

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

Rough year for your favorite NFL team?
Join me, Danny Heifetz, along with Danny Kelly,
Ben Stollack, and Craig Krolbeck on the Ringer NFL Draft Show,
where we talk about all things NFL Draft,
and more importantly, how to fix your mediocre team.
Check out the Ringer NFL Draft Show every Tuesday and Thursday.
Today's episode, the case against Donald Trump.
So there's a line in my favorite law movie,
A Few Good Men, where Kevin Bacon opens his prosecution
by saying, the facts of the case are these,
and they are undisputed.
And that movie really made me want to become a lawyer.
I did not end up becoming a lawyer,
but this seems like a good moment to quote Mr. Bacon,
because underneath all the hubbub,
this case isn't very complicated.
The facts of the case are these, and they are undisputed,
at least undisputed by just about everybody
paying close attention.
Donald Trump slept with Stormy Daniels.
Donald Trump's team instructed his lawyer, Michael Cohen,
to pay her hush money.
Then they paid back Michael Cohen in several installments,
which were recorded in the business as ordinary legal fees.
This deal was struck during the heat
of a razor-tight presidential election in 2016.
Those are the pieces of the case,
and they are basically undisputed.
What is disputed is the law.
What law did this break?
And all those facts that I just recited,
is that all that happened?
Or is there some other smoking gun
that turns what might ordinarily be
a business fraud misdemeanor into a felony?
On Tuesday, Donald Trump pled guilty to 34 charges,
11 counts for false invoices, 11 counts for false checks,
and check stubs, 12 for false general ledger entries.
That indictment is now but unsealed.
I told you that when it would be unsealed,
we'd have a legal expert on to talk about it,
and today, that's what's happening.
But here's what's so interesting to me.

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

Legal experts do not agree
about the strength of this indictment.
On one side, a lot of lawyers I've read and heard say,
this case is a nothing burger.
This case is a legal embarrassment.
It is an inevitable win for Donald Trump.
We are trying out an entirely new legal recipe
on an ex-president.
It isn't completely inappropriate.
On the other side, there are people
like today's guest, Norman Eisen.
Eisen says, actually, the ex-president
has something to worry about.
He is a lawyer, he's a senior fellow
with a Brookings Institution,
and Eisen was also, this is relevant,
a co-counsel for the House Judiciary Committee
during the first impeachment and trial of Donald Trump.
Eisen and I talk about the indictment,
the strength of Alvin Bragg's case,
and why the naysayers are, according to Eisen,
and you will hear us push back and forth a bit,
why he thinks the naysayers are dead wrong.
Of course, as we talked about last week,
the indictment of an ex-president
who is also running for president,
who is also now the far away front runner
for the Republican nomination.
This is not just a legal story.
This is a politics story.
And so we've got the great political reporter,
Dave Weigel from Semaphore
on the second half of the show, to talk politics.
No big wind up from me today.
Politics and law are, I might as well be blunt
and honest about this, interests of mine,
but this is not my bag.
This is not my expertise.
In all honesty, I am just out there,
probably like the rest of you,
just reading and trying to figure out
what the hell is going on.
Thank you as always for listening,

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

trusting me to make plain
that which is sometimes not particularly plain
even when the facts are undisputed.
I'm Derek Thompson, and this is Plain English.
Here we go.
Norman Eisen, welcome to the show.
Norm, you just published a big piece
in the New York Times about this Trump indictment,
and before we evaluate the strength of the case,
what makes you and your co-author
qualified to assess this indictment?
Well, your test thing might false modesty, Derek.
I'll start with my co-author,
Karen Agnophilio, former chief deputy
in the Manhattan district attorney's office,
has worked on countless cases,
including, as I'll explain,
many cases that are actually very similar to this one,
although it has unique aspects,
the books and records charges
and the campaign finance violations
that make those charges a felony
have been charged often in New York state
and books and records all the time
by the Manhattan DA under her supervision
as the former chief deputy.
As for me, I am one of the only living American lawyers
to have actually charged a president
with crimes and misdemeanors
and then put a president on trial.
That's because I was counsel in the impeachment,
first impeachment of Donald Trump.
It was high crimes and misdemeanors,
not the low crimes and misdemeanors,
but I investigated these identical hush money claims
as high crimes and misdemeanors.
I know the evidence, I know the law,
and I have been a criminal defense lawyer
doing criminal practice and a scholar
for more than three decades.
So those are the qualifications of Karen and myself.
I think those qualifications absolutely suit.
Thank you for pushing through your own humility.

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

You've had a look at this indictment.

False humility.

False humility.

Excuse me, Norm.

Before we get to your assessment
of the indictment and the statement of facts,
just give it to me plain.

When you looked at this, what was important?

What is D.A. Alvin Bragg charging Donald Trump with?

Well, he's charging him with attempted interference
in the 2016 election.

That was a precursor, as I wrote in the Times,
and in an opinion piece that I published immediately after.

This 2016 conduct involving the hush money
was a gateway drug for the attempted election interference
involving getting the president of Ukraine
to attack Joe Biden, at least the attempt in 2019.

This was the subject of the impeachment, first impeachment,
and then the massive election interference
that constituted the attempted coup and insurrection
following the 2020 election.

This was the gateway drug, and the way it's being persecuted,
there's no crime on the books for pushing a gateway drug
of democracy to denial,

but the way it's being persecuted, as you always do,
is to look for the specific crimes that were violated
when you have one of these assaults.

Here, Trump, it seems to me, powerful evidence
that Trump created false books and records.

He characterized hush money payments that were made
to Stormy Daniels as legal fees.

Under New York law, you can't write in your corporate books
and records that something is a legal fee
if it's hush money payment.

That is a slam dunk New York crime,
and it's a felony crime if you do it to hide another offense.

Here, it appears that there were campaign finance violations.

Michael Cohen can't give \$130,000 payment or loan
to benefit the campaign.

He pled guilty to that in federal court.

There's state campaign finance violations.

There's tax issues.

When you cover up or advance another crime,

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

as happened here, that is a felony books and records violation. Of course, the reason, returning to my point, election interference, the reason for this hush money payment was to benefit Trump's campaign. There's a ton of evidence of that, including that it came right after the Access Hollywood scandal. A second, sixth scandal might have killed Trump in an election that he only won by a little over 70,000 votes in three states anyhow. So Bragg's charges are righteous. They are not petty New York misdemeanors and felonies. They're major democracy crimes, just like the ones that other prosecutors, state and federal are looking at for 2020. I'm going to give you a chance to respond to some people who have made the opposite claim, which is that they worry that the indictment is not as strong as they were expecting. But before we get there, there's a couple of numbers I want to run over that I got from your reporting, from your articles. There are 34 charges in this indictment, 11 counts for false invoices, 11 counts for false checks and check stubs, 12 counts for false general ledger entries. This is not the first time that DA Alvin Bragg has indicted people on false record charges in his brief tenure as district attorney. Is that right? That is right. He's charged now with Trump 30 defendants in a little over a year with false books and records. Books and records are the meat and potatoes of Manhattan DA and in general, New York DA charging. And for people who aren't lawyers, books and records, what are we talking about in plainer language here? You cannot create fake business records like the false checks and check stubs, the false invoices, the false general ledger entries that say these hush money payments were legal fees. And the reason that we have that rule is that precisely because this is a badge of fraud and authorities want businesses to be honest to stop them. If you can create false books and records, then you're on the royal road to all kinds of other frauds. So this is to prevent exactly what we have here, the kind of wrongdoing that may have illegitimately changed in election. They stop it at the front end with books and records.

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

It's charged frequently, not just there.

It's been charged thousands of times across New York.

I did a table of, you know, 50 of the most comparable cases over the past years.

There's nothing unusual about a books and records charge in this situation, and there's nothing unusual about a books and records charge being bumped up to a felony, as is happening here, treated as a felony crime, because it covered up a campaign finance violation.

Michael Cohen was not allowed to make \$130,000 payment, \$130,000 loan, however you characterize it, to benefit the Trump campaign.

He pled guilty to it.

The proof is powerful that Trump intended this as a payment, but for the campaign, that's the legal test he never would have made.

You know, it doesn't count on Michael Cohen's guilty plea or Michael Cohen's word.

There's a lot of other proof of that proposition.

So that is the book and records crime here.

I want to get your take on what the strongest and potentially weakest parts of this case are.

But before we get there, just a really quick question.

You mentioned that the DA has brought this charge thousands of times over the last few years, 30 defendants on books and records just in the last 12 months alone.

What is the DA's batting average on these kind of cases?

Are we talking like 20%, 50%, 80% conviction rate?

It's well over 90, the high 90s.

I mean, I haven't done the analysis, but you know, we're talking about extremely rare cases where you don't get a conviction.

I talk about them all, the successes and the failures in my essays for just security,

I've published a series of them really doing deep seven, doing deep, deep diets into the facts, the laws, the big chronology in there of evidence and all of the different legal aspects and tables of these cases, both for books and records and specifically campaign finance prosecutions based on books and records and analogous statutes in New York and nationally.

Let's get right into that.

The title of your essay is, quote,

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

we finally know the case against Trump and it is strong.
What is the strongest part of this case?
Is it the abundant evidence?
Is it the fact that Alvin Bragg in the DA's office
is incredibly and routinely practiced
in bringing these kind of cases to court?
What in your mind and in the minds of audiences
should people take away as the strongest piece of this case?
The strongest piece of this case is that Trump did it.
He paid hush money, lied about it in the books and records
in order to benefit his campaign,
violating campaign finance law,
and he may have changed the outcome of the election.
There's the theory of the case in one sentence.
It is a strong case.
Bragg has the wind at his back.
It is not a slam dunk.
There's some legal arguments that are going to be
oddly contested.
I believe Bragg has the better of those legal arguments
and I believe that he is going to succeed
in getting this case before a jury.
And while Trump is presumed innocent
and as a lawyer who for most of my career
has been a criminal defense lawyer
until Congress hired me to prosecute Trump,
I take that presumption very seriously.
But to me, it looks like a powerful case.
Yeah, so let's say that Alvin Bragg,
let's say you are advising Bragg's team
and they come to you and they say,
we want to know what the most likely obstacle is
for actually getting a conviction in this case.
What is the weakest part of this case?
What's the biggest unknown that they should be anxious
about going into this trial?
Derek, you are the first person to ask me the question
in that form of the hundreds of questions
that have been asked about this case
since it hewed up in the past weeks
on TV and podcasts, the radio, reporters,
my editors, all these publications I've done.
So I think the weakest,

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

some people say the weakest part of the case is Michael Cohen, my friend. I got to know him because I investigated the same stuff during impeachment. He was one of the first people I talked to about the Hush Money Associated Proof. But Michael Cohen, having read the statement of facts, I believe is going to be 5% of this case or less. They have built a case that will allow a very strong cross-examination of Michael Cohen and it's going to be a vibrant one. And he's going, you know, I think he's going to do well, but to the extent the jury sees that cross-examination, what they've done, that's why Greg, I think, took a year to build this case. He's built a case that includes Michael, but it has a much broader sweep. So I don't agree with the people who say Michael is the weakest part of the case. There's been a fair amount of conventional wisdom that the novelty of applying the well-recognized law that allows Greg to do a Books and Records case about campaign finance violations, about state campaign law, all of which has been done before successfully, and I wrote about them in the New York Times again and again and again, that's been prosecuted, but never against a federal president. I should say a federal candidate in applying New York state law. That's right. I think I read from your reporting, from your reporting I read that the Brooklyn DA convicted an Assemblyman, Clarence Norman, for soliciting illegal campaign contributions and for felony falsification on business records. That, however, and this is getting into the point of disagreement here, not between you and me, but between you and the legal scholars, you know, this is obviously a local race. This is a New York Assemblyman, but the people who disagree with this case, and I've read several essays of disagreement, the School of Thought there,

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

and I think it was probably maybe best articulated by Richard Hassan, who is a UCLA legal scholar, wrote this up in Slate.

I'm just going to quote to you and get your response.

Quote, based on what I've seen so far, the decision to charge Donald Trump with felonies in New York state is a mistake, both legally and politically.

He continues, quote, it is far from clear that Trump could be liable for state campaign finance crimes as a federal candidate.

Overstate prosecutors may be precluded from prosecuting federal candidates for federal crimes under a rule called preemption, meaning they have to be brought by federal authorities rather than state authorities.

Alvin Bragg is a state authority, he is not a federal authority, and so under the preemption rule, they could maybe throw this case out or lose it.

Could you define preemption for us?

Just define preemption as you understand it and tell me why you're less concerned that preemption could spoil this case.

So Derek, there's two issues that I think are, where I think Bragg has the better of the argument, but they're the two most contested, let's not say weakest, but they'll be the two most contested legal issues, and then Cohen will be the most contested factual issue, and a second contested factual issue will be Trump's intent.

Would he have done this but for the campaign?

I think there's proof beyond a reasonable doubt.

So those are probably three and four, those two factual issues.

One and two we talked about, and it's not just Clarence Norman, it's a wide array of political figures in New York who've been prosecuted, books and records, New York state campaign finance violations, convictions obtained, but they were state figures.

So applying that state law to a president is one.

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

You're raising the other contested issue in this case, which is Bragg has said he's gonna do belt and suspenders, he's gonna apply state law and federal law. Can a state prosecutor apply federal law in a state prosecution? The answer to that question is preemption, and there is a doctrine, but it has exceptions that federal prosecution or that the prosecution of federal campaign finance matters has to be done in federal court by federal prosecutors. That's what it is, in other words, preempted, blocked off for state prosecutors. But here's the thing, the preemption doctrine is highly varied from issue to issue, and the preemption that applies to FICA, the federal campaign finance law statute, is as false as Swiss cheese. And again, and I wrote about this in the New York Times, and the contestants are not going through case by case, just like on the state. They have to deal with Norman and the many other cases that I've itemized. State authorities have been allowed again and again under this very gap-ridden, exception-laden preemption doctrine on federal campaign finance issues. The prosecute matters against individuals who are related to or connected to federal campaigns, and I link to all those cases in the New York Times. Is there one that's exactly on point? No. Are they analogous? I believe so, and we will soon find out. But the brilliance of what Craig has done is he's done belt and suspenders. He said, well, I'm going to try the state case. I'm going to try the federal campaign finance issue. He's not stopping there. He's raised the possibility in the documents he filed with the court that he's going to raise a tax issue here. There was a tax conspiracy. So it's belt, suspenders, and the tax is kind of like duct tape. There's suspenders and duct tape here. He's leaving nothing to chance that's as it should be

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

because, as you just asked me a few minutes ago,
you know, this is a very powerful case,
and I think Trump should be prosecuted for it.
Thank God Bragg is doing it because the Donald Trump
Bill Barr Justice Department, which should have done it,
didn't do it.

Last question before I let you go.

I read your piece.

I'm listening to your arguments.

I'm listening to them compelling.

I'm placing that alongside the fact
that there's a lot of people writing at the Atlantic,
where I work, writing in the New York Times,
like David French, who are no fans of Trump,
who are also lawyers, who are also legal experts,
who have not come to your conclusion.

In fact, they've come to the opposite conclusion.

They are upset with Bragg and upset that the indictment
is not as much of a slam dunk as they wished.

I mean, Andrew McCabe was just on CNN saying that he's disappointed
by this indictment.

In your view, what is it that they're fundamentally getting wrong
if you're confident that this case is strong
and they're confident that this case is weak?

Well, where would we be without debates?

I think that they are, at the most fundamental level,
misapprehending that this case is a very important democracy matter
because it might have, out of all the cases we're considering,
it might have changed the outcome of an election.

I don't think that they're adequately accounting for,
they often say, well, it's novel,
but they haven't accounted for the many.

It's not just the Norman case.

The many times that a state prosecutor in New York
has gone after books and records cases
based on state law campaign finance violations,
which we have here, they are not accounting for,
and state law allows that.

State law doesn't say you can only prosecute based on state violations.

It says if there's a false book and record in New York
and it's done for another, quote, unlawful purpose,
different statutes use different words.

It doesn't say that the unlawful purpose has to be a state one.

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

So this bump-up is actually allowed by New York law.
Why shouldn't you be able to prosecute a books and records case
if there was a federal cover-up?
That doesn't, you know, that doesn't,
for the state law piece, there's no preemption.
Then they're saying, well, but wait a minute,
he's also bringing in federal crimes,
but they're not looking at all of the preemption cases.
And they don't, you know, haven't,
I've done campaign finance in my prior watchdog group.
I've done campaign finance work for decades.
I advise President Obama on it
as part of being his epic czar in the White House.
When you look at those preemption cases,
it's not as clear-cut as they say.
So I think they're, and then they have hesitations about the facts.
They haven't investigated the Hush Money case
like I have for almost a year in impeachment.
They haven't sat with Michael Cohen again and again
with his story never changing.
And, you know, some of them have not been practitioners.
I've done these cases for 30 years, including in New York.
So I did them all over the country.
So these kinds of criminal cases.
So for all those reasons, I respectfully disagree,
but I love the debate. Bring it on.
And, you know, I linked to some of their arguments,
many of their arguments, all of the main arguments
that were out there in my writings
and then attempted to respond to them.
Great. Norman Eisen, thank you very much.
And we'll soon find out who's right, Derek.
Thank you very much.
That was Norman Eisen.
And next up, we have politics reporter at SEMA4, Dave Weigel.
Dave Weigel, SEMA4, welcome to the show.
Good to be here. Thank you.
So first off, I just want your reaction
to a historic day in American history, the Trump indictment.
What did you see? What did you read that surprised you?
What were your big takeaways?
Oh, it's hard to have a surprise today,
because I think there have been, like,

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

Star Wars movies analyzed from fewer angles
that this indictment was, that this moment in New York was.
I guess I got some amusement from George Santo showing up
and then saying it was a media circus,
which I think is the only climate he ever moves in.
But no, what was new was the indictment itself,
and I feel that it was validating for people who have worried
that while there are several ongoing investigations
which could lead to criminal charges against Trump,
this remains the one that is very hard to nail somebody for,
for several reasons.
Yes, there's 34 counts of falsifying business records.
There's Trump really guilty, but there's not really a denial
of Michael Cohen paying off Stormy Daniels
for the 2016 election.
I feel that every time that's in the news,
it is generally bad for Trump and not good for him.
But as a case that might, that might nail him,
and we now know there's not much more to the indictment than this,
and we know that unless it's pushed,
there should probably be an effort to.
Trump is not back in court until December,
so there's going to be a whole campaign primary season
where this is hanging over Trump and they're trying to dismiss it.
Yeah, but that's what I, that's what I figured out.
The rest of the media circus around this was
was not new.
And some of the hyperventilating about how,
I'm not accusing you of hyperventilating.
I mean, it is unprecedented for this to happen to a former president,
but it's not unprecedented to happen to a politician.
Like there have been crazier things.
I've seen ex-governors and ex-members of Congress
accused of and go to trial for.
So that part of it, I feel like I'm missing like whatever,
whatever is in people's brains that makes them
rip their garments and disbelieve that this could happen to a president.
I think, oh, I don't know.
Sometimes politicians commit crimes.
What do you got to do?
Trump is next due in court in December.
That is so far from now.
That is the middle of the primary season.

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

I mean, so much can happen between here and then.
He could be indicted for one, two, three more crimes.
How meaningful is it to you that the next time that he's due in court,
is there going to be an entirely new reality in politics?
Well, we had a dry run for this,
which was the impeachment in 2019, rolling over in 2020.
What it does among Republicans,
this is much more tense than his president,
is say, we don't buy it.
This is our icon, our hero, our Caesar.
We're not going to, and I'm using the word Caesar
because I've read columns of comparison,
we're not going to let these investigations
stop him from staying president or becoming president again.
That's the Republican response.
I think in the Republican primary field,
the response to this has been to criticize the investigation
and not talk about the contents
and try to move the conversation to something else.
It is, if you've been watching Trump navigate
the Republican Party for the last eight years
and you wonder, are they ever going to get better?
They're not going to get better at this.
They have no strategy.
They hope that maybe Republican voters
are convinced that he can't win again
because he's so under duress.
But that's not what they're saying.
They're kind of validating this idea
that Trump is only being investigated
and only being charged because he is the essential man
who's going to take back America.
And the attitude, I guess I would describe as,
if any other Republican nominee
would be less legitimate at this point,
just because they would have benefited
from political prosecution.
Nobody's really contradicting that in this race.
The exception of Asa Hutchinson,
the former governor of Arkansas,
he's the one Republican running for president.
He's at between 0 and 1% in polls,
which I don't need to dismiss him as a person.

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

He just, he is.

He said that Trump should be disqualified from running based on this.

That is something that most Americans, according to the CNN poll, 60% of Americans agree with.

Trump should be disqualified, shouldn't be running again.

Whether they're running for president, they host TV shows, they write books, they write columns.

Their attitude generally is,

yes, this is a,

they handle it basically the way that

very different circumstance,

but the prosecutions

of Dilma Rousseff and Lula in Brazil were handled.

I don't want to get into the weeds there.

Not the same thing,

but within

Lula's political alliance

on the left, Rousseff's allies,

the thought was

they're doing this disqualified

as person from becoming president.

There is no legitimacy.

But look at Lula, he was very popular president

who won 60% of the vote

in his first two wins

and won 452% last time.

It hurt him.

It hurt him to be seen as

legally exposed.

This is what I wanted to get at, because I do feel like

the conventional wisdom that is solidifying

right now is that this

is good for Trump

primaries, and it is bad for him

in the general election.

And that is because a gap has opened up

between the ideology

of Republican supporters

who are very firmly in his camp

and the ideology, or at least the

attitude toward Trump

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

of the great American
middle.

Whenever there's like
a conventional wisdom that becomes really, really
conventional, there's always a little bit of me
that's like, should we double check that?
Should we sure it's true now that everyone
is saying it?

I'm not entirely sure that I can think of a reason
why this conventional wisdom is wrong, though.

Do you have any pushback
to this general idea
that Trump will be
tailwinded
by this indictment in the next nine months,
but that once he, if he does
win the nomination,
it will have soured a lot of
independence and moderates against him.

Yeah.

I'm glad you keep delineating who is talking
about this, because
in Republican circles that
don't know what to do with Trump,
they say one thing that I think
sometimes they believe, sometimes they are trying
to convince themselves of.

I went back
to 2016, there are things
Donald Trump was accused of that were going to be legal problems for him.
Stormy Daniels, he paid to cover up.

But we knew that
Trump University was a legal
problem, the fraud committed
by Trump University.
Hitler couldn't run against it.
Republicans worried that it was real
and that it would hurt him and he might lose the election.
And then once he won the election, they said,
well, okay, you can't actually,
you can't touch him anymore. He's the president.
Same thing with the documents
they took from Mar-a-Lago. Most voters think

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

that was bad.

The biggest issue in the planet for them, they most disagree with Trump taking these documents from Mar-a-Lago when they first heard about it.

In Republican circles, it was backfilling.

Well, actually, if the president takes anything, he's declassified by his person.

It gets very weedy and I think tedious if you're not super into this.

The constant defense of Donald Trump.

And you need to do it in the Republican Party because if he remembers, Republican voters, I think more importantly remember if you don't stand up for Trump in real time, or if it sounds like you're validating a criticism of him, you get punished for it. They are not out of this trap and you could go down the list of Republicans, not just to vote for impeach Trump, but I covered lots of Republicans in primaries who, let's say, during the Access Hollywood tape said he shouldn't have said that.

And then four years later, the fact they criticized Trump was used against them, they lost a primary. That's, it's a very self-preservation focused

instinct going on for Republicans and it is not coterminous with what the rest of the electorate thinks. That remains their problem. It just, the one other thing I'd add is that Republicans at

35%, maybe at this point two-thirds of Republican voters do believe that the election was stolen, that Trump actually won it. That's been declining over time. But

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

most Republicans believe that, well it follows if you think that Donald Trump won the last election, you don't get into questions like, is he unpopular? Are there people who don't like him? Is, does he need to change what he's doing to win? Does he need to run on this popular position instead of that unpopular position? You don't even have the conversation. You're like, well no, he like, really want. So we need to run Trump again but control the electoral system. And I even saw today, I mean, this, I was writing, as Wisconsin last week ran about the Supreme Court race, Charlie Kirk, very influential, because sort of leads to turning point USA, you know, says matter of factly to his audience, well this makes it harder to win Wisconsin 2024. Well, why would it? Wisconsin's close, there's going to be an election 2024, Democrats are going to spend a lot of money, Republicans are going to spend a lot of money. What they're saying is, well we all know that Trump probably won the state last time, which he didn't. Trump probably won and he only lost it because of this chicanery with absentee ballots and they're going to make it harder. What they're thinking of is, for example, the conservative Supreme Court in Wisconsin after 2020 said, hey by our interpretation of the law, you can't have drop boxes. The new liberal court might say, actually you can. And if your belief is, well Donald Trump won that election, but he was stolen from him because of drop boxes, then sure, you're going to say, dang, the drop boxes are back, we can't win. None of that is policy, none of that is about what you run on, none of that is the image you present to the voter, and there are lots of them who liked

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

Trump the second time. I mean, there were millions more voters who didn't vote for him the first time, voted for him the second time. They don't care. They don't want this stuff. This is not what they're voted for or for. They're compelled, like, oh, maybe he was better at handling inflation. Maybe he was, but we were safer in Russia debating anybody. You're not even having the conversation, just like, he did everything right, do it again, control the courts, that's the one. And that's the dominant attitude in the party that, again, I mentioned one Republican who disagrees and he's polling between 0 and 1%. Exactly. I mean, it's so interesting because Donald Trump has this reputation of Teflon Don and, you know, nothing gets to him and the Democrats keep shooting arrows and it keeps bouncing off of his exoskeleton. But in a larger sense, Donald Trump is not popular. This is a guy who lost the popular vote in 2016. I'm not saying he lost the election in a legal sense. He lost the popular vote in 2018. They lost the midterms in 2020. He lost the election in 2022. A lot of his preferred candidates lost races that Republicans, moderate Republicans, think they should have won. Inditing Donald Trump is popular if you poll it and even half of Republicans I think I'm getting this from your own reporting say that paying to squash the Stormy Daniels story before the 2016 election was unethical. Half of Republicans think that the underlying facts in this case, whether or not you agree with Alvin Bragg bringing the indictment, they think the underlying facts speak to an ethical behavior on the part of Trump.

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

He's not popular in any majoritarian sense. This gets to New Hampshire poll that just came out, which has Trump with 44% of the vote. The rest of the field is splitting the other 56% of the vote with I think DeSantis around like 29%. It seems to me we are headed for an absolute potential sequel of 2016 where Trump has under 50% support of the Republican Party but the never Trump contingent splits the vote all the way to Super Tuesday and we end up with Trump being nominated. How realistic does never Trump colon 2 the sequel seem to you at this point? You mean never Trump but that fails. I feel like that's very likely. One, the gas in the tank of never Trump in 2016 was the idea that Donald Trump could not win. What really hurt them was that Trump's strongest competition once Rubio melted down with Ted Cruz. I do think it's funny that Chris Christie's back campaigning against Trump had Chris Christie just laid off Rubio in a debate in New Hampshire. It's possible that it gets down to a Rubio versus Trump race. Rubio is weak in a lot of ways as a candidate but who knows. But that's gone. The idea that he cannot win is

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

not
in the Republican party right now.
A good example is that
Nikki Haley is running for president against
Trump, wants to be the nominee, not him.
Whatever one thinks about her running for VP
which I don't know
but it's possible.
But
the way she puts it is that we have lost the popular vote
in seven of the last eight elections.
That is true.
You could also say
we lost the last election.
Chris
Sununu will say we lost the last three elections.
That gets a little further.
Trump lost. We lost the midterm.
We lost 2022 effectively.
He's not running yet.
But when he
is poll and there's a New Hampshire poll this week
the governor of New Hampshire who wins
landslide reelection, less and less
but he's been winning reelections
for four years, for terms
I should say.
He is at 14% and Trump is way ahead.
So
I feel that
it's less what is going to happen to Trump
legally. What are Trump's ethics
for most Republican voters? The thought is well we know
that already and
not just
we think that
we're okay with him being
morally
compromised
but we now think, I'm speaking as the
voice of the Republican voter, we now think
that when he is attached for something
it is because he's so effective.

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

It is that because they know
he's going to take the presidency if they don't
try to drag him down. That is not
what Democrats will tell you.
You can polygraph them. They honestly think Trump
is a weaker nominee than
Nikki Haley.
I'll talk on and off the record
about this. Like boy
we hope it's not Mike Pence. We hope it's not
Nikki Haley. We hope it is somebody who's so unpopular
that most voters say I can't possibly
vote for him. That's not Republicans
think. They don't talk to Democrats.
They don't think that's true.
They think everything Trump
absorbs is because Democrats
are so worried about him that they want him to go.
And so you can get into the nitty gritty
of all these cases and they're just going to
say like well you're only doing that because
you're trying to sack our quarterback.
That is the attitude.
It does seem possible to me and maybe
I'm just recapitulating what you said at the
top of the interview that this
indictment is much more historic
than it is important.
Trump is the favorite
to win the Republican nomination
and he will remain the favorite
really whether or not he is
indicted. He is
after he wins say above
50% chance of winning the Republican nomination
going to be in a really tough
race against an incumbent president
the contours of which
will be shaped by a bunch of things that you and I can't
really predict. Maybe we have a recession
in 2024. Maybe there's an invasion
where of Iran
or something or in Iran evanes a neighbor

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

like just some craziness out of the Middle East
that can't even possibly predicted.
But we simply enter sort of the jambalaya
of 2024 politics that are difficult
to predict
and that fundamentally
the indictment while it is
enormous news doesn't actually change
the contours of
the election
that much.
Is there something to that?
The essential fact about Biden is that he is
very old. He's in his 80s
he benefits when he's
not making news.
I saw some people
attacking New York Times today as they do
for to say
it's a problem. The White House is trying to get his message
out there and we're talking about Trump instead.
It's like well it's not really
a problem for them. When people are not
thinking that much about Joe Biden
Biden does not
suffer. The idea that
we need to have the president
fixed in your mind you're not going to vote for him
I think is based on nothing.
Well I think it's based on media
self reflection.
Might it be true for the primary in a way that it isn't for the general?
I don't know this is the perfect
contrast to draw. It does seem like Trump's ability
to get and hold attention
is useful as a weapon
against Ron DeSantis specifically.
But it's not necessarily useful as a weapon
against Joe Biden specifically.
Yes.
That's a very good way of putting it.
I think it hurts him.
It overall

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

hurts the GOP
and helps Joe Biden when
the conversation is what Trump wants it to be about.
An example I think
about a lot is that
Trump's administration
had anti-trans policies.
It opposed critical race theory. It opposed the
1619 project. It did so.
Memo's from the White House. Trump would criticize it.
But when Trump was doing it
20% of the country said
I don't like this guy, I don't care.
Trump was gone and then in 2021
there were these elections in Virginia and Republicans were like
what we really need to do is get rid of the 1619 project
and these like
gender stuff in the schools.
And without the face of Trump
it kind of sold. It got over.
A lot of voters said I don't like that.
I'm a Democrat but that sounds bad to me.
When Trump reappears
the funnel
that he builds around himself to get the attention
that he has.
I'm blanking on
the exact political scientist.
As we're climbing New Yorker
we're going to do a summary of it.
Political science is pretty clear.
When a president
even if he's popular
starts talking about something it now polarizes.
Only the partisans agree with the president.
When he's an unpopular president, unpopular figure
it polarizes and most people are like I don't agree with that.
I feel like it very clearly
like we had in 2022 where Republicans running
Trump was back and Trump was campaigning
everywhere and Trump was
turning rallies into rambling about 2020
and people said I don't like that guy

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

and they voted for Democrats.
That's so weird about the last
two years.
The disbelief that 2020 was real
and that the polls are real
has persisted
even after the midterm which showed
actually the polls are pretty right.
And there was a month
I would say
in the R&C meeting
and the Republican Governor's Association
Republican Jewish Association
there was this kind of perestroika
of Republicans saying hey
whatever you think of this guy you can't win
we need somebody electable
and then that faded because we got further from the midterms
and Republicans were like I don't know
that was a flukey election
we know that Trump can win. Let's go back to him.
My last question for you is
I wrote down a note as you were talking
where I said the GOP primary
doesn't have a media primary
while the general election is more
of a fundamentals election.
I'm not saying fundamentals don't matter in the GOP primary
I'm not saying that media doesn't matter
in the general
but it seems to me
that there's something about attention politics
that is more important
for Republicans in their own primaries
and it makes me wonder
maybe a perfect person to ask this question to
because I've sort of been circling this point
especially in talking to some friends on Twitter
and talking to them on Twitter makes the following question ironic
does the GOP have like a touch grass problem?
Like DeSantis
talks so much about
wokeness and Trump in his speech last night

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

was talking about all of these
issues that were an extremely
online interpretation
of the indictment
and a lot of people were saying I don't even know
how people who aren't constantly
all over the subreddits
and the truth social posts would even understand
half the things that Trump is talking about
like maybe
I guess there's two questions here one is
do you agree with this premise that Republicans
have this two online
problem and two
if you do agree with the premise
where does it come from?
Well
I generally think I agree
the roots are very long
the
Nixon's
concept of the silent majority is now
54 years old
but at the same time Nixon was talking about
that and saying there's an East Coast elite media
that doesn't understand the rage of
the actual working American
there was an effort to build up
a more conservative alternative media
I think that has
succeeded through the dreams of everyone
who thought about it 50 years ago
if I'm a Republican
voter right now and I talked a lot of voters
of both parties
they're independents but I talked about Republican voters
I'll ask them sometimes
what do you
really get your information I'm not demanding they read
my stuff where you get it
and they have tuned out for years
CNN, New York Times, AP
they listen to

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

I mentioned Charlie Kirk
they listen to Ben Shapiro
they listen to Joe Rogan to some extent
and I honestly think
it's good to have a diverse media diet
I'm not allergic to listening to anything like that
but I do think
it has led to
you mentioned touch and grasp
it happens pretty frequently like Republicans
are bringing up a concept and I've heard about it
because I've listened to Charlie Kirk and then
I ask anyone in like my newsroom
or like that other person who's
paying attention to politics do you know what that means
they don't know it is so obscure they don't know
this happens on the left
but the
media infrastructure
people have tried to start
a left-wing media company that you need
instead of
you can read that or listen to that
instead of watching CNN it doesn't work
like there still is a
connective tissue between
Democrats, Liberals and
the establishment media
I saw it when I was at the post during the Trump
years like people subscribed more and they loved it
they would thank it for what it was doing
and it is still
for most people
I think information is getting more and more atomized all the time
but for most people like was it on the TV news
that night is more
like a
thing that happened
you get fewer
code words you're less aware of certain scandals
it takes I mean you saw this I mentioned CRT
and stuff that Trump talked
about in 2020 it took like

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

a year for people
for that to get enough into the mainstream
conversation through conservatives
pushing it
that there was a political constituency
to stop
to take some race lessons out of school etc
but it was very confusing to people for a very long time
I mean you saw this with
the groomer branding Republicans used
for gender issues
that sort of sounds weird to a lot of people
and the idea is yes
but if they unplug from
the you know
coma inducing mainstream media
and they see what's really going on well it's like
most people are not going to do that
not because they are ideologically attuned
but because they're busy and they don't care
like it needs to rise the level of
why is this thing so bad and that's why I think
although it may be fading now
like Democrats saying things like we should
defund police departments
and put more resources into
into social welfare
that didn't really click until like crime went up
and people said well I remember Democrats saying that
but it took a lot they didn't care
that Democrats did like land acknowledgments
which they also do which I think conservatives
also find very silly and annoying they don't care
this is like
the world people operate in
they mostly would like politics
to leave them alone and they get angry when it's not
either because the government service
is failing or because something stupid
is happening but they generally don't care
and I think you're right Republicans
Republicans
at this point are so

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

invested in alternative media
that is trying to change the narrative that they often
just they're three weeks
they're a year ahead of something
that most people don't care about I think that keeps
happening
and I think
there's also some
denial this Wisconsin election
last night their Democrats said from the outset
hey we're going to run on
we'll keep abortion legal
and we're going to
you know we believe in democracies
we're going to revisit these maps and these voting rules
and Republicans had a couple messages
but they never came up with a great response
the abortion one they just said like well that's
that's a partisan distraction
they had a lot of advertising about
just the importance of a
nonpartisan
unbiased court a judge that they just
came up with some stuff that just was a little
too Mark Levin like a little too
conservative that didn't make
didn't appeal to somebody who says you know what
actually I'm kind of worried that abortion might be banned in
Wisconsin they never had an answer to that
because they didn't think they needed one it turned out they did
like they can like
lots of Republicans can win elections in safer states without
doing any of this stuff but I feel like that too
I said the final thing
there are other points I'd make is that like
a lot of states there are no competitive
politics anymore
if you're in Missouri you have a super majority
if you were in Alabama you have a super majority
and things can
rock it through there
with no political consequence to their Republican
party whatsoever I do think then when you

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

gear up to like campaign in Wisconsin
you don't have the hell we were talking about
because like
it's a different set of issues the different set of concerns
and there are political consequences you can like
lose an election if you go too far right
the big irony to me
from a demographic standpoint
is that for a long time we've been talking
about how millennials
Gen Z leans left
and you'd think in terms of news
diet that this is the demographic
that would more likely rely
on rabbit holes
of the internet to get their news from
but it turns out that the most
rabbit hole
contingency in American politics
is the right
and I know that some listeners who are more conservative
are going to say no that's not true the left has its own
extremely online weirdness of course they do
but look at the president
look at president Joe Biden
is there anything extremely
online about this guy
I mean can you imagine Joe Biden doing like a
land acknowledgement
this is not
an internet poisoned mind
this is someone who I think one of the benefits
of the administration frankly
they seem to be almost optimally
online they seem to have an awareness
of a lot of online discussions but they
don't fall into these rabbit holes
that prey on this
majority illusion that lots of people fall
prey to online where they say
I got 10,000 retweets
for this message therefore
it is broadly popular from a majoritarian

[Transcript] Plain English with Derek Thompson / How Strong Is the Case Against Donald Trump?

standpoint in the electorate that is an illusion
it is a delusion that I think has gotten
a lot of a certain parts of
certainly the left but specifically the right
in this conversation
caught into thinking that certain
positions are significantly more
popular than they are. Dave I know that
we promised you that you could run at
130 Steve if you can make a phone call
go make that phone call thank you so much
for talking to us and we'll have you
back soon. Okay well thank you very much
bye. Thank you
for listening Plain English is produced by
Devon Manzi if you like the show
please go to Apple Podcast or Spotify
give us a five star rating leave
a review and don't forget to check out
our Tiktok at Plain English
underscore that's at
Plain English underscore
on Tiktok.