

IN A GENERAL COURT-MARTIAL
SECOND JUDICIAL CIRCUIT, U.S. ARMY TRIAL JUDICIARY
FORT BRAGG, NORTH CAROLINA

UNITED STATES)	Renewed Motion to Dismiss
)	(Apparent UCI)
v.)	
)	
SGT Robert B. Bergdahl)	
HHC, Special Troops Battalion)	
U.S. Army Forces Command)	
Fort Bragg, North Carolina 28310)	17 October 2017

RELIEF SOUGHT

Sergeant Bergdahl renews his motion to dismiss the charges and specifications for apparent Unlawful Command Influence (UCI). Oral argument is requested.

BURDEN OF PERSUASION AND BURDEN OF PROOF

The governing legal standards and allocation of burdens for apparent UCI cases are set forth in *United States v. Salyer*, 72 M.J. 415 (C.A.A.F. 2013), and *United States v. Boyce*, 76 M.J. 242 (C.A.A.F. 2017).

FACTS

On 20 January 2017, after President Trump took office, the defense moved to dismiss on the basis of apparent UCI arising from disparaging statements he had previously made about SGT Bergdahl. D APP 56. The Court found those statements “troubling,” “disturbing,” “disappointing,” and “problematic,” but denied the motion, but expressly left the door open for further submissions by the defense. AE 36. SGT Bergdahl sought an extraordinary writ from the U.S. Army Court of Criminal Appeals, which denied the petition “without prejudice to raising these issues again to the military judge as the case develops.” *Bergdahl v. Nance*, ARMY MISC 20170114 (Army Ct. Crim. App. 2017) (mem.). The U.S. Court of Appeals for the Armed Forces denied a writ-appeal petition. *Bergdahl v. Nance*, 76 M.J. 342 (C.A.A.F. 2017) (mem.).

On 16 October 2017, SGT Bergdahl pleaded guilty with exceptions and substitutions. His pleas were accepted and findings were entered at approximately 1:00 p.m. There was no pretrial agreement.

At 1:47 p.m. on 16 October 2017, President Trump held a joint press conference in the Rose Garden with Senate Majority Leader Mitch McConnell. According to the official transcript, the following colloquy occurred between the President and a member of the press corps:

Q Mr. President, Ronica Cleary with Fox 5.

THE PRESIDENT: Yes.

Q Do you believe that your comments in any way affected Bowe Bergdahl's ability to receive a fair trial? And can you respond to his attorney's claims that --

THE PRESIDENT: Well, I can't comment on Bowe Bergdahl because he's -- as you know, they're -- I guess he's doing something today, as we know. And he's also -- they're setting up sentencing, so I'm not going to comment on him. **But I think people have heard my comments in the past.**

(Emphasis added.) Enclosure 1 to this motion is a copy of the transcript. Enclosure 2 is a DVD with a video of just the colloquy pertaining to this case.¹



President Trump and Majority Leader McConnell in the Rose Garden, 16 October 2017

EVIDENCE AND WITNESS

¹ The video of the press conference can be found at https://www.youtube.com/watch?v=_g2mjHdM98w. The colloquy on which we rely appears at approximately 30:40. The official transcript can be found at <https://www.whitehouse.gov/the-press-office/2017/10/16/remarks-president-trump-and-senate-majority-leader-mitch-mcconnell-joint>.

The defense offers the transcript and a DVD of the colloquy reproduced above in support of the motion. We assume the government will not contest their authenticity and accuracy. If that is incorrect, we will ask that President Trump be called to testify telephonically.

LEGAL AUTHORITY

1. *United States v. Salyer*, 72 M.J. 415 (C.A.A.F. 2013)
2. *United States v. Boyce*, 76 M.J. 242 (C.A.A.F. 2017)

ARGUMENT

The apparent UCI issue was briefed in D APPs 56-57, 95 and 99, to which the Court's attention is respectfully invited. The present submission will briefly address only the latest development.

1. In the previous apparent-UCI proceedings, considerable attention was paid to the fact that President Trump was not in office when he made his numerous disparaging statements about SGT Bergdahl. The President yesterday made it unnecessary to resolve that issue for the important parts of the military justice process that have not yet occurred. His statement, made at a televised press conference that was one of the most salient public events of the day, removes any doubt about whether his campaign comments reflect his current opinion. He obviously knew about the day's proceedings in this Court. The plain meaning of his final comment – after and despite the disclaimers – was that his views now, months after Inauguration Day, are no different from what they were before then. Had they changed, he would have said so. His final comment, however, points in precisely the opposite direction.

2. The defense has previously briefed the issue of whether a civilian official's words and deeds can give rise to apparent UCI. D APP 57 at 5-6. Whatever may be the case where the offender is a service secretary, *see Boyce, supra*, at 246 n.3, an incumbent President, as Commander in Chief, is within the scope of that doctrine. Indeed, President Trump's attempt to steer clear of saying the wrong thing – even though he torpedoed it in his final comment – indicates that we are not alone in this view.

3. President Trump stands at the pinnacle of an unbroken chain of command that includes key participants in the remaining critical steps of the case. Among these are the Military Judge, the staff judge advocate, the general court-martial convening authority, and the judges of the Court of Criminal Appeals. A *Salyer* observer, informed of President Trump's reconfirmation of his pre-Inauguration comments, would therefore harbor a substantial doubt as to the fairness of the proceedings.

- a. The case is being tried judge-alone. The Court is an active duty commissioned officer serving under President Trump. Next week the sentencing phase will commence. President Trump's comment cast an impermissible shadow over this critical phase.

- b. The proceedings will in due course be subject to review by the staff judge advocate and the general court-martial convening authority, each of whom is on active duty under President Trump. The GCMCA will have discretionary power to set aside the findings and reduce or disapprove the sentence for any reason or no reason. Art. 60(c), UCMJ; R.C.M. 1107 (former version). The same pall President Trump cast over the sentencing phase also extends to the SJA's and GCMCA's critical functions.
- c. Given the authorized punishments, the adjudged sentence may qualify for mandatory review by the Court of Criminal Appeals, the judges of which are active duty commissioned officers, and enjoy sentence-review powers. See Art. 66, UCMJ. How is a *Salyer* observer to have confidence that SGT Bergdahl's case will receive the independent appellate review to which every accused is entitled under these circumstances? By the same token, even if the adjudged sentence were to fall below the CCA's jurisdictional threshold, SGT Bergdahl would still be entitled to meaningful review under Article 69, UCMJ. That review would be performed by a judge advocate serving under The Judge Advocate General. Both the reviewing judge advocate and the TJAG serve under President Trump.

The evidence easily passes the low apparent UCI threshold. *Salyer, supra; Boyce, supra.*

4. It has long been observed that UCI is the "mortal enemy of military justice." *E.g., Boyce, supra*, 76 M.J. at 246. The Court must take decisive action because the critical terms it employed in the course denying SGT Bergdahl's Inauguration Day apparent-UCI motion did not have the necessary effect. What we said in our motion is even more apt today than it was when we filed it:

There are times when an insult to the fair administration of justice is so sustained, palpable and recent, and comes from such a source, that the integrity of the military justice system is necessarily at stake and the strong medicine provided by the doctrine of apparent UCI is required. This is such a case.

CONCLUSION

The defense's threshold having been satisfied, the burden of proof now rests on the government.


for

EUGENE R. FIDELL

Civilian Defense Counsel

For

LTC FRANKLIN D. ROSENBLATT
MAJ OREN GLEICH
MAJ JASON D. THOMAS
CPT JENNIFER D. NORVELL
CPT NINA S. BANKS

P. SABIN WILLETT
CHRISTOPHER L. MELENDEZ
KIRSTEN B. WHITE

CERTIFICATE OF SERVICE

I certify that I emailed the foregoing Renewed Motion to Dismiss (Apparent UCI) to Trial Counsel on 17 October 2017. Trial Counsel has also today been furnished a copy of the DVD referred to in the Supplemental Motion.



FRANKLIN D. ROSENBLATT



From the Press Office

Speeches & Remarks

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Presidential Actions

Legislation

Disclosures

The White House

Office of the Press Secretary

For Immediate Release

October 16, 2017

Remarks by President Trump and Senate Majority Leader Mitch McConnell in Joint Press Conference

Rose Garden

1:47 P.M. EDT

THE PRESIDENT: Thank you very much. I just want to say that we just spent quite a bit of time inside with the Senate Majority Leader Mitch McConnell, who has been a friend of mine for a long time, long before my world of politics, early into his world of politics, I think. But we've been friends for a long time.

We are probably now, despite what we read, we're probably now -- I think, at least as far as I'm concerned -- closer than ever before. And the relationship is very good.

We're fighting for the same thing. We're fighting for lower taxes, big tax cuts, the biggest tax cuts in the history of our nation. We're fighting for tax reform, as part of that. We are getting close to healthcare. We'll come up in the early- to mid-part of next year. We're going to have a vote; I think we already have the votes. We feel confident we have the votes. We pretty much know what the plan is.

I believe Republicans and Democrats are, as we speak, working together very hard, right now -- working together to do an intermediate plan, a short-term plan, because Obamacare is a disaster. The rates have gone up. The premiums have gone up. The deductibles have gone through the roof. I mean, it's terrible. If you look at the deductibles, unless you really have a problem, you're not going to be able to use them.

So we have been working together long and hard. We think we're in good shape for the budget, we hope. And we hope to be in good shape with, again, the largest tax cuts ever passed in this country. It's going to spur business. You look at other countries, what they've done -- and we're competing with other countries. When China is at 15 percent, when I hear that Ireland is going to be reducing their cooperate rates down to 8 percent from 12. But you have other countries also reducing. We can't be at 35 percent and think we're going to remain competitive in terms of companies and in terms of jobs. So we worked on that.

I was very honored to see a man that I've had a lot of respect for, James Lee Witt, of the Clinton administration -- the head of FEMA. He gave us an A-plus; I just see -- it just came out. And I've always had respect for him. He gave us -- he's the FEMA director of the Clinton administration -- gave us an A-plus for how we responded to the hurricane aftermath -- all of the hurricanes. And that includes Puerto Rico.

So I just want to thank Mr. Witt, wherever you may be now, wherever you may be listening. I just want to say, I really much appreciate it. Because that took it out of politics -- out of the world of politics, in that he was with the Clinton

administration and I'm sure remains loyal to the Clinton administration. I hope he does.

So just to finish off, my relationship with this gentleman is outstanding, has been outstanding. We are working very hard to get the tax cuts. We will continue to work hard to get the healthcare completed. I'm going to be surprising some people with an economic development bill later on, but I haven't even told Mitch because I want to focus on tax cuts and some other things right now.

One of the unspoken elements that we discussed at lunch -- and it just is not talked about -- yes, we got a great justice, Justice Gorsuch, into the United States Supreme Court. He is going to be outstanding, hopefully for many, many years. But something that people aren't talking about is how many judges we've had approved, whether it be the court of appeals, circuit judges, whether it be district judges. We have -- tremendous -- right now under review; the Democrats are holding them up beyond anything -- beyond comprehension, they're holding them up.

I mean, frankly, they have terrible, terrible policy -- terrible policy -- and perhaps they're not even good politicians, but they are good at obstruction. So I looked at some of these numbers, between the judges -- and I want to say that we will set records in terms of the number of judges.

And if you read the Wall Street Journal, I have to give them a little bit of a -- a person, a writer, I won't mention names -- but you can see who has really been a really fair person -- wrote an article or wrote an editorial, in a sense, saying how well we're doing with judges and appointments. I think it's one of the big unsung things of this administration, in addition to the fact that we have had a lot of legislation passed on the VA and lots of other things.

But the judge story is an untold story. Nobody wants to talk about it. But when you think about it, Mitch and I were saying, that has consequences 40 years out, depending on the age of the judge, but 40 years out. So numerous have been approved. Many, many are in the pipeline. The level of quality is extraordinary.

And I just wanted to say that we're working very closely on that also, and getting really great reviews from those people and, in many cases, some

scholars that have been studying it. There has never been anything like what we've been able to do together with judges.

So with that, I'd like to have Mitch say a few words, and if you want to do a little question-and-answer, we can do that also.

Thank you very much. Thank you.

LEADER MCCONNELL: Well, thank you very much, Mr. President. I want to underscore what the President said. We have the same agenda. We've been friends and acquaintances for a long time. We talk frequently. We don't give you a readout every time we have a conversation. But frequently we talk on the weekends about the issues that are before us.

Obviously passing a budget, which enables tax reform and tax reduction comes next, then a supplemental to take adequate care of those who have been harmed by the natural disasters we've been afflicted with lately. And, of course, the Senate's unique role -- it seems to be a lot of people forget -- we're in the personnel business. There are 1,200 of the President's nominations subject to confirmation in the Senate. The House is not in the personnel business. We are.

The single-most significant thing this President has done to change America is the appointment of Neil Gorsuch to the Supreme Court. But it's not just the Supreme Court. There are a lot of vacancies at both the circuit court and district court level, as the President has indicated, of young, conservative -- and when we say conservative about a judge, what we're talking about here are, the kind of the people the President is appointing to the courts believe that the role of a judge is to try to rule based upon what the law says, not what they hoped the outcome would be.

Justice Scalia used to say, if the judge is not occasionally unhappy with the conclusion he reached, he's not a very good judge. Or as Justice Gorsuch put it down in my state a couple of weeks ago, judges don't wear red, they don't wear blue -- they wear black.

And those are the kind of people the President is sending up to the Senate to be confirmed. Many of them, as he pointed out, are younger and will be on the bench for a long time, and have a great deal to do with what kind of country we're going to have far into the future.

Legislatively, obviously the top priority is tax reduction. And I think what the President and I would both like to say to you today, contrary to what some of you may have reported: We are together totally on this agenda to move America forward.

THE PRESIDENT: John.

Q Mr. President, in terms of the timetable for tax reform, the Speaker of the House, Paul Ryan, has said he wants to get it done by the end of this year. He would make the House stay through the Christmas break in order to get it done. The Senate Majority Leader has said we'll get it done this Congress. Would you be okay if tax reform were not passed until next year as opposed to this year?

THE PRESIDENT: Well, I would like to see it be done this year, John. I would like very much to see it be done this year. So we won't go a step further. If we get it done, that's a great achievement.

But don't forget it took years for the Reagan administration to get taxes done. I've been here for nine months, a little more than nine months. I can say the same thing for healthcare. If you look at Obama -- first of all, if you look at Clinton, they weren't able to get it done. If you look at other administrations, they weren't able to get it done. President Obama, after a long period of time, was able to finally push it through, but pushed through something that's now failed -- really failing badly. But again, we're meeting -- Democrat, Republican are meeting right now, and right now they're working on something very special.

But I have to tell you, I really believe that we have a very good chance, and I think Mitch feels the same way, of getting the taxes done, hopefully fairly long before the end of the year. That's what we'd like to see.

Go ahead.

LEADER MCCONNELL: Let me just add to what the President said. The goal is to get it done this calendar year. But it is important to remember that Obama signed Obamacare in March of year two. Obama signed Dodd-Frank in July of year two. We're going to get this job done, and the goal is to get it done by the end of the year.

THE PRESIDENT: And just to finish up for Mitch -- and we're nine months, right? So we could have a long way to go, but that's okay.

Yes.

Q Thank you very much. Do you both have confidence in Representative Tom Marino to be your drug czar? And on healthcare, in your recent (inaudible), you said, "The only problem I have with Mitch McConnell is that after hearing repeal and replace for seven years, he failed. That should never have happened." Do you still (inaudible)?

THE PRESIDENT: Well, let's go to the second part of your question, with Mitch. Again, we've been doing healthcare for, really, seven months, and probably six months, if you think about it, because we started in probably a total of six months. Others were 2.5 years, and much more than that. Others were eight years, and they didn't get it passed. This man is going to get it done, and I think get it done long before anybody else, and I think it's going to be a great healthcare.

As far as Tom Marino, so he was a very early supporter of mine -- the great state of Pennsylvania. He's a great guy. I did see the report. We're going to look into the report and we're going to take it very seriously. Because we're going to have a major announcement, probably next week, on the drug crisis and on the opioid massive problem. And I want to get that absolutely right. This country -- and, frankly, the world -- has a drug problem. The world has a drug problem. But we have it, and we're going to do something about it.

So I'm going to have a major announcement on that problem next week. We're going to be looking into Tom.

Q Thank you, Mr. President. Trey Yingst with One America News Network. I'd like to ask you: Do you support the plan by people who previously served in your administration, such as the Steve Bannon, to primary Republican candidates in the 2018 elections who do not support your agenda?

THE PRESIDENT: Well, I have a very good relationship, as you know, with Steve Bannon. Steve has been a friend of mine for a long time. I like Steve a lot. Steve is doing what Steve thinks is the right thing. Some of the people that he may be looking at, I'm going to see if we talk him out of that, because, frankly, they're great people.

What Mitch will tell you is that maybe, with the exception of a few -- and that is a very small few -- I have a fantastic relationship with the people in the Senate, and with the people in Congress. I mean, I have a -- with our House of Representatives. I have a great relationship with political people. If you read the papers, you think -- I'm like on one island and they're like on the other. Well, it's not the way it is.

We have a fantastic relationship. I'm friends with most of them, I can say. And I don't think anybody could have much of a higher percentage. But I'm friends with most of them. I like and respect most of them, and I think they like and respect me.

Just so you understand, the Republican Party is very, very unified. When we get things approved, we have to go through hell because we have no Democrat support, we have nobody. We don't have a vote from the Democrats. As an example: massive tax cuts -- we may not get any Democrat votes. Now, we also may get three of four, but we may get no -- for massive tax cuts. We're the highest-taxed country in the world, and yet we may get no Democrat support. And that's because they're obstructionists and they just basically want us to do badly, but that's not going to happen.

Yes, go ahead.

Q On the opioid crisis, I listened to you on the campaign trail talk about that repeatedly. You said you watched the "60 Minutes" report last night. Number one, do you want to reverse the law that Congressman Marino helped pass that DEA whistleblowers say has contributed to the expansion of the opioid crisis?

THE PRESIDENT: We're going to look at that very closely.

Q And does his sponsorship of that law in any way undermine your confidence in him as drug czar?

THE PRESIDENT: Well, he's a good man. I have not spoken to him, but I will speak to him and I'll make that determination. And if I think it's one percent negative to doing what we want to do, I will make a change, yes.

Q Mr. McConnell --

Q Mr. President --

THE PRESIDENT: One second. Yes.

Q What about declaring a written national emergency for this crisis? You've talked about it but you haven't put that piece of paper together.

THE PRESIDENT: We are going to be doing that next week. By the way, you know that's a big step. By the way, people have no understanding of what you just said. That is a very, very big statement. It's a very important step. And to get to that step, a lot of work has to be done and it's time-consuming work. We're going to be doing in next week, okay?

Q Did you have a chance, during your lunch today, to discuss the comments that Steve Bannon made this weekend? And what do you make of those comments, declaring war on the Republican Party, declaring war on you?

LEADER MCCONNELL: Look, you know, the goal here is to win elections in November. Back in 2010 and 2012, we nominated several candidates -- Christine O'Donnell, Sharron Angle, Todd Akin, Richard Mourdock. They're not in the Senate. And the reason for that was that they were not able to appeal to a broader electorate in the general election.

My goal as the leader of the Republican Party in the Senate is to keep us in the majority. The way you do that is not complicated. You have to have nominate people who can actually win, because winners make policy and losers go home. We changed the business model in 2014; we nominated people who could win everywhere. We took the majority in the Senate. We had one skirmish in 2016; we kept the majority in the Senate. So our operating approach will be to support our incumbents and, in open seats, to seek to help nominate people who can actually win in November. That's my approach and that's the way you keep a governing majority.

Q Mr. President, earlier today you criticized drug companies and also insurance companies, saying that drug companies were charging prices that are too high --

THE PRESIDENT: Yes.

Q -- and insurance companies were taking government money --

THE PRESIDENT: Exactly right.

Q What specifically would you like to see both of those types of companies do?

THE PRESIDENT: So the insurance companies have made a fortune with Obamacare -- an absolute fortune. As you know, what I did with the cuts at the end, which were all going -- you know, you're talking about hundreds of millions of dollars a month going right into the pockets of the insurance companies. And I'm very happy with what I did.

And because of that, people are talking now. Democrats are talking to the Republicans for a short-term taking care of, what we will call, healthcare so that people can have good healthcare without a big spike. You would have had massive spikes -- you already have. I mean, every year the massive spikes to Obamacare have been ridiculous.

As far as -- and I didn't speak to Mitch about this today, but a priority of mine -- and you know that this is coming up -- will be the cost of prescription drugs. We are going to get the costs way down, way down, and those drugs companies -- so you have the insurance companies, in the one case; in the other case -- actually, with regard to both, you have the drug companies.

They contribute massive amounts of money to political people -- I don't know, Mitch, maybe even to you. But I have to tell you, they contribute massive amounts of money. Me, I'm not interested in their money. I don't need their money. I will tell you, you have prescription drugs -- you go to England, you go to various places, Canada -- you go to many, many countries, and the same exact pill from the same company, the same box, same everything, is a tiny fraction of what it costs in the United States.

We are going to get drug prices -- prescription drug prices way down because the world has taken advantage of us. The world has taken advantage of us when that happens, so that's going to be very important.

Q Thank you. On healthcare, there are about 6 million people that get subsidies to help pay for Obamacare -- about 70 percent, by one study of a couple of states that you won in November --

THE PRESIDENT: Yeah.

Q Now that you've cut off these payments, are you going to ensure that those people will still get help from the federal government to pay --

THE PRESIDENT: Well, that's what we're looking to do, Joe. We want to get it down so that people can have affordable healthcare. Look, you look at some states -- 116 percent up. In Alaska, over 200 percent up. In other states, 50 percent, 70 percent up, and those are some of the states that are doing better. Obamacare is a wreck, it's a mess, it's destroying lives. We want to get it in those states -- the states that I did so well in -- but also in states that I didn't win.

I want to get healthcare that's much more affordable and much better healthcare, and that's what we're doing.

Yes.

Q Let me ask you about tax reform.

THE PRESIDENT: Go ahead -- tax reform.

Q Yes, tax reform. You had said the other day that there were some adjustments being made.

THE PRESIDENT: Yeah.

Q Gary Cohn said today that there would be some things that are negotiable. What exactly, in your eyes, is negotiable? And then, for the Leader, you said that the top priority is tax reduction -- you did not say tax reform -- in 2017, Leader McConnell. So can you commit specifically to tax reform in 2017? For the both of you.

THE PRESIDENT: So we are doing minor adjustments. We want to make sure that the middle class is the biggest beneficiary of the tax cuts and tax reform. And that's, I'm sure, what Mitch meant also, because people get it confused.

We are doing massive tax cuts. We're also doing simplification and reform. Simplification, where, literally, if we can do it on page; now, in some cases, it may be two pages. But we're doing major simplification. We're bringing the categories down from -- if you include zero, because there are zero -- we're bringing it from eight to four. That's a big, big simplification, just that alone.

But we are doing the massive cuts. And I will say this: Wherever I've been, this has been so popular with the people. Now we have to get a couple of additional people to raise their hands.

Mitch.

LEADER MCCONNELL: Yeah, I agree with the President, it's about both reduction and reform. It's been 30 years since this kind of effort was undertaken successfully, and we're going to succeed this time. The bills, the details of them, will be written by the Ways and Means and Finance Committees after we approve the budget. And obviously, the budget opens the path to tax reform. But it's a both -- it's about both -- about both reform and reduction.

Q Why haven't we heard anything from you so far about the Soldiers that were killed in Niger? And what do you have to say about that?

THE PRESIDENT: I've written them personal letters. They've been sent, or they're going out tonight, but they were written during the weekend. I will, at some point during the period of time, call the parents and the families -- because I have done that, traditionally. I felt very, very badly about that. I always feel badly. It's the toughest -- the toughest calls I have to make are the calls where this happens, soldiers are killed. It's a very difficult thing. Now, it gets to a point where, you know, you make four or five of them in one day -- it's a very, very tough day. For me, that's by far the toughest.

So, the traditional way -- if you look at President Obama and other Presidents, most of them didn't make calls, a lot of them didn't make calls. I like to call when it's appropriate, when I think I'm able to do it. They have made the ultimate sacrifice.

So, generally, I would say that I like to call. I'm going to be calling them. I want a little time to pass. I'm going to be calling them. I have -- as you know, since I've been President, I have.

But in addition, I actually wrote letters individually to the soldiers we're talking about, and they're going to be going out either today or tomorrow.

Yes.

Q General Kelly said just last week that you believe that Cuba could stop the attacks against Americans. Do you believe them, that Cuba is -- do you believe Cuba is responsible?

THE PRESIDENT: I think Cuba knew about it, sure. I do believe Cuba is responsible. I do believe that. And it's a very unusual attack, as you know, but I do believe Cuba is responsible, yes.

Q Roy Moore, down in Alabama, has said that he believes homosexuality should be illegal and that Muslims should be barred from serving in the U.S. Congress. What makes you comfortable with someone with those beliefs serving in the U.S. Senate? And the same question to you, Mr. Leader.

THE PRESIDENT: Well, I'm going to be meeting with Roy sometime next week, and we're going to talk to him about a lot of different things. But I'll be meeting with him.

He ran a very strong race. The people of Alabama, who I like very much and they like me very much, but they like Roy. And we'll be talking to him, and I can report to you then. Okay?

Go ahead.

Q Mr. President, this is a question for you and for Leader McConnell following up on your comments on the budget. One of the issues outstanding right now is what the Senate Judiciary Committee will (inaudible) of blue slips. I'm wondering what your position is, Mr. President, and what your position is, Leader McConnell. Because, you know, (inaudible) that right now gives Democrats leverage over the appointments.

LEADER MCCONNELL: I can give you my position. The blue slip, for those of you who are not familiar with it, is a custom determined by the Chairman of the Judiciary Committee. And Senator Grassley can give you his view of how he views this. I'll give you my view.

My view is that a blue slip on a circuit judge is simply a notification of how you're going to vote. To conclude otherwise would have left us in the following position at the beginning of this Senate. Forty-eight Democratic senators would have been able to blackball 62 percent of the circuit judge nominees. That's

simply not a tenable place to land in a Senate that now deals with judges with a simple majority.

So my own personal view is that a blue slip on a circuit judge should simply be a notification of how you intend to vote.

THE PRESIDENT: We could talk blue slips, but my attitude is I just want really capable people going to the courts.

Peter.

Q Mr. President, in 2012 you tweeted that "Obama's complaints about Republicans stopping his agenda are BS," in your words, "since he had full control for two years." You wrote, "He can never take responsibility." But today, you've said about some of the challenges right now in Congress and in Washington, "I'm not going to blame myself, I'll be honest. They're not getting the job done." So what's different then than now?

THE PRESIDENT: Well, let me just explain what's different. We have nominations pending right now, and we have 182 approved -- if you look at this: the number that he had approved was 65 percent and 70 percent, and we have 39 percent. They're holding up every single nomination.

Q How about the agenda broadly?

THE PRESIDENT: Schumer and the group are holding up every single nomination. They are obstructing. They're doing -- I'm telling you, they're not good politicians, but they're very good at obstruction.

They are holding up every single nomination, and I will tell you, Peter, it's not right. It's really not right. They'll bring them right out to the end at last minute. What they're doing is unfair.

So you look at even Bush, you look at Obama, you look at Clinton, and you look at Bush original, you have 389 versus 182 -- these are approvals. You look at Clinton, 357 versus 182. You look at President Obama, 364 versus 182. These are nominations approved, and what they're doing to us -- we have unbelievable people, and they're waiting to be approved. They've been waiting for a long period of time.

Now, I do believe that Mitch is going to start pushing them very hard, and he can do that, and he wants to do that. He also wants to get the judicial nominations through, and he wants to get them through fast, too.

Go ahead, John. Go ahead, John.

Q Can I just follow on that, if I could, please? You seemed to have a budding spirit of cooperation with the Senate Minority Leader and the House Minority Leader when it came to the budget, when it came to this idea of finding a fix for DACA. But every proposal that you have floated since then, they have very critically rejected. So where is this relationship?

THE PRESIDENT: Well, I hope to have a relationship. If we don't, we don't. I mean, we have races coming up, as you know, in a year from now. I think we're going to probably do very well. I can say this: If we get taxes approved, we're going to do unbelievably well.

Many of the senators are running in states that I won by massive amounts -- 20, over 20 percent, sometimes 30 percent; I guess in one or two cases, by over 40 percent over the Democrat.

Q But do you think you can work with them?

THE PRESIDENT: Well, we're going to let you know that. I would like to give you that answer in about seven years from now, is that okay? Meaning, one plus seven.

John, I hope to be able to because I like the concept of bipartisan. But right now, they are doing nothing but obstructing. And really, if you think about it, they're against major tax cuts that's going to make our country stronger and more competitive. That's a hard thing to win an election on, and I believe that some Democrats will be voting for us when it comes to the tax cuts.

Q With this economic development bill that you mentioned, can you give us any of the details of what your plans are?

THE PRESIDENT: I'm going to be proposing an economic development bill in the not-too-distant future. I want to get tax cuts, obviously, done first; maybe even healthcare. But I think somewhere in between or shortly thereafter I'm going to be developing an economic development bill that will put us so far

ahead of other countries you will not even believe it. That will be very important.

Q Thank you, Mr. President. Last week, your administration made two major announcements on rolling back the Iran Deal and getting rid of the cost-sharing reductions as part of Obamacare. And a lot of criticism has been leveled at your administration saying that, really, all you're doing is --

THE PRESIDENT: And a lot of praise.

Q Fair enough, sir. Rolling back -- a lot of what you're doing is simply rolling back everything your predecessor accomplished. Is there a single policy of your predecessor that you specifically do not want to touch, sir?

THE PRESIDENT: Well, we're very opposite in terms of incentives and incentives for jobs and other things. And if you look at what's happened, we just hit a new high today again in the stock market. We've picked up, Mitch, as of this moment, \$5.2 trillion in stock market value. We have the lowest unemployment rate in -- I believe it's almost 17 years. We're doing well.

We're going to be doing immigration work that's going to be outstanding, and we're going to have people coming into our country based hopefully on a merit system, not just coming in randomly. But they're going to be coming in based on a merit system where they can help us. Because I have companies moving into this country -- you saw what happened with the automobile industry last week with five major plants. We have companies pouring back into this country for the first time in anybody's memory. We are actually going to be, fairly soon, at a point where we're going to need workers. Our country is going to do so well. But the tax cuts are going to be a major, major part of it.

Q Sir, is there a policy you'd want to keep in place though? Is there a single policy you'd keep in place?

THE PRESIDENT: Well, not too many, I must say. It's the opposite side of the spectrum.

Peter. Go ahead, Peter.

Q Earlier, you said that President Obama never called the families of fallen soldiers. How can you make that claim?

THE PRESIDENT: I don't know if he did. No, no, no, I was told that he didn't often. And a lot of Presidents don't; they write letters. I do --

Q (Inaudible.)

THE PRESIDENT: Excuse me, Peter. I do a combination of both. Sometimes -- it's a very difficult thing to do, but I do a combination of both. President Obama I think probably did sometimes, and maybe sometimes he didn't. I don't know. That's what I was told. All I can do -- all I can do is ask my generals. Other Presidents did not call. They'd write letters. And some Presidents didn't do anything. But I like the combination of -- I like, when I can, the combination of a call and also a letter.

One at a time. Go ahead.

Q Thank you. If it would help you -- if it would help Special Counsel Robert Mueller get to the end of the Russia investigation, would you --

THE PRESIDENT: Well, I'd like to see it end. Look, the whole Russian thing was an excuse --

Q Would you (inaudible).

THE PRESIDENT: Excuse me. Excuse me. The whole Russia thing was an excuse for the Democrats losing the election, and it turns out to be just one excuse. I mean, today Hillary blamed Nigel Farage. That one came out of nowhere. So that was just an excuse for the Democrats losing an election that, frankly, they have a big advantage in the Electoral College. They should always be able to win in the Electoral College, but they were unable to do it.

So there has been absolutely no collusion. It's been stated that they have no collusion. They ought to get to the end of it because I think the American public is sick of it.

Go ahead. Go ahead.

Q Mr. President, Ronica Cleary with Fox 5.

THE PRESIDENT: Yes.

Q Do you believe that your comments in any way affected Bowe Bergdahl's ability to receive a fair trial? And can you respond to his attorney's claims that --

THE PRESIDENT: Well, I can't comment on Bowe Bergdahl because he's -- as you know, they're -- I guess he's doing something today, as we know. And he's also -- they're setting up sentencing, so I'm not going to comment on him. But I think people have heard my comments in the past.

Go ahead. Go ahead.

Q Will you extend the deadline for DACA recipients if Congress can't pass the bill by March?

THE PRESIDENT: Well, they should be able to do something. But we need very stronger border security, and we do want the wall.

Go ahead.

Q My question is about the fires in Northern California. They feel like they've been left out from --

THE PRESIDENT: No, they haven't. In fact, I spoke to Governor Brown. We had a great conversation. We have FEMA there. And as you know, James Lee Witt gave us an A-plus, and I think if he didn't include the fires, he would include the fires also. We have FEMA there. We have military there. We have first responders there. It's a tragic situation. But we're working very closely with the representatives from California, and we're doing a good job.

Go ahead, back. Yes, go ahead, back.

Q Mr. President, in the wake of an avalanche of allegations made against Harvey Weinstein, your campaign is being subpoenaed for any documents relating to sexual harassment allegations made against you. Do you have a response to that?

THE PRESIDENT: All I can say is it's totally fake news. It's just fake. It's fake. It's made-up stuff, and it's disgraceful what happens. But that's happens in the world of politics.

Jon.

Q Mr. President, on the wall, are you going to insist that you must have wall funding before you can sign something for the DREAMers or for spending for the rest of the year?

THE PRESIDENT: Our country needs a wall. Mexico, you see what's happening there. You see what just happened yesterday with one of their big political leaders. Mexico is not doing particularly well when it comes to the kind of thing that we have great interest in. Drugs are pouring across our border. We're stopping it, but we need a wall to really stop it. We need a wall in this country. You know it. I know it. Everybody knows it. We have to have a wall, so that's going to be part of it.

Q (Inaudible.)

THE PRESIDENT: The Puerto Rico situation is so -- because as you know --

Q Do you maintain that the federal response has been outstanding?

THE PRESIDENT: Oh, I think -- well, that's according to the Clinton administration's head of FEMA, it's been outstanding.

Puerto Rico is very tough because of the fact it's an island. But it's also tough because, as you know, it was in very poor shape before the hurricanes ever hit. Their electrical grid was destroyed before the hurricanes got there. It was in very bad shape, was not working, was in bankruptcy, owed \$9 billion. And then on top of that, the hurricane came.

Now, you're going to have to build a whole new electrical plant system. We're not talking about generators. We moved -- Puerto Rico now has more generators, I believe, than any place in the world. There are generators all over the place. The fact is, their electrical system was in horrible shape before and even worse shape after.

So we are working right now -- as you know, relief funds were just approved and are in the process of being approved by Congress. And that includes Texas, by the way. That includes Florida. And it also includes Puerto Rico, the U.S. Virgin Islands, et cetera. But it was in really bad shape before. We have done -- I will say this, we have done --

Q (Inaudible) -- Mr. President, people don't have drinking water.

THE PRESIDENT: Well, we've delivered tremendous amounts of water. Then what you have to do is you have to have distribution of the water by the people on the island. So we have massive amounts of water. We have massive amounts of food. But they have to distribute the food, and they have to do this. They have to distribute the food to the people on the island.

So what we've done is we now actually having military distributing food -- something that really they shouldn't have to be doing.

But if you look at the governor, who is a good man, by the way, but if you look at the governor of Puerto Rico, he himself has said we've done an outstanding job. And most people have said we've done an outstanding job. But Puerto Rico is a very tough one.

Yes, go ahead.

Q (Inaudible) support for the 20-week abortion ban bill. How important is this bill to you? And what are you doing to work with Leader McConnell (inaudible) gets through the Senate?

THE PRESIDENT: Well, I'll let Mitch. You want to talk about that, Mitch?

LEADER MCCONNELL: Was the question about the 20-week --

Q (Inaudible.)

LEADER MCCONNELL: Yeah, well, it's supported by virtually all of my members, and we expect to have a vote on it at some point.

THE PRESIDENT: Go ahead.

Q Thank you, Mr. President. Previous Presidents who have traveled to South Korea have gone to the demilitarized zone. There are those who believe this would be the worst time to do that because it would be viewed as provocative. How do you view what you're trying to accomplish in South Korea? Do you intend to go to the DMZ?

THE PRESIDENT: Well, I'll be going, as you know, to South Korea, to China, to Japan, to Vietnam for the summit. We have a big economic summit there. I may be going to the Philippines also. We've been invited to the Philippines, so

I may be going to the Philippines. And I look forward to all of them. We haven't set the details as of this moment.

Q Are you afraid of provoking North Korea by going to the DMZ?

THE PRESIDENT: We'll take a look at that. I didn't hear in terms of provoking, but we will certainly take a look at that.

Q Thank you, sir. A quick follow-up on an earlier question. You discussed the special counsel and the investigation currently. Are you considering firing Robert Mueller?

THE PRESIDENT: No, not at all.

Q One quick follow-up on Iraq, sir. On Iraq, the Kurdish forces and Iraqi forces last night were clashing in northern Iraq. Are you concerned about a larger conflict in the region while U.S. forces are still advising on the ground?

THE PRESIDENT: We don't like the fact that they're clashing. We're not taking sides, but we don't like the fact that they're clashing.

Q Do you support the Kurdish referendum for independence?

THE PRESIDENT: Let me tell you, we've had for many years a very good relationship with the Kurds, as you know. And we've also been on the side of Iraq, even though we should have never been in there in the first place. We should never have been there. But we're not taking sides in that battle.

John.

Q Mr. President, in an interview earlier today, Hillary Clinton said that she did not believe that players taking a knee in the NFL was about disrespecting the flag -- at complete odds with the way that you have referred to this. You fired back in a tweet saying that you hope that she runs again in 2020. Why --

THE PRESIDENT: Oh, I hope Hillary runs. Is she going to run? I hope. Hillary, please run again.

Go ahead.

Q So she's at odds with you over whether or not this is disrespecting the flag. Is she right or is she wrong?

THE PRESIDENT: I think she's wrong. Look, when they take a knee -- there's plenty of time to do knees and there's plenty of time to do lots of other things. But when you take a knee --

Q She says taking a knee is reference to --

THE PRESIDENT: But when you take a knee -- well, that's why she lost the election. Honestly, it's that thinking -- that is the reason she lost the election.

When you go down and take a knee or any other way, you're sitting essentially for our great national anthem, you're disrespecting our flag and you're disrespecting our country. And the NFL should have suspended some of these players for one game. Not fire them -- suspended them for one game. And then if they did it again, it could have been two games and three games and then for the season. You wouldn't have people disrespecting our country right now.

And if Hillary Clinton actually made the statement that, in a form, sitting down during the playing of our great national anthem is not disrespectful, then I fully understand why she didn't win. I mean look, there are a lot of reasons that she didn't win, including the fact that she was not good at what she did. But I will tell you that is something that I had just heard about, and I think that her statement in itself is very disrespectful to our country.

Thank you very much.

Q Sir, what about police-involving shootings? Sir, what about police-involved shootings as it relates to the NFL? That is what the players are saying is the crux of why they're taking the knee, sir. The police-involved shooting issue, what would you do about that?

THE PRESIDENT: It is very disrespectful to our country when they take a knee during our national anthem. It is very --

Q (Inaudible.)

THE PRESIDENT: Just hear it. Hear it. It is very disrespectful to our country when they take a knee during the national anthem, number one. Number two, the people of our country are very angry at the NFL. All you have to do is look at their ratings and look at their stadiums. You see empty seats where you

never saw them before. A lot of people are very angry at it. It is highly disrespectful. They shouldn't do it.

Thank you very much, everybody. Thank you.

Q Mr. President, is healthcare now Trumpcare?

THE PRESIDENT: I don't think so.

END

2:27 P.M. EDT

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