

[Transcript] The Ezra Klein Show / Trump's Legal Jeopardy and America's Political Crossroads

Alright, before we start today, we are taking questions for the upcoming Ask Me Anything episode. So if you've got anything, anything at all to ask me that you want to hear answered on the show, send that into Ezra Klein Show at nytimes.com. We are accepting questions until Sunday, April 2nd. So anything that comes in after that, we're not going to consider. We just get a lot and we got to start sorting through it. So send it in before Sunday, April 2nd, if you want it to be part of the show. Speaking of dates, I'm recording this on Monday, March 27th, and it's a Monday with a lot of uncertainty. We don't yet know what is going to happen with the case against Donald Trump in Manhattan, the case around the Stormy Daniels hush money payments. It is possible Donald Trump could be charged with a felony, with a misdemeanor, with nothing. It's also not the only case against Donald Trump. There's a case in Georgia that is around elections version. There are different investigations opened by the Department of Justice, again, around January 6th and the election and then also around classified documents. There's quite a lot of legal risk around Donald Trump right now. And where there's legal risk, there's political risk, there's risk of violence, the risk of damage to our institutions, either because they do hold Donald Trump accountable or because they don't. Donald Trump forces the political system constantly into profoundly challenging positions that don't really have good answers, that really, really don't have good answers. That is part of the danger he poses, but also part of the danger, and we talk about this today, that his movement poses, that the kind of politics that he doesn't just practice, but that he is rewarded for, that is wanted so badly by the people who support him that others in the Republican Party now ape it. That is also, maybe that is centrally where the risk comes from. And so the question at the moment is how to balance all these different kinds of risks and questions and cases. And my colleague, David French, a New York Times opinion, has been thinking quite a bit about how to do just that. David is a lawyer. He's done a lot of cases in free speech and religious rights areas. He is a longtime conservative commentator, and he has been trying to parse the legal merits of the cases against Donald Trump, the political questions around them, and the ways institutions should or should not think about moving forward. And also, as you'll hear, the ways the Republican Party has collapsed as a safeguard of these institutions, and as a force that enables them to make the decisions they need to make. So we talk about all that here. As always, my email is reclineshow at nytimes.com.

David French, now of the New York Times. The first time we've done this since then. Welcome to the show.

Well, thank you. It is the first time, isn't it?

Yeah.

It's an honor to be your colleague.

It's a whole new relationship. But it's a good time to have you here because we have a bunch of Donald Trump legal questions. And so I wanted to start with this. From the outside as a non-lawyer, the Stormy Daniels case feels pretty clean. You have Michael Cohen. He paid off Stormy Daniels. We know that. We know Trump reimbursed Michael Cohen. We know Cohen got prosecuted and actually went to jail for that. And so I'm a simple child. It seems like Trump should, too.

So why do you and many others consider the case weak and in some ways unusual?

Yeah, it's complicated. And it's complicated because of where the different cases have been. Okay. So you're correct that the Stormy Daniels hush money piece of this is really pretty clean. You had Michael Cohen pay Stormy Daniels \$130,000. He has reimbursed for that plus some additional money on top of that. And it's all mischaracterized. This is not classified in the business records as hush money for porn star. This is all mischaracterized. And that's pretty neat and clean falsification of business records. Okay. Problem. One is not really a problem. It's a misdemeanor. So it's not a big crime, but certainly you shouldn't give Trump any favors and refuse to indict him for misdemeanor when you had indicted anybody else. I'm a big believer that a president is not nobility. They're just a citizen like you and I. And if citizen Trump would be indicted for this, then former president Trump should be indicted for this, but there's a two year statute of limitations. So it's a misdemeanor with a two year statute of limitations, arguably, and we can get into this, arguably that has expired. So how do you continue to make the Stormy Daniels case an issue? Well, New York law says that if you commit this misdemeanor of falsification of records and furtherance of another crime, then it's a felony and it's got a five year statute of limitations. So then the question is, what is the other crime? This hush money payment was in furtherance of. Now, to be super clear, as of the time of the taping of this podcast, we haven't seen an indictment. So everything that's going to follow here is what I would call informed speculation. The prosecutor could surprise us, but the informed speculation is that the other crime is a federal campaign finance law violation. The very violation that Michael Cohen pleaded guilty to and that landed him in federal prison, which was an unlawful campaign contribution and Trump directing an unlawful campaign contribution.

So you might be saying, well, wait a minute, David, why is this any kind of a stretch? Because Michael Cohen pled guilty to this and he went to jail for it. Well, the problem is what we're talking about is prosecuting a federal tying a state misdemeanor to a federal felony that was never prosecuted by the feds. So neither the Trump DOJ nor the Biden DOJ brought this prosecution. We could talk about why that might be. We don't know for sure, but I can tell you there was a tremendous amount of controversy in the legal world around the Michael Cohen guilty plea, because the question was, did he actually plead guilty to something that was really and truly a crime? There's a lot of argument over the Stormy Daniels hush money payment, how it interrelates with federal election law, and whether or not that was actually an illegal campaign contribution or just the same kind of money that somebody would spend, who's a billionaire or a hundred millionaire or whatever he is, that somebody would spend when they're trying to conceal negative information from their family. And so there was a big argument over whether this was a federal crime to begin with, John Edwards had been prosecuted for something remarkably similar, but the prosecution failed with a hung jury. The case was not retried. So it's a local district attorney prosecuting a state level misdemeanor potentially tying that to a federal felony that was never prosecuted by the federal government. So that's why a lot of folks look at this and me included and say, that's a bit of a reach.

So you mentioned in your columns when thinking about this that there are sort of two opposing forces for you. One is if you committed a crime, you should pay for the crime. And the

other is a legal principle called lenity. Can you explain what lenity is?

Yeah. So the rule of lenity, and this is something that's actually been talked about pretty recently at the Supreme Court, is essentially a rule that says, wait a minute, if there is ambiguity in a statute, if the meaning is hazy and we're talking about a criminal prosecution, then when the meaning is hazy, when there's ambiguity and interpretation, then you shouldn't bring the case. That when a person's liberty is at stake, as it is in a criminal prosecution, you should prosecute people when statutes are clear and legal obligations are clear. When statutes are not clear, the ambiguity should be resolved in favor of the defendant. And then there's also the equitable principle on the other side that says, hey, civil justice. And there was a good piece in the Times before I wrote my piece saying, hey, it's really unjust to throw someone in jail for committing a crime at the direction of another person that's Cohen and the payoff scheme with Stormy Daniels and not prosecute the person who directed the scheme. That seems strange. And I completely agree. But that goes to the question of why didn't the federal government pursue those charges?

Well, one suspicion many people have gets at this other category of risk, which is not that the jury wouldn't agree with the prosecutor, but that political risk is real. And you'll hear the argument basically that it would be politically combustible to prosecute Donald Trump for crimes. He himself has said there'll be violence. And prosecutors do exercise discretion on what cases they do and don't bring that happens routinely. The idea that everybody gets prosecuted for every law they break is not accurate. And so even if Trump did commit the crime here, it's just not in the national interest to prosecute. And that's not a crazy thing for prosecutors to weigh. And maybe that is what we don't know, but maybe that is what the DOJ at least under Biden decided. How do you think about the arguments for weighing political risk?

Yeah, that's a very good question. And I'm kind of a hardliner on this, Ezra. My view is it is not the role of the prosecutor to weigh the political risk. So the prosecutor might be weighing such things as what is my law enforcement priority to bring peace to the streets. So for example, a classic exercise of prosecutorial discretion is our emphasis this year is going to be on prosecuting gun crimes. But that's a classic sort of strategic law enforcement decision made in often in communication with political leaders about allocating limited law enforcement resources. What is not typical for a prosecutor and what I would say we do not want prosecutors doing is saying, if I prosecute this case, it creates a massive political problem. Or if I prosecute this case, it could lead to unrest in the streets, which gives sort of a mob the veto power over the rule of law. In actuality, the federal constitution and most state constitutions, not all of them, but most, they do provide for a political process on prosecutions. And that's the pardon power or clemency. And so the head of the executive branch, and this is a holdover from colonial times and our royal British heritage, that one of the last vestiges of royalty is this sort of absolute pardon power that exists with a president. And so the way this should work in my view, Ezra, is the prosecutor brings cases based on the facts and the law and the prosecutorial priorities of the office, the political branch through the president and its pardon power or governor with pardons and clemency. The president can trump that for political reasons, but that's not the prosecutor's job. And the classic example of this is, of course, the

grand jury that was moving towards indicting Richard Nixon and Gerald Ford stepped in and pardon Nixon. Extremely controversial that he did that. I think that in hindsight, there's maybe a lot more reasons why it's a mistake than proper. But that's the way the system is supposed to work. The justice system was moving in one direction, and then the president intervened using his constitutional authority to make that political determination.

I want to pick up that question of hindsight. My view is that Gerald Ford's decision to pardon Nixon, it created the belief in our political system. I'd maybe even say the precedent that we shouldn't prosecute former presidents even when they have committed crimes because it would be too hard on the country. The famous, our long national nightmare is over, quote. Do you think that pardon was wrong in the sense that it damaged our political and legal culture, that it created the expectation that presidents are indeed above the law? That's a really good question. And I'm going to admit that I'm torn. And I used not to be torn. And the reason why I wasn't torn is I thought that the fallout from Watergate, where you did have both congressional elections, presidential election, where there was a public rebuke of the corruption that existed in the Republican Party at that time, a number of post-Watergate reforms, it seemed as if the political system worked in a way to rebuke a corrupt president to create reforms to minimize the chances of future corruption. But what we have seen since Watergate has caused me to doubt those conclusions that I reached earlier in my adult life, because it is absolutely the case that the combination of increasing polarization and failures of two separate, in my view, completely merited impeachments during the Trump era has demonstrated that the system, the political system for holding presidents accountable for misconduct has broken. It has just broken. And so then you're left with the legal system, which holds everyone, can hold everyone else in America accountable. And in fact, if you look at American history, we've prosecuted a former vice president, we've prosecuted federal judges, we've prosecuted members of Congress, we've prosecuted governors

of states, and the system is held, it's been healthy for our system. There's no reason to believe that we can't prosecute a former president.

And it's interesting because I don't want to say we're an outlier, but you certainly see comparative examples internationally that work the opposite way. I was struck when JD Vance and some other Republicans have been saying that it would be a third world country descent for us to prosecute a former president, but it just happened in Israel, which obviously is now undergoing a lot of tumult around that. It happens in South Korea. It happens in France. Nicholas Sarkozy has been actually sentenced to prison, although he's appealing that right now. How do you understand the international precedent here? We actually do have a lot of examples where national leaders get prosecuted, in some cases even sent to prison, and systems continue on, sometimes even get reelected later, which is always striking to me. But how do you think about that international dimension?

The argument using the international example is to use a legal term presuming facts not in evidence. So in other words, what they're presuming when they're making this argument that the idea that a former president can be prosecuted specifically Donald Trump, what they're presuming is that the system is broken and that the evidence that it is broken is the prosecution of a former president. They're getting that completely wrong. There are certainly

broken legal systems where political losers are prosecuted routinely. We've seen this in authoritarian countries, but the evidence that the American legal system is so fundamentally broken is missing. In fact, of the three branches that have been through the Trump years, I would argue that the judicial branch in many ways weathered it the best, in part because it was the judicial branch, both Democratic and Republican-nominated judges and justices who blocked the election steal effort at every turn. Now, I understand that there might be many listeners who will point to this or that decision by more conservative courts and say, that's bad and wrong. But if you're talking about the preservation of the system itself, the judiciary shined during the 2020 election challenges. And there's no indication right now that the judiciary is not up to the task of resolving a criminal complaint against a former president.

So one thing I've heard just in my own life from people is a sense that Donald Trump was responsible for misdeeds that were so grave that even to people who quite dislike him, the idea that you're going to get them on the Stormy Daniels hush money thing feels off to them. And I'm not claiming that as a legal point. But one thing it brings up is that there are other cases pending against Trump. There are actually a lot of them. The Organization Just Security counts 23 separate civil and criminal lawsuits against him. And the one I think getting the most attention from a lot of legal scholars, I trust, that people seem to think is the strongest that I believe you think is the strongest and is most related to the misdeed that was most grave is in Georgia. So tell me a bit about that case.

Yeah, I am of the belief that the Georgia case is the strongest case based on what we know publicly. So let's just caveat that based on what we know publicly, it's the strongest case. And the reason why it's strong is because the marriage between the law and the facts is so tight. So Georgia, for example, and I'm not pretending that this is the only sort of evidence that's applicable. But Georgia, for example, prohibits criminal solicitation to commit election fraud. In other words, just the effort to try to induce someone to commit election fraud is criminalized in Georgia. And it's a quite clear statute. There's not much that's ambiguous about it at all. So what's the evidence? Now, if you remember, there was a recorded phone call between Donald Trump and the Georgia Secretary of State's office. And the key part of that call, he asks them to find the Georgia Secretary of State's office about 11,780 votes, roughly 12,000 votes to overcome the deficit in Georgia. He then talks about how there is legal risk to the Georgia Secretary of State if he doesn't do this, that there could be law enforcement action undertaking against the Georgia Secretary of State if he doesn't find the votes. There's nothing subtle about it. That's your inducement there. That's what separates this from, hey, I've been reading something that says, you know, that a lot of dead people voted. What do you think? Is that true? That's an inquiry versus I need 12,000 votes or you might find yourself prosecuted. That's something else entirely. And let's put it this way. Let's say if it's a local sheriff and they are subject to an election and they're losing the election by 80 votes and they go to the county election commissioner and says, I need 90 votes or you might find yourself in handcuffs. That local sheriff would already be arrested and tried for this. It would not be considered a controversial case at all. Here we have a former president and his language is only

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slightly less direct than what I just said. It's very slightly less direct, but clearly not just implicating criminality, but expressly stating that it's possible. Boy, those facts alone and I haven't even mentioned the fact that there was a fake electors scheme in Georgia where people were presuming to be the true Trump electors. There are Georgia consp- anti-conspiracy

statutes regarding election fraud that are applicable. It's, it is not hard to explain this to the American people. You criminalize solicitation election fraud. Trump asked for to find almost 12,000 votes and said there could be criminal jeopardy for the secretary of state if he didn't. That is a very straight line kind of prosecution.

Where is that case in process? So that's a great question. Georgia convened a special grand jury to look at all of this. Now, under Georgia law, that special grand jury didn't have the power to indict in the way that other grand juries have the ability to hand up indictments. So they did not have the power to indict. So it issued a report recommending certain indictments. A very small portion of that report was released to the public, I believe in February, and there was an indication that indictments would be imminent. They would be soon. So quite literally at any moment, we could see Fonnies Willis, the Fulton County prosecutor, potentially issue an announcement of indictments based on this special grand jury report.

Does a case like that turn in any way on whether or not you can prove Donald Trump knew the theories he was peddling were false?

I think it's new or should have known. In other words, did he have a legitimate reason to believe that what he was peddling was true? That's where you saw the January 6 Commission really digging into. Now, this is crossing of the streams or jumping to another stream where the January 6 Commission did a really good job of explaining how many people told the president he didn't have a case to overturn the election. A lot of that is the kind of foundation you would lay in trial where you're saying, ladies and gentlemen jury, he may tell you that he legit thought that 12,000 dead people are voted or whatever. He may tell you that all of the greatest experts told him that the Georgia election was bogus and fraudulent, but let me explain to you what he was actually told and what he actually knew. That would be a part of the trial.

Then there's another legal probe, which I want to touch on before moving to some bigger picture questions that you mentioned and that others have, which is Attorney General Merrick Garland appointed a special counsel, Jack Smith, to look into Trump's role in January 6, possibly other things. Tell me a bit about that investigation that's been talked about, Mike Pence testifying or they want him to. This one also seems like it has some politically explosive potential.

Yeah. In both of the two strands of the special counsel investigation, one is investigating not just January 6, but critically the effort to reverse the election in general and the classified documents scandal from Mar-a-Lago. These are two separate things. The January 6th related and election steel related investigation is a federal investigation looking at potential federal crimes.

The reason why I said the Georgia investigation is so straightforward is that the evidence in Georgia is just easy to lay out and easy to expose. That's not to say that there isn't

a lot of evidence of criminality at the federal level. There is, and the January 6th Commission made a criminal referral, which is not as big a deal as it was hyped by many folks in the media. A criminal referral doesn't require the Justice Department to prosecute anybody, but the criminal referral by the January 6th Commission did give you a sense of the kinds of claims that could be brought against Trump. Abstruction of an official proceeding, which criminalizes anyone who corruptly obstructs, influence, or impedes any official proceeding or attempts to do so. You have conspiracy to defraud the United States.

The one that I have thought is very intriguing is the 18 USC section 2383, which criminalizes inciting, assisting, or engaging in any rebellion or insurrection against the authority of the United States. In my view, Ezra, that is most clearly what happened around January 6th.

The really big issue around a prosecution for that is it is very difficult to prove incitement constitutionally. That's a tough hurdle to clear because we strongly protect free speech rights. We protect even people who urge the overthrow of the government that's protected free speech as long as you're not inciting imminent lawless action. The question is, did he incite what occurred on January 6th? The common sense view of it is, well, heck yes he did, but there's a legal definition of incitement that's pretty strict.

I want to zoom out here to maybe a broader theory of the challenge Trump keeps posing to systems because I think I've had versions of the conversation we're having here across a lot of domains in a way that creates a pattern. I think of what happens here, the Trump's disturbance dividend. What he does is he violently disturbs the workings of a system, and it could be the media or the presidency or social media or the law. He does it by violating very established norms or rules or laws for behavior. Then the system to uphold its own workings has to treat him as a kind of disturbance. It has to punish or censor or contain him. His own staff has to encircle him, not tell him things, not carry out his orders. Then he could complain about unfair treatment or that the system is against him. He could get all this attention from this huge conflict that he is unable to incite. I'm not somebody who believes he's Teflon or that this is exactly good for him, but it does keep him in this weird way at the center of everything. We are talking more about Donald Trump right now than about Joe Biden, than about Ron DeSantis. It does damage to all these systems he touches because it really is, at that point, no good answer. Either the system has to turn against him or the system is not working properly, or it has to give him a free pass in which case it has degraded itself further. It's this weird hard cases or maybe bad people make bad laws problem, but it seems to me Trump just keeps posing it to institution after institution and domain after domain.

Yes. What we really see is how imperfect a vehicle the law is to correct a breakdown in moral norms. Let's just look at the challenge created, and I keep going back to this when I think about these times, the challenge created by the failure of, in particular, the second impeachment effort. This was not a legal proceeding in the classic sense that you think of as legal proceedings. This was a political process designed by the founders to check the power of a president. If you were going to tell me as a kid that a president could incite an attack, a violent attack on the Capitol based on a completely fraudulent theory of an election fraud where he was literally trying to overthrow the lawfully elected government of the United States, and that wouldn't qualify for a conviction. He was impeached, not convicted.

I would think that we'd lost our way, that we just flat out lost our way. What has ended up happening, I think, is that a number of people have failed to exercise or demonstrate the moral fortitude to stop Donald Trump from breaching American norms, and now a lot of people are sort of begging the legal system to do what they failed to do. The legal system, it is a necessary part of American democracy, but it is not a substitute for moral courage. The real failure that we have seen in the Trump presidency, going from when he came down the escalator, was a large-scale failure of moral courage, time and time and time again, to the point now where, as I talk to Republicans who are still, they will go out and say that they don't like this prosecution of Trump, and they're secretly hoping it happens and it succeeds. That's a textbook failure of moral courage, and one of my real concerns here is if he is indicted and convicted and sentenced, and that ends the matter, that people will say, we'll see the system worked. I would say it barely worked. It barely worked. The last remaining guardrail held. The basic baseline rule of law, every other guardrail was stampeded over, but that's another reason why I strongly object to political considerations of saying it's too destabilizing, it's too disruptive to prosecute him, because then you would trample over that last guardrail. You would say that the anger of the mob in the final analysis is going to trump the rule of law. My own view, at the risk of sounding ridiculously nerdy, is to echo the words of Theoden in The Two Towers in the Peter Jackson adaptation, when he saw Saruman's army. I didn't see this coming. You did not, yes. He sees Saruman's army coming, and he says, let them come. In other words, defy the mob. Defy them. Do not let the mob win, period. That's why I get really nervous when I keep hearing people saying we need a political consideration about whether or not to prosecute crimes that prosecutors would otherwise prosecute under the belief they could prevail in court. This is a place where I think it's important actually to be specific. I mean, there was a failure of moral courage, and it was on the part of the elected Republican Party. Yes.

It was particularly on the part of Republicans in Congress. I mean, I think two things follow from this. One is that most of the institutions, and this is a breakdown of the design of the founders, they did not expect us to have highly polarized political parties operating across institutions. They thought we would have a competition between the Senate and the House and the presidency and the judiciary, and ambition would check ambition, that there would be cooperation across branches by political parties, breaks the system in a much more profound way than I think people realize. The Richard Nixon removal, or he ultimately resigns, but he would have been removed, comes at this very low ebb of partisan polarization, this aberrant moment in American party history, but we've not had that kind of situation for quite a long time. And so I think this is a place where things are quite scary actually. I mean, as you say, maybe the legal system holds, but I've often heard people say that the system held under Trump, that ultimately he couldn't overturn an election, and that's a very low bar because I think what we've mainly seen is that if one of the two political parties is not willing to protect the system over its own standard bear, then the system doesn't hold. And the last just point I'll make on this, one reason the way impeachment is treated frustrates me, is it impeachment, the way the power ended up being designed, given the vice presidency, is it impeachment really isn't a partisan remedy? You get to

keep your co-partisan in power. Mike Pence would have become president. It's not like Nancy Pelosi would have become president. And even within that, the Republican Party wasn't willing to act. And now you have the Republican Party saying they're gonna drag the prosecutors before Congress to testify. I think this is a much more profound breakdown because it's not really about Donald Trump. If Donald Trump didn't have the Republican Party behind him, he could not survive politically. It is only the Republican Party's support of him that has allowed this to all become so dangerous.

I'm going to go deeper than that because I think ultimately one of the things we learned in 2016 is that the Republican elites didn't actually command the Republican legions. So in 2016, we did have a number of Republican elites call out Donald Trump in no uncertain terms, including some of the people who vigorously defend him now. And they called out Trump, a Lindsey Graham, a Marco Rubio. I mean, you could go down the list. The last two Republican nominees for president, John McCain and Mitt Romney, called out Donald Trump. And they looked around for support and didn't see it. The people weren't with them. You even saw it in the sort of conservative infotainment world. Fox was not all about Donald Trump early on. Many of the talk radio hosts were not all about Donald Trump. But the thing about Trump is he understood their audience in many ways better than they understood their audience. And what ultimately ended up happening is that the Republican elites fell in line behind this Republican populist uprising. And I am of the belief that moral courage could have overcome that. Just take, for example, the second impeachment. If just a few more Republican senators had had the guts to do what their job actually required and convict him and bar him from future office, Donald Trump is not a factor right now. But that fear of the base that set in at every level of the Republican elite is really something to see. It is something to behold. And I would even include that evangelical elites. Evangelical elites were not for Donald Trump. Early on, it was Jerry Falwell Jr. and a couple of other people more on the fringes than him and no one else. But when they saw where the people in the pews were, they got in line. And I'm very nervous that if we think we can sort of change the elite focus, that we can change the course of American politics. I think the rod is a little deeper than that, sadly, and that we have a real problem with I'm going to steal an analysis from my friend, Yvonne Levin. There's always been a George Wallace constituency in American politics, sort of a George Wallace culture in American politics. And for a long time that constituency was some of it was in the Democratic Party, some of it was in the Republican Party. Now, all of it is in the Republican Party. And so it exercises this incredibly disproportionate influence over one of our two great political parties to the point where you can rationally think as a Republican primary candidate that all I have to do is win over the reactionary populace, I can win a primary, and then turn around to the rest of the Republican public and say, it's me or the Democrat, what are you going to choose?

And to add something to the way Yvonne puts that, it's both that this tendency in American politics has concentrated in the Republican Party, but now they also have the media. And so we talk about the party, but the party is very weak. And there is this endless debate, I think, about whether or not right wing media leads the base or the base leads right wing media. And I think you can't look at that as one

way. I think these things have a ricochet or a dynamic quality to them. But the Dominion lawsuit has, I think, been a really interesting object lesson of something that many of us suspected, which is that whether or not Fox News makes this problem worse, they do not themselves feel they have control over it. When confronted with the belief that their viewers hold a view different than the one they hold, they will fold on that view and they will try to satisfy their viewers.

Yes. So there's been an immense public service done by the Dominion lawsuit, even if the suit does not prevail. We could talk about the legal barriers and the legal challenges and difficulties of suing a major media organization that's taking on public topics and public entities like a major software voting company. But there's a tremendous public service done because it lifted the lid on something that a lot of us had been running around talking about for years, but we didn't have all the text messages. And that was, look, these Republican senators, these Republican, these conservative and right-wing hosts say one thing in private and they say another thing in public. And everything you see them say on prime time, you can also, they will be saying the opposite to friends, even just acquaintances, they'll be saying the opposite behind closed doors. And I've been saying this for years. I have colleagues who've been saying this for years. And then finally, you had the documentary proof and the documentary evidence. And here's the way they justified us. It's a really interesting way in which they rationalize it. And they essentially goes something like this, look, the mainstream media disrespects our audience. The reason why there are audiences, they're disrespected by the mainstream media, they're looked down on, they're called deplorables. I mean, you name it, we have our business because we respect our audience when they don't. So we need to continue to respect our audience by giving voice to their concerns. That's how this is rationalized, which is a weird form of respect when you're sort of saying, I'm going to respect you by essentially coddling you by saying that you're not ready for the truth. The truth hurts you too much. So I'm just not going to tell it to you. It's a weird form of respect. That's not a form of respect I'm familiar with. But this is everywhere. And I wrote a piece yesterday after the Trump rally Saturday night. There was a perfect vignette example about how this works. And it was started with Ted Nugent, who was warming up the crowd. And he called Volodymyr Zelensky, Ukraine's president, a homosexual weirdo. That's what he called him in the rally. And which is A, false, B, Zelensky's sexual orientation is irrelevant to the rightness of Ukraine's cause, right? So it's weird. It's out of nowhere. It's false. It's obviously a bigoted statement. And so what happens next is on the show, this network called Real America's Voice, it's immediately the commentator says that was amazing. And he says what a lot of people are feeling. Well, that is exactly in a nutshell how this works. On right wing media, if your people are feeling something, they want to have that feeling reflected back to them. Or they're going to be very angry. They're going to feel betrayed, and they're going to go somewhere else. So the way this worked at Fox, pre-election, what did they want to hear? What they were wanting to hear was there's something wrong with this election, right? There's something wrong. The mail-in ballots make this an inherently suspect election. Why did the early Arizona call cause such a rupture with the audience? Well, how can you call Arizona when you've been telling us that this election is problematic? That's contradictory. And so then Fox went right back

to its old ways after the election call to again satisfy the audience.

I'm struck by the way this has become a value on the right. Because one way you could say the Fox News thing is Fox News is a business run by a very rich man. And they're not respecting their audience. They are serving their market. And however they dress it up, it's ridiculous. They are business. They want to make as much money as possible, and they will do whatever is required to do that. Fine. That's capitalism. You don't have to laud anybody for it, but we've seen it before. But you tell an interesting story about talking with Baptist ministers, about a former Baptist statement, and being told that their flock would find that too elitist. Yes.

Could you tell that story? Yeah. So this was early in the Trump presidency. I was invited and I spoke to a gathering of Baptist pastors, many of them with pastors of big churches, some of small churches, and we were talking about the importance of character in politicians. And the reason for this was obvious. I mean, we had just seen the data that evangelicals had gone from in 2011, the religious group in America, most likely to say that immoral acts would disqualify a politician to the group survey that was now least likely to say that. And what was particularly ironic is that in 1998, the Southern Baptist Convention, which is quite conservative, issued a statement on moral character of public officials. This is the height of the Bill Clinton-Monica-Lewinsky scandal. And it said words, tolerance of serious wrong by leaders, sears the conscience of a culture, leads to unrestrained lawlessness, and surely will result in God's judgment. And this was something passed overwhelmingly in the Southern Baptist Convention in 1998. And so I'm talking to these Baptist pastors and I said, if that was true in 1998, isn't it true in 2017 or 2018? And again, I'm talking about a Baptist moral resolution. And a pastor raised his hand and I said, yes. And he said, if I bring that up to my congregation, they're going to call it elitist. And he's a pastor, I believe, of congregation in Alabama. And it was an interesting demonstration to me as to how thoroughly the sort of Trump movement and the populist movement had taught and how thoroughly the members of this populist movement had imbibed this potion that said, criticism of our populist leader is elitism. Criticism equals elitism. And so in many ways, people became inoculated against the truth. Even a Baptist statement was elitist in a Baptist gathering if it took on Donald Trump. And that was quite striking to me. I've got story after story after story of the Trump years living in a very, very red, heavily evangelical area like that, where you couldn't even get to the truth because the firewall against hearing it had been lifted so high. People might have heard of the John Height Greg Lukianov book, *The Coddling of the American Mind* a few years back. And you had a nice line working off of that, where you called this the coddling the populist mind. I remember a great piece years ago now, calling this populist correctness, which I always thought was a quite good way of putting it. On one level, it seems almost obvious to say that the challenge in American politics is not Donald Trump, it is the voters who would support him. Absent them, Trump has no power. And I would also say it is almost verboten in American politics to say that. But if I had lined this podcast, the problem is in Trump, it's his voters. That is a much more explosive statement than if I just say the problem that American politics has a Donald Trump problem. And it is interesting, we have, for all that democracy in a way, is meant to call forward the deliberation and political and civic responsibility

of the citizens. I think we have lost the language of being willing to say some decisions and being willing to support some things is bad. And it isn't just something that needs to be understood, it is also something that can be criticized or even condemned. Well, you know, there's sort of, if you're a politician, the people can't fail, they can only be failed. So you're constantly presenting to the people whom you're trying, you're trying to appeal to them to gain their votes. It's generally a bad tactic to say you guys messed up. It's much easier to say, well, it's not your fault that the previous guy was a bad president. That's a lot easier to say. But for people in our job who don't have to worry about winning over voters, I think it's really important to say when the people are getting this really wrong. And I'm much more willing to say that now than I was in October 2016, say, now that we've had years of watching Donald Trump be a president and be an ex-president. And then also when the, especially when I'm talking to my Republican friends, there isn't the binary choice argument anymore. They don't have the argument, well, it's Donald Trump or Joe Biden. And if you're pro-life, you only have one choice or what all of the binary choice kind of arguments that go along with the general election. Trump has primary contenders now. And the other thing to show, there is something where Republican voters have adopted or spawned or some combination of adopted and spawned. This culture of cruelty is Trump's primary competitor, Ron DeSantis, in many ways has become a primary Trump competitor by becoming a Trump mini-me. Now, to be clear, I do not believe that Ron DeSantis is as dangerous as Donald Trump. I could not see Ron DeSantis inspiring an attack on the Capitol, for example. But in many ways, Ron DeSantis emerged from the pack by becoming the closest thing that a lot of Republicans saw to another Donald Trump, but without Donald Trump's weaknesses. And that tells you that you've got a real voter issue here. This is the law of supply and demand working. And one thing that is one of the most sobering charts I've seen in recent years is right after January 6th, Republican approval for Mike Pence plunged. And for Mitch McConnell plunged. And Republican approval for Trump stayed relatively high, with just sort of a slight decrease. And this was after Mike Pence, just consider, Ezra, if Mike Pence had said yes, what kind of constitutional crisis we'd face with a mob braying for his head, he defended the constitutional order and became less popular with Republicans. And so that's going to tell me that the problem that we have in this country is not concentrated in a cowardly Republican elite. One of the reasons why the Republican elite is cowardly is because the vitriol of the Republican base. I remember early on in the Trump years, there was a vogue for looking at electoral system design reforms that people thought could answer this challenge. That maybe you could look and find the problem in we weren't enough of a multi-party democracy or we didn't use instant ranked voting or instant runoff voting or ranked choice voting or whatever it might be. And I remember finally a political scientist said to me that there is no answer in election design for the problem of a bad party or a bad person, that you can do things that make your system better or worse. But once you have one of the nominees of the major parties operating in a very, very aberrant way with wide support from his party, you can't solve that through trying to tweak the rules. I mean, one, you can't change the rules already because that party would stand in your way. But even if you could, you haven't actually solved the problem, which is, as you were saying, the demand for this kind of political

figure. And I think DeSantis gets at this point. One thing that I don't love the conversation of DeSantis dangerous or not dangerous because I don't really think I know. But one thing that I noticed with him, the weakness of DeSantis is he doesn't have Trumps to be blunt about a charm and charisma and humor. Liberals, I think, don't always like to admit this, but Trump is funny. He is magnetic. He is a great showman. What DeSantis has is Trump's instinct for conflict with systems, his sense that a way to break through in the attention marketplace is to go to war with systems. You don't really want to be at war with him, but to really attack reporters or to really try to put himself out as the lone defender of the right against the institutions. And it's just that dynamic as it becomes more mainstreamed in American politics. To go back to this point about the disturbance dividend, systems don't have a good answer for a large anti-system party. I mean, I just don't think that is a solvable problem.

I would agree with you, and especially it's contradictory in many ways to the emphasis of the conservatism that I grew up with, which was very much about institution building and respect for institutions without a Pollyannish view that says that institutions can't go bad or can't go wrong. But the goal was institutional reform, not institutional destruction or endless institutional oppositionalism. And so part of what makes the United States of America, the United States of America, going all the way back to de Tocqueville, is the way in which we're just relentless institution builders here in this country. We create civic associations of all kinds. We create institutions of all kinds, and it's one of the better parts of American life, in my view. And so if you become fundamentally anti-institutional, and then what you replace it with isn't necessarily a set of new institutions, but a series of personalities and political celebrities, then what you've done, you've done some real harm to the national fabric.

And I think that one of the things is somebody who, you know, I've been conservative for a long time and if made my critiques of the media, the general critiques of the media for a long time. And one of the things that's so distressing to me is I feel like the American right took legitimate criticisms of the way in which the media universe traditionally in the United States had been disproportionately left-leaning and therefore often unfair to conservative points of view and said, you know what, we're going to build an alternative media ecosystem. And they did, and it's worse. It's worse. It's a celebrity focused populist reactionary media ecosystem.

And I'm not going to say there aren't good journalists in right-leaning media. I know a number of good journalists in right-leaning media, but it is a culture that is dominated by the hot take. It is dominated by opposition and anger. And if you deviate from the hot take and the opposition and anger, you are often gang-tackled by these same angry voices as somehow weak or cowardly. And these phrases, weak or cowardly, have particular potency on the right. That is the ultimate sin. The ultimate sin on the right is to be seen as weak or not up for the fight. And so that culture that's been created that is oppositional to its core as opposed to constructive at its core creates real, there are real cultural and political effects from that that are profoundly negative.

So you can drive yourself crazy trying to think about what the response of this or that system should be. I mean, I've always had a lot of empathy for the people who ran social

media networks in 2020 and had to figure out whether or not to let a president or a recent next president or somebody who was going to be an ex-president foment electoral subversion on their network or try to kick them off the network. I mean, that was a very bad choice for anybody to have to face. There was no good option at that point.

But to go back to what you said earlier about prosecution, is your view that the systems more or less shouldn't try to wrap themselves around the logic or the strategic answer that the view should be, let them come. And you try to do the job according to the norms and ethics of your institution as honestly and straightforwardly and almost naively of the potential consequences you can. I think you do your job and you do the best you can to mitigate the consequences. And so that would mean, for example, if you're going to indict Donald Trump, you're absolutely going to prepare law enforcement to deal with that. And then at the same time, you're going to also relentlessly repeatedly say to the public why you're doing what you're doing, what the justification is, why you're treating Donald Trump no better or no worse than any other American citizen in comparable circumstances, that this is the even-handed application of justice, not because you're necessarily going to have sort of the whole populist movement have a, for lack of better terms, come to Jesus moment on this. But because what you're going to end up doing is you're going to be consistently peeling people away. There was an interesting poll I saw recently where it talked about, I believe it was Fox News viewers talking about a percentage, it might have been around 13% or so, had had their minds actually impacted by the Dominion revelations, that this was something that actually made an impact. 13% here and 5% there. And pretty soon you're talking about a movement that has become so weakened that it either has to be content with rump status or it has to change. And I saw after 2022, really for the first time in the Trump era, a number of people in my median environment who had been consistently

pro-Trump for a time after 2022 rethought it, not because of 22, 22 in isolation, but because it changed the way they view 2022, 2020 and 2018 and raised doubts that he's the winner that they thought he was. That's a good place to wrap, I think. Always our final question, what are three books you'd recommend to the audience? So here's a good one that I read not long ago called *We the Fallen People, the Founders and the Future of American Democracy* by a professor named Robert Tracy McKenzie. It really looks at the role of sort of the view of the fallenness of human nature in the design of the country. Really fascinating, because one of the things I like about our classical liberal legal structure is that it recognizes two realities about human beings. One, we possess incalculable worth. We're all endowed with unalienable rights because we, as human beings, possess incalculable worth. We also suffer from flaws. All of us suffer from flaws. Classical liberalism is designed to protect our worth and to guard against our flaws, so that's a really tremendous book. The next two are just if you'd like to absolutely nerd out on military history, which I basically do on a daily basis. I'm two-thirds of the way through a book called *Napoleonic Wars, A Global History*. I'm going to really apologize to the author Alexander Mikha Bids, wonderful book, and really does demonstrate that maybe World War I wasn't World War I. It was the Napoleonic Wars. The other one, which is fascinating, and it's a 2017 book by Alexander Watson called

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Ring of Steel, Germany and Austria-Hungary in World War I, and is written from sort of the central powers view of World War I, and it is fascinating, absolutely fascinating getting into the mindset of Germany and Austria-Hungary. So those are two history nerd books and one political philosophy nerd book.

David French, thank you very much, you nerd.

Thank you, Ezra, and I accept that as a compliment.

This episode of the Ezra Klein Show is produced by Annie Galvin, Emma Falgout, Jeff Geld, Roger Carman, Kristen Lin, fact-checking by Michelle Harris, Roland Hughes, Kristen Lin, Christina Samuelski, and Kate Sinclair. Mixed by Jeff Geld and Sonya Herrera, original music by Isaac Jones, audience strategy by Shannon Busta, the executive producer of New York Times' opinion audio is Andy Rose Strasser, and special thanks to Pat McCusker and Christina Samuelski.