migrants back to their home countries before they reach the United States. The Obama administration also worked with the U.S. Congress to allocate nearly \$1.5 billion since 2014 to address the economic, governance, and violence-related drivers of Central American migration — and it will be essential to partner with Mexico on these efforts if they are to succeed. Trump could put all this cooperation at risk with his shortsighted approach toward Mexico. And if actions on trade that contribute to a free fall in Mexico's economy compound Trump's approach, providing fresh incentives for Mexicans to once again move north, the migration crisis will worsen even further.

(Photo credit: DREW ANGERER/Getty Images)

### No Purpose Without Process

Every new president, of course, faces dilemmas to confront and strategic contradictions to resolve. But what is remarkable about Trump's "America First" grand strategy is the number, pervasiveness, and centrality of such contradictions. In other words: Trump has consistently articulated a set of basic grand strategic concepts, but the policy implications of those concepts add up to a Gordian knot of conflicting initiatives.

This raises the question of why Trump's grand strategy is so tangled and internally contradictory. And the answer has to do with the process — or rather, the lack thereof — through which these ideas are born, as well as, shall we say, the unique personality of the president himself.

It is hard to think of a presidential campaign, or a presidential

transition, that has been more haphazard about translating ideas into a cohesive, practical, and implementable body of policies. Trump's campaign had virtually no foreign policy apparatus to speak of — many of his senior advisers had little foreign policy experience and little contact with or influence on the candidate himself. The Trump team produced no meaningful white papers during the campaign — compared to those produced by Republican candidate Mitt Romney's team in 2012, for instance — that undertook the task of turning ideas into policy proposals and seeing how various themes might, or might not, fit together.

The transition was similarly shambolic and disorganized. Even nominees for top posts have apparently had few substantive conversations on issues such as Russia or alliances with Trump, although Rex Tillerson, the president's pick for secretary of state, has assured us that he has the president's phone number should the need for such a conversation arise. Moreover, the mechanics of transferring power from one presidential team to another — and thus the mechanics of actually starting to grapple with the real world challenges and contradictions of policy — were painfully slow to start moving. Add in a candidate (now president) whose core ideas are strongly held but often poorly considered, who likes bold proposals but disdains the nitty-gritty of turning them into workable courses of action, and for whom intellectual coherence does not seem to be a top priority, and you have a recipe for the grand strategic contradictions we see in Trump's approach.

What all this means, in practical terms, is that the implementation phase of Trump's grand strategy — the period in which the ideas upon which one campaign are translated into the day-to-day initiatives by which one governs — is likely to be far messier than is normally the case. The Trump administration will have to determine how to proceed on those issues — such as Russia, Iran, alliance relations, trade, and homeland security — where key advisers have staked out positions very different from those of the president. More fundamentally, the Trump administration will have to determine how to reconcile the president's various promises and impulses — and where those things cannot be reconciled, how to prioritize among them.

This could be good news for the country and the world. As the Trump team realizes how intractable the contradictions are among the president's various policy pronouncements, it may see the wisdom in backing off of some of the more problematic or dangerous ones. And the fact that there are so many profound disconnects between what Trump says and what is wise may create space for the president's more sober advisers — such as James Mattis, James Kelly, Rex Tillerson, and Nikki Haley — to shift policy and even influence the president's thinking. We can hope that this is the scenario that ultimately unfolds. But in the meantime, both the content and contradictions of Trump's grand strategy make it seem likely that U.S. foreign policy and the international order are in for a rough ride.

## ETATS-UNIS

### POLITICO How Trump got to yes on Gorsuch

By Shane Goldmacher, Eliana Johnson and Josh Gerstein

The robe ceremony aired in primetime—of course.

President Donald Trump, the reality TV star turned commander-in-chief, stepped out before a national television audience on Tuesday to choose Judge Neil Gorsuch as his nominee to the Supreme Court—the winner of a monthslong selection process that started with a list of 21 contenders.

Story Continued Below

"Was that a surprise? Was it?" the president said as he invited Gorsuch and his wife to enter the East Room of the White House through a side door where they'd remained hidden until the climactic reveal.

Gorsuch is a predictable, logical pick for Trump, who won over a large portion of his conservative base with his pledge to replace the late Justice Antonin Scalia with a jurist of similar pedigree. The White House hopes the nomination — the announcement was moved up two days — will be a rallying point for

rank-and-file Republicans, who have been critical or leery of the administration's chaotic first two weeks.

In the lead-up, Trump amped up the drama of the choice by keeping his selection process and ultimate choice a closely held secret.

Behind the scenes, Trump settled on Gorsuch after only a single in-person interview in Trump Tower. Gorsuch was ushered into the building through a back door on Jan. 14 so he wouldn't be seen by the press gathered in the lobby.

"I don't think you'll find any person in this room that was not impressed with how he went about it. One, his selection process...who he selected and how he rolled it out tonight," said House Majority Leader Kevin McCarthy in an interview after the announcement.

Trump personally interviewed four Supreme Court finalists, three at his home in New York before he moved to the White House, according to two people involved in the search. The others were Judge Thomas Hardiman, who sits on the Third Circuit with Trump's sister, Judge

Maryanne Trump Barry; 11th Circuit Court Judge Bill Pryor; and Judge Amul Thapar, who sits on the U.S. District Court for Eastern District of Kentucky.

Only one other person was in the room during Trump's full interviews with the finalists: White House Counsel Don McGahn, the two officials said. And Trump only met with each of the finalists once before deciding, although he did later speak with some by phone. Trump's top lieutenants — Vice President Mike Pence, McGahn, chief of staff Reince Priebus, and chief strategist Stephen Bannon — also had their own interviews with the four finalists, along with several other candidates in New York.

Trump called Gorsuch on Monday to tell him he was the nominee, White House spokesman Sean Spicer said, and Gorsuch was whisked to D.C. that night.

Prior to the interviews, Trump had largely outsourced the search process to others. In an unprecedented move, Trump rolled out a list of 21 potential judges during the campaign, a list put together by conservatives at the Federalist Society and the Heritage Foundation.

But even if Trump himself was initially removed, his allies say he was keenly aware of how important his final choice is to his presidency.

"If Trump is going to be a transformational president, not a transitional president, he needs a supportive court," said Roger Stone, a longtime Trump adviser. "Not a conservative court, not a right-wing court — a Trump court. A court that

is populist right. Because the court is going to challenge Trump in a dozen areas."

From the beginning, this Supreme Court search wasn't just about filling the seat once held by Scalia. Trump's team was also intent on signaling to 80-year-old Justice Anthony Kennedy that, should he choose to retire during Trump's term, the president would fill it with a respected jurist.

Having the initial list of 21 candidates proved both constraining and liberating for Trump. He knew he risked a backlash from movement conservatives if he strayed from it, and quickly discarded the notion after winning the election, according to people involved in the search. But he was free to choose whoever he liked best within the pool, knowing any of them would be supported by established conservative advocacy groups whose support he'll need to win a tough Senate confirmation battle.

The idea of publicizing a list of candidates first emerged last March, when Trump met with about two dozen congressional Republicans at McGahn's Washington, D.C. law firm, Jones Day. Leonard Leo of the Federalist Society, who counseled Trump on his search throughout, attended, too, and he and Trump kicked the idea of a list around during the meeting, according to a source with knowledge of the situation. Trump publicized an initial list two months later, then added additional names to it in September, including Gorsuch, who was not on the initial list.

Internally, Pryor had been seen as an early frontrunner in part because of a prominent backer: Alabama Sen. Jeff Sessions, Trump's attorney general nominee, for whom Pryor once served as deputy attorney general in Alabama years ago. But Pryor — who once called *Roe v. Wade* "the worst abomination of constitutional law" — encountered some surprising resistance among evangelical leaders, a group that advisers said Trump was determined to please from the start.

"The person that I pick will be a big, big — I think people are going to love it. I think evangelicals, Christians will love my pick and will be represented very fairly," Trump told the Christian Broadcasting Network last Friday.

At the White House announcement, Trump noted that "millions of voters said this was the single most important issue to them." A Trump adviser said that in private, president can quote the exit polls showing it: "I can tell you for a fact that he knows that exit poll data."

But Trump, who only embraced social conservatism during his presidential campaign, doesn't care for some of the legal fights conservatives and evangelicals are most excited to bring before the Court. "He is definitely not interested in any effort to overturn gay marriage," said another person Trump consulted during the search process. Notably, the White House announced the same day as Gorsuch announcement that Trump would enforce an Obama-era executive order "protecting the rights of the LGBTQ community."

As the inauguration neared, Hardiman was the last man standing between Gorsuch and the Supreme Court. Both had been approved for the federal appeals court without recorded dissent — a key factor for Trump's team. Hardiman's supporters included Trump's sister, and they tried to sell Trump on his blue-collar credentials.

But Trump ultimately settled on the Harvard-educated Gorsuch, whose elegant writing — "standing here in a house of history, and acutely aware of my own imperfections," Gorsuch said while accepting the nomination — has some hailing him as Scalia 2.0.

Trump's own introduction of Gorsuch was lacking in any real description of the nominee's judicial views or outlook. Instead, there were the usual Trump superlatives. "It is an extraordinary resume," Trump declared. "As good as it gets."

Gorsuch, in his own remarks, paid subtle homage to the man he's now slated to replace, paraphrasing an old Scalia line: "A judge who likes every outcome he reaches is very likely a bad judge."

Trump, who likes to like every outcome, seemed pleased with the whole show. After Gorsuch spoke, two men locked hands and eyes. They walked off stage together, a president and his chosen Supreme Court nominee.

## The New York Times Trump Nominates Neil Gorsuch to the Supreme Court (UNE)

Julie Hirschfeld Davis and Mark Landler

Joined by liberal groups that plotted for weeks to fight Mr. Trump's eventual nominee, leading Democrats signaled they would work to turn the Supreme Court dispute into a referendum on the president, and what they contend is his disregard for legal norms and the Constitution. Conservatives and business groups cheered Judge Gorsuch, calling his record distinguished and his qualifications unparalleled.

The announcement came at a particularly tumultuous moment in an extraordinarily chaotic beginning to Mr. Trump's presidency. Just a day earlier, he dismissed the acting attorney general for refusing to defend his hard-line immigration order that started a furor across the United States over what critics

condemned as a visa ban against Muslims.

"Now, more than ever, we need a Supreme Court justice who is independent, eschews ideology, who will preserve our democracy, protect fundamental rights and will stand up to a president who has already shown a willingness to bend the Constitution," Senator Chuck Schumer of New York, the Democratic leader, said in a statement.

"The burden is on Judge Neil Gorsuch to prove himself to be within the legal mainstream and, in this new era, willing to vigorously defend the Constitution from abuses of the executive branch and protect the constitutionally enshrined rights of all Americans," Mr. Schumer said.

He said he would insist that Judge Gorsuch meet the 60-vote threshold

needed in the Senate to overcome a filibuster for his confirmation to move forward. That would either require eight Democrats to join the Senate's 52 Republicans to advance the nomination, or force Republicans to escalate a parliamentary showdown — as Mr. Trump has already urged them to do — to change longstanding rules and push through his nominee on a simple majority vote.

Republicans and conservative groups signaled they relished a war over Judge Gorsuch's confirmation.

"I hope members of the Senate will again show him fair consideration and respect the result of the recent election with an up-or-down vote on his nomination, just like the Senate treated the four first-term nominees of Presidents Clinton and Obama," said Senator Mitch McConnell, Republican of Kentucky and the majority leader. He noted that the

Senate confirmed Judge Gorsuch without opposition in 2006 to his current seat on the United States Court of Appeals for the 10th Circuit.

Carrie Severino, the chief counsel for the Judicial Crisis Network, a conservative group that immediately started a \$10 million campaign to defend Mr. Trump's nominee, said the coalition would mount intensive campaigns in crucial states to "force vulnerable senators to choose between obstructing and keeping their Senate seats."

If confirmed, Judge Gorsuch would become the 113th justice and take a seat held not only by Justice Scalia, but also by Justice Robert H. Jackson, perhaps the finest writer to have served on the court. As an Episcopalian, Judge Gorsuch would be the only Protestant seated among five Catholics and three Jewish jurists.

He would restore the 5-to-4 split between conservatives and liberals on the court, returning the swing vote to Justice Anthony M. Kennedy, whose rulings have fallen on both sides of the political spectrum.

At 49, Judge Gorsuch (pronounced GORE-sutch) is the youngest nominee to the Supreme Court in 25 years, underscoring his potential to shape major decisions for decades to come. In choosing him, Mr. Trump reached for a reliably conservative figure in Justice Scalia's mold, but not someone known to be divisive.

Mr. Trump, who recognized Justice Scalia's wife, Maureen, in the audience as he announced his choice, heaped praise on the "late, great" jurist, saying his "image and genius was in my mind throughout the decision-making process."

Judge Gorsuch said he was humbled by his "most solemn assignment."

"I will do all my powers permit to be a faithful servant of the Constitution and laws of this great country," he said. He also praised Justice Scalia as "a lion of the law."

The announcement reopened the bitter wounds that dominated the political battle last year over Mr. Obama's nominee for the seat, Judge Merrick B. Garland. Republicans refused to even consider — much less support — his nomination in

the thick of a presidential campaign.

A Colorado native who was in the same class at Harvard Law School as Mr. Obama, Judge Gorsuch is known for his well-written, measured opinions that are normally, though not exclusively, conservative. He holds a doctorate from Oxford University, where he was a Marshall Scholar, and was a Supreme Court law clerk to Justices Byron R. White and Kennedy. That Judge Gorsuch has a personal connection to Justice Kennedy is no accident. By choosing a familiar figure, several officials said, the White House is sending a reassuring signal to Justice Kennedy, 80, who has been mulling retirement.

Choosing a more ideologically extreme candidate, the officials said, could have tempted Justice Kennedy to hang on to his seat for several more years, depriving Mr. Trump of another seat to fill.

Still, Judge Gorsuch's conservative credentials are not in doubt. He has voted in favor of employers, including Hobby Lobby, who invoked religious objections for refusing to provide some forms of contraception coverage to their female workers. And he has criticized liberals for turning to the courts rather than the legislature to achieve policy goals.

"It is the role of judges to apply, not alter, the work of the people's representatives," he said on

Tuesday. "A judge who likes every outcome he reaches is very likely a bad judge, stretching for results he prefers rather than those the law demands."

Judge Gorsuch is the son of Anne Gorsuch Burford, who became the first female head of the Environmental Protection Agency under President Ronald Reagan. He attended Georgetown Preparatory School, outside Washington, before going to Columbia University.

There had been some speculation that Mr. Trump would choose someone with a less elite background for the court. The other finalist for the post, Judge Thomas M. Hardiman, was the first person in his family to graduate from college, and helped pay for his education by driving a taxi.

The White House stoked suspense over Mr. Trump's court choice in the hours before announcing it. A senior Trump administration official said both Judge Gorsuch and Judge Hardiman were summoned to Washington for the nomination ceremony. But only Judge Gorsuch appeared at the White House gathering shortly after 8 p.m.

In an allusion to the intense foreshadowing he and his team did to encourage interest and speculation over the pick, Mr. Trump interrupted his own announcement to marvel at his showmanship: "So was that a

surprise?" the president said after announcing Judge Gorsuch's name. "Was it?"

As he looked out into an audience that Democrats had refused to join — several senior lawmakers declined his invitation to attend the East Room ceremony — the president expressed hope that he could avoid a partisan battle.

"I only hope that both Democrats and Republicans can come together for once, for the good of the country," Mr. Trump said.

But progressive groups had already gathered at the steps of the Supreme Court to protest a nominee they predicted would be extreme. Nan Aron of the liberal-aligned Alliance for Justice called Judge Gorsuch "a disastrous choice," adding that his record showed "no sign that he would offer an independent check on the dangerous impulses of this administration."

Conservatives were as ardent in their support. Tom Fitton, the president of the right-leaning group Judicial Watch, called Mr. Trump's nomination "a major step in the right direction in defining his presidency and moving the Supreme Court away from dangerous and destructive judicial activism."

## **The New York Times** Picking One Justice, Trump Has Eye on Choosing a Second (UNE)

Peter Baker

The White House is not the only player engaged in the long game with this nomination. Senate Democrats now must decide how far they are willing to go in opposing Judge Gorsuch, particularly after Senate Republicans refused to even give a hearing to President Barack Obama's last Supreme Court nominee, Judge Merrick B. Garland.

Since Judge Gorsuch will be replacing Justice Antonin Scalia, the conservative anchor on the court who died last February, his confirmation presumably would not alter the ideological division. But Democrats signaled on Tuesday night that they would filibuster him rather than save that option for the next, presumably more significant nomination, as some liberals had quietly urged.

"Everyone involved in the process — the president, the Senate Republicans, the Senate Democrats — needs to fight this nomination with one eye on Justice Kennedy,"

said Ron Klain, a former senior White House aide who shepherded court appointees for Mr. Obama and President Bill Clinton. "His decision to retire or remain determines the balance of power on the Supreme Court."

Mr. Trump's strategists understand that filling Justice Scalia's seat is not as significant as replacing Justice Kennedy. "I'm sure they would dearly love to see him step down soon," said Walter Dellinger, a former acting solicitor general. "But he would like to be replaced by a moderate. If they chose a firebrand for the Scalia seat, Justice Kennedy might be more reluctant to leave. Of course, there is no guarantee the next nominee will be like this one."

White House officials, naturally, did not voice that goal publicly. But as he left the announcement on Tuesday night, Senator Orrin Hatch, Republican of Utah, said he believed that Judge Gorsuch's nomination would reassure Justice Kennedy that the future of the court was in good hands.

"I think Justice Kennedy will really enjoy serving with him, because he knows him well," Mr. Hatch said, adding, "He might feel like it's time to retire, too, because he's talked about that a few times."

Appointed by President Ronald Reagan in 1988 after two choices were rejected or withdrew, Justice Kennedy has emerged as the pivotal voice on many critical issues over the past three decades. While voting with the conservative wing on economic issues like Mr. Obama's health care program, he has sided with the liberals on social issues like abortion and gay rights.

### **Trump Selects Gorsuch for Supreme Court**

Judge Neil M. Gorsuch, if confirmed, will take the seat vacated by the death of Justice Antonin Scalia.

January 31, 2017. Photo by Stephen Crowley/The New York Times. Watch in Times Video »

He wrote the *Obergefell v. Hodges* decision that established a

constitutional right to same-sex marriage across the nation — a case that he and other legal scholars believe will mark his place in the history books. Some refer to the current bench as the Kennedy court because of his influence, which is all the more reason that conservatives have been eager to replace him.

Justice Kennedy has been silent about his plans, but it was widely noticed by his fellow justices and other court watchers last fall that he had not hired a full complement of clerks for the next term. Some thought he was slowing down when he did not teach last summer in Salzburg, Austria, as he has for many years. Another sign was his decision to schedule his reunion of clerks, normally held every five years, one year early.

But after Mr. Trump's election, Justice Kennedy moved ahead with hiring clerks and authorized the court spokeswoman to issue a statement meant to dispute speculation that he might retire. The statement said that he had not gone

to Salzburg because of conflicting family plans but would return there in 2017, and that the clerks had wanted to hold the reunion early to celebrate his 80th birthday.

Although Judge Gorsuch is closer to Justice Scalia in terms of judicial philosophy, Justice Kennedy admires his intelligence and temperament, former clerks said, enough that he flew to Denver to preside over his swearing-in after President George W. Bush appointed him to the Court of Appeals for the 10th Circuit.

Judge Gorsuch returns the affection. At Tuesday night's White House ceremony, he noted that he had clerked for both Justice Kennedy and Justice Byron White. "Justice Kennedy was incredibly welcoming and gracious, and like Justice White he taught me so much," he said. "I am forever

grateful."

Senate Democrats, however, found plenty of reasons to object to Judge Gorsuch, and liberal groups plan to wage a vigorous campaign against his confirmation. Senator Chuck Schumer, the minority leader, said on Tuesday night that he would insist that Judge Gorsuch be approved by the 60 votes necessary to break a filibuster rather than a simple majority of 51.

It is unusual to filibuster a Supreme Court nominee, but it has been tried. When Democrats were in charge of the Senate, they made it impossible to filibuster lower court nominees but not Supreme Court candidates.

If Democrats filibuster Judge Gorsuch, Senate Republicans could eliminate the filibuster for Supreme Court fights, too, making the tactic unavailable for the next nomination.

Mr. Trump has already urged Senate Republicans to do so.

Few imagine that Justice Kennedy finds the idea of being replaced by a Trump nominee appealing. "It's hard for me to believe that an old-fashioned gentleman like Justice Kennedy would be impressed with Donald Trump's vulgarity and the way he behaves," said Daniel Epps, a former clerk for Justice Kennedy who now teaches law at Washington University in St. Louis.

Like other clerks, who declined to be identified, Mr. Epps said he thought the justice was unlikely to be swayed by a nominee named by Mr. Trump. If the president had picked someone who genuinely offended him, Justice Kennedy might resolve to stick around longer, but neither Judge Gorsuch nor the other finalist would qualify, they said.

"It's not a crazy theory, but my sense of Justice Kennedy and Supreme Court justices generally is that the decision of when to leave is very personal and it turns more on what's happening with them," Mr. Epps said.

Orin Kerr, another former clerk teaching law at George Washington University, likewise said he did not think the justice would figure Mr. Trump's plans into his. "Just my hunch, I tend to doubt AMK would make that kind of calculation," he wrote on Twitter.

But that did not stop even the justice's own circle from speculating. As Mr. Epps put it, "I am just as curious as you are and the rest of the world."

## THE WALL STREET JOURNAL

Kendall

Updated Jan. 31, 2017 10:34 p.m. ET

President Donald Trump picked Judge Neil Gorsuch as his nominee to the U.S. Supreme Court, a choice that would fill a nearly year-long vacancy on the bench and amount to the most transformational decision of his eventful first 12 days in office.

Mr. Trump's choice, announced Tuesday evening at the White House, would tilt the ideological balance of the nation's highest court back to conservatives, a promise he made for months from the campaign trail as he aimed to attract fellow Republicans to his candidacy.

"The qualifications of Judge Gorsuch are beyond dispute," Mr. Trump said, describing his pick as "a man who our country needs badly to ensure the rule of law and the rule of justice."

The choice will set off another political battle for Mr. Trump, whose first two weeks in office have been marked by almost daily clashes with Democrats, fellow Republicans and even within his fledgling administration. Republicans immediately praised the choice while Democrats, under pressure from their party's base to stymie the new administration, predicted a rough path to confirmation.

"The burden is on Judge Neil Gorsuch to prove himself to be within the legal mainstream," Senate Minority Leader Chuck Schumer (D., N.Y.) said. He added that Judge Gorsuch had taken an

ideological approach that he said raised questions about his independence.

But it will likely take days before the intensity of the Democratic opposition becomes apparent.

The event was something of a spectacle, with Mr. Trump keeping the two finalists for the nomination, Judge Gorsuch and Judge Thomas Hardiman, in suspense. As Mr. Trump's team sought to build suspense for the announcement, some Republican senators weren't informed about the pick until about two hours before the announcement in the East Room. Don McGahn, the White House counsel, had been in touch with Judiciary Republicans soliciting their input. That helped build their comfort with the selection process, said Sen. Jeff Flake (R., Ariz.).

Judge Gorsuch, 49 years old, is a well-established conservative, appointed by President George W. Bush to the Denver-based 10th U.S. Circuit Court of Appeals. He has been outspoken about the need for courts to have a limited role in American life, and he has criticized what he considers the disproportionate powers taken on by federal agencies.

"When we judges don our robes, it doesn't make us any smarter, but it does serve as a reminder of what's expected of us: Impartiality and independence, collegiality and courage," he said while standing in front of Mr. Trump and his wife, Louise.

The judge is also known as an articulate writer who relishes jumping into complex or difficult

legal subjects. Among his notable cases, he favored the right of religious business owners to claim exemptions from a provision of the Affordable Care Act that requires them to provide contraception coverage to their employees.

His mother, Anne Gorsuch Burford, served in the administration of President Ronald Reagan as head of the Environmental Protection Agency.

Judge Gorsuch has a glittering legal pedigree, having served as a law clerk for former Supreme Court Justice Byron White and current Justice Anthony Kennedy. If he is confirmed, he would be the first justice to serve with a justice for whom he clerked.

Sen. Mike Lee (R., Utah), a former assistant U.S. attorney, said he had argued before Judge Gorsuch and found him "extremely impressive," saying he would work hard for the judge's confirmation.

But while he sailed through his previous confirmation, Judge Gorsuch is likely to face a brutal landscape this time around. Democrats already have yet to confirm 16 of Mr. Trump's cabinet appointees, citing, in some cases, ethics concerns, as well as the uproar from their voters over Friday's White House executive order to suspend entry from seven Muslim-majority nations out of concerns that terrorists from those countries may enter the U.S.

And some Democrats have suggested retaliation for Republicans' move last year to deny President Barack Obama a chance to fill Justice Antonin Scalia's seat

after his death in February. Mr. Obama nominated Merrick Garland, the chief justice of the U.S. Court of Appeals for the District of Columbia, but Senate Majority Leader Mitch McConnell had declared within hours of Justice Scalia's death that Republicans wouldn't consider any nomination by the Democratic president.

Sen. Patrick Leahy of Vermont, a senior Democrat on the Senate Judiciary Committee, signaled that Judge Gorsuch wouldn't face a smooth path, saying Mr. Trump's "unconstitutional actions" in his first week required "unsparing" scrutiny of the nomination. At least three Democratic senators quickly said they opposed the nomination—Elizabeth Warren of Massachusetts, Sherrod Brown of Ohio and Jeff Merkley of Oregon.

By contrast, Sen. Joe Manchin of West Virginia, a centrist Democrat, said his colleagues should "put partisan politics aside and allow the vetting process to proceed."

Republicans hold a 52-48 advantage in the Senate, meaning they must attract eight Democratic votes to overcome a potential filibuster.

Judge Gorsuch would join a court that has moved at a slow speed since the death of Justice Scalia, a man Judge Gorsuch described Tuesday evening as a "lion of the law."

The high court deadlocked on some notable cases last term, including on immigration and union dues, and reached narrow rulings in others.

Bigger cases are looming, including a case about a Virginia transgender



student who said his school discriminated against him by prohibiting him from using the bathroom of his choice. In the potential case pipeline are major election-law disputes as well as litigation over the constitutionality of the Consumer Financial Protection Bureau.

With the early batch of executive orders by Mr. Trump, it also is possible that litigation over those matters could arrive at the high court in short order.

The pick of the next Supreme Court nominee was a central issue in Mr. Trump's campaign. At one campaign stop after another, he criticized Chief Justice John Roberts—a George W. Bush appointee who was the key vote in upholding the Affordable Care Act—as an “absolute disaster” and vowed to find appoint an antiabortion justice who also would protect access to firearms.

He also took the unusual approach of promising to conduct a litmus test

for his eventual choice on a range of issues.

In May, he published a list of potential nominees, which he updated again in September. The list was the result of a March meeting Mr. Trump had in Washington, at the law offices of Jones Day, with Republican lawmakers, lobbyists and policy writers, according to John Malcolm, director of the Heritage Foundation's Edwin Meese III Center for Legal and Judicial Studies.

The list helped keep Republicans from abandoning his campaign and helped coalesce evangelical support, said former Sen. Rick Santorum.

“It was hugely important to the evangelical community,” Mr. Santorum said in an interview. “Whenever I talked to socially conservative groups, all they wanted to talk about was the fact that he had this list, and that it was a great list.”

As the conversation during that meeting turned to the Supreme Court vacancy, Mr. Trump addressed former Republican Sen. Jim DeMint, now president of the Heritage Foundation, and asked if he would assemble a list of potential justices. Mr. DeMint, who was at the White House Tuesday for Mr. Trump's announcement, published a list assembled by his group, as did the Federalist Society, Mr. Malcolm said.

Mr. Trump's campaign advisers—including Mr. McGahn—chose their favorites from each.

“There were a lot of Republicans skeptical of who Donald Trump would pick, and the list did a lot to calm their nerves,” Mr. Malcolm said.

Mr. Trump met with Republican and Democratic leaders about his choices, and he conferred with outside figures, including Mr. Santorum and conservative commentators such as Laura Ingraham and Andrew Napolitano, a

person familiar with the process said. He has sought advice from his sister, Judge Maryanne Trump Barry of the Third U.S. Circuit Court of Appeals in Philadelphia, Mr. Santorum said.

Mr. McGahn, along with senior advisers, culled the list again this month to a handful of federal appellate judges, including four of whom he interviewed personally, said people familiar with the planning.

Judge Gorsuch, who met with Mr. Trump at Trump Tower on Jan. 14, was told about the decision on Monday in a phone call with the president, said Sean Spicer, the White House press secretary.

A team from the White House counsel's office was dispatched to escort Judge Gorsuch on a military jet from Colorado to Washington later that day, and he stayed overnight with an acquaintance in Virginia.

## **The New York Times** Editorial : Neil Gorsuch, the Nominee for a Stolen Seat

It's been almost a year since Senate Republicans took an empty Supreme Court seat hostage, discarding a constitutional duty that both parties have honored throughout American history and hobbling an entire branch of government for partisan gain.

President Trump had a great opportunity to repair some of that damage by nominating a moderate candidate for the vacancy, which was created when Justice Antonin Scalia died last February. Instead, he chose Neil Gorsuch, a very conservative judge from the federal Court of Appeals for the 10th Circuit whose jurisprudence and writing style are often compared to those of Justice Scalia.

If Judge Gorsuch is confirmed, the court will once again have a majority of justices appointed by Republican presidents, as it has for nearly half a century. For starters, that spells big trouble for public-sector labor unions, environmental regulations and women's access to contraception. If Trump gets the chance to name another justice, the consequences could be much more dire.

In normal times, Judge Gorsuch — a widely respected and, at 49, relatively young judge with a reliably conservative voting record — would be an obvious choice for a Republican president.

These are not normal times.

The seat Judge Gorsuch hopes to sit in should have been filled, months ago, by Merrick Garland, the chief judge of the Court of Appeals for the District of Columbia Circuit, whom President Barack Obama nominated to the court last March. Judge Garland, a former federal prosecutor and 20-year veteran of the nation's most important federal appeals court, is both more moderate and more qualified than Judge Gorsuch.

That meant nothing to Senate Republicans, who abused their power as the majority party and, within hours of Justice Scalia's death, shut down the confirmation process for the remainder of Mr. Obama's presidency. There would be no negotiations to release this hostage; the sole object was to hold on to the court's conservative majority. The outrageousness of the ploy was matched only by the unlikelihood that it would succeed — until, to virtually everyone's shock, it did.

The destructive lesson Senate Republicans taught is that obstruction pays off. Yet they seem to have short memories. After Senate Democrats refused to attend votes on two of Mr. Trump's cabinet picks on Tuesday, Senator Pat Toomey of Pennsylvania said, “We did not inflict this kind of obstructionism on President Obama.” Even absent such dishonesty, any Democratic impulse to mimic the Republican blockade by filibustering Judge Gorsuch would be understandable. But

Senate Democrats should be wary of stooping to the Republicans' level, especially because any such effort is likely to prove futile, since Republicans have the votes to simply eliminate the use of the filibuster against Supreme Court nominees. The hearings should, however, present Democrats with an opportunity to probe Judge Gorsuch's views.

So what might a Justice Gorsuch mean for the court? Like Justice Scalia, he is an originalist, meaning he interprets the Constitution's language to mean what it was understood to mean when it was written — an approach that has led both men to consistently conservative results.

Judge Gorsuch's similarities to Justice Scalia extend into several areas of the law. Since his appointment in 2006, by President George W. Bush, he has voted consistently in favor of religious-liberty claims, such as requests for exemptions for private companies and religious nonprofits that oppose the Affordable Care Act's contraceptive mandate.

He is even more conservative than Justice Scalia in at least one area — calling for an end to the deference courts traditionally show to administrative agencies, like the Environmental Protection Agency, that are charged with implementing complex and important federal laws.

Given the events of recent days, senators should press Judge Gorsuch on how he would approach

constitutional questions that have already arisen out of Mr. Trump's actions as president, like his order barring refugees and immigrants from seven Muslim-majority countries, or his alleged violation of the Emoluments Clause of the Constitution.

While Judge Gorsuch's views on abortion are not known, he has written extensively about assisted suicide and euthanasia. In his book on the topic, he wrote that “human life is fundamentally and inherently valuable, and that the intentional taking of human life by private persons is always wrong.” By himself, Judge Gorsuch would not upset the court's balance on abortion rights or affirmative action, but if one of the more liberal justices or Justice Anthony Kennedy step down during Mr. Trump's presidency, a solidly right-wing majority could quickly overturn those precedents.

Supreme Court nominations are among the most important decisions a president makes, and certainly the most enduring: A nominee like Judge Gorsuch could sit on the court for more than three decades. At a rally last summer Mr. Trump said: “Even if you can't stand Donald Trump, you think Donald Trump is the worst, you're going to vote for me. You know why? Justices of the Supreme Court.” That may have played well on the campaign trail, but Mr. Trump's failure to choose a more moderate candidate is the latest example of his refusal to acknowledge his

historic unpopularity and his nearly three-million-vote loss to Hillary

Clinton. A wiser president faced with such circumstances would

govern with humility and a respect for the views of all Americans.

## NATIONAL REVIEW ONLINE

# Whelan : Gorsuch: Justice Scalia's Supreme Successor

On the Saturday afternoon last February when he received word of Justice Scalia's death, Neil M. Gorsuch "immediately lost [his] breath" and "couldn't see . . . for the tears."

In his grief over the death of a justice he deeply admired and emulated, Judge Gorsuch could hardly have imagined the series of events that would lead to his being selected today to fill the Scalia vacancy. And while he has rightly recognized that no one could ever replace Justice Scalia, there are strong reasons to expect Justice Gorsuch to be an eminently worthy successor to the great justice.

Gorsuch is a brilliant jurist and dedicated originalist and textualist. He thinks through issues deeply. He writes with clarity, force, and verve. And his many talents promise to give him an outsized influence on future generations of lawyers.

Gorsuch's judicial outlook is reflected in his beautiful speech (text and video) celebrating — and embracing — Justice Scalia's traditional understanding of the judicial role and his originalist methodology:

Perhaps the great project of Justice Scalia's career was to remind us of the differences between judges and legislators. To remind us that legislators may appeal to their own moral convictions and to claims about social utility to reshape the law as they think it should be in the future. But that judges should do none of these things in a democratic society. That judges should instead strive (if humanly and so imperfectly) to apply the law as it is, focusing backward, not forward, and looking to text, structure, and history to decide what a reasonable reader at the time of the events in question would have understood the law to be—not to decide cases based on their own moral convictions or the policy consequences they believe might serve society best.

In that speech, Gorsuch acknowledges that Justice Scalia's project had its critics, from the secular moralist Ronald Dworkin to the pragmatist Richard Posner. He explains why he rejects those critics and instead sides with Justice Scalia in believing that "an assiduous focus on text, structure, and history is essential to the proper exercise of the judicial function." The Constitution itself carefully separates the legislative and judicial

powers. Whereas the legislative power is the "power to prescribe new rules of general applicability for the future," the judicial power is a "means for resolving disputes about what existing law is and how it applies to discrete cases and controversies." This separation of powers is "among the most important liberty-protecting devices of the constitutional design." Among other things, if judges were to act as legislators by imposing their preferences as constitutional dictates, "how hard it would be to revise this so-easily-made judicial legislation to account for changes in the world or to fix mistakes." Indeed, the "very idea of self-government would seem to wither to the point of pointlessness."

'American liberals have become addicted to the courtroom, relying on judges and lawyers rather than elected leaders and the ballot box.' — Neil Gorsuch

As Gorsuch put it (in *Cordova v. City of Albuquerque*), the Constitution "isn't some inkblot on which litigants may project their hopes and dreams . . . , but a carefully drafted text judges are charged with applying according to its original public meaning" (emphasis added). In his one foray as a National Review Online contributor, in 2005 (before he took the bench), Gorsuch lamented that "American liberals have become addicted to the courtroom, relying on judges and lawyers rather than elected leaders and the ballot box, as the primary means of effecting their social agenda on everything from gay marriage to assisted suicide to the use of vouchers for private-school education."

### Gorsuch's Judicial Record, in Brief

At 49 years of age, Gorsuch has already served for more than a decade on the U.S. Court of Appeals for the Tenth Circuit, which reviews decisions of the federal district courts in the states of Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming. His judicial record (which I am detailing more extensively in a series of posts on NRO's Bench Memos blog) is remarkably impressive.

On issues of religious liberty, Gorsuch has an especially strong record. In 2013, he determined that Hobby Lobby was entitled under the federal Religious Freedom

Restoration Act to relief from the HHS Obamacare mandate that would have required it to provide its employees insurance coverage for abortifacient drugs and devices. (By a 5–4 vote, the Supreme Court ruled in favor of Hobby Lobby in 2014.) In 2015, he objected vigorously to a Tenth Circuit ruling that held that the massive fines that the Obama administration threatened to impose on the Little Sisters of the Poor for refusing to facilitate insurance coverage for contraceptives and abortifacients did not seriously implicate their religious liberty. (In 2016, the Supreme Court sent the case back to the Tenth Circuit to enable the government to work out a more sensible approach.)

Gorsuch has also fought against a hyper-expansive reading of the establishment clause that would exclude religion from the public square. In 2009 (in *Green v. Haskell County Board of Commissioners*), he disputed a panel decision that ruled that a county's Ten Commandments display was unconstitutional. He memorably complained that the panel's hypothetical "reasonable observer" — whose imagined perceptions dictate what does and does not violate the establishment clause — was not "someone who got things right" but was instead "an admittedly unreasonable" observer who "just gets things wrong" "because, the panel tells us, our observer is from a small town, where such errors cannot be helped." In another case (*American Atheists, Inc. v. Davenport*), he disagreed with a panel ruling that Utah violated the establishment clause when it allowed the private Utah Highway Patrol Association to memorialize troopers killed in the line of duty by erecting large white crosses on public property near the locations of their deaths. The Tenth Circuit's "reasonable observer," in his view, "continues to be biased, replete with foibles, and prone to mistake" (as well as "a bit of a hot-rodger").

Gorsuch has earned special acclaim for his insights on administrative law and separation of powers. In an opinion last August (*Gutierrez-Brizuela v. Lynch*), he argued that the Supreme Court's precedents on deference to reasonable agency interpretations of law "permit executive bureaucracies to swallow huge amounts of core judicial and legislative power and concentrate federal power in a way that seems more than a little difficult to square

with the Constitution of the framers' design." He called for the Supreme Court to reconsider whether the so-called *Chevron* doctrine of deference is sound. In another recent opinion (*United States v. Nichols*), he said that Congress had gone too far in delegating power to an agency to decide what conduct is criminal: For Congress to "effectively pass off to the prosecutor the job of defining the very crime he is responsible for enforcing" is "by any plausible measure . . . a delegation run riot, a result inimical to the people's liberty and our constitutional design."

Gorsuch dissented strenuously when the Tenth Circuit refused to reconsider a panel ruling in favor of Planned Parenthood's Utah affiliate.

Gorsuch has had only one case involving the matter of abortion (*Planned Parenthood of Utah v. Herbert*). Last October, he dissented strenuously when the Tenth Circuit refused to reconsider a panel ruling in favor of Planned Parenthood's Utah affiliate. The panel had granted Planned Parenthood a preliminary injunction against the Utah governor's directive to state agencies to stop acting as intermediaries for federal funds flowing to Planned Parenthood. Gorsuch faulted the panel for failing to accord the appropriate degree of deference to the district court's factual findings and for making its own bizarre inferences about the governor's reasons for acting.

In a case involving a firearms conviction (*United States v. Games-Perez*), Gorsuch protested that "people sit in prison because our circuit's case law allows the government to put them there without proving a statutorily specified element of the charged crime." In support of his interpretation of the statute, Gorsuch invoked, quoting Justice Thomas, the "long tradition of widespread lawful gun ownership by private individuals in this country" and the Supreme Court's recognition that the Second Amendment "protects an individual's right to own firearms and may not be infringed lightly."

On criminal law and procedure, Gorsuch has a strong and balanced record. He has protected the privacy rights of Americans while respecting the proper powers of the police. Reversing a lower court, he concluded that when law-

enforcement officers open and examine private e-mails, they are engaging in a search governed by the Fourth Amendment. He has argued, in dissent, that a homeowner who posted No Trespassing signs all over her property didn't consent to police entering her property and knocking on her front door. But he has also explained that the Fourth Amendment must be applied in a manner that "takes a realistic view of human capacities and limitations."

Gorsuch has complained that the overcriminalization of "so many facets of daily life [means] that prosecutors can almost choose their targets with impunity." He has insisted that laws and regulations provide clear notice of what is prohibited, and he has prevented police officers from being held personally liable for conduct that wasn't clearly unlawful.

### Rocky Mountain Roots

Neil Gorsuch combines an appealing Rocky Mountain profile

**THE WALL  
STREET  
JOURNAL**

M. Grossman

Jan. 31, 2017 8:31 p.m. ET

Judge Neil Gorsuch, President Trump's nominee to succeed Justice Antonin Scalia, is a native Coloradan and avid outdoorsman. He clerked for a federal appellate judge and two Supreme Court justices and spent a decade practicing law before his appointment in 2006, at age 39, to the 10th U.S. Circuit Court of Appeals. In the decade since, he has written some 850 opinions.

The way to take a judge's measure is to read his opinions, and so we set out to review Judge Gorsuch's. It was not an arduous task, for his prose is unusually engaging—think Scalia, with none of the abrasiveness. Justice Elena Kagan has declared herself a fan of his writing style. The only difficulty in summarizing Judge Gorsuch's output is the compulsion to quote, at length, from so many of his opinions.

One opens this way: "Haunted houses may be full of ghosts, goblins, and guillotines, but it's their more prosaic features that pose the real danger. Tyler Hodges found that out when an evening shift working the ticket booth ended with him plummeting down an elevator shaft." The case, by the way, was a prosaic dispute between insurers.

with a stellar personal history. He has deep roots in his hometown of Denver and absorbed his work ethic from his family. One of his grandfathers worked his way through law school with a job as a streetcar conductor in Denver. The other grew up in an Irish tenement in Denver and, at the age of eight, began working to support his family as a porter at a train station. Both of his parents were lawyers in Denver. His mother, Anne Gorsuch Burford, was one of the first women to work as a prosecutor in Denver, was twice elected to the Colorado legislature, and was President Reagan's first head of the EPA.

In his youth, Gorsuch worked a variety of everyday jobs: shoveling snow, moving furniture, working the front desk at a Howard Johnson's hotel.

In his youth, Gorsuch worked a variety of everyday jobs: shoveling snow, moving furniture, working the front desk at a Howard Johnson's hotel. He also developed a lifelong love of the outdoors.

## Rivkin Jr. and Grossman: What Kind of a Judge Is Gorsuch?

David B. Rivkin Jr. and Andrew

Another opinion starts: "What began as a fight at a strip club finds its way here as a clash over hearsay."

Judge Gorsuch shows a concern for the people whose disputes are before the court. Each opinion typically begins with the name of the person seeking relief and why. A recent example: "After a bale of hay hit and injured Miriam White while she was operating her tractor, she sued the manufacturer, Deere & Company." Ms. White's appeal was summarily denied, but even the brief, three-page opinion reflects a serious engagement with her arguments and the facts—in contrast with the boilerplate language judges often use in such decisions. Win or lose, parties appearing before Judge Gorsuch surely know that they have been treated with fairness, consideration and respect.

These are not stylistic flourishes, but central to how Judge Gorsuch views the judicial role. "In our legal order," he has written, "judges distinguish themselves from politicians by the oath they take to apply the law as it is, not to reshape the law as they wish it to be." When a judge understands that he has no authority to legislate from the bench, cases that might otherwise be hard become straightforward exercises in applying law to facts.

Thus, Judge Gorsuch could recognize the "tragic circumstances" of a family whose daughter had died

Gorsuch has a distinguished academic pedigree, with an undergraduate degree from Columbia, a J.D. from Harvard law school (in the same 1991 class as Barack Obama), and a doctorate (as a Marshall Scholar) from Oxford. In his courageous book *The Future of Assisted Suicide and Euthanasia*, he propounds the principles that "human life is fundamentally and inherently valuable, and that the intentional taking of human life by private persons is always wrong."

After law school, Gorsuch was hired as a law clerk by D.C. Circuit judge David Sentelle and then by Supreme Court justice, and Colorado legend, Byron R. White. Because Justice White retired shortly before Gorsuch's clerkship began, Gorsuch, in addition to assisting White, doubled as a clerk for Justice Anthony M. Kennedy.

After his clerkships, Gorsuch joined a D.C. law firm, where he quickly became a partner and litigated for a decade. In 2005, he left private practice to serve as deputy

associate attorney general in the U.S. Department of Justice.

With the support of both Colorado senators—including Democrat Ken Salazar—President Bush nominated Gorsuch to a Tenth Circuit judgeship in 2006. The American Bar Association judicial-selection panel unanimously gave Gorsuch its highest rating of well-qualified. The Senate confirmed him unanimously, by voice vote, barely two months after his nomination.

Judge Gorsuch's path to confirmation—this time to become Justice Gorsuch and a fit successor to Justice Scalia—should again be smooth and swift.

— Ed Whelan, president of the *Ethics and Public Policy Center*, is a former law clerk to Justice Scalia. He is a regular contributor to National Review Online's *Bench Memos*, where he will be blogging extensively about the Gorsuch nomination.

in a rafting accident, while still holding that the liability release she had signed was legally binding. That Colorado allows people to assume such risks, he explained, was a choice for the state's General Assembly, not the court.

In a similar dissent, Judge Gorsuch argued for allowing a seventh-grader who was arrested for horseplay in gym class to sue the police officers, reasoning that no New Mexico statute authorized the arrest. And he has vigorously enforced rights of religious exercise under statutes like the Religious Freedom Restoration Act, deferring to Congress's decision to vindicate, as he put it, "this nation's long-held aspiration to serve as a refuge of religious tolerance."

Judge Gorsuch is among the judiciary's most consistent and adept practitioners of textualism, the approach Scalia championed. In a memorial lecture last year, Judge Gorsuch said that "an assiduous focus on text, structure, and history is essential to the proper exercise of the judicial function." Textualism, he added, serves to "confine the range of possible outcomes and provide a remarkably stable and predictable set of rules people are able to follow." On the other hand, attempting to divine legislative intent, as he wrote in one opinion, is a "notoriously doubtful business." Another opinion decried the judicial "conjuring" that substitutes the

court's view of optimal policy for Congress's.

In an influential 2015 decision, Judge Gorsuch excavated the meaning of a law increasing penalties on anyone who "uses" a gun "during and in relation to" a drug offense. He carefully employed "plain old grade school grammar"—including a sentence diagram.

Judge Gorsuch's textualism extends to the Constitution, quite emphatically: "That document," he wrote, "isn't some inkblot on which litigants may project their hopes and dreams for a new and perfected tort law, but a carefully drafted text judges are charged with applying according to its original public meaning." Looking to the "original public meaning" of the Fourth Amendment, for example, Judge Gorsuch has rejected the government's view that a search warrant could be applied across jurisdictional lines. He also disputed its claim that police officers may ignore "No Trespassing" signs to invade a homeowner's property without a warrant.

What about the Constitution's separation of powers, intended to safeguard liberty? Judge Gorsuch has been at the vanguard of applying originalism to the questions raised by today's Leviathan state, which is increasingly controlled by unaccountable executive agencies. These questions loom large after



the rash of executive actions by President Obama, and now the whiplash reversals by the Trump administration.

The deference that judges now must give to agencies' interpretations of the law, he wrote

**THE WALL  
STREET  
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ET 164 COMMENTS

No one can replace Antonin Scalia on the Supreme Court, but President Trump has made an excellent attempt by nominating appellate Judge Neil Gorsuch as the ninth Justice. The polarized politics of the Court guarantees a confirmation fight, but based on his record the 49-year-old judge is a distinguished choice who will adhere to the original meaning of the Constitution.

Judge Gorsuch is a leading light on the Tenth Circuit Court of Appeals, where he was appointed in 2006 by George W. Bush. He is well known in legal circles for his sharp prose, as well as for his arguments for religious liberty and his skepticism toward judicial doctrines that give too much power to the administrative state. He is also noted for a Scalia-like approach to criminal law that takes a dim view of vague statutes that can entrap the innocent.

This paper trail is important, especially given Mr. Trump's relatively recent embrace of conservative judicial principles. Every recent Republican President has disappointed supporters with at least one of his Supreme Court picks. Sandra Day O'Connor and Anthony Kennedy drifted left over the years as they were feted by Washington elites, while David Souter was a disaster from the start.

in an opinion last year, permits the executive "to swallow huge amounts of core judicial and legislative power and concentrate federal power in a way that seems more than a little difficult to square with the Constitution of the framers' design."

Judge Gorsuch added: "Maybe the time has come to face the behemoth." His addition to the Supreme Court would give the justices a better chance than ever to do precisely that.

Messrs. Rivkin and Grossman practice appellate and constitutional law with Baker & Hostetler in Washington.

## Editorial : Neil Gorsuch Is a Supreme Court Pick

Updated Feb. 1, 2017 8:25 a.m.

Judge Gorsuch's judicial record makes such a transformation on the High Court unlikely. When the Tenth Circuit heard *Hobby Lobby v. Sebelius*, a case that eventually went to the Supreme Court, Judge Gorsuch wrote a powerful concurrence supporting religious freedom and the right of a company to opt out of ObamaCare's contraception mandate based on conscience. While the religious convictions at issue may be contestable or unpopular, Judge Gorsuch wrote, "no one disputes that they are sincerely held religious beliefs."

Once such sincere beliefs are demonstrated, he added, we know the Religious Freedom Restoration Act applies. "The Act doesn't just apply to protect popular religious beliefs: it does perhaps its most important work in protecting unpopular religious beliefs, vindicating this nation's long-held aspiration to serve as a refuge of religious tolerance."

This defense of a core First Amendment right is especially important today when so many progressives want to subjugate religious practice to the will of the state.

Judge Gorsuch has also shown skepticism toward the judicial doctrine known as "Chevron deference" that encourages the courts to defer to an administrative agency's rule-making. In *Gutierrez-Brizuela v. Lynch* in 2016, he wrote in a concurrence that requiring

courts to defer to executive agencies "seems no less than a judge-made doctrine for the abdication of the judicial duty."

He added that "Chevron invests the power to decide the meaning of the law, and to do so with legislative policy goals in mind, in the very entity charged with enforcing the law." This judicial logic also has current relevance because the Obama Administration routinely invoked the Chevron doctrine to defend any regulation, no matter how distant from the text of the statute being interpreted.

Judge Gorsuch has also displayed a crisp approach to cases attempting to discover ill-defined constitutional rights. In a concurrence in 2016's *Cordova v. City of Albuquerque*, he took issue with a plaintiff's vague argument that he was the subject of a malicious prosecution. "Ours is the job of interpreting the Constitution," he wrote. "And that document isn't some inkblot on which litigants may project their hopes and dreams for a new and perfected tort law, but a carefully drafted text judges are charged with applying according to its original public meaning."

At a 2016 speech to honor Justice Scalia's legacy at Case Western Reserve Law School, Judge Gorsuch noted that "an assiduous focus on text, structure, and history is essential to the proper exercise of the judicial function." While the Founders debated a role for the judiciary that would have given

them some quasi-legislative powers, he said, they instead "quite deliberately chose one that carefully separated them."

Mr. Trump nominated Judge Gorsuch from the list of 21 potential nominees he released during the campaign, and his choice will be popular among GOP voters of all stripes. The nomination is also a chance for the White House to rebound from some of its early blunders. But it will also be an acute and painful reminder for Democrats of the price of Hillary Clinton's defeat.

As qualified as he is, Judge Gorsuch ought to be confirmed at least as easily as President Obama's appointees Elena Kagan and Sonia Sotomayor. But Democrats won't forgive Republicans for declining to vote on Mr. Obama's nomination of Merrick Garland last year, though Democrats would have done the same to a GOP nominee in the last year of a presidential term.

Republicans have a 52-seat Senate majority, and without some revelation the presumption will be to confirm Judge Gorsuch. Democrats could attempt a filibuster, but then the GOP will have to be prepared to break it. Mr. Trump won in major part because he promised to appoint judges in Justice Scalia's mold, and in Neil Gorsuch it appears he has.

**the Atlantic**

## Trump's Supreme Court Nominee: Neil Gorsuch

Matt Ford

Updated at 8:50 p.m. ET

President Trump nominated Neil Gorsuch to fill the 11-month-old vacancy on the U.S. Supreme Court on Tuesday night, fulfilling his campaign promise to appoint a staunch conservative justice to replace Antonin Scalia.

In a primetime ceremony at the White House, Trump praised Gorsuch as among the finest jurists in the country and a worthy successor to the conservative icon he would replace.

"Judge Gorsuch has outstanding legal skills, a brilliant mind,

tremendous discipline, and has earned bipartisan support," Trump said. "When he was nominated to the Tenth Circuit Court of Appeals, he was confirmed by the Senate unanimously."

Gorsuch, a 49-year-old federal appellate judge based in Colorado, currently sits on the Tenth Circuit Court of Appeals. Born in Denver, Colorado, he would be one of the few justices hailing from west of the Mississippi, adding some geographic diversity to a court where most of the justices hail from the Northeast. Gorsuch spent his teenage years living in Washington, D.C., when President Ronald Reagan appointed his mother, Anne

Gorsuch Buford, to lead the Environmental Protection Agency.

His legal career reflects a rapid ascent to the upper echelons of the American judicial system. After graduating from Harvard Law School in 1991, Gorsuch clerked first for Judge David Sentelle, a longtime member of the D.C. Circuit Court of Appeals' conservative wing, followed by Justices Byron White and Anthony Kennedy on the U.S. Supreme Court. He then spent 10 years in private practice at a high-profile Washington law firm, followed by a year serving as a principal assistant to the deputy attorney general in the Department of Justice. President George W.

Bush appointed Gorsuch to the Tenth Circuit in 2006.

Speaking briefly after Trump's announcement, with his wife at his side, Gorsuch expressed gratitude for the nomination and extolled those who held his seat before him, including his immediate predecessor.

"The towering judges that have served in this particular seat of the Supreme Court, including Antonin Scalia and Robert Jackson, are much in my mind at this moment," he said. "Justice Scalia was a lion of the law. Agree or disagree with him, all of his colleagues on the bench share his wisdom and his humor, and like them, I miss him."



Trump's choice of Gorsuch in particular will likely hearten conservative activists and Republican members of Congress alike.

With this nomination, Trump has met his campaign pledge to nominate a conservative jurist "in the mold of" Scalia, who died in February. Scalia's death propelled the Court's future to the forefront of the American political arena during the 2016 presidential election, especially on the right. A justice nominated either by then-President Barack Obama or Hillary Clinton would have likely given the Court's liberal wing its first five-justice majority since the Warren Court of the 1960s.

To prevent such an ideological shift, Senate Majority Leader Mitch McConnell, a Republican from Kentucky, vowed to keep Scalia's seat vacant until after the presidential election. Senate Republicans accordingly refused to hold hearings for D.C. Circuit Chief Judge Merrick Garland, Obama's nominee for the vacancy.

Trump's choice of Gorsuch in particular will likely hearten conservative activists and Republican members of Congress alike. He was among the 11 judges named on the second of two lists Trump released to assuage fears among the conservative legal community about his commitment to appoint a Supreme Court justice in their ideological mold. As my colleague David Graham noted earlier this week, nominating a reliably conservative jurist like Gorsuch could also shore up Trump's support among conservatives after a rocky opening week to his presidency.

Gorsuch's history on the bench is unlikely to disappoint them. On the Tenth Circuit, he carved out a reputation for relying upon an originalist interpretation of the Constitution—that it should be read from the perspective of those who first wrote it—when deciding cases. In the *Hobby Lobby* and *Little Sisters of the Poor* cases, which challenged the Affordable Care Act's contraceptive mandate on religious-liberty grounds and were eventually heard by the Supreme

Court, Gorsuch sided strongly with the plaintiffs.

"The opinion of the panel majority is clearly and gravely wrong—on an issue that has little to do with contraception and a great deal to do with religious liberty," he wrote in a dissent in the *Little Sisters of the Poor* case. "When a law demands that a person do something the person considers sinful, and the penalty for refusal is a large financial penalty, then the law imposes a substantial burden on that person's free exercise of religion."

Unlike Scalia, Gorsuch is also a critic of *Chevron* deference, a legal principle under which judges generally defer to administrative agencies when interpreting federal statutes. And while he has never decided a case on abortion, he wrote in a book considering the morality of euthanasia and assisted suicide that "human life is fundamentally and inherently valuable, and that the intentional taking of human life by private persons is always wrong."

Many Democrats, still smarting over Senate Republicans' unprecedented stonewalling against Garland last year, are expected to put up a strong resistance to Gorsuch's nomination. Their most potent weapon to resist will be the filibuster. Senate Democrats eliminated it for all executive branch and judicial nominees when they controlled the Senate in 2013, but left it intact for Supreme Court nominations.

In a statement, Senate Minority Leader Chuck Schumer, a Democrat from New York, said he had "very serious doubts" about whether Gorsuch fell within the legal mainstream and could protect the Constitution from potential abuses of power by the executive branch.

"Make no mistake, Senate Democrats will not simply allow but require an exhaustive, robust, and comprehensive debate on Judge Gorsuch's fitness to be a Supreme Court Justice," Schumer said.



## Trump Lowers the Dignity of the Supreme Court

Stephen L. Carter

I admit it. I am a sucker for dignity. I am a fan of the quiet and the thoughtful and the somber, not the loud and the raucous and the attention-grabbing. That's probably why I don't like the celebrity culture or made-for-television politics. And why I am appalled at the idea of turning the selection of a U.S. Supreme Court justice into a game show.

Let me be clear. I have nothing against Judge Neil Gorsuch, President Donald Trump's nominee to fill the vacancy left by the death of Antonin Scalia. And I say this having written last year in support of Judge Merrick Garland, on whose nomination the Senate shamefully refused to act.

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But having said that, I think the idea of calling two potential nominees to the White House in order to parade one of them before the cameras is undignified. It's beneath the dignity of the presidency, and it is absolutely beneath the dignity of the judicial branch. There is no need for the suspense. There is no need for the drama. Pick someone, invite that person to Washington, and if it leaks it leaks.

The Supreme Court holds an almost mystical place in American political iconography. If it is no longer our secretive constitutional Olympus, the court at its best nevertheless operates at a certain distance and even diffidence from the rest of the government. In the 1830s, toward the end of his tenure as chief justice, the great John Marshall worried that the rise of Jacksonian democracy, with its more powerful and activist presidency, would be a bad thing for the court. He was referring to the question of whether a powerful president might defy the justices' edicts. But a president can also harm the institution by stripping it of the dignity that in turn engenders public respect. Tuesday night's bizarre ceremony, with its implicit designation of a "winning" and a "losing" candidate for the nomination, presents exactly that danger.

To be sure, there is much that is undignified about how we talk and think about the Supreme Court these days. Let's begin with the deathwatch, about which I have written before. I refer to the way partisans chart out at the beginning of each new presidency how long the justices whose votes they like and the justices whose votes they hate are "likely to serve." This is intended as a tactful way of discussing how long they are likely to live. Actually it is tactless, and at times mean-spirited. There's often an eagerness behind it: "We need

to win the next time around because there will probably be two vacancies." That sort of thing. It's as though partisans are actually rooting for a strategic distribution of deaths: during one of our presidencies, not one of theirs.

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But the lack of dignity in the deathwatch hasn't a patch on the lack of dignity in the confirmation hearings. Actually it is almost impossible to have dignified hearings. Interest groups on both sides are too powerful, and the lure of the soundbite is too strong. We all hate the showboating of the modern confirmation process, where groups raise money and senators raise their profiles through vicious attacks on the nominees. But the showboating is integral to the process. I have argued for three decades that requiring nominees to testify is wrongheaded and even embarrassing. Nothing in recent history suggests otherwise.

Think about the process. Senators ask the nominee questions they know that no one preparing for service on the Supreme Court can answer. They ask for promises, under oath, that the nominee will vote a particular way on particular cases. Nominees who refuse to play (as pretty much all of them do) are accused of being evasive. But it is the senators, not the nominees, who are out of line.

As I said: undignified.

Actually, testimony by the nominee did not become a regular part of the confirmation process until the 1950s. At that time the Senate was largely run by segregationist Southern Democrats. Furious about *Brown v. Board of Education*, they decided to require all future nominees to appear before the Judiciary Committee, because they wanted to press the potential justices on their views about school integration. In effect, the Dixiecrats sought promises that the nominees would vote to overturn *Brown*.

When the segregationists began this nonsense, liberals were outraged. They argued, correctly, that inquiring about the nominee's views was a threat to the constitutional separation of powers. To their credit, liberals held to that position for over a decade -- that is, until Richard Nixon's wholesale remaking of the Supreme Court. After that they decided to muck about in the nasty swamp invented by the right. And have played in the same muck ever since.

I don't know whether the Senate will confirm Judge Gorsuch, or whether a Democratic filibuster will shoot him down. I do know that the process of confirmation has long been a mess, and that the mess has cost the Supreme Court a great deal of its dignity. Turning the

selection into a game show is not the way to make things better.



## Trump makes his pick, but it's still Kennedy's Supreme Court (UNE)

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(Peter Stevenson, Gillian Brockell/The Washington Post)

President Trump has tapped Neil Gorsuch to fill the late Antonin Scalia's seat on the Supreme Court. The Post's Robert Barnes tells you what you need to know. President Trump has tapped Neil Gorsuch to fill the late Antonin Scalia's seat on the Supreme Court. The Post's Robert Barnes tells you what you need to know. (Peter Stevenson, Gillian Brockell/The Washington Post)

President Trump has chosen his first nominee, but it remains Justice Anthony M. Kennedy's Supreme Court. The question is how much longer he wants it.

Kennedy, 80 and celebrating his 29th year on the court this month, will remain the pivotal member of the court no matter how the warfare between Republicans and Democrats plays out. On almost every big social issue, neither the court's liberal, Democratic-appointed justices nor Kennedy's fellow Republican-appointed conservative colleagues can prevail without him.

*[For conservatives, a year of letdown at the Supreme Court]*

That is why an undercurrent of Trump's first choice for the court was whether it would soothe Kennedy, making him feel secure enough to retire and let this president choose the person who would succeed him.

President Trump has chosen Colorado appeals court judge Neil Gorsuch as his pick for the Supreme Court. President Trump has chosen Colorado appeals court judge Neil Gorsuch as his pick for the Supreme Court. (Victoria Walker/The Washington Post)

(Victoria Walker/The Washington Post)

"Justice Kennedy tries not to play politics with these

things," said one of Kennedy's former clerks, who watches the court carefully. Like others, he would not talk for attribution about his old boss. "But obviously he will feel more comfortable if the person who is picked is someone he likes and respects, just as the opposite would give him pause."

Who better, then, to put Kennedy at ease than one of his former clerks? Kennedy trekked to Denver to swear in his protege Neil Gorsuch on the appeals court 10 years ago. If Gorsuch is confirmed to the Supreme Court, it would be the first time that a justice has served with a former clerk.

Gorsuch on Tuesday evening praised the "incredibly welcoming and gracious" Kennedy, along with his other judicial mentors, the late justice Byron White and Judge David B. Sentelle of the U.S. Court of Appeals for the D.C. Circuit. "These judges brought me up in the law," he said. "Truly I would not be here without them."

Trump campaigned for office expertly on the Supreme Court, which is especially important to conservatives and evangelicals. He went so far as to say that even if voters did not like him, they had no choice but to support him because of the potential to shape the court for a generation.

Justice Ruth Bader Ginsburg is 83, and Justice Stephen G. Breyer is 78. They are two of the court's four liberals and are not likely to leave the court voluntarily while Trump is in charge.

Some say Kennedy would be reluctant to leave, too, if it meant a more conservative court that would reverse some of his landmark decisions, especially on gay rights. But others who know him suggest he is ready to go.

"I would put it at 50-50 that he leaves at the end of the term," said another former clerk. Kennedy recently hired clerks for the term that begins in October, but that is seen more as insurance than intent.

Watch Neil Gorsuch's full speech after President Trump picked the

appeals judge to fill the late Justice Antonin Scalia's Supreme Court seat. Watch Neil Gorsuch's full speech after President Trump picked the appeals judge to fill the late Justice Antonin Scalia's Supreme Court seat. (Victoria Walker/The Washington Post)

(Victoria Walker/The Washington Post)

The gentlemanly Kennedy could not be more different from the combative Trump, and so some involved in filling the current Supreme Court opening kept the justice in mind during the process.

Pleasing Kennedy is wise but not dispositive, as lawyers at the court like to say.

"I suppose he's more focused on the Trump administration as a whole," said another former clerk. "I think that will be more important to him than whether he likes this particular pick or not."

All agree that it will not be Trump's first Supreme Court pick who will seal the court's ideological direction for a generation. It will be, if it happens, his second.

Gorsuch, like almost anyone on Trump's list of 21 candidates to take Antonin Scalia's spot, is likely to replicate the late justice's voting pattern (if not his style). That would restore the court's long-held position as a generally conservative body capable of the occasional liberal surprise.

Those surprises are almost always supplied by Kennedy, nominated to the court by fellow Californian Ronald Reagan. Overall, Kennedy most often votes with the court's conservatives: He is further to the right on law-and-order issues than Scalia was, he is comfortable with the court's protective view of business, and he shared the losing view that the entire Affordable Care Act is unconstitutional.

But when the court moves left, it is because Kennedy joins its liberals — Ginsburg, Breyer, and Justices Sonia Sotomayor and Elena Kagan.

So Gorsuch's appointment would return the court to the status quo

that existed before Scalia died. After that, the court's next appointment could mean a definitive shift.

The Supreme Court without Breyer, Ginsburg or Kennedy would be a different place, indeed. They have been part of the scant majority that forbade the death penalty for minors and the intellectually disabled, and established a constitutional right for same-sex couples to marry. When environmentalists win, which is becoming increasingly rare, it is because this group has banded together.

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Just last term, Kennedy and the liberals struck down a Texas law that they said used protecting women as a pretext for making abortion unavailable, and they continued a limited endorsement of affirmative action.

Many if not all of those holdings would be at risk in a court with five consistent conservatives, the oldest being 68-year-old Justice Clarence Thomas.

Kennedy's role was especially important this past term. Before writing his opinion in the University of Texas affirmative-action case, Kennedy had never approved of a race-conscious program, although he had not been as willing as his colleagues to outlaw the use of race in such instances.

And prior to striking down the Texas abortion law, he had disapproved of only one statute on the issue — requiring a woman to inform her husband of her decision to have the procedure — among dozens the court had reviewed.

As had happened so many times before, Kennedy had the biggest impact on the most important cases. How long that continues is bigger than the current opening.



## Trump picks Colo. appeals court judge Neil Gorsuch for Supreme Court (UNE)

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President Trump nominated Colorado federal appeals court judge Neil Gorsuch for the Supreme Court on Tuesday, opting in the most important decision of his

young presidency for a highly credentialed favorite of the conservative legal establishment to fill the opening created last year by the death of Justice Antonin Scalia.

Gorsuch, 49, prevailed over the other finalist, Thomas Hardiman of Pennsylvania, also a federal appeals court judge, and Trump announced the nomination at a

televised prime-time event at the White House.

The bonhomie of the ceremony was in stark contrast to the reaction of Democrats, who are ready for a pitched battle over the future of the Supreme Court. Senate Minority Leader Charles E. Schumer (D-N.Y.) said Gorsuch will have to win over some Democratic senators to get the 60 votes needed to clear procedural hurdles.

Trump broke tradition by entering the White House ceremony by himself, rather than alongside his nominee. He declared that after "what may be the most transparent judicial selection process in history," he had delivered on a campaign promise to "find the very best judge in America" for the court.

Gorsuch took a humbler approach, and showed the flair for language that has won him praise as a legal writer.

The path ahead for Neil Gorsuch, Trump's Supreme Court nominee

"Standing here in a house of history, and acutely aware of my own imperfections, I pledge that if I am confirmed I will do all my powers permit to be a faithful servant of the Constitution and laws of this great country," said Gorsuch, with his wife Louise at his side.

Gorsuch pledged to be impartial and independent, and respectful of his place in government.

"It is the role of judges to apply, not alter, the work of the people's representatives," he said. "A judge who likes every outcome he reaches is very likely a bad judge."

Gorsuch's pick won extravagant praise from Republicans and conservatives, something that has been rare in the Trump administration's combustible start. The president noted that Gorsuch had been confirmed to the U.S. Court of Appeals for the 10th Circuit 10 years ago without objection.

"I can only hope that both Democrats and Republicans can come together for once for the good of the country," Trump said.

That is unlikely. Democrats and liberals are still furious that the Republican Senate did not allow a vote on former President Barack Obama's choice for the Scalia seat, Judge Merrick Garland, and vowed to contest Gorsuch.

An early sign of discontent: Trump invited senior Democratic senators to the White House for a reception to meet his Supreme Court pick, but they declined, according to senior aides.

A group of legal and civil rights groups blasted the nomination, saying Gorsuch was a tool of conservative activists who would gut protections for consumers, workers, clean air and water, safe food and medicine and roll back the rights of women and LGBT people.

Gorsuch and Hardiman, 51, emerged from a list of 21 as Trump's most likely choices. A third person on the shortlist — U.S. Appeals Court Judge William H. Pryor Jr. of Alabama — saw his chances diminish as some Senate Republican leaders have said his confirmation would be difficult.

Trump considered six and met with four, including a federal district judge from Kentucky, Amul R. Thapar.

Gorsuch got the word Monday, and the couple went to a neighbor's house in Boulder, where they were met by a team from the White House Counsel's Office. They were ferried along a country road to the airport, where they boarded a military jet to Washington.

*[Read speeches and key cases of Supreme Court nominee Neil Gorsuch]*

Gorsuch is seen as a less bombastic version of Scalia and would seem destined to be a solidly conservative vote on the ideologically split court. But friends and supporters describe Gorsuch as being more interested in persuasion than Scalia, who was just as likely to go it alone as to compromise.

Gorsuch would be the youngest Supreme Court justice since Clarence Thomas was confirmed in 1991. But Gorsuch has been on the bench for a decade, and at his 2006 investiture ceremony, friends joked that his prematurely gray hair was fitting.

"When Neil came to our firm in 1995 he had gray hair," said one of his law partners, Mark C. Hansen. "In fact, he was *born* with silver hair, as well as an inexhaustible store of Winston Churchill quotes."

Indeed, Gorsuch came equipped for the ultimate judicial elevation.

There is a family connection to Republican establishment politics, and service in the administration of George W. Bush. There is a glittery Ivy League résumé — Columbia undergrad, Harvard Law — along with a Marshall scholarship to Oxford. There is a partnership at one of Washington's top litigation law firms and a string of successful cases.

There is a Supreme Court clerkship; Gorsuch was hired by Justice Byron

White, a fellow Colorado native, who shared him with Justice Anthony M. Kennedy.

Kennedy stood by that day in Denver to administer the judicial oath, and if Gorsuch is confirmed, Kennedy would become the first justice to sit with a former clerk on the Supreme Court's mahogany bench.

But those who know Gorsuch and have studied his decade of solidly conservative opinions on the Court of Appeals say he more resembles the man he would replace — the late Justice Scalia — than the more moderate Kennedy.

Like Scalia, Gorsuch is a proponent of originalism — meaning that judges should attempt to interpret the words of the Constitution as they were understood at the time they were written — and a textualist who considers only the words of the law being reviewed, not legislators' intent or the consequences of the decision.

Critics say that those neutral considerations inevitably lead Gorsuch to conservative outcomes, a criticism that was also leveled at Scalia.

Gorsuch would like to curb the deference that courts give to federal agencies and is most noted for a strong defense of religious liberty in cases brought by private companies and religious nonprofit groups objecting to the contraceptive mandate in the Affordable Care Act.

Gorsuch said in a speech last spring that as a judge he had tried to follow Scalia's path.

"The great project of Justice Scalia's career was to remind us of the differences between judges and legislators," Gorsuch told an audience at Case Western Reserve University School of Law in Cleveland.

Legislators "may appeal to their own moral convictions and to claims about social utility to reshape the law as they think it should be in the future," Gorsuch said. But "judges should do none of these things in a democratic society." Instead, they should use "text, structure and history" to understand what the law is, "not to decide cases based on their own moral convictions or the policy consequences they believe might serve society best."

But those who know him say he lacks Scalia's combustible, combative style.

"He has very strong opinions, but he just treats people well in every context," said Melissa Hart, a University of Colorado law professor. She is a Democrat who

clerked for former Justice John Paul Stevens and knows Gorsuch because he has taught judicial ethics, legal writing and antitrust law at the school.

Gorsuch was born in Colorado and lives outside of Boulder with his wife, Louise, whom he met while at Oxford, and two daughters. The nominee is an Episcopalian, and would be the court's only Protestant. There are five Catholic and three Jewish members.

But he spent formative years in Washington and graduated from Georgetown Prep. He witnessed firsthand how difficult Washington politics can be. His mother was Anne Gorsuch Burford, a lawyer and conservative Colorado legislator who was picked by President Ronald Reagan as the first woman to head the Environmental Protection Agency. Her tenure was short and rocky: She clashed with environmentalists and was cited for contempt of Congress in 1982 for refusing to turn over subpoenaed agency documents relating to hazardous waste sites. Although she was following the legal advice of the Justice Department, Burford was forced to resign when the administration gave up the fight. She died in 2004.

After his Supreme Court clerkship, Gorsuch joined the D.C. law firm of Kellogg Huber Hansen Todd Evans & Figel, where he developed a taste for litigation and eventually became a partner. He helped secure what his former partner Hansen said was the largest antitrust award in history and won praise for his courtroom style.

Gorsuch did a short stint as a high-ranking official in the Justice Department and then was nominated to the appeals court by Bush. He sailed through on a voice vote in the full Senate and took his seat on the Denver-based court in August 2006.

Gorsuch is popular with current Supreme Court justices, and his clerks regularly are hired for a term on the high court, not just by conservatives but also by liberals such as Kagan and Justice Sonia Sotomayor.

On the appeals court, Gorsuch has not been called upon to consider two hot-button social issues that may come before the Supreme Court: same-sex marriage and abortion.

After a federal judge in Utah struck down that state's prohibition on same-sex marriage, Gorsuch was not a member of the 10th Circuit that upheld the decision. It was one of the cases that eventually led to

the Supreme Court deciding marriage was a fundamental right that could not be denied gay couples.

Likewise, Gorsuch has not ruled on abortion. But activists on both sides of the issue believe they know where he stands. They point to language in his book "The Future of Assisted Suicide and Euthanasia," in which he opines that "all human beings are intrinsically valuable and the intentional taking of human life by private persons is always wrong."

Additionally, his rulings on behalf of those who challenged the

Obamacare mandate that employee insurance coverage provide all approved contraceptives seemed instructive. He noted the provision would require the objecting businesses to "underwrite payments for drugs or devices that can have the effect of destroying a fertilized human egg."

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Gorsuch's opinions favoring the owners of the Hobby Lobby craft stores and a nonprofit religious group called Little Sisters of the Poor took the same sort of broad reading of the Religious Freedom Restoration Act as the Supreme Court's conservative majority.

In Gorsuch's words, the law "doesn't just apply to protect popular religious beliefs: it does perhaps its most important work in protecting unpopular religious beliefs, vindicating this nation's long-held aspiration to serve as a refuge of religious tolerance."

Hart, the Democratic law professor, said she resents what Republicans did on the Garland nomination but does not believe there is a "principled reason to block" Gorsuch.

"He will have a strong influence on the court because he's a very persuasive writer," she said. "That's a little scary, but it's not disqualifying."

Philip Rucker and Katie Zezima contributed.



## Trump's Supreme Court Pick Is Payoff to the Religious Right

Judge Neil Gorsuch is enthusiastically pro-life and conservative on all other issues near and dear to evangelicals who held their noses and who elected a morally flawed president.

Judge Neil Gorsuch, Donald Trump's nominee to the Supreme Court, is Trump's payoff to the Christian Right.

Gorsuch is the clearest social conservative of the SCOTUS finalists. He has written several books opposing euthanasia and assisted suicide, describing a sincere and consistent pro-life philosophy. (He later stated that those were his personal beliefs, separate from his role as a judge.) He wrote a concurrence in the Tenth Circuit *Hobby Lobby* case that was extremely favorable to the corporation. He has been likewise supportive other cases affirming wide-ranging religious exemptions to civil rights laws.

In short, Gorsuch is the dream candidate of the Christian Right—consider this love letter from the Christian Right group Alliance Defending Freedom—which, after all, is the constituency that put Trump over the top on November 8. Post-election analyses have focused on the "white working class," but it's evangelicals who held their noses, thought of the Supreme Court, and voted for Trump. Now they are being rewarded.

Democrats will undoubtedly oppose Gorsuch; in their view, he's being nominated for a seat that was President Obama's to choose and Judge Merrick Garland's to fill. But their opposition will have to be principled, not personal. There is no question that he is qualified

(Harvard, Oxford, PhD), a gifted writer, and a bit of a prodigy. Only 49 years old, he is the youngest Supreme Court nominee since Justice Thomas. And as Trump said while introducing him, Gorsuch was approved unanimously for his current position.

A detailed SCOTUSblog analysis of his record called him "the most natural successor to Justice Antonin Scalia." And on the merits, Gorsuch's record will give them plenty to talk about:

—Gorsuch has espoused a very Scalia-like "originalist" jurisprudence, writing in a tribute to Scalia that "Judges should instead strive (if humanly and so imperfectly) to apply the law as it is, focusing backward, not forward, and looking to text, structure, and history to decide what a reasonable reader at the time of the events in question would have understood the law to be—not to decide cases based on their own moral convictions or the policy consequences they believe might serve society best." That is indeed Scalia 2.0, and would lead to Scalia-like results on a wide range of cases.

—In addition to *Hobby Lobby* and similar cases, Gorsuch has written a series of First Amendment opinions that would allow far more public displays of religion than are currently constitutional under Supreme Court precedent.

—Gorsuch has an idiosyncratic view of administrative law, and would defer less to agency decisions than even Justice Scalia did. Normally, this leads to more conservative results—overturning environmental and labor regulations, for example—though with the Trump cabinet picks so opposed to their own agencies' missions, it could have the opposite

effect for the next four years. (Interestingly, Gorsuch's mother was Ann Gorsuch, the Reagan-era director of the Environmental Protection Agency who had to resign in disgrace.)

At the same time, as SCOTUSblog noted, Gorsuch is so much like Scalia that he often irritates conservatives. He would enable felons to be convicted of gun violations even if they didn't know they were committing a felony at the time, a position that has angered pro-gun conservatives. And in some cases, he has read criminal laws so strictly that defendants' convictions were overturned, a position that some "law and order" conservatives could find irksome.

But in other ways, Gorsuch is no ideologue. Indeed, in his 2007 confirmation hearings, he sounded more like Justice Anthony Kennedy than Scalia.

"I resist pigeon holes," he said at the time. "I think those are not terribly helpful, pigeon-holing someone as having this philosophy or that philosophy. They often surprise you. People do unexpected things and pigeon holes ignore gray areas in the law, of which there are a great many."

He also spoke in favor of "respecting your colleagues and trying to reach unanimity where possible... I often find that the process of getting to a single position with different minds leads to a better result." Contrast that with Justice Scalia's notoriously fiery dissents, which described his colleagues' work as "argle-bargle" "pure applesauce" and "jiggery-pokery."

There's also no question that Gorsuch is competent, ethical, and solid. If Senate Republicans hadn't just wrecked the confirmation

process, he would surely be confirmed on those bases. Instead, what's next is going to be a mess.

Despite Gorsuch's impeccable credentials, Democrats have vowed to filibuster anyone Trump nominates—just as Republicans refused to consider the impeccably credentialed Merrick Garland. It seems unlikely that Senate Majority Leader Mitch McConnell will invoke the "nuclear option" of ending the filibuster entirely, because he knows firsthand that the shoe will eventually be on the other foot.

One solution would be to strike a "grand bargain" for two Supreme Court nominees at the same time. Judge Gorsuch is basically a nicer version of Justice Scalia; he's a hard core conservative who can ably fill Scalia's shoes on the Court. But it's also been rumored that Justice Kennedy is set to retire. Perhaps Democrats and Republicans could agree to a consensus, centrist candidate to replace Justice Kennedy, and approve Gorsuch to replace Scalia.

That would be a sensible compromise. It would essentially say "the confirmation system is broken, so we will just continue with the status quo." And that might be the right result, even if it prolongs the conservative tilt of the Court for another two decades at least. Better that than dysfunction. Trump is known for the art of the deal, after all.

And as part of a package like that, Gorsuch makes a lot of sense. He is the Scalia of the next generation. He would likely enrage liberals for decades—but he'd also likely earn their respect.



So this is where we are, just under two weeks into the presidency of a man who has never had to report to a boss or a board, who likes to imagine he gives all the orders, who fires or sues those who complain:

An acting attorney general, Sally Yates, fired and accused of betrayal because she told her Justice Department subordinates not to defend President Trump's order closing the nation's borders to more than 200 million legitimate foreign travelers, because it targets Muslims.

A State Department where more than 1,000 career employees have publicly and lawfully dissented from that order, which they fear will weaken, not strengthen, the nation's defenses against would-be terrorists.

A Pentagon that thinks the order will needlessly alienate vital allies in conflict zones like Iraq where Americans and Iraqi Muslims are together resisting ISIS.

And all across the government, in the Environmental Protection Agency, the Food and Drug Administration and even the Interior Department, a universe of federal employees rattled by directives on regulations and hiring, shaken by rumors of cuts in basic science

involving energy, health and climate change, and wondering where the next edict will come from.

And of course a press secretary, Sean Spicer, with a belligerent message not just for the State Department dissenters but for any federal employee worried about Mr. Trump's rule by decree: Get with the program or get lost.

Mr. Trump's supporters thrill to see him pumping out executive orders and memorandums aimed at turning his campaign pledges into action — building a wall, killing trade deals, gutting Obamacare and barring Muslim refugees. Yet in doing so he has not only flouted traditional policy-making machinery but, in some cases, opened the way for legal challenges.

He has issued more than a dozen orders and memorandums, often without significant review by Congress or federal lawyers, and always with little regard for the agencies responsible for overseeing the outcome. None of the relevant departments and agencies — State, Homeland Security, Defense, Immigration and Customs Enforcement — were asked to weigh in on creation of the Muslim ban, which was written largely by Stephen Bannon, late of Breitbart News, and Stephen Miller, a former

aide to Senator Jeff Sessions, Mr. Trump's nominee for attorney general, whose role during the campaign was whipping up the xenophobia at rallies before Mr. Trump took the stage. Indeed, nobody in the White House thought to call most of these officials until Mr. Trump was signing the order on television.

"This gang shoots, and then they look around to see what they've hit," said a former senior government executive who's been fielding agency complaints. "There's a danger not just of unintended consequences, but of significantly dangerous consequences."

In similar fashion, the executive order inviting the Canadian company TransCanada to reapply for a permit to build the Keystone XL pipeline, which President Barack Obama had killed, came without consultation with the State Department, which worked on the issue for years. The order on dismantling Obamacare rattled congressional Republicans, who were recorded in a closed-door retreat last week arguing over the re-election perils of stripping Americans' health benefits without a replacement. An order freezing federal government hiring sought no input from federal agencies on how

such a freeze would affect services and no guidance as to whether its exemption for military personnel included veterans, who make up nearly one-third of the civilian work force.

When he isn't beating up on the press, Mr. Spicer denigrates civil servants as "career bureaucrats," and in the case of the State Department dissenters, invites them to "question whether or not they should continue" in their jobs, suggesting disloyalty to the official line. Yet what these employees are doing has an honorable history, dating back to the Vietnam War, when the "dissent channel" was established with the express purpose of encouraging unorthodox thinking. It has been used in recent years to voice disagreements over policies in Bosnia and Syria.

During Ms. Yates's Senate confirmation in 2015, Senator Sessions asked her, "If the views a president wants to execute are unlawful, should the attorney general or deputy attorney general say no?" Ms. Yates replied, "Senator, I believe the attorney general or deputy attorney general has an obligation to follow the law and the Constitution." She did that, and Mr. Trump made her pay for it.



## Steve Bannon Builds a New Node of Power in the White House

Kimberly Dozier

The former Breitbart chief

has teamed up with Jared Kushner to set up a White House 'Strategic Initiatives Group.' Will it challenge the National Security Council for influence?

There's a new center of influence that's quietly being built in the White House—and answers to two of President Donald J. Trump's most influential, most controversial advisers. Counselor to the president Steve Bannon, and Trump son-in-law Jared Kushner—arguably the top two aides to Trump—have set up a brand-new body called the Strategic Initiatives Group, an internal White House think tank that answers to them, as well as to Chief of Staff Reince Priebus, a senior administration official tells The Daily Beast.

The idea is not to make but to inform policy, helping guide a new president unfamiliar with the levers of power in Washington, D.C., and bridge the gap between the White House and industry, said the official, who spoke anonymously as a condition of describing White House deliberations.

Less charitable observers say the SIG is intended to be an alternative lodestar of power and influence to just possibly supersede the advice coming out of the traditional centers of influence like the National Security Council and the wider agencies of government.

"This is how Bannon will watch Flynn," said one person briefed on Bannon's thinking, referring to retired Lt. Gen. Michael Flynn, the national security adviser. "That's why he's made sure he'll be in every NSC meeting," the source said, referring to a controversial presidential memo Trump signed over the weekend, slightly tweaking the NSC to give Bannon a permanent seat at the table.

The source said Bannon has been frustrated with Flynn's immediate focus on counterterrorism and the campaign against the so-called Islamic State and al Qaeda to the detriment of wider issues like Brexit and the U.S. relationship with NATO.

"They're all getting along just fine," countered another close observer, chalking up tension between the teams to the standard bedding-in process as they all learn how to translate the no-holds-barred tempo

of a campaign into the strictures of policymaking and the confines of the White House.

"Bannon, Kushner, and Flynn have been working closely together for two years," added another source who was part of the Trump transition, again speaking anonymously to discuss sensitive policy discussions.

It may get crowded. Roughly 20 subject matter experts will report to the SIG, said a person familiar with the matter, who had been briefed on Bannon's goals for the body.

The senior administration official said that 75-80 percent of that manpower will be devoted to domestic issues like infrastructure, manufacturing, and cyber, and only a portion to foreign policy and national security.

There are roughly 20 politically appointed positions in the NSC, working alongside the newly re-established Homeland Security Council. (The NSC and HSC had been merged under Obama. The total staff of the two bodies has been capped at 150, with most staffers on temporary assignment from other agencies.)

The creation of the new body presents the possibility of three-way intramural wrestling for the president's ear, between Bannon's campaign-derived inner circle, Flynn's fiercely loyal and mostly military NSC, and Vice President Mike Pence's died-in-the-wool traditional GOP contingent.

Former Republican administration members—every one of them vying for a spot in the new administration—tell The Daily Beast that this alternative node of power is one possible reason for the weekend of disarray over the executive order temporarily barring refugees and travelers from seven predominantly Muslim countries. In past administrations, such orders are discussed at the National Security Council's Principals and Deputies Committee meetings, with the principals responsible for helping turn presidential orders into policy, and the deputies largely responsible for day-to-day crisis management.

"You can't have a principals and deputies process and then have this other cabinet," said a former Bush White House staffer. "Your White House staff will craft an EO (executive order) and then the agencies involved put in place

implementing instructions. They loop back around and get final blessing by the White House. There's a process. So if this SIG starts spewing policy with no way to implement it, you're going to have more and more incidents like this," the former official said.

A one-time member of the Obama administration goes a step—actually, several steps—further.

"To put it bluntly, this is truly crazy... Being a racist and misogynistic political advisor is one thing, but when that person controls domestic and national security policy, it's time to break glass because of emergency," this former senior administration official said of Bannon. "I shudder to think what is next, once Bannon's operation is fully staffed up."

Thank You!

**The  
Washington  
Post**

## Editorial : Trump goes above and beyond to break the unwritten rules of governing

After acting attorney general Sally Yates issued a memo on Jan. 30, for Justice Department lawyers not to defend President Trump's immigration order, he "relieved Ms. Yates of her duties," according to a White House statement. Dana Boente, the U.S. attorney for the Eastern District of Va., was sworn in to replace her. After acting attorney general Sally Yates ordered Justice Dept. lawyers not to defend Trump's immigration order, he "relieved Ms. Yates of her duties." (Video: Jenny Starrs/Photo: Jabin Botsford, The Post; Kevin Lamarque, Reuters/The Washington Post)

AMERICA'S HISTORY of orderly freedom reflects the strength of our Constitution and laws. Yet it also demonstrates the power of unwritten rules — norms of civility and decency — that are often hard to define but always crucial to respect, lest social trust disappear and instability spread. As Judge Learned Hand famously remarked: "Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it."

Unwritten rules lie at the heart of the conflict over

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Longtime watchers and participants in the White House policymaking process from the Bush and Obama administrations say they've never heard of such a body, but that every president has certain people close to him or her that they run everything past, as former President Barack Obama had his David Axelrod and Valerie Jarrett.

The Strategic Initiatives Group is run by assistant to the president Christopher Liddell, and includes deputy assistant to the president Sebastian Gorka, who has worked closely with Bannon while writing for Breitbart, the website he used to run.

Bannon, Gorka, and Flynn share a like-minded view on the perils of Islamic terrorism, with Gorka giving his first interview in his new role on Tuesday to The Counter-Jihad Report, a blog run by controversial activist Leslie Burt.

"We are at war with global jihadism," he said. "The fact is, we know that ISIS has declared in English, in its publications, in its videos, 'We will use the refugee streams and mass migrations to insert our jihadis into your cultures,'" he said, explaining the weekend executive order as a necessary evil to protect Americans from ISIS infiltration.

Gorka lamented that federal authorities vetting one of the San Bernardino attackers were prevented from examining her social media, which might have

tipped them off to her views on militancy.

"The federal authorities looking into her visa application couldn't look at her public Facebook pages! That was deemed an intrusion of privacy. That by itself tells you we have to review the system," he said.

In recent days, Trump administration officials have begun to discuss the possibility of building on its controversial immigration policies by forcing overseas visitors to open up their social media contacts before they're allowed to enter the United States. If Gorka's comments are any indication, that's a plan that may have originated from this new Strategic Initiatives Group.

President Trump's firing of the acting attorney general, Sally Yates, a caretaker left over from the Obama administration. Ms. Yates felt she was honoring a vital unwritten rule — the Justice Department's political independence — by refusing to defend the president's executive order restricting refugees and others from seven majority-Muslim countries. Ms. Yates was absolutely right that Mr. Trump's order is neither wise nor just, as she said in a letter made public Monday. Less certain is that the appropriate response was to remain at her post, blocking legal defenses of the order — "unless and until I become convinced that it is appropriate" to change course, as she also wrote.

*[Trump's firing of the acting attorney general sets a dangerous precedent]*

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The order's legality, or lack thereof, is an unsettled issue; much of Mr. Trump's decree, alas, may be

permissible under the wide discretion that immigration statutes grant the president. Significantly, Ms. Yates herself did not state flatly that the order was unlawful, only that she was not yet convinced of its lawfulness. Given all that, she could have resigned in protest and let Mr. Trump appoint someone who could, in good conscience, defend his policy.

Mr. Trump was, accordingly, within his rights to oust her. Characteristically, however, the new president took power he legitimately possesses on paper and abused it in practice. The White House statement announcing Ms. Yates's firing could have expressed respectful disagreement or thanked her for her long service to the government. Instead, it hurled politicized insults — "weak on borders" — at Ms. Yates and, more shockingly, accused her of having "betrayed" her department.

Among the unwritten rules that make democracy possible, none is more important than resisting the impulse to demonize political opponents. The fledgling Trump administration, like the Trump campaign before it, has violated this norm with zest. Before the White

House's ugly response to Ms. Yates, press secretary Sean Spicer told dissenters within the Foreign Service that "they should either get with the program or they can go." Such rhetoric is having its predictable radicalizing effect on Democrats, including over-the-top tactics such as Tuesday's boycott of Senate committee meetings on the confirmation of Mr. Trump's Cabinet picks.

*[Will backlash to Trump's travel ban paralyze the executive branch?]*

Hand gave his "Spirit of Liberty" address in 1944, before administering the oath of citizenship to immigrants assembled in Manhattan's Central Park. In a world at war, these new Americans heard his words and looked forward to new lives in a stable political community — flawed by deep social ills but blessed by democratic processes for addressing them.

Every participant in politics today could benefit from reflecting on Hand's message — Mr. Trump most of all.

**THE WALL  
STREET  
JOURNAL**

## Editorial : The Democrats' Nominee Boycott

Updated Jan. 31, 2017 9:30 p.m.  
ET 162 COMMENTS

Oregon Senator Ron Wyden indulged in a Tuesday morning political tantrum, leading fellow Democrats in a boycott of a Senate Finance Committee vote on two

Trump cabinet nominees. If Mr. Wyden intends to start a scorched-earth procedural war, he might consider that his minority party has more to lose.

The boycott by all 12 committee Democrats temporarily denied Republicans a quorum to vote to

approve Health and Human Services nominee Tom Price and Treasury nominee Steve Mnuchin. Finance Chairman Orrin Hatch called the move "the most pathetic thing" he'd witnessed in his time in the Senate, which is 40 years. Committee Democrats had agreed only the night before to hold the

vote. Instead on Tuesday they staged a surprise press conference down the hall from the hearing room, complaining that they still had unanswered questions.

That's a hoot. Rep. Price has at this point undergone 35 days of committee vetting, which is twice as

long as both of Barack Obama's HHS secretaries—Kathleen Sebelius (16 days) and Sylvia Burwell (17 days). Mr. Mnuchin has submitted more than 4,400 documents, including tax returns and a detailed questionnaire, and submitted to a marathon hearing. Mr. Wyden has already declared his

intention to vote against both nominees, so the boycott stunt is aimed purely at dragging out the seating of Trump nominees.

If Mr. Wyden is frustrated that he can't block Messrs. Price and Mnuchin, he can blame his own vote in 2013 to allow then Majority

Leader Harry Reid to blow up the Senate filibuster for cabinet and appellate court nominees. And if he doesn't want Republicans to follow that precedent and eliminate the filibuster for Supreme Court nominees, he might consider that nothing will give nervous Republicans better cover for doing

so than partisan Democratic sabotage against every cabinet nominee as a new President tries to form a government.

## THE WALL STREET JOURNAL

### Donald Trump, Democrats Dig In for Fight (UNE)

Janet Hook, Kristina Peterson and Reid J. Epstein

Updated Feb. 1, 2017 8:44 a.m. ET

WASHINGTON—President Donald Trump's aggressive White House debut is stoking a war with Democrats and creating unease with fellow Republicans, dimming chances for cross-party compromise and potentially limiting the scope of what he can get done while in office.

Democrats, pushed by their base, are under pressure to not cooperate with the new president—on anything. On Tuesday Senate Democrats boycotted committee votes on cabinet nominees and delayed at least for a day a committee vote on Mr. Trump's choice for attorney general.

The battle is now poised to move to the most hard-fought political arena in Washington: the appointment of a U.S. Supreme Court justice who will get a lifetime job judging policy on immigration, taxes, abortion and a host of issues that evoke partisan passions.

Some Democrats are pledging to block the nomination, quickly injecting politics into the debate after Republicans spent much of last year blocking President Barack Obama's Supreme Court pick, Merrick Garland.

Many Republicans, rattled by some of Mr. Trump's early moves, remain in the shadow of his high popularity with the GOP base. They have for the most part rallied behind the president and his agenda—even on trade policies many shunned before his election.

The result is that Mr. Trump faces more immediate obstacles to realizing goals that can't be achieved through the stroke of an executive pen.

While the president is expected to win confirmation of most of his cabinet nominees and Republicans have said they are confident the Senate will confirm his Supreme Court choice, the Democrats have the power to delay and potentially block legislation they find objectionable.

Republicans hold 52 seats in the Senate, and most bills need 60 votes to pass. Alienating Democrats would doom most legislative efforts, including a plan to replace the Affordable Care Act after Republicans repeal it with a party-line maneuver tied to the budget.

Senate Republicans will need to persuade a handful of Democrats to allow legislation to move forward or take extraordinary measures to change the chamber's rules to permit measures to advance with a majority vote.

Leadership from both parties have resisted changing the vote rules because the Senate, unlike the House, is more prone to flipping between Republican and Democratic control. The Senate also has a longstanding tradition of seeking bipartisan solutions.

"We Democrats need to be very forceful," Washington Gov. Jay Inslee said in an interview. He was among the first wave of protesters, joining about 175,000 people in Seattle for the post-inauguration Women's March, which drew far larger crowds than organizers expected. "The goal of those who value liberty is to fight back whenever, wherever and however," he said.

White House spokesman Sean Spicer rebuffed suggestions that Mr. Trump's first weeks in office have been divisive, noting that he has met with Democrats as well as Republicans, union members as well as businesses.

"The president has done a tremendous amount through both what he has said and done, more importantly, to start to bring this country together," Mr. Spicer said Tuesday. "And his policies, frankly, are focused on keeping every American safe."

Far from Washington, Mr. Trump's breakneck style of governing has thrown many Republicans for a loop, even though he is doing what he promised during his campaign.

"It's reassuring to have a candidate who is now president actually doing what he said he would do—that's a breath of fresh air," said Robert Graham, Arizona's GOP chairman. "But he's moving so quickly, it does

put you back on your heels a little bit."

Political observers believe Mr. Trump bears some responsibility for the absence of a honeymoon.

He has led off with contentious issues—most notably immigration—that delight his followers and alienate Democrats, and he has used his Twitter feed to call his adversaries names, including "clowns." Even some Republicans have said Mr. Trump has made little effort in his opening days to appeal to Democrats to work with him.

"I don't think that's his goal right now," Sen. Bob Corker, a Tennessee Republican, said. "It's definitely a very strident tone that's being set."

That has complicated Democrats' hopes to work with Mr. Trump on issues like an infrastructure bill. He also inflamed liberal activists and the Democratic base, who have poured into the nation's streets, airports and public squares across the country to protest his policies.

Mr. Obama, a Democrat, helped fan the flames this week. He said in a statement that he was "heartened" by the protests, marking his first public comment since leaving the White House.

Democratic activists are marshaling their supporters to counter Mr. Trump at every turn.

"Until and unless Donald Trump decides to operate within the Constitution, Democrats should be shutting the process down," said Ben Wikler, Washington director of MoveOn.org, a liberal activist group.

On Monday afternoon, Sen. Bernie Sanders's political arm, Our Revolution, asked the five million people on the Vermont independent's email list to demand Democratic senators resist Mr. Trump's agenda by delaying votes on cabinet appointees as long as possible.

A link in the email routed 10,000 calls to Senate Democrats between 3 p.m. Monday and Tuesday morning before the Senate committee walkout, said Larry Cohen, chairman of Our Revolution. MoveOn also says it routed another

10,000 calls to Democratic senators.

Those calls are getting through to lawmakers like Sen. Angus King of Maine, an independent who caucuses with Democrats.

"There certainly are many—and we're hearing from them—who want me to vote against anything and everything" proposed by Mr. Trump, Mr. King said.

Activists still face reluctance from senators who shy from unalloyed obstructionism.

"If he's right, I'm with him. If he's wrong I'm going to oppose him," Mr. King said.

The pressure is especially intense on Senate Minority Leader Charles Schumer, a New York Democrat who before the inauguration spoke often of cooperating with Mr. Trump when the new president's priorities aligned with what Democrats have sought.

At a rally with more than 100 Democratic members of Congress in front of the Supreme Court on Monday, protesters shouted "do your job" at Mr. Schumer to encourage him to try to block Mr. Trump's cabinet appointees.

"I'd like to think Democrats' hearts are in a good place," said protester Jacob Weisman, a cook from Greenbelt, Md.

"But apart from a few—Bernie Sanders, Elizabeth Warren—I wonder how willing they are to take action," she said, referring to Ms. Warren, a Democratic senator from Massachusetts.

The message is getting through: Mr. Schumer said Monday he would oppose five of Mr. Trump's cabinet nominees. On Tuesday he also voted against a sixth, Transportation Secretary Elaine Chao, who is married to Senate Majority Leader Mitch McConnell (R., Ky.).

Ms. Chao was considered a relatively uncontroversial nominee whom the Senate approved Tuesday by a 93-6 vote. Mr. Schumer also orchestrated a delay in the Senate Judiciary Committee's vote to approve the nomination of



Sen. Jeff Sessions, an Alabama Republican, to be attorney general.

"We have said all along we will be guided by our values," Mr. Schumer told reporters at the Capitol Tuesday. Yet Mr. Schumer reiterated that Democrats would work with Mr. Trump to advance their own priorities.

House Republicans said the slow-walking of Senate confirmation votes could also delay some of their legislative goals.

For instance, Republicans had hoped to vote on repealing the Affordable Care Act in February, but now are expecting to get there in April, in part, because of his

pending cabinet nominees, including Health and Human Services designee Tom Price. The delay also stems from the fact that Republicans are divided over how to repeal and replace the 2010 health law.

Republicans are operating under a very different set of political pressures: Mr. Trump remains very popular among GOP voters, and many lawmakers feel they criticize him at their peril.

The confusing implementation of an executive order suspending entry of refugees and others travelers from seven majority-Muslim nations because of terrorism concerns

became an early test of their maneuvering room.

Some Republicans stepped out to criticize the rollout, but only gingerly because the underlying policy is popular with many of their voters who view the president's order as delivering on a campaign promise.

"The response I get is: 'Oh my gosh, not only did he say it, he meant it!'" said Rep. Frank Lucas (R., Okla.) "If he continues at this pace, he will be president for the next eight years."

Republicans are generally thrilled to have a GOP president: For about 70% of House Republicans and 42% of GOP senators, it is the first

time since they came to Congress that Mr. Obama isn't sitting in the Oval Office.

But Mr. Trump is leading their party in an unorthodox direction, forcing them to rally behind trade and budget policies many have long opposed, by stirring talk of tariffs and big spending on roads and bridges.

That could lead to conflict down the road, said Rep. Tom Cole of Oklahoma, a Republican. For now, though, "Trump has positioned himself on the popular side of those issues," he said.

**The  
Washington  
Post**

## Democrats block confirmation votes for Sessions, Price and Mnuchin (UNE)

<https://www.facebook.com/kelsey.snell.3>

Democrats intensified their opposition to President Trump on Tuesday by further delaying the confirmations of several of his Cabinet nominees, prompting a bitter showdown with Republicans who accused them of paralyzing the formation of a new administration.

First, Democrats boycotted a Senate committee scheduled to take two votes, one on Rep. Tom Price (R-Ga.), Trump's nominee for secretary of health and human services, and the other on Steve Mnuchin, his choice to lead the treasury. Then, they blocked a vote on Sen. Jeff Sessions (R-Ala.), Trump's nominee for attorney general.

The theatrics reflected growing concern over Trump's travel ban for refugees and foreign nationals from seven Muslim-majority countries, an order issued Friday with virtually no consultation with top government officials or senior lawmakers. In blocking Sessions, Democrats also cited the president's firing Monday night of acting attorney general Sally Yates for refusing to defend the ban.

Sen. Dianne Feinstein (D-Calif.) and other Democrats strongly defended Yates against Trump's claim that she had betrayed the Justice Department. Yates's defiance of Trump "took guts," Feinstein said.

"That statement said what an independent attorney general should do. That statement took a steel spine to stand up and say no."

Republicans were forced to reschedule votes for key cabinet picks after Democrats intensified their opposition to President

Trump's nominations. Republicans were forced to reschedule votes for key cabinet picks after Democrats intensified their opposition to President Trump's nominations. (Video: Alice Li, Whitney Leaming/Photo: Getty/The Washington Post)

(Alice Li, Whitney Leaming/The Washington Post)

"I have no confidence that Sen. Sessions will do that," she added. "Instead, he has been the fiercest, most dedicated and most loyal promoter in Congress of the Trump agenda."

Democrats alone lack the votes needed to block any of Trump's nominees from taking office — and there are no signs of Republican opposition to any of his picks. In fact, Republicans lashed out at Democrats for what they described as partisan, obstructionist moves.

"It is time to get over the fact that they lost the election," Senate Majority Leader Mitch McConnell (R-Ky.) said. "The president is entitled to have his Cabinet appointments considered. None of this is going to lead to a different outcome."

That did nothing to tamp down enthusiasm among liberal activists and some Democratic lawmakers to mount a fierce resistance to Trump's priorities. On the 12th day of Trump's presidency, Democrats said they now plan to match growing anger in the streets by exhausting every mechanism at their disposal — even if it still results in Trump's nominees taking office.

"Democrats are going to keep fighting back," said Sen. Patty Murray (D-Wash.). "We are going to stand with people across the country. And we will keep pushing

Republicans to put country above party, and stand with us."

That stance was met with praise from liberal activists, labor unions and constituents, who have been pressuring Democrats to mount more resistance to Trump.

"We're seeing someone who came into office with a historic popular vote loss come in and push a radical, unconstitutional agenda," said Kurt Walters, the campaign director of the transparency group Demand Progress. "Yes, radical and bold tactics are what senators should be using in response."

How long Cabinet confirmations take — and why past nominees failed

During a hearing of the Senate Judiciary Committee, Democrats criticized Trump for firing Yates and said that they would vote against Sessions out of concern that he would never similarly defy Trump in the face of a potentially unconstitutional act. Then they invoked an arcane rule to block the committee from holding a roll-call vote on the nomination, forcing Republicans to postpone the vote until Wednesday.

In a nearby hearing room, the Senate Finance Committee convened to vote on Mnuchin and Price. Democrats boycotted that meeting entirely, denying Republicans a necessary quorum and forcing them to reschedule both votes.

They had less success delaying confirmations elsewhere. They tried once again to stall a committee vote to advance Trump's pick for education secretary, Betsy DeVos, but Republicans prevailed on a party-line vote despite new revelations that her written responses to hundreds of questions

from committee members appeared to include passages from uncited sources.

*[DeVos questionnaire appears to include passages from uncited sources]*

Senators also confirmed Elaine Chao to serve as Trump's transportation secretary by a vote of 93 to 6 — although, in a sign of a new level of toxicity, Minority Leader Charles E. Schumer (D-N.Y.) was among six members of the Democratic caucus who voted against her. Chao, who is also McConnell's wife, is the first transportation secretary ever to earn "no" votes, according to a C-SPAN review of Senate records.

Additionally, the Senate Energy and Natural Resources Committee approved the nominations of former Texas governor Rick Perry to be energy secretary and Rep. Ryan Zinke (R-Mont.) to be interior secretary — both with bipartisan majorities, sending them to the full Senate for final up-or-down votes.

Developments in the Judiciary and Finance committees, however, signaled how defiant Democrats remain in stalling Trump's nominees. Most of the drama unfolded along a fluorescent-lit hallway on the second floor of the Dirksen Senate Office Building.

Finance Committee Chairman Orrin G. Hatch (R-Utah) sat at the dais with just three other Republican senators at the start of his hearing. Having just come from the Judiciary Committee, Hatch told his colleagues, "Jeff Sessions isn't treated much better than these fellas are."

"Some of this is just because they don't like the president," Hatch said, later adding that Democrats "ought



to stop posturing and acting like idiots.”

Sen. Mike Enzi (R-Wyo.) agreed. “I think this is unconscionable,” he said.

“We did not inflict this kind of obstructionism on President Obama,” added Sen. Patrick J. Toomey (R-Pa.), the only other senator in the room. He added that the Democrats were committing “a completely unprecedented level of obstruction. This is not what the American people expect of the United States Senate.”

In fact, in 2013, Republicans similarly boycotted a Senate committee’s vote on Gina McCarthy to serve as former president Barack Obama’s Environmental Protection Agency administrator. Senators said at the time that she had refused to answer their questions about transparency in the agency. Republicans did it again that year to one of Obama’s nominees to serve as a deputy secretary of homeland security. And throughout 2016, they blocked a hearing for Obama’s nominee to the Supreme Court, Merrick Garland.

Aware of the growing national anger with Trump’s travel ban, Democratic senators began mulling their options over the weekend, aides said. In a series of interviews on Monday, Schumer threatened to jam the Senate calendar if Trump did not revoke his order or if Republicans did not allow a vote on legislation that would rescind it.

“Senate Democrats, we’re the accountability,” Schumer boasted in an interview with Spanish-language

network Univision.

Strategy discussions continued late into Monday night and coincided with two developments: first, Trump’s dramatic decision to fire Yates and a Wall Street Journal report on a discounted stock purchase by Price.

A series of stock buys Price made in an Australian company, Innate Immunotherapeutics, has brought Democratic scrutiny for weeks. In 2016, he received a discounted price for his purchases as part of a private offering made to only a certain number of investors; the questions have been whether he received certain insider information from Rep. Chris Collins (R-N.Y.), a company board member and its largest investor, and whether he got a special price when he bought \$50,000 to \$100,000 in shares last year.

The Journal reported Monday that Price received a “privileged” offer that he had mischaracterized in the hearings when he said they “were available to every single individual that was an investor at the time.”

Innate Immunotherapeutics chief executive Simon Wilkinson told The Washington Post on Monday that Price received the same 12 percent discount as about 620 shareholders in Australia, New Zealand and the United States.

Sen. Ron Wyden (Ore.), the ranking Democrat on the Finance Committee, told reporters that Price’s statements contradicted those by Wilkinson and other company officials.

“At a minimum,” Wyden said, “I believe the committee should postpone this vote and talk to company officials.”

On Tuesday, shortly before the Finance Committee hearing began, committee Democrats huddled in Wyden’s office and agreed to boycott the meeting.

They also voiced several concerns about Mnuchin: He initially misstated his personal wealth on a financial disclosure form, and he misstated under oath how OneWest Bank, a bank he led as chairman and chief executive officer, scrutinized mortgage documents.

“In some ways, we’re doing President Trump a favor,” Sen. Sherrod Brown (D-Ohio) said in explaining the boycott. “If these nominees had been confirmed, and then these stories broke about how they lied, how they made money on foreclosures, how they made money off of sketchy health-care stock trades, this would have been a major scandal for the administration. Now it’s just a problem we can fix.”

In the Judiciary hearing, Republicans defended Sessions but said little about Trump’s executive order. Democrats ended the hearing by using the obscure “two-hour” rule that permits either party to stop committees from meeting beyond the first two hours of the Senate’s official day. During the Obama administration, Republicans used the same rule against Democratic Cabinet nominees.

[ Here are Betsy’s DeVos’s answers to 139+ questions from Democratic Sen. Murray ]

Then senators toiled over the actual vote on DeVos’s nomination. Democrats complained that the vote should not count because Hatch — a committee member who was simultaneously dealing with events in the Judiciary and Finance meetings — was allowed to submit a proxy vote. After a recess and several minutes of heated argument, Republicans ordered a new vote with Hatch in the room and approved DeVos along party lines, 12 to 11.

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Hatch, the longest-serving Republican senator, later marveled at having to rush back and forth between three contentious hearings.

“I lost some weight here today,” he quipped.

Further delays and high-level vacancies across federal agencies could have far-reaching consequences. Some Republicans complained that the slowdown of Price’s confirmation is hampering Republican plans to begin repealing the Affordable Care Act.

Amy Goldstein, Kimberly Kindy and David Weigel contributed to this report.

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## Milbank : The GOP senators who spoke up against Trump’s ban are all talk

If the 230-year American democratic experiment unravels — no longer an unthinkable possibility — the postmortem should focus on what happened in the Senate this week.

The majority Republicans could have put the brakes on President Trump and forced the rewriting of his travel ban on seven Muslim-majority countries. They chose not to.

The sloppily executed travel ban, produced under the auspices of attorney general nominee Jeff Sessions, has been blocked in part by federal judges, while the acting attorney general, doubting the order’s legality, said she would not defend it. Trump aides reacted with conflicting signals of whether they would honor the court orders and by firing the acting attorney general —

Trump’s own version of Richard Nixon’s Saturday Night Massacre, after just 10 days on the job.

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Many Republican lawmakers voiced their objections. But given a chance to do something about the offending order, they demurred.

The Senate Judiciary Committee met Tuesday morning to vote on the Sessions nomination — a perfect leverage point to force Trump to revise or withdraw the order. Not one of the Republicans made a peep.

(Alice Li, Whitney Leaming/The Washington Post)

Republicans were forced to reschedule votes for key cabinet picks after Democrats intensified their opposition to President Trump’s nominations. Republicans were forced to reschedule votes for key cabinet picks after Democrats intensified their opposition to President Trump’s nominations. (Video: Alice Li, Whitney Leaming/Photo: Getty/The Washington Post)

One of those on the panel, Jeff Flake (R-Ariz.), had called the order “unacceptable” as written.

But Flake said nothing of that Tuesday morning in his brief statement calling Sessions “a good man.”

Another on the panel, Lindsey O. Graham (R-S.C.), had said in a joint statement with John McCain (R-Ariz.) that the “order was not properly vetted” and that “we should not turn our backs” on blameless refugees, mostly women and children, who “suffered unspeakable horrors.”

But on Tuesday, Graham “enthusiastically” saluted the man behind the order.

Also on the committee: Ben Sasse (R-Neb.), who called the order “too broad” and cautioned that it could help terrorist recruiters.

Sasse didn’t speak at Tuesday’s meeting.

It’s commendable that many Republicans have spoken out against Trump’s travel ban. But the disconnect between what they say

and what they do was particularly pronounced Tuesday morning.

As The Post's Philip Rucker and Robert Costa reported, Sessions has been the "intellectual godfather" of Trump's policies, including the travel restrictions. Key Trump aides Stephen Miller, Rick Dearborn and Stephen K. Bannon have strong ties to Sessions, and Bannon called Sessions "the clearinghouse for policy."

Roger Stone, a Trump confidant, described Sessions as Trump's John Mitchell — the Nixon attorney general who wound up in prison after an earlier constitutional crisis.

It's not much of an exaggeration to describe the current situation as a constitutional crisis — except in this instance, those in the legislative branch have quickly surrendered the Article I authorities given them in the Constitution.

There's a strong case that Trump's unilateral action violates federal law,

and the cavalier treatment of court orders is worrisome regardless of the outcome. But Senate Republicans have twice blocked attempts by the Democrats to rescind the order — swallowing their own misgivings along the way.

Back in December 2015, Senate Majority Leader Mitch McConnell (R-Ky.), asked about Trump's proposed Muslim ban, said, "We're not going to follow that suggestion." He called the proposal "completely and totally inconsistent with American values." Six months later, he was still arguing that "a kind of broad ban is a bad idea."

Now Trump is doing just such a ban in the affected countries, a Muslim ban in all but name, and McConnell is punting: "It's going to be decided in the courts as to whether or not this has gone too far."

Democrats delayed action on three of Trump's nominees Tuesday to protest the executive's caprice, but

ultimately only the majority GOP can stop Trump. And the Republicans will never have more bargaining power than they have now, with several of Trump's Cabinet nominees unconfirmed.

Democrats forced a one-day delay in the vote on Sessions with long-winded speeches on the Judiciary Committee. "This is an administration that needed only one week to find itself on the losing side of an argument in federal court," Patrick J. Leahy (D-Vt.) said. "Never, ever seen anything like that."

Mazie Hirono (D-Hawaii) tied the Muslim ban to the internment of U.S. citizens and noncitizens of Japanese descent during World War II, and she praised Republicans such as Sasse, Flake, Graham and Orrin G. Hatch (Utah) for their critical statements.

But what about actions?

Hatch had previously encouraged Trump to "move quickly to tailor its policy . . . as narrowly as possible."

But he didn't press the point Tuesday, instead calling Sessions's qualifications "unmatched in American history."

Chairman Charles E. Grassley (R-Iowa) had cautioned about the need to remain "a welcoming nation."

But on Tuesday he concentrated on Sessions's "integrity."

Mike Lee (R-Utah), also on the panel, had previously raised "questions" about Trump's order.

But he had no questions Tuesday. Lee praised Sessions's "deep commitment to the notion" that "laws govern us rather than the will and whim of individual humans."

That was the notion, anyway — until 10 days ago.



## Editorial : Protect the environment, reject Pruitt

Much of the debate over human-caused climate change has been focused on whether the threat has been overestimated. But what if the threat has been underestimated?

Scientists are constantly being surprised by how quickly the planet is changing. Last year was the warmest since modern record-keeping began. Rising temperatures contributed to killer heat waves in Asia and the Middle East, a supsize wildfire in Canada, the retreat of glaciers across the globe and the vast bleaching of the Great Barrier Reef off Australia.

Climatologists say the Arctic could be ice-free in summer within a decade or two. The world's largest iceberg — the size of Delaware — is preparing to break off from the Larsen C Ice Shelf in Antarctica. Scientists now believe that, under the worst scenario, oceans could rise more than 8 feet by century's end, inundating coastal cities.

In a bid to stave off catastrophe, nearly 200 nations last year joined the Paris Agreement to curb greenhouse gas emissions. In the United States, the Obama administration mandated cleaner power plants and more fuel-efficient cars.

Much of this progress could be reversed under President Trump, who has expressed skepticism about climate change, has threatened to pull the United States out of the Paris accords, and could

jettison Obama's regulations on power plant emissions and gas mileage standards.

Carbon dioxide emissions are regulated by the Environmental Protection Agency, and Trump could not have nominated someone more opposed to the agency's mission than Oklahoma Attorney General Scott Pruitt to be its new administrator. Pruitt, a champion of the fossil fuel industry, has sued the EPA 14 times to block environmental regulations. In 13 cases, co-plaintiffs included industries that contributed money to Pruitt's political campaign or affiliated committees. During recent confirmation testimony, the nominee declined to say whether, as EPA administrator, he would voluntarily recuse himself from dealing with the lawsuits he filed against the agency.

Pruitt offered a very carefully worded response about climate change. He conceded it was happening. But as to whether the burning of fossil fuels was a primary cause? Debatable, he said. Actually, climate scientists attribute 80% to 90% of recent warming to human causes. Pressed about what specifically was causing climate change, Pruitt refused to answer: "My personal opinion is immaterial." Nothing could be further from the truth.

Elections have consequences and, in most cases, if a nominee is qualified, a new president should be allowed his or her choice. No one should be under the delusion that if Pruitt is turned down, Trump will

pick Al Gore to be his EPA administrator. But when the future of the planet is on the line, the choice of someone so openly hostile to the EPA's mission is unacceptable. The Senate should send that message to the White House and reject the Pruitt nomination.